
From: Jane Wakeham [Contact details removed]
Sent: Monday, July 23, 2012 5:13 PM
To: Mike Harris; Able Marine Energy Park
Cc: [Contact details removed]
Subject: AMEP - Summary of Oral Submissions made on 12.07.12 & amended Order (23.07.12) [Ref:10995-33]

Mike

A hard copy of the attached letter with enclosed summary and amended draft Development Consent Order follows by post this afternoon.

Kind regards

Jane

Jane Wakeham
Barrister


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For the attention of Mike Harris, Case Manager

Our Ref: JEW/10995/33/AMHG
Your Ref: TR030001

23 July 2012

Dear Sirs

**The Able Marine Energy Park Development Consent Order
Harbour Master Humber**

You will be aware that we act for Captain P.J. Cowing, Harbour Master Humber.

In accordance with the Examining Authority's timetable for the examination of the application in Annex C to the rule 8 letter dated 31 May 2012, we enclose our written summary of the case put by Mrs Alison Gorlov of this firm on behalf of Captain Cowing at the Specific Issue Hearing on the draft Development Consent Order (including the deemed Marine Licence) held on 12 July 2012.

The summary also includes submissions on some matters that did not form part of the oral submissions on behalf of Captain Cowing, but in relation to which the Examining Authority indicated it would welcome contributions.

The Examining Authority also invited amendments to the draft Development Consent Order. We therefore enclose a further-amended version of the Order. This does not supersede the marked up Order (showing the Harbour Master Humber's 29 June Amendments) which was submitted to the Examining Authority under cover of Jane Wakeham's email to Mike Harris of 5 July 2012 (17:56hrs).

After the 12 July hearing, Bircham Dyson Bell, for the Applicant, told us that they would find it most helpful for these latest amendments to be shown separately from the previous amendments, as amendments to the Applicant's amended Order. That is how the enclosed amended Order has been prepared. The relationship between the two amended Orders is as explained in paragraph 5 of the enclosed summary.

Yours faithfully

Signature removed

Winckworth Sherwood LLP

Contact details removed

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INFRASTRUCTURE PLANNING

**THE INFRASTRUCTURE PLANNING
(EXAMINATIONS PROCEDURE) RULES 2010**

THE ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER

TR030001

**Written Summary of the Oral Case on behalf of the Harbour Master, Humber
put at the Specific Issue Hearing on the draft Development Consent Order including
the draft Deemed Marine Licence held on 12 July 2012**

(Rule 8 letter 31 May 2012 Annex C)

Unique Reference Number	URN10015524
Rule No.	8(1)(k) and 17
Document Ref.	SOC01
Author	Harbour Master, Humber
Date	23 July 2012
Date of revision & version number	23 July 2012 (Revision 1.0)

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Introduction

1. This is the written summary of the case put by Mrs Alison Gorlov of Winckworth Sherwood LLP at the Specific Issue Hearing on 12 July 2012 on behalf of Captain P.J. Cowing in his capacity as Harbour Master, Humber, representing Associated British Ports ("ABP") as the statutory harbour authority and, in relation to pilotage, the competent harbour authority for the river Humber ("the Harbour Master, Humber"). It also includes submissions on some matters that did not form part of the oral submissions on behalf of the Harbour Master, Humber on 12 July but in relation to which the Examining Authority indicated that it would welcome contributions.
2. This summary, and the views expressed in it, are separate and distinct from anything that may be received by the Examining Authority from Associated British Ports in its capacity as a port operator within the Humber.

Session 1 – Issues of Principle

Agenda item 1. The definition and description of the proposed development

Issue of principle relating to deemed marine licence

3. The Examining Authority's attention is drawn to the interface between the deemed marine licence (Schedule 8 to the Development Consent Order ("DCO")) and the proposed protective provisions on behalf of the Harbour Master, Humber (Part 2 of Schedule 9) which must be drafted so as to operate effectively in practice.
4. The Harbour Master, Humber proposed, in Annex 2 to his written representation, amendments ("the HMH's 29 June amendments") including a number of amendments to the protective provisions. Whilst the Applicant's representative has provided verbal reassurance that all the HMH's 29 June amendments are acceptable, the Harbour Master, Humber has no formal commitment that the Applicant will seek them in the draft Order.
5. Further changes are required in the light of the revised DCO submitted by the Applicant. These include revisions in the protective provisions in Part 2 of Schedule 9. All these amendments are appended to this summary at Appendix 1. They are additional to the HMH's 29 June amendments and, with the exception of the Part 2 Schedule 9 amendments, all of which are shown for the sake of completeness, the HMH's 29 June amendments are not shown in Appendix 1. The Harbour Master, Humber still seeks the HMH's 29 June amendments.

Issue of principle relating to description of development and competency of application

6. The DCO would provide statutory authority for whatever development it encompasses, regardless of what has been assessed in the Environmental Statement. The description of the authorised development in the DCO as applied for is sufficiently vague that the reader cannot ascertain what development is intended. It would leave open the size and precise location of the elements of the proposed development and its ultimate use. It is the view of the Harbour Master, Humber that this inadequacy of the DCO as applied for has the result that the DCO fails properly to identify what is sought to be authorised, something that is not capable of being rectified by other application documents and which is anyway not so rectified. It follows that the application does not comply with regulation 5 of the Infrastructure

Planning (Application: Prescribed Forms and Procedure) Regulations 2009. This point therefore goes to the very validity of the application.

7. Given the potential for different structures to give rise to different marine impacts, which may not have been assessed in the Environmental Statement, the Harbour Master, Humber submits that the powers under the DCO should be restricted so as to authorise only what has been assessed. In the preparing HMH's 29 June amendments he took the view that it would not be appropriate for him to offer amendments to the Applicant's description of the works in the DCO, but his proposed amendments to Article 5 (*Development consent etc. granted by the Order*) and insertion of a new article 6 (*Limits of deviation*) are intended to go some way to tackle the deficiencies (see the HMH's 29 June amendments 20(a) and (b)).
8. Schedule 1 should contain the definitive description of what would be statutorily authorised, including sufficient particulars to identify the physical extent and situation of the works and their general nature. The proposed works descriptions do not achieve this. They are merely skeleton descriptions, unrelated to anything except the order limits. There is nothing to require the development to be constructed in conformity with works plans or design drawings or within specified limits of vertical deviation. These are more than drafting defects. The HMH's 29 June amendments take these defects into account.
9. The conventional way of statutorily authorising works is the same for any of the procedures for so doing. A standard drafting approach is to describe the form of the works and their situation e.g. commencing at one defined point and terminating at another, and to link them to the works plan and, where there are design drawings, also to those drawings. Brief descriptions are given that are sufficiently precise to enable the reader to identify at least the envelope of what is proposed. The Applicant's description fails to do this. The fact that the Planning Act 2008 is a new consenting procedure makes no difference. Importantly, nothing in the Model Provisions encourages a different approach.
10. The Panel asked the Harbour Master, Humber to produce a description of works which would demonstrate these deficiencies. An outline description of works is in Appendix 1 (see amended Schedule 1). These amendments indicate the sort of provision that is required leaving the Applicant to complete details of which only it is fully aware.

Agenda item 6. The timescales proposed for land acquisition, start of development and completion of development

11. The DCO as currently drafted would authorise the compulsory acquisition by the Applicant of part of the river bed in which ABP (as conservancy authority) has a very long leasehold interest (856 years unexpired). Although the Applicant has confirmed that a sub-lease from ABP in the standard ABP form is adequate for its purposes, and hopes to agree a sub-lease before the end of the examination procedure, that agreement has yet to be reached and the Applicant has not committed to seeking amendments to the DCO which exclude the relevant land from the scope of the compulsory acquisition powers. (See HMH's 29 June amendments 18(a) to (c)).
12. Thus, as matters stand, the land interests of the Harbour Master, Humber are subject to compulsory powers and he has an interest in the proposed timescales. If the conservancy authority's riverbed remains subject to compulsory acquisition, the negotiations on the sub-lease would be carried on against the background of an ongoing risk that the Applicant might serve a land-owner's notice at any time (subject

only to the five year time limit in article 33), even at the end of what the Harbour Master, Humber understood to be fruitful negotiations. If the Applicant's assurances to exclude the riverbed can be made legally binding, either by accepting the Harbour Master, Humber's proposed amendments to the DCO or by a side-agreement, this issue goes away.

Agenda item 7. The need for and adequacy of provisions relating to a Construction and Environmental Management Plan (CEMP)

13. The Harbour Master, Humber did not have occasion to make specific representations regarding a CEMP at the hearing but in view of what others said he offers the following observations.

One CEMP or several: in DCO or elsewhere?

14. The Harbour Master, Humber has no preference as to how the subject areas covered may be divided up or the number of management plans. However, he submits that detailed plans ought not to be included in the DCO itself. They are implementation tools which must be flexible and be readily capable of variation to evolving needs. That cannot be achieved by crystallising them in the DCO itself (including of course in the deemed marine licence). Instead, these plans should be recognised as forming an integral part of the detailed construction design that will be prepared to give effect to the design drawings and works plans if the DCO is made. That is how they conventionally operate.

Protective provisions: HMH approval of plans

15. In the protective provisions in Part 2 of Schedule 9, paragraph 8 requires the Able Harbour Authority to submit its detailed design plans and sections to the Harbour Master, Humber for his approval before the plans are sent for the approval of the Secretary of State. It is normal for provision of this sort to expand "plans" to include sections, elevations, drawings, specifications, programmes and method statements.¹ The Harbour Master, Humber considers it essential that he should be able to approve all such documents as being as significant to construction as the plans themselves. This is provided for by HMH's 29 June amendments, amendment 20. With this amendment the Harbour Master, Humber can be assured that he is able to secure the protection of his conservancy and other interests from adverse construction impacts and does not have a direct interest in the CEMP. However, if the protective provisions were not amended in the way the Harbour Master, Humber seeks, his only protection would be via the CEMP. That would not be a satisfactory outcome. The Harbour Master, Humber has statutory functions which he must perform. It would not be right for that performance to be dependent on some other body enforcing a CEMP.

¹ See e.g. London Gateway Port Harbour Empowerment Order 2008 (SI 2008/1261) Schedule 7, paragraph 1(1), Schedule 10, paragraph 2 and Schedule 11, paragraph 2(2); Felixstowe Dock and Railway Harbour Revision Order 2007 (SI 2007/3219), Schedule 2, Part 1, paragraph 2 and Part 2, paragraph 1(2); Maryport Harbour Revision Order 2007 (SI 2007/3463), Schedule 4, paragraph 2; Humber Sea Terminal (Phase III) Harbour Revision Order 2006 (SI 2006/2604), Schedule 1, Part 1, paragraph 1 and Part 2, paragraph 1(2). With one exception these are the only relevant HRO provisions since 2006. The exception is the protection for the PLA in the London Gateway Order, where the relationship between London Gateway Port and the PLA made provision on the face of the Order unnecessary.

Multiple approvals

16. At the 12 July hearing Mr Angus Walker, for Able, expressed disquiet at the number of consents and approvals that were proposed to be required in respect of many of the same documents. He may have been thinking out loud when he mentioned the possibility of one of the approving authorities having the final say but, as that proposal might be thought to have the attraction of simplicity, the Harbour Master, Humber should point out that the reverse would be the case.
17. The Harbour Master, Humber supports observations made by others. The need for the same documents to require multiple approvals is a necessary norm in works projects of this sort. There is no duplication. Each of the approving authorities has a different interest in the documents, and each separate interest may call for different needs to be catered for. It should not be supposed that this means the different needs conflict, only that they all must be accommodated. It will be for Able, in consultation with the various consenting bodies, to evolve a 'package' of documents and construction methods that meet all the relevant interests.
18. This is a standard position with projects of this sort. If it would assist the Panel the Harbour Master, Humber would produce examples, but it may be more appropriate to endeavour first to agree the overall consenting structure with the Applicant. If that can be achieved, the Panel may not want to be troubled further with this question of detailed consenting structure.

Consistency of provisions

19. The Harbour Master, Humber supports the concerns expressed by others that the various management plans should be consistent as between themselves and with the wording of the DCO. The Panel will understand this in the context of the wider concern regarding consistent drafting generally.

Session 2 – Issues of detail

Deemed Marine Licence

20. If Part 2 of Schedule 9 is included in the DCO with the HMH's 29 June amendments, much of the subject matter of the deemed marine licence will be captured by those protective provisions.
21. Notwithstanding 20 above, the drafting of the deemed marine licence is inadequate in a number of respects, not least because the permission proposed to be given by the licence is not cross-referenced or otherwise related to the statutory authorisation elsewhere in the draft DCO or the order limits. Within the deemed licence itself there is a lack of definitions. As this DCO would be a statutory instrument, rectification of these defects is essential for its validity.
22. The procedures for agreeing method statements and works schedules need to be compatible with those of the protective provisions for the Harbour Master, Humber that relate solely to the marine licence. This is the obverse of the submissions above regarding a CEMP.
23. The Harbour Master, Humber is profoundly concerned by the missing information in the replacement draft marine licence. The Applicant is effectively saying it does not know the extent of its own dredging project. If the Applicant really does not know the volumes of dredged materials, the Harbour Master, Humber can have no confidence

in the environmental modelling and other information produced by the Applicant, supplementing the environmental statement, to demonstrate the impact of the dredging proposals. The project as applied for has been the subject of environmental impact assessment. (The supplementary information currently states that there will be up to 1.4 million wet tonnes of dredging annually.) If the volume of dredging is as assessed, it must be possible to fill in the blanks in the draft marine licence. If volumes are other than as assessed, it follows that the environmental statement is wrong.

24. This is a matter that goes to the competency of the application. Had the Applicant put in an application with blank spaces in the marine licence, the Examining Authority would not have accepted it. There is a difference between putting in an incomplete set of protective provisions and an incomplete deemed licence. This is because protective provisions are restrictive on the Applicant, whereas a marine licence is an enabling power.

Annex A – Specific articles and requirements

Article 4 (Modification of enactments)

25. The Harbour Master, Humber would be content with the disapplication of local legislation in article 4(1) provided that the protective provisions cater adequately for the position after construction of the development (i.e in relation to control of maintenance dredging and – which may not have been specifically mentioned on 12 July – works constructed under the DCO after the initial construction of the harbour).

Proposed Article (Limits of deviation)

26. The Harbour Master, Humber proposed a new article to require the undertaker to carry out the authorised development within specified limits of lateral and vertical deviation. This is essential for the proper identification of the authorised development and goes to the competence of the DCO.

Article 9 (Maintenance of authorised development)

27. The Harbour Master, Humber's concern is with the inclusion of the words "enlarge" or "extend". The inclusion of these words would enable the Applicant to replace its works with structures that are much larger and hence have quite different impacts, but with no mechanism for EIA or consent. On this basis it would be legal for the Applicant to extend its works very considerably, the only constraint being harbour limits. This would have the potential to interfere with the river regime in ways that have not been assessed. The issue disappears if "enlarge" and "extend" are deleted from the next iteration of the draft DCO.

Article 12 (Consent to transfer benefit of Order)

28. Article 12 would empower the undertaker to transfer or grant a lease of the benefit of the DCO and related rights. The Harbour Master, Humber has proposed amendments to the draft DCO which would ensure that a lessee cannot transfer or grant a greater interest than has been granted to him and that the Harbour Master, Humber is notified of any such changes (see HMH 29 June, amendments 8 and 9).
29. At the hearing there seemed to be some suggestion that this article was required to enable the transfer of harbour assets. If that was being said, it is mistaken. Bricks

and mortar, plant and equipment do not need statutory powers to transfer them. The purpose of this article is to enable the transfer of the statutory powers in the DCO.

30. The Applicant has stated that if it were to transfer the duties of the Able Harbour Authority it would seek a Harbour Revision order rather than rely on this article. There is no reason why the Applicant cannot promote the necessary legislation to effect any particular transfer of the benefit of the Order at the relevant time. The promotion of a HRO also means that public notice of the proposed change will be given. As this removes the purpose of article 12, it should be deleted.
31. The Panel invited representations as to whether a DCO could be amended by a harbour revision order ("HRO") made under the Harbours Act 1964 ("the 1964 Act"). The Harbour Master, Humber has been advised that it can. The position is as follows.
32. The means of legislating for existing harbours is generally by way of HRO under section 14 of the 1964 Act. A DCO is only required where the construction or alteration of harbour facilities is within the volume limits in section 24 of the Planning Act 2008. Section 14 will therefore potentially be available to AMEP to legislate for non-works provisions e.g. regarding harbour authority governance, and harbour alterations that are less than the volume limits in section 24(2) and (3) of the 2008 Act.
33. Section 14(3) provides:

"A harbour revision order may include all such provisions as appear to the appropriate Minister to be requisite or expedient for rendering of full effect any other provision of the order and any supplementary, consequential or incidental provisions appearing to him to be requisite or expedient for the purposes of, or in connection with, the order, including, but without prejudice to the generality of the foregoing words ... and provisions for excluding or modifying any provision of any Act or of any instrument made under any Act (including this Act) and for repealing any statutory provision of local application affecting the harbour to which the order relates."

A HRO can therefore amend a DCO, as it is an "instrument made under" an Act. The scope of permitted repeals is expressed differently as extending only to any "statutory provision of local application affecting the harbour" to which the HRO relates. "Statutory provision" is defined in section 57(1) as

"a provision, whether of a general or a special nature, contained in, or in a document made or issued under this Act or any Act whether (of a general or of a special nature) other than this Act".

"Local application" does not require definition. It refers to legislation that applies to a particular place rather than generally throughout the country. If the draft DCO is made it will be made under the 2008 Act, and so will be a statutory provision within section 57, and will apply only to AMEP, so will be of local application. It follows that a HRO can amend or repeal a DCO relating to the harbour the subject of the DCO.

Article 20 (Authority to survey and investigate the land)

34. The powers conferred by article 20 are intrusive and ought only to be exercisable within a defined and identifiable area. The Humber Master, Humber has proposed

amendments to the DCO including to the protective provisions to restrict the scope of this power (see the HMH's 29 June amendments, amendments 10 and 11).

Article 23 (abatement of works abandoned or decayed) and paragraph 17 of Part 2 of Schedule 9 (Abandoned or decayed works)

35. It was suggested by the Applicant that these two provisions amount to an unnecessary duplication and that article 23 can be dispensed with. The Harbour Master, Humber does not see any need for this. There is no reason why the Secretary of State should not discharge his function of safeguarding the public navigation by retaining the discretion to act given by article 23. The fact that safety of navigation is also one of the responsibilities of the Harbour Master, Humber does not prevent both the Secretary of State and the Harbour Master, Humber from having powers to act. The Panel's concern about two independent powers seemed to be that there might be disagreement between the two, but this could only arise if either of them was concerned by the other's exercise of its power. Such concern is unlikely. If one of them thinks there are works that need to be reviewed he can exercise his power. If one of them exercises the power when the other thinks there was no need that may be an issue as between Able and the person exercising the power, but it cannot matter to anyone else.
36. So long as the Harbour Master, Humber has paragraph 9 of the Part 2 of Schedule 9, he can act if he considers the works require abatement and will be content. The only possible difference would be that abatement required by the Secretary of State would be at the taxpayers' risk, if Able failed to reimburse, whereas any shortfall resulting from the Harbour Master, Humber's exercise of paragraph 9 would have to be paid for out of port revenues so that the burden would fall on river users as payers of conservancy dues.

Schedule 10 – Limits of harbour

37. The Harbour Master, Humber would welcome clarification in relation to the small area of land where the southern end of the limits of the harbour makes landfall as shown on the proposed DCO plan. This may be resolved when the Applicant produces the next iteration of the DCO including the revised plan. It does however emphasise that there are inherent risks surrounding the use of a small scale plan.

Planning Act 2008
Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
Regulation 5(2)(b)
Document reference: TR030001/DCO/2

Amendments and comments shown tracked are the Harbour Master, Humber's amendments 23.7.12. These are additional to the HMH 29 June Amendments. Where there is an inconsistency between the two sets of amendments, the 23.7.12 amendments prevail.

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**The proposed Able Marine Energy Park
Draft Development Consent Order**

29 June 2012
Revision: 2
Bircham Dyson Bell

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2012 No. XXXX

INFRASTRUCTURE PLANNING

HARBOURS, DOCKS, PIERS AND FERRIES

**The Able Marine Energy Park
Development Consent Order 2013**

Made - - - - 2013
Coming into force - - 2013

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Able has applied for an order granting development consent to the Infrastructure Planning Commission in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

the application was examined by an Examining authority under Part 4 of the Planning Act 2008(a);

the Examining authority has considered the application and the relevant representations made in relation to it, and has reported its recommendation to the Secretary of State as decision-maker under section [74(2)(b) / 83(2)(b)] of that Act;

the decision-maker has decided under section 104 of that Act to make an order granting development consent;

the decision-maker makes the following Order under section 114 of that Act.

(a) 2008 c. 29, as amended

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PART 1

PRELIMINARY

Citation and Commencement

1. This Order may be cited as the Able Marine Energy Park Development Consent Order 2013 and shall come into force the day on which it is made.

Interpretation

2.—(1) In this Order—

“the 1847 Act” means the Harbours, Docks and Piers Clauses Act 1847(a);

“the 1961 Act” means the Land Compensation Act 1961(b);

“the 1965 Act” means the Compulsory Purchase Act 1965(c);

“the 1980 Act” means the Highways Act 1980(d);

“the 1984 Act” means the Road Traffic Regulation Act 1994(e);

“the 1990 Act” means the Town and Country Planning Act 1990(f);

“the 1991 Act” means the New Roads and Street Works Act 1991(g);

“the 2008 Act” means the Planning Act 2008(h);

“AB Ports” means Associated British Ports, company number ZC000195, registered at 79-91 Aldwych, London WC2B 4HN;

“area of jurisdiction” means the area shown bounded by the line described as ‘boundary of jurisdiction of the Harbour Authority’ on the plan at Schedule 10; and in the following provisions of this Order, references to the limits of the harbour shall be construed as references to the limits so shown;

“the approach channel” means the area bounded by co-ordinates (53°39.57’N, 00°13.43’W), (53°39.61’N, 00°13.30’W), (53°39.40’N, 00°12.90’W), (53°39.03’N, 00°12.41’W) and (53°38.94’N, 00°12.60’W) and shown on sheet xx of the works plan;

“area of seaward construction activity” means the area of the sea within the Order limits shown on the land plan;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, being development within the meaning of section 32 of the 2008 Act;

“the berthing pocket” means the area bounded by co-ordinates (53°39.55’N, 00°13.48’W), (53°39.57’N, 00°13.43’W), (53°38.94’N, 00°12.60’W) and (53°39.92’N, 00°12.64’W) and shown on sheets 4, 8 and 9 of the works plan;

“the book of reference” means the book of reference certified by the decision-maker as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“the Cherry Cobb Sands channel means [];

- (a) 1847 (10 & 11 Vict) c. 27, as amended at the date of the coming into force of this Order
- (b) 1961 c. 33, as amended at the date of the coming into force of this Order.
- (c) 1965 c. 56, as amended at the date of the coming into force of this Order
- (d) 1980 c. 66, as amended at the date of the coming into force of this Order.
- (e) 1984 c. 27, as amended at the date of the coming into force of this Order.
- (f) 1990 c. 8, as amended at the date of the coming into force of this Order.
- (g) 1991 c. 22, as amended at the date of the coming into force of this Order.
- (h) 2008 c. 29, as amended at the date of the coming into force of this Order.

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“the Conservancy Authority” means AB Ports Humber Estuary Services in its role as harbour authority for the Humber Conservancy;

“the Company” means Able Humber Ports Limited, company number 107029, registered at Ogier House, The Esplanade, St Helier, Jersey, JE4 9WG;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“the Crown land plan” means the plan certified as the Crown land plan by the decision-maker for the purposes of this Order;

“the decision-maker” has the same meaning as in section 103 of the 2008 Act;

“the dockmaster” means the dockmaster appointed by the Harbour Authority under this Order;

“the design drawings” means the design drawings submitted under regulation 5(2)(o) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and certified as the design drawings by the decision-maker for the purposes of this Order;

“the ecology plan” means the plan certified as the ecology plan by the decision-maker for the purposes of this Order;

“harbour” means the harbour constructed by the undertaker in pursuance of the powers conferred on them by this Order and includes the dredged channel also constructed under those powers, and all other works, land, buildings, ancillary works, plant, property and conveniences connected with them, as from time to time existing;

“the Harbour Authority” means the Company in its capacity as harbour authority established by article 7 (jurisdiction of the Harbour Authority);

“the harbour master” means the harbour master appointed by AB Ports to be a harbour master for an area that includes the area of jurisdiction and includes the harbour master’s deputies and assistants;

“the heritage plan” means the plan certified as the heritage plan by the decision-maker for the purposes of this Order;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the land plan” means the plan certified as the land plan by the decision-maker for the purposes of this Order;

“level of high water” means the level of mean high-water springs;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct or replace the authorised development and any derivative of “maintain” shall be construed accordingly;

“Network Rail” means Network Rail Infrastructure Ltd, company number 02904587 registered at King’s Place, 90 York Way, London N1 9AG;

“Order land” means the land shown on the land plan which is within the boundary of land required for or affected by the proposed development, and described in the book of reference;

“the Order limits” means the limits shown as such on the works plan, and are the limits within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“relevant planning authority” means the local authority for the area in which the relevant land to which the provisions of this Order apply is situated;

“requirement” means the corresponding paragraph of Schedule 11;

“the rights of way plan” means the plan certified as the rights of way plan by the decision-maker for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

Comment [amhg1]: Moved here from Schedule 9, Part 2, because this expression is used elsewhere e.g.. article 21.

(a) 1981 c. 67, as amended at the date of the coming into force of this Order.

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“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageway, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“tidal work” means so much of any work authorised by this Order as is on, under or over tidal waters or tidal lands below the level of high water;

“tree preservation order” has the meaning given in section 198 of the 1990 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“the turning area” means the area bounded by co-ordinates (53°39.40’N, 00°12.90’W), (53°39.41’N, 00°12.53’W), (53°39.11’N, 00°12.26’W) and (53°39.03’N, 00°12.41’W) and shown on sheets 8 and 9 of the works plan.

“the undertaker” means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act and articles 11 and 12;

“the undertaking” means the harbour undertaking of the undertaker as authorised from time to time;

“vessel” means every description of vessel or water-borne structure, however propelled, moved or constructed, and includes displacement and non-displacement craft, personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over or placement in water and which is at the time in, on or over water;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plan” means the plan certified as the works plan by the decision-maker for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development shall be taken to be measured along that work.

Incorporation of the Harbours, Docks and Piers Clauses Act 1847

3.—(1) With the exception of sections 6 to 23, 25, the proviso to section 28, section 31, the proviso to section 32, section 33, sections 35, 36, 38, 39, 42, 43, 45, 48 to 50, 53 to 55, 59 to 64, 66 to 69, 71 to 73, 76 and 79 to 90, 92, 97, 98 and 102, the 1847 Act is incorporated in this Order subject to the modifications stated in paragraph (2).

(2) In construing the 1847 Act as so incorporated—

the expression “the special Act” means this Order;

the expressions “the Promoters of the undertaking” and “the undertakers” mean the undertaker;

the expression “the harbour, dock or pier” means the authorised development within the area of jurisdiction;

the expressions “limits” and “prescribed limits” mean the area of jurisdiction;

the expression “near the pier” does not extend beyond the area of jurisdiction;

the expression “the harbour master”, in relation to the authorised development means the harbour master as defined in article 2;

the definition of “vessel” in article 2(1) shall be substituted for the definition in section 3 of the 1847 Act; and

any requirement to comply with a notice or direction given by the harbour master shall be construed as including a requirement that, in complying with such notice or direction, a person who is subject to the notice or direction shall also comply with any relevant notice or direction

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given by AB Ports or the harbour master in the exercise by either or both of them of any function conferred by or under any enactment (including this Order).

Modification of enactments

4. —(1) Sections 25 and 26 of the River Humber Conservancy Act 1852(a), section 9 (licences for execution of works) of the Humber Conservancy Act 1899(b) and section 6(2) (no erections in Humber below river lines or without licence above river lines) of the Humber Conservancy Act 1905(c) do not apply to the authorised development.
- (2) The requirement to obtain consent under section 23(1) of the Land Drainage Act 1991(d) does not apply to the authorised development.

PART 2
PRINCIPAL POWERS

Development consent etc. granted by the Order

5. Subject to the provisions of this Order and to the requirements in Schedule 11 (requirements) the undertaker is granted development consent for the authorised development, to be carried out within the Order limits.

Period for completion of work

6. If the authorised development is not completed within ten years from the coming into force of this Order or such extended time as the decision-maker may on the application of the undertaker allow, then on the expiration of that period or such extended time (as the case may be) the rights granted by this Order to the undertaker for making and maintaining the works shall cease except as to so much of them as is then substantially commenced.

Jurisdiction of the Harbour Authority

- 7.—(1) Without prejudice to the functions of AB Ports exercisable within its limits, the Company shall be the harbour authority for the area of jurisdiction.
- (2) Without prejudice to any provision of the 1847 Act as incorporated by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847), the area within which the Harbour Authority and the dockmaster may exercise their functions under this Order shall be the area of jurisdiction.
- (3) The jurisdiction of the Harbour Authority over vessels within the area of jurisdiction shall not extend to—
any vessel unless it is at anchor or otherwise moored or is causing an obstruction within the area of jurisdiction; or
signalling or any other activity connected with the movement of the vessel.
- (4) Where any person referred to in paragraph (5)(a) considers that there is an actual or anticipated conflict between—
the exercise of any function of any person mentioned in paragraph (5)(a); and
the exercise of any function of any person mentioned in paragraph (5)(b),
then that person may give notice to the relevant person in paragraph (5)(b).

(a) 1852 c. cxxx. , as amended at the date of the coming into force of this Order.
(b) 1899 c. cci. , as amended at the date of the coming into force of this Order.
(c) 1905 c. clxxix. , as amended at the date of the coming into force of this Order.
(d) 1991 c. 59, as amended at the date of the coming into force of this Order

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(5) The persons referred to in paragraph (4) are—

AB Ports and the harbour master; and

the Harbour Authority and the dockmaster.

(6) The notice referred to in paragraph (4) shall set out any requirements concerning the exercise of the relevant function by the relevant person mentioned in paragraph (5)(b).

(7) The requirements referred to in paragraph (6) may—

make general provision in relation to the exercise of functions over time; or

make specific provision about the exercise of a particular function or functions on a particular occasion.

(8) If—

a notice sets out requirements falling within paragraph (7)(a) it must be made in writing; and

a notice sets out requirements falling within paragraph (7)(b) it may be made in writing or in any other manner considered appropriate by the person giving the notice.

(9) On receipt of a notice given under paragraph (4), the recipient of the notice shall comply with the notice.

(10) Save where expressly provided elsewhere in this Order, no person mentioned in paragraph (5)(b) is obliged to seek any permission or otherwise notify any person mentioned in paragraph (5)(a) prior to exercising any function.

(11) Subject to the requirements of any notice given under paragraph (4), the functions of the Harbour Authority and the dockmaster shall be exercised in accordance with Part 2 of Schedule 9 (for the protection of AB Ports).

Agreements entered into by Company, etc.

8. Any agreement or undertaking entered into by the Company before the coming into force of this Order in connection with the proposed exercise of its functions as Harbour Authority shall be binding upon the Harbour Authority notwithstanding that it was entered into by the Company before it was established as a Harbour Authority by article 7 (jurisdiction of the Harbour Authority).

Maintenance of authorised development

9. The undertaker may at any time maintain the authorised development and within the limits of the harbour, from time to time enlarge, relay or extend temporarily or permanently the authorised development, except to the extent that this Order or an agreement made under it provides otherwise.

Provision of works

10.—(1) The undertaker may from time to time within the Order limits provide and operate such harbour facilities, together with works ancillary to those facilities, as may be necessary or convenient for the construction of the authorised development or the operation of the undertaking, and for this purpose the undertaker may construct and maintain roads, railway lines, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances and such other works and conveniences as may be necessary or expedient.

(2) Without prejudice to paragraph (1) the undertaker may within the Order limits carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the authorised development, including—

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works for the accommodation or convenience of vessels (including but not limited to berthing heads, mooring posts, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons);

works to divert, remove or replace apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines; and

landscaping and other works to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works.

(3) Article 3 of, and Parts 11 and 17 in Schedule 2 to, the Town and Country Planning (General Permitted Development) Order 1995(a) shall apply as if this Order were a grant of planning permission.

Benefit of Order

11. Subject to article 12 (consent to transfer benefit of Order), the provisions of this Order shall have effect solely for the benefit of the Company.

Consent to transfer benefit of Order

12.—(1) The undertaker may, with the consent of the Secretary of State—
transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related rights as may be agreed between the undertaker and the transferee; or
grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1), references in this Order to the undertaker, except in paragraph (3), shall include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

PART 3
STREETS

Street works

13.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—

- break up or open the street, or any sewer, drain or tunnel under it;
- tunnel or bore under the street;
- place apparatus in the street;
- maintain apparatus in the street or change its position; and
- execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(a) SI 1995/418, as amended at the date of the coming into force of this Order.

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(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Temporary stopping up of streets

14.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street and may for any reasonable time—

divert the traffic from the street; and

subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 3 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the rights of way plan, in column (3) of that Schedule.

(4) The undertaker shall not temporarily stop up, alter or divert—

any street specified as mentioned in paragraph (3) without first consulting the street authority; and

any other street without the consent of the street authority which may attach reasonable conditions to any consent.

(5) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Access to works

15.—(1) The undertaker may, for the purposes of the authorised development—

form and lay out means of access to a public highway, or improve existing means of access to a public highway, in the location specified in columns (1) and (2) of Schedule 4 (access to works); and

with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access to a public highway or improve existing means of access to a public highway, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If a relevant planning authority which receives an application for approval under paragraph (1)(b) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it shall be deemed to have granted approval.

Agreements with street authorities

16.—(1) A street authority and the undertaker may enter into agreements with respect to—

the strengthening, improvement, repair or reconstruction of any street required as a result of the exercise of the powers conferred by this Order;

any stopping up, alteration or diversion of a street authorised by this Order; or

the carrying out in the street of any of the works referred to in article 13(1) (street works).

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

make provision for the street authority to carry out any function under this Order which relates to the street in question;

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include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
contain such terms as to payment and otherwise as the parties consider appropriate.

Public rights of way

17.—(1) With effect from the date of certification by the local highway authority that the agreed alternative right of way has been created to the standard defined in the implementation plan, the section of each public right of way (being a footpath) specified in columns (1), (2) and (3) of Schedule 3 (footpaths to be diverted) is extinguished.

(2) With effect from that same date, the alternative section of each footpath specified in column (4) of Schedule 5 is created.

(3) In this article—

“implementation plan” means the written plan prepared by the undertaker and approved by the local highway authority for the creation of the agreed alternative right of way to the defined standard; and

“local highway authority” has the same meaning as in section 329(1) of the 1980 Act.

PART 4
SUPPLEMENTAL POWERS

Discharge of water

18.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker shall not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.

(4) The undertaker shall not make any opening into any public sewer or drain except—
in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and
where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker shall not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010(b) (requirement for an environmental permit).

(8) In this article—

(a) 1991 c.56, as amended at the date of the coming into force of this Order.
(b) S.I. 2010/675, as amended at the date of the coming into force of this Order.

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“public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964^(a) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in those Regulations.

Protective work to buildings

19.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—
at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—
enter the building and any land within its curtilage; and
where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—
a right under paragraph (1) to carry out protective works to a building;
a right under paragraph (3) to enter a building and land within its curtilage;
a right under paragraph (4)(a) to enter a building and land within its curtilage; or
a right under paragraph (4)(b) to enter land,
the undertaker shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days’ notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 58 (arbitration).

(7) The undertaker shall compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—
protective works are carried out under this article to a building; and
within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the

(a) 1964 c.40, as amended at the date of the coming into force of this Order.

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protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker shall compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article “protective works” in relation to a building means—
underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land

20.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- survey or investigate the land;
- without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—
shall, if so required upon entering the land, produce written evidence of their authority to do so; and
may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article—
in land located within the highway boundary without the consent of the highway authority; or
in a private street without the consent of the street authority,
but such consent shall not be unreasonably withheld.

(5) The undertaker shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Power to dredge

21.—(1) The undertaker may, for the purposes of constructing and maintaining the authorised development and of affording access to the authorised development by vessels, from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the River Humber as adjoin or are near to the work and may use, appropriate or dispose of the

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materials (other than wreck within the meaning of Part 9 of the Merchant Shipping Act 1995) from time to time dredged by them.

(2) No such materials shall be laid down or deposited—
in contravention of the provisions of any enactment as respects the disposal of waste; or
in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by the Marine Management Organisation pursuant to Part 2 of Schedule 8 (deemed marine licence).

(3) The undertaker shall consult with the Conservancy Authority before exercising the rights conferred on them by this article.

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Tidal works not to be executed without approval of Secretary of State

22.—(1) Unless its construction has commenced within five years of the coming into force of this Order, no tidal work shall be constructed, reconstructed, extended, enlarged, replaced or relaid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before that work is begun.

(2) If a tidal work is constructed, reconstructed, extended, enlarged, replaced or relaid in contravention of paragraph (1) or of any condition or restriction imposed under that paragraph—

the Secretary of State may by notice in writing require the undertaker at its own expense to remove the tidal work or any part of it and restore the site to its former condition; and, if on the expiration of 30 days beginning with the date when the notice is served on the undertaker it has failed to take reasonable steps to comply with the requirements of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; or

if it appears to the Secretary of State urgently necessary so to do, the Secretary of State may remove the tidal work, or part of it, and restore the site to its former condition,

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the undertaker.

Abatement of works abandoned or decayed

23.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the undertaker at its own expense either to repair and restore that work or any part, or to remove that work and restore the site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion of it, in any notice under this article.

(3) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the undertaker

Survey of tidal works

24. If the Secretary of State considers it expedient to do so, the Secretary of State may order a survey and examination of a tidal work or of the site on which it is proposed to construct the work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the undertaker.

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Lights on tidal works etc. during construction

25. The undertaker shall at or near—
a tidal work, including any temporary work; or
any plant, equipment or other obstruction placed, in connection with any authorised development or any work authorised by article 10 (provision of works), within the area of seaward construction activity,
during the whole time of the construction, reconstruction, extension, enlargement, replacement or relaying, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State and the Humber Conservancy Board or, failing agreement between them, the Secretary of State may from time to time direct.

Provision against danger to navigation

26. In case of damage to, or destruction or decay of, a tidal work or any part of it, the undertaker shall as soon as reasonably practicable notify the Humber Conservancy Board and Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House and the Humber Conservancy Board or, failing agreement between them, the Humber Conservancy Board may from time to time direct.

Permanent lights on tidal works

27. After the completion of a tidal work the undertaker shall at the outer extremity of it exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as the Humber Conservancy Board and Trinity House or, failing agreement between them, the Humber Conservancy Board may from time to time direct.

Power to appropriate

28.—(1) Subject to articles 11 and article 13, the undertaker may from time to time set apart and appropriate any part of the harbour for the exclusive or preferential use and accommodation of any trade, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such charges and to such terms, conditions and regulations as the undertaker may think fit.
(2) No person or vessel shall make use of any part of the harbour so set apart or appropriated without the consent of the harbour master, and—
the harbour master may order any person or vessel making use of the harbour without such consent to leave or be removed; and
the provisions of section 58 of the 1847 Act (powers of harbour master as to mooring of vessels in harbour), as incorporated by this Order, shall extend and apply with the necessary modifications to any such vessel.

PART 5
POWERS OF ACQUISITION

Compulsory acquisition of land

29.—(1) The undertaker may acquire compulsorily so much of the Order land as is shown washed pink on the land plan as is required for the authorised development or to facilitate it.
(2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.

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(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article is subject to article 39 (temporary use of land for carrying out the authorised development).

Power to override easements and other rights

30.—(1) Any authorised activity undertaken by the undertaker which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title under it) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

an interference with an interest or right to which this article applies; or

a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

the erection, construction or carrying out, or maintenance of any building or work on land;

the erection, construction, or maintenance or anything in, on, over or under land; or

the use of any land.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including and any natural right to support.

(4) Nothing in this article shall authorise interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is—

a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or

a right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.

(5) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article the interest or right shall be extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences.

(6) In respect of any interference, breach extinguishment, abrogated or discharged in pursuance of this article, compensation—

shall be payable under section 7 or 10 of the 1965 Act; and

shall be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where—

(i) the compensation is to be estimated in connection with a purchase under those acts; or

(ii) the injury arises from the execution of works on or use of land acquired under those acts.

(7) Nothing in this article shall be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

(8) Nothing in this article shall be construed as restricting the entitlement of any person to compensation.

(9) Where a person deriving title under the undertaker by whom the land in question was acquired or appropriated—

is liable to pay compensation, and

fails to discharge that liability,

the liability shall be enforceable against the undertaker.

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Compulsory acquisition of land – incorporation of the mineral code

31. Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981^(a) (minerals) are incorporated in this Order subject to the modification that for “the acquiring authority” substitute “the undertaker”.

Time limit for exercise of authority to acquire land compulsorily

32.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

no notice to treat shall be served under Part 1 of the 1965 Act; and

no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 35 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)^(b).

(2) The authority conferred by article 39 (temporary use of land for carrying out the authorised development) shall cease at the end of the period referred to in paragraph (1), but nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

33.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the land plan.

(2) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 of the 1965 Act, as substituted by article 37 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.

(4) Any person who suffers loss as a result of the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Private rights of way

34.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes.

(a) 1981 c. 67, as amended at the date of the coming into force of this Order

(b) 1981 c.66., as amended at the date of the coming into force of this Order.

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(3) Subject to the provisions of this article, all private rights of way over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 41 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) shall have effect subject to—
any notice given by the undertaker before—

- (i) the completion of the acquisition of the land,
 - (ii) the undertaker's appropriation of it,
 - (iii) the undertaker's entry onto it, or
 - (iv) the undertaker's taking temporary possession of it,
- that any or all of those paragraphs shall not apply to any right of way specified in the notice; and

any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—
is made with a person in or to whom the right of way is vested or belongs; and
is expressed to have effect also for the benefit of those deriving title from or under that person,
it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

35.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981^(a) shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(a) 1981 c. 66. as amended at the date of the coming into force of this Order

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- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and

subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

36.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 29 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 37 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

37.—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—

a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and

a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

without material detriment to the remainder of the land subject to the counter-notice; or

where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

without material detriment to the remainder of the land subject to the counter-notice; or

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where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but

the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and

the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of six weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, shall pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

38.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) shall not apply in relation to—

any subway or underground building; or

any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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(5) Compensation shall not be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

39.—(1) The undertaker may, in connection with the carrying out of the authorised development—

enter on and take temporary possession of—

- (i) the land specified in columns (1) and (2) of Schedule 6 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
- (ii) any of the Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act or no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;

remove any buildings and vegetation from that land; and

construct temporary works (including the provision of means of access) and buildings on that land.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

in the case of land of which temporary possession may be taken, after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 6;

in the case of any Order land, after the end of the period of two years beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.

(5) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(7) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker shall not be precluded from—

acquiring new rights over any part of that land under article 33 (compulsory acquisition of rights); or

acquiring any part of the subsoil (or rights in the subsoil) of that land under article 36 (acquisition of subsoil only).

(9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.

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(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised development

40.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and

construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) shall not authorise the undertaker to take temporary possession of—

any house or garden belonging to a house; or

any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person’s entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article “the maintenance period”, in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

41. The undertaker may—

acquire compulsorily the land belonging to statutory undertakers shown on the land plan within the limits of the land to be acquired and described in the book of reference;

extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the land plan and described in the book of reference; and

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acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plan and described in the book of reference.

Recovery of costs of new connections

42.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 41 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 41, any person who is—

the owner or occupier of premises the drains of which communicated with that sewer; or

the owner of a private sewer which communicated with that sewer,

shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article shall not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 6

MISCELLANEOUS AND GENERAL

Deemed marine licence

43. The undertaker is deemed to be granted a licence under section 66 of the Marine and Coastal Access Act 2009(a) to carry out the works described in Schedule 8, subject to the provisions set out in that Schedule, which shall be treated as licence conditions.

Felling or lopping of trees

44.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

(a) 2009 c. 23, as amended at the date of the coming into force of this Order

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Trees subject to tree preservation orders

- 45.—(1) The undertaker may fell or lop any tree described in Schedule 7 and identified on the land plan, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—
- from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- from constituting a danger to persons using the authorised development.
- (2) In carrying out any activity authorised by paragraph (1)—
- the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and
- the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.
- (3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.
- (4) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

Railway and navigation undertakings

- 46.—(1) Subject to the following provisions of this article, the undertaker may not under article 13 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—
- is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or
- forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,
- except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.
- (2) Paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.
- (3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.
- (4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.

Railway network

47. —(1) The modification of the railway network consisting of the removal of the line crossing the Order land from the network operated by Network Rail shall be treated as a minor modification for the purposes of Part 4 of the Railways Act 2005(a).
- (2) The undertaker, or any person permitted by the undertaker, may operate and use the railway crossing the Order land together with any ancillary works as a system, or part of a system, for the carriage of goods.
- (3) The Office of Rail Regulation, Network Rail and the undertaker may enter into agreements in connection with the operation and use of the railway crossing the Order land.

(a) 2005 c. 14 as amended at the date of the coming into force of this Order

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Arrangements with Her Majesty's Revenue and Customs

48. The undertaker and Her Majesty's Revenue and Customs may enter into any such agreement or arrangement as they think fit to provide for, or to facilitate, the assessment, collection or recovery of charges, including an agreement or arrangement as to the provision and maintenance of accommodation at the harbour.

Application of landlord and tenant law

49.—(1) This article applies to—

any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

50. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

51.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if

the defendant shows that the nuisance—

- (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or
- (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(a) 1990 c.43, as amended at the date of the coming into force of this Order.

(b) 1974 c.40, as amended at the date of the coming into force of this Order.

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the defendant shows that the nuisance—

- (iii) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development in accordance with a scheme of monitoring and attenuation of noise agreed with the relevant planning authority as described in requirement 19; or
- (iv) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

52. Schedule 9 to this Order has effect.

Saving for Trinity House

53. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Disapplication of regulation 73 of the Conservation of Habitats and Species Regulations 2010

54.—(1) Regulation 73 of the Conservation of Habitats and Species Regulations 2010(a) (general development orders) (“the Habitats Regulations”) shall not apply to any planning permission which relates to the works authorised by article 10 (provision of works) and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995(b) for the class of development described as permitted development in Part 11 of Schedule 2 to that Order.

(2) Paragraph (1) does not apply if and to the extent that those works—

do not form part of the plan and project which was subject to an appropriate assessment in accordance with regulation 61 of the Habitats Regulations (assessment of implications for European Sites and European Offshore Marine Sites) in connection with the making of this Order; and

are not the subject of a further consent, permission or authorisation by a competent authority as defined in the Habitats Regulations.

Planning, etc. jurisdiction

55.—(1) During the period beginning with the date when this Order comes into force and ending on the accretion date, the area within the Order limits shall, for the purposes of the Control of Pollution Act 1974(c) and the 1990 Act, be annexed to and incorporated with the area of the relevant planning authority.

(2) In this article, “accretion date” means the date when the works authorised by this Order have been completed or, if earlier, the date when the benefits and rights granted by this Order cease to have effect pursuant to article 6 (period for completion of work).

-
- (a) S.I. 2010/400 as amended at the date of the coming into force of this Order
 - (b) S.I. 1995/418 as amended at the date of the coming into force of this Order
 - (c) 1974 c. 40 as amended at the date of the coming into force of this Order

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Certification of plans etc

56.—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to the decision-maker copies of—

the book of reference;

the Crown land plan;

the ecology plan;

the heritage plan;

the land plan;

the rights of way plan; and

the works plan,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

57.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

by post; or

with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978^(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and

either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement shall be taken to be fulfilled only where—

the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

the notice or document is capable of being accessed by the recipient;

the notice or document is legible in all material respects; and

in a form sufficiently permanent to be used for subsequent reference.

(a) 1978 c. 30.

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(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

that person shall given notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.

(9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

Arbitration

58. Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Requirements - appeals

59. Section 78 of the 1990 Act shall apply to an application for any consent, agreement or approval of a local planning authority under Schedule 11 as if such consent, agreement or approval were required pursuant to a condition imposed on a grant of planning permission.

Signed by authority of the Secretary of State

[xxx] 2013

Department for Transport

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SCHEDULES

SCHEDULE 1

Article 5

AUTHORISED DEVELOPMENT

NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT

1. In the district of North Lincolnshire—

Work No. 1—a quay of solid construction comprising a quay wall and reclamation behind it on the [south] side of the River Humber, the quay wall commencing by a junction with the existing flood wall at point [53°39.46'N, 00°13.68'W], extending [] wards for a distance of XXX metres to point [53°39.54'N, 00°13.45'W], continuing [] wards for a distance of XXX metres to point [53°38.95'N, 00°12.67'W], then continuing [] wards for a distance of XXX metres to point [53°38.88'N, 00°12.75'W] and [] wards for a distance of XXX metres and terminating by a junction with the existing flood wall at point [53°38.98'N, 00°13.18'W].

ASSOCIATED DEVELOPMENT

2. In the district of North Lincolnshire—

Work No. 2—improvements to the junction of Humber Road and Rosper Road;

3. In the district of North Lincolnshire and within the Order limits—

dredging the approach channel, the berthing pockets, the turning area, the Cherry Cobb Sands channel and the other areas within which dredging is deemed to be licensed by virtue of the deemed marine licence set out in Schedule 8;

land reclamation behind the new quay wall (Work No. 1) and in the new intertidal area between the old and new flood defence [] at Cherry Cobb Sands in accordance with the deemed marine licence set out in Schedule 8;

the provision of onshore facilities for the manufacture, assembly and storage of components and parts for offshore marine energy and related items;

improvements to Rosper Road, Eastfield Road, the A160 and the A180;

surface and foul water disposal arrangements;

lighting;

parking;

ecological mitigation works; and

the re-siting of apparatus.

4. In the district of the East Riding of Yorkshire and within the Order limits, the development of compensatory environmental habitat.

Comment [amhg2]: Amendment assumes Order is amended to include HMH's 29 June amendments, no. 20(b) (new article after article 5)..

Deleted: and within the limits of deviation for Work No. 1 shown on the works plan

Comment [AMHG3]: specify direction

Comment [AMHG4]: specify direction

Comment [AMHG5]: specify direction

Comment [AMHG6]: specify direction

Comment [amhg7]: As above.

Deleted: and within the limits of deviation for Work No. 2 shown on the works plan

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Comment [amhg8]: Insert appropriate structure as per Schedule 8 – wall, embankment or whatever.

Deleted: ;

Deleted: works

Comment [amhg9]: This could mean anything at any location within the Order limits. The general nature of these works should be specified on the face of the Order. Must be consistent with the ES.

Comment [amhg10]: This could mean anything. The general nature of these works should be specified on the face of the Order. Must be consistent with the ES.

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SCHEDULE 2

Article 13

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
District of North Lincolnshire	Rosper Road
	Chase Hill Road

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SCHEDULE 3

Article 14

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> Area	<i>(2)</i> Street to be temporarily stopped up	<i>(3)</i> Extent of temporary stopping up
District of North Lincolnshire	Rosper Road	Between points C and D as shown on the rights of way plan
	Rosper Road	Between points E and F as shown on the rights of way plan
	Eastfield Road	Between points G and H as shown on the rights of way plan

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SCHEDULE 4

Article 15

ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Subject to street works</i>
District of North Lincolnshire	Improved access from Rosper Road shown at the point marked A on sheet 2 of the rights of way plan
	New access from Rosper Road shown at the point marked A on sheet 3 of the rights of way plan

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SCHEDULE 5

Article 17

FOOTPATHS TO BE STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Footpath to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New footpath to be substituted</i>
District of North Lincolnshire	Footpath 50	From point F1 to point F2 as shown in orange on the rights of way plan	A footpath between points F1 and F3 as shown in blue on the rights of way plan
District of the East Riding of Yorkshire	Paull Footpath 6	From point F4 to point F5 as shown in orange on the rights of way plan	A footpath between points F4 and F5 as shown in blue on the rights of way plan

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SCHEDULE 6

Article 39

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
District of North Lincolnshire	01001, 01002, 01003	Works to A160 / Rosper Road junction	Works to Rosper Road
	02001, 03001, 04001, 05001	Works to Rosper Road	Works to Rosper Road
	02009, 02010, 02011, 02012, 03027	Footpath diversion	Footpath diversion
	03026	Private track diversion	Private track diversion
	02013	Quay construction - access	Marine works
	06001, 06002, 06003, 06004, 06005	Installation of a sewer and works to sewage treatment works	Sewage improvement works

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SCHEDULE 7

Article 45

TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Identification of tree shown on ecology plan</i>	<i>(3)</i> <i>Work to be carried out</i>
District of North Lincolnshire	Marked with T1 on sheet 3 of the ecology plan	Felling to allow authorised development to proceed
	Marked with T2 on sheet 3 of the ecology plan	Felling to allow authorised development to proceed

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SCHEDULE 8

Article 43

DEEMED MARINE LICENCE

PART 1

INTRODUCTORY

Interpretation

1. (1) In this Schedule:—

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“the Centrica outfall” means the area bounded by co-ordinates xxx, xxx, xxx and xxx and shown on sheet 5 of the works plan;

“clay” means dredged materials with a diameter of less than 31.25 micrometres;

“the E.ON outfall” means the area bounded by co-ordinates xxx, xxx, xxx and xxx and shown on sheet 5 of the works plan;

xxx and xxx and shown on sheets 10, 11, 12 “flood wall at Cherry Cobb Sands” means the area bounded by co-ordinates xxx, xxx, and 13 of the works plan;

“gravel” means dredged materials with a diameter of at least 2 and less than 64 millimetres;

“HU080” means the area bounded by co-ordinates (53°36.95’N, 00°03.47’W), (53°36.55’N, 00°00.42’E), (53°36.30’N, 00°00.62’W) and (53°36.47’N, 00°02.32’W);

“HU082” means the area bounded by co-ordinates (53°37.47’N, 00°02.27’W), (53°37.25’N, 00°00.80’W), (53°36.97’N, 00°00.81’W) and (53°37.12’N, 00°02.29’W);

“licensable activity” means an activity licensable under section 66 of the 2009 Act;

“licensed activity” means any activity described in Part 2 of this Schedule;

“licensed undertaker” means the Company and any agent or contractor acting on its behalf;

“MMO” means the Marine Management Organisation;

“mean high water springs” means the average of high water heights occurring at the time of spring tides;

“named vessel” means a vessel whose name and type has been notified to the MMO in writing;

“the North Killingholme Haven Pits sluice site” means the area bounded by co-ordinates xxx, xxx, xxx and xxx and shown on sheet 5 of the works plan;

Comment [amhg11]: Taken to article 2 because referred to here and in Schedule 1.

Deleted: “the approach channel” means the area bounded by co-ordinates (53°39.57’N, 00°13.43’W), (53°39.61’N, 00°13.30’W), (53°39.40’N, 00°12.90’W), (53°39.03’N, 00°12.41’W) and (53°38.94’N, 00°12.60’W) and shown on sheet xx of the works plan; ¶
“the berthing pocket” means the area bounded by co-ordinates (53°39.55’N, 00°13.48’W), (53°39.57’N, 00°13.43’W), (53°38.94’N, 00°12.60’W) and (53°39.92’N, 00°12.64’W) and shown on sheets 4, 8 and 9 of the works plan; ¶

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“the pumping station channel” means []:

“the pumping station site” means the area bounded by co-ordinates xxx, xxx, xxx and xxx and shown on sheets 3 and 9 of the works plan;

“sand” means dredged materials with a diameter of at least 62.5 micrometres and less than 2 millimetres;

“sea bed” means the ground under the sea;

“silt” means dredged materials with a diameter of at least 31.25 and less than 62.5 micrometres; and

(2) Unless otherwise specified, all geographical co-ordinates given in this Schedule are in latitude and longitude degrees and minutes to two decimal places.

Addresses

2. (1) Unless otherwise advised in writing by the MMO, the address for postal correspondence with the MMO for the purposes of this schedule is the Marine Management Organisation, Marine Licensing Team, PO Box 1275, Newcastle upon Tyne, NE99 5BN.

(2) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this Schedule is marine.consents@marinemangement.org.uk.

PART 2

LICENSED ACTIVITIES

3. For the purpose of constructing and maintaining the authorised development the licensed undertaker may within the Order limits carry out the activities set out in this Part as if those activities were licensed under the 2009 Act.

Construction of the quay (Work No. 1)

4. (1) The licensed undertaker is permitted to construct Work No. 1 and carry out associated land reclamation within that work according to the following specification:—

approximately 550 tubular and 1100 sheet steel perimeter piles may be driven into the bed of the estuary to form the external face of the quay, where such piles are to be installed from named vessels moored in the estuary;

two return walls may be constructed between the ends of the quay and the existing flood defence wall, comprising approximately 23,000 steel piles driven into the bed of the estuary from named vessels and also earthwork revetments with approximately 75,000 tonnes of rock armour protection, such revetments and rock armour to be constructed using land-based plant;

approximately 450 flap anchor piles may be fixed to the landward face of the perimeter piles and seated in a trench on the bed of the estuary, to be installed from named vessels moored in the estuary;

approximately 70 steel anchor piles may be driven into the bed of the estuary and fixed to perimeter piles, to be installed from named vessels moored in the estuary;

the area of estuary approximately 50 metres landward of the quay perimeter piles may be reclaimed by depositing marine dredged sands and gravels from named vessels using rainbowing techniques;

the remaining area of estuary enclosed by the quay perimeter piles and the two return walls may be reclaimed using marine dredged sands and gravels by constructing two granular dams that extend from the existing flood defence wall to the area reclaimed under paragraph ((f)), so that the dams divide the remaining reclaim area into three approximately equal cells, whereupon named vessels shall pump fluidised granular material into each cell in sequence, allowing estuarine water

Comment [amhg12]: This definition is unnecessary. The specified reference points belong to the description of Work No. 1 – see amended Schedule 1.

Deleted: “the quay limits” means the area bounded by co-ordinates (53°39.46’N, 00°13.68’W), (53°39.54’N, 00°13.45’W), (53°38.95’N, 00°12.67’W), (53°38.88’N, 00°12.75’W) and (53°38.98’N, 00°13.18’W) and shown on sheets 8 and 9 of the works plan;

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Comment [amhg13]: Taken to article 2 because referred to here and in Schedule 1.

Deleted: “turning area” means the area bounded by co-ordinates (53°39.40’N, 00°12.90’W), (53°39.41’N, 00°12.53’W), (53°39.11’N, 00°12.26’W) and (53°39.03’N, 00°12.41’W) and shown on sheets 8 and 9 of the works plan.

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Deleted: are able to be carried out by the licence holder

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that is retained within each cell to overflow the dams as the fluidised material is deposited and settles within the cell, such activity to continue until all cells attain their design levels; and steel plates may be attached to the perimeter piles by welding and bolting, whereupon a fender may be attached to each steel plate by bolts, all such works being undertaken from a man basket suspended from a crane located on land.

(2) Drainage outfalls and cooling water outfalls may be incorporated into the quay.

(3) Monitoring equipment fixed to buoys shall be deployed at locations in the estuary during the piling works permitted by sub-paragraph (1) in accordance with a mitigation and monitoring plan to be submitted to and approved by the MMO following consultation with the Environment Agency and Natural England.

Temporary dolphins

5. (1) The licensed undertaker is permitted to construct and remove up to seven temporary dolphins within the berthing pocket, such that each dolphin comprises three tubular steel piles driven into the bed of the estuary from named plant moored in the estuary, whereupon the piles shall be braced with interconnecting steelwork.

(1) The dolphins constructed under sub-paragraph (1) may be used to moor named vessels involved in the carrying out of any of the other activities listed in this Part.

(2) Monitoring equipment fixed to buoys shall be deployed at locations in the estuary during the piling works permitted by sub-paragraph (1) in accordance with a mitigation and monitoring plan to be submitted to and approved by the MMO following consultation with the Environment Agency and Natural England.

(3) Each temporary dolphin must be removed as soon as practicable once the activities for which they have been constructed have been completed.

Berthing pocket infill

6. Following or during the dredging of the berthing pocket, the licensed undertaker must deposit up to 250,000 tonnes of gravel and rock from named vessels into the berthing pocket so that its depth does not exceed -11 metres chart datum.

Pumping station

7. (1) The licensed undertaker is permitted to construct a pumping station and pumping station channel at the pumping station site according to the following specification:—

a temporary steel cofferdam containing six drainage pipes may be installed through the existing flood defence and extend onto the foreshore, whereupon the flood defence wall shall be reinstated to its original seaward profile using inert soil materials and concrete;

the pumping station channel may be created by excavating the foreshore seawards from the outfall pipe, whereupon material shall be removed down to the invert level of the drainage pipes over the width of the pipes and up to 50 metres seawards of the pipes;

a stone mattress may be placed within the pumping station channel created under (b) over a distance of 20 metres seawards of the outfall pipes; and

the pumping station may be constructed such that its seaward extend it above the stone mattress.

(2) Works outside the cofferdam shall be undertaken using land based plant operating from a berm formed within the south-eastern return wall of the quay.

Compensation site creation

8. The licensed undertaker is permitted to remove the 250 metre section of the existing flood wall at Cherry Cobb Sands between points A and B shown on the works plan under the following conditions:—

a new flood defence [] shall be constructed landward of the existing flood defence;

the Cherry Cobb Sands channel shall be excavated from the site of the breach to the foreshore at the level of the breach;

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Comment [amhg14]: Is this all in the pumping station site? The position should be marked on the works plan.

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Comment [amhg15]: Words do not make sense. Is it intended to be "... constructed so that it extends seaward above ..."?

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Comment [amhg16]: Should be consistent with the plans referred to in the ES e.g. the Cherry Cobb Sands Compensation Site General; Arrangement Drawing AME-0216

Comment [amhg17]: Wall/embankment/other? Specify. Also dimensions and position. Description should match whatever structure has been the subject of EIA - see e.g. the Cherry Cobb Sands Compensation Site General; Arrangement Drawing AME-0216.

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Comment [amhg18]: Where ? What dimensions (width in particular)? To be consistent with the ES.

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all material is to be removed using land-based plant;
all excavated material is to be disposed of in the **intertidal area** created between the old and new flood defences; and
the amount of excavated material shall not exceed **xxx**.

Comment [amhg19]: As it will become intertidal, this must surely be a reclamation from the river.

Comment [amhg20]: Maximum is as assessed in the ES.

Deleted: licence holder

North Killingholme Haven Pits sluice

9. The **licensed undertaker** is permitted to carry out works to the existing sluice at the North Killingholme Haven Pits sluice site according to the following specification:—

Capital dredging

10. (1) The **licensed undertaker** is permitted to carry out capital dredging at the following locations:—

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the **site of Work No. 1** to a depth of **xxx**;

Deleted: quay

the berthing pocket to a depth of -11 metres Chart Datum;

the approach channel to a depth of **xxx**;

Comment [amhg21]: This will be either -9m CD or less – see ES para 4.4.20.

the turning area to a depth of **xxx**;

Comment [amhg22]: This will be either -9m CD or less – see ES para 4.4.21.

the E.ON outfall to a depth of **xxx**;

the Centrica outfall to a depth of **xxx**;

Comment [amhg23]: Cannot be greater than as assessed in ES.

the pumping station channel to a depth of **xxx**; and

(a) the **Cherry Cobb Sands channel** to a depth of **xxx**.

Comment [amhg24]: Define – see article 2(1). Should be there because also mentioned in Schedule 1.

(2) The materials must be dredged in the approximate **quantities** and deposited at the locations according to the following table:

Comment [amhg25]: Cannot be greater than as assessed in ES.

Comment [amhg26]: Must be consistent with what is in ES. That shows quantities and locations, so why are these not known for inclusion in the table?

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<i>Location</i>	<i>Material</i>	<i>Tonnage per year</i>	<i>Deposit location</i>	<i>Total licensed tonnage</i>
Quay site	Gravel		HU080	
	Sand			
	Silt		HU082	
	Clay			
The berthing pocket	Gravel		HU080	
	Sand			
	Silt		HU082	
	Clay			
The approach channel	Gravel		HU080	
	Sand			
	Silt		HU082	
	Clay			
The turning area	Gravel		HU080	
	Sand			
	Silt		HU082	
	Clay			
The E.ON outfall	Gravel		HU080	
	Sand			
	Silt		HU082	
	Clay			
The Centrica outfall	Gravel		HU080	
	Sand			
	Silt		HU082	
	Clay			
The pumping station channel	Gravel		HU080	
	Sand			
	Silt		HU082	
	Clay			
The Cherry Cobb Sands channel	Gravel		HU080	
	Sand			
	Silt		HU082	
	Clay			

Maintenance dredging

11. (1) The **licensed undertaker** is permitted to carry out maintenance dredging at the following locations:—

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the berthing pocket;
the approach channel;
the turning area;
the E.ON outfall;
the Centrica outfall;
the pumping station channel; and
(a) the Cherry Cobb Sands channel.

Comment [amhg27]: This appears to be a mistake. The quay site (Work No. 1) will have the quay built on it, so there will be nothing to dredge. The dredging can only relate to the area around the quay e.g. the berthing and turning areas. If other, the licence should specify location.

Deleted: the quay site

(2) The dredging under sub-paragraph (1) may only be carried out for the purpose of:—
maintaining the authorised development;
maintaining access to the authorised development; and
removing siltation caused by the authorised development;

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and the dredged depths may not exceed those set out in paragraph 10(1).

(3) The materials must be dredged in the approximate quantities and deposited at the locations according to the following table:

Location	Material	Tonnage per year	Deposit location	Total licensed tonnage
Quay site	Gravel		HU080	
	Sand			
	Silt			
	Clay			
The berthing pocket	Gravel		HU080	
	Sand			
	Silt			
	Clay			
The approach channel	Gravel		HU080	
	Sand			
	Silt			
	Clay			
The turning area	Gravel		HU080	
	Sand			
	Silt			
	Clay			
The E.ON outfall	Gravel		HU080	
	Sand			
	Silt			
	Clay			
The Centrica outfall	Gravel		HU080	
	Sand			
	Silt			
	Clay			
The pumping station channel	Gravel		HU080	
	Sand			
	Silt			
	Clay			
The Cherry Cobb Sands channel	Gravel		HU080	
	Sand			
	Silt			
	Clay			

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Comment [amhg28]: Must be consistent with the ES. As that mentions quantities, why are the quantities in the table still unknown?

PART 3

CONDITIONS

General conditions

12. (1) The conditions set out at paragraphs 12 to 29 are licence conditions attached to the deemed marine licence granted by article 43.

(1) For such of the licensed activities that involve the construction, alteration or improvement of works in or over the sea or on or under the sea bed, the conditions shall apply to any person who for the time being owns, occupies or enjoys any use of the licensed activity.

13. The MMO must be notified by the licensed undertaker at least five working days before the commencement of any licensed activity of its acceptance of the provisions of this Schedule and that the licensed undertaker has knowledge of the provisions of this Schedule.

Comment [amhg29]: Does this imply that there are to be special conditions? If so, what are they?

Comment [amhg30]: Presumably this is what is meant.

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Comment [amhg31]: The definition of "licensed undertaker" captures company, agents and contractors.

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14. The MMO must be notified by the licensed undertaker at least five working days before the commencement of each licensed activity ~~that that such licensed activity is about to commence.~~

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15. The MMO must be notified by the licensed undertaker in writing of any agents, contractors or sub-contractors that will be carrying out any licensed activity on behalf of the licensed undertaker at least five working days before the commencement of the licensed activity.

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16. The licensed undertaker must ensure that a copy of this Schedule and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or sub-contractors that will be carrying out any licensed activity on behalf of the licensed undertaker.

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17. The MMO must be provided with notification of any vessel being used to undertake any licensed activity no less than 24 hours before the commencement of the licensed activity, such notification setting out

the vessel type,

the vessel International Maritime Organization (IMO) number; and

the vessel owner or operating company.

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18. The licensed undertaker must ensure that a copy of this Schedule and any subsequent revisions or amendments has been provided to, read and understood by the master of any vessel being used to undertake any licensed activity, and that a copy of this Schedule is held on board any such vessel.

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19. Should the licensed undertaker become aware that any of the information on which the granting of this deemed marine licence was based has changed or is likely to change, the licensed undertaker must notify the MMO and the harbour master at the earliest opportunity.

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20. Any breach of the conditions of this deemed marine licence may be treated as the breach of a marine licence over which the MMO may take enforcement action under the 2009 Act.

Project wide conditions

21. The works shall be carried out in accordance with a works schedule to be agreed in writing between the licensed undertaker and the MMO prior to the commencement of the works, and any changes to the works schedule are also to be agreed in writing with the MMO.

Comment [amhg32]: Note that this document will also require approval of the Harbour Master in accordance with Schedule 9 Part 2, paragraph 8 , amended as proposed by HMM.

Piling conditions

22. (1) No operations consisting of piling shall commence until a piling method statement has been submitted to and agreed in writing by the MMO, following consultation with the Environment Agency and Natural England, such statement to include the following:—

the use of pile pads,

the use of pile shrouds,

the specification of piles to be used,

soft start procedures to be followed after any cessation of piling of more than 10 minutes that ensure an incremental increase in pile power over a set time period until full operational power is achieved, over a period of not less than 20 minutes,

(a) marine mammal observation, and

implementation of an active monitoring scheme under paragraph 23.

(2) Percussive piling shall only be carried out in accordance with the relevant piling method statement.

23. No development shall be commenced until an active monitoring scheme has been submitted to and agreed in writing by the MMO, to include the following details:—

the location of active monitoring buoys and the depth and design of sensors,

details of the frequency of measurement of temperature and dissolved oxygen,

24-hour monitoring of noise,

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when monitoring shall commence and cease, to include a two-week period of pre- and post-construction monitoring to establish baseline conditions and the return to baseline conditions respectively,

a log of the number and approximate locations of piling rigs that are in operation on any given day, and

details of how the monitored information will be accessed by or communicated to the site contractor and the MMO as necessary.

(2) The development shall be carried out in accordance with the relevant active monitoring scheme.

(3) No percussive piling shall take place while the data from the relevant active monitoring scheme shows either the temperature to be above 21.5 degrees Celsius or dissolved oxygen to be below 5 milligrams per litre.

24. No percussive piling shall take place between 7 April and 1 June inclusive in any calendar year.

25. (1) Percussive piling shall be restricted at other times as follows:—

from 2 June to 22 July inclusive in any year, the maximum amount of percussive piling permitted within any four-week period shall not exceed:—

- (i) 100 hours where a single piling rig is in operation, or
- (ii) a total of 168 hours where two or more rigs are in operation;

from 23 July to 10 September inclusive in any year, the maximum amount of percussive piling permitted within any four-week period shall not exceed:—

- (iii) 25 hours where a single piling rig is in operation, or
- (iv) a total of 42 hours where two or more rigs are in operation;

from 11 September to 31 October inclusive in any year, the maximum amount of percussive piling permitted within any four-week period shall not exceed:—

- (v) 134 hours where a single piling rig is in operation, or
- (vi) a total of 224 hours where two or more rigs are in operation.

from 1 November in any year to 4 April in the following year inclusive, the maximum amount of percussive piling permitted within any eight-week period shall not exceed:—

- (vii) 336 hours where a single piling rig is in operation, or
- (viii) a total of 560 hours where two or more rigs are in operation.

(2) For the purposes of calculating hours of operation under this paragraph, these shall be calculated to be the time elapsed between the first and last percussive strikes during any one day.

26. No percussive piling shall take place on a Sunday, or before 0600 hours or after 2200 hours on any other day.

27. The maximum diameter of marine piles shall be 2.1 metres.

Dredge and disposal conditions

28.

29. (1) The licensed undertaker must agree a dredge and disposal strategy with the MMO before the commencement of any licensed activities.

(2) The dredging and disposal must be carried out in accordance with the dredge and disposal strategy.

Comment [amhg33]: There seems to be only one substantive condition. If others are proposed, what are they?

Comment [amhg34]: With only the one substantive condition, this appears to be unnecessary.

Deleted: Conditions 29 to xxx shall apply to licensed activities consisting of dredging and disposal.

Comment [amhg35]: Note that this must also be approved by the Harbour Master as dredging is a tidal work to which Schedule9, Part 2, paragraph 8 will apply.

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PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF NATURAL ENGLAND

1. For the protection of Natural England the following provisions shall, unless otherwise agreed in writing between the undertaker and Natural England, have effect.

Biodiversity enhancement and monitoring

2. No stage of the authorised development shall commence until a biodiversity enhancement and monitoring plan has been prepared for that stage by the undertaker and approved by Natural England.

3. Each stage of the authorised development shall be carried out and monitoring undertaken in accordance with the relevant biodiversity enhancement and monitoring plan.

Sediment transport and geomorphological effects

4. No tidal work shall commence until a post-construction plan for the monitoring of indirect sediment transport and geomorphological effects caused by that work development has been prepared by the undertaker and approved by Natural England.

5. The undertaker will carry out post-construction monitoring as detailed in the plan agreed under paragraph 4.

PART 2

FOR THE PROTECTION OF THE HUMBER CONSERVANCY

Note: For completeness this Part shows the HMM's 29 June amendments in italics. The remaining HMM amendments are not italicised.

Interpretation

6. In this Part—

“authorised work” means any work, operation or activity that the undertaker is authorised by this Order to construct or carry out;

“the Able Dockmaster” means the dockmaster appointed by the Able Harbour Authority under this Order;

“environmental document” means—

(a) the environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental statement or other document so prepared by way of clarification or amplification of the environmental statement; and

(b) any other document containing environmental information provided by the Able Harbour Authority to the Secretary of State or the Conservancy Authority for the purposes of any tidal works approval under article 22 (tidal works not to be constructed without approval of the Secretary of State) or this Schedule; and

Comment [amhg36]: Taken to article 2(1) because this expression is used elsewhere e.g. article 21.

Deleted: “the Conservancy Authority” means AB Ports Humber Estuary Services in its role as harbour authority for the Humber Conservancy;

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“the Able Harbour Authority” means Able Humber Ports Ltd in its role as harbour authority for the Able Marine Energy Park;

“the Humber Harbour Master” means the harbour master appointed by the Conservancy Authority to be a harbour master for an area that includes the area of jurisdiction and includes the harbour master’s deputies and assistants;

“plans” includes sections, elevations, drawings, specifications, programmes, method statements and hydraulic information; and

“the river” means the River Humber.

General

7.—(1) The provisions of this Schedule shall, unless otherwise agreed in writing between the Able Harbour Authority and the Conservancy Authority, have effect for the protection of the Conservancy Authority and the users of the river.

(2) For the purposes of this Schedule, the definition of “tidal work” shall be taken to include—
any projection over the river outside the area of jurisdiction by booms, cranes and similar plant or machinery, whether or not situated within the area of jurisdiction; and
any authorised work which affects the river or any functions of the Conservancy Authority, whether or not that authorised work is within the limits of the Conservancy Authority,

Deleted: but shall not include any maintenance dredging

Tidal Works: approval of detailed design

8.—(1) Before—

(a) submitting any plans and sections for any tidal work to the Secretary of State for her approval under article 22 (tidal works not to be constructed without approval of the Secretary of State);

(b) commencing any operation for the construction of a tidal work where approval of the Secretary of State under article 22 is not required; or

(c) submitting any plan, schedule method statement, scheme or strategy to the Marine Management Organisation in accordance with paragraphs 4(3), 5(2), 21, 22(1), 23 or 29(2) of Schedule 8;

(d) submitting any written scheme, external lighting details, proposed alteration in the design drawings or plan or specification of proposals under article 9 to the relevant planning authority in accordance with paragraph 3, 4, 17 or, as the case may be, [24] of Schedule 11;

(e) commencing any operation for the maintenance of a tidal work,
the Able Harbour Authority shall as the case may require submit to the Conservancy Authority—

Comment [amhg37]: As numbered with amendments shown above.

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(i) plans and sections of the tidal work or operation;

(ii) the design drawings relevant to those plans and sections;

(iii) the documents referred to in sub-paragraph (c); and

(iv) the written scheme or proposed alteration referred to in sub-paragraph (d)

and such further particulars as the Conservancy Authority may, within 28 days from the day on which plans and sections are submitted under this sub-paragraph, reasonably require.

(2) No application for the Secretary of State’s approval under article 22 shall be made in respect of a tidal work until plans and sections in respect of that tidal work submitted under sub-paragraph (1) have been approved by the Conservancy Authority.

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(3) No plan, schedule method statement, scheme or strategy referred to in sub-paragraph (1)(c) shall be submitted to the Marine Management Organisation for agreement until the work schedule has been approved by the Conservancy Authority.

(4) No written scheme or proposed alteration referred to in sub-paragraph (1)(d) shall be submitted to the relevant planning authority for approval until the scheme or alteration has been approved by the Conservancy Authority.

(5) Any tidal work not requiring the Secretary of State's approval under article 22 shall not be constructed, and no tidal work shall be maintained, except in accordance with such plans as may be approved in writing by the Conservancy Authority or determined under paragraph 26.

(6) Any approval of the Conservancy Authority required under this paragraph shall not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as the Conservancy Authority may make for the protection of—

traffic in, or the flow or regime of, the river;

the use of its operational land or the river for the purposes of performing its functions; or

the performance of any of its functions connected with environmental protection.

(7) Requirements made under sub-paragraph (4) may include conditions as to—

the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the tidal work; and

the expiry of the approval if the Able Harbour Authority does not commence construction of the tidal work approved within a prescribed period.

(8) Subject to sub-paragraphs (8) and (9), any such approval shall be deemed to have been refused if it is neither given nor refused within 42 days of the specified day.

(9) Before making a decision on any such approval, the Conservancy Authority shall take into account any opinion on plans and sections provided to it by the Environment Agency.

(10) Accordingly, an approval of the Conservancy Authority under this paragraph shall not be deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (6) has not been given pending the outcome of any consultation on the approval in question that the Conservancy Authority is obliged in the proper exercise of its functions to carry out provided that during the course of such consultation, the Conservancy Authority has acted with all due expedition.

(11) In this paragraph "the specified day" means, in relation to any tidal work—

the day on which plans of that work are submitted to the Conservancy Authority under sub-paragraph (1); or

the day on which the Able Harbour Authority provides the Conservancy Authority with all such particulars of the work as have been reasonably requested by the Conservancy Authority under that sub-paragraph;

whichever is the later.

(12) Whenever the Able Harbour Authority provides the Secretary of State with an environmental document it shall at the same time send a copy to the Conservancy Authority.

9. Any operations for the construction of any tidal work approved in accordance with this Order shall, once commenced, be carried out by the Able Harbour Authority with all reasonable dispatch and to the reasonable satisfaction of the Conservancy Authority so that river traffic, the flow or regime of the river and the exercise of the Conservancy Authority's functions shall not suffer more interference than is reasonably practicable, and the Conservancy Authority shall be entitled by its officer at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

Discharges, etc.

10.—(1) The Able Harbour Authority shall not without the consent of the Conservancy Authority—

deposit in or allow to fall or be washed into the river any gravel, soil or other material; or

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discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise.

(2) Any consent of the Conservancy Authority under this paragraph shall not be unreasonably withheld but may be given subject to such terms and conditions as the Conservancy Authority may reasonably impose.

(3) Any such approval shall be deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 35 days of the day on which the request for consent is submitted under sub-paragraph (1).

(4) In its application to the discharge of water into the river, article 18 (discharge of water) shall have effect subject to the terms of any conditions attached to a consent given under this paragraph.

11. The Able Harbour Authority shall not, in exercise of the powers conferred by article 18, damage or interfere with the beds or banks of any watercourse forming part of the river unless such damage or interference is approved as a tidal work under this Order or is otherwise approved in writing by the Conservancy Authority.

Obstruction in river

12. If any pile, stump or other obstruction to navigation becomes exposed in the course of constructing any tidal work (other than a pile, stump or other obstruction on the site of a structure comprised in any permanent work), the Able Harbour Authority shall, as soon as reasonably practicable after the receipt of notice in writing from the Conservancy Authority requiring such action, remove it from the river or, if it is not reasonably practicable to remove it—

cut the obstruction off at such level below the bed of the river as the Conservancy Authority may reasonably direct; or

take such other steps to make the obstruction safe as the Conservancy Authority may reasonably require.

Removal, etc. of the Conservancy Authority moorings and buoys

13. If—

by reason of the construction of any tidal work it is reasonably necessary for the Conservancy Authority to incur reasonable costs in temporarily or permanently altering, removing, re-siting, repositioning or reinstating existing moorings or aids to navigation (including navigation marks or lights) owned by the Conservancy Authority, or laying down and removing substituted moorings or buoys, or carrying out dredging operations for any such purpose, not being costs which it would have incurred for any other reason; and

the Conservancy Authority gives to the Able Harbour Authority not less than 28 days' notice of its intention to incur such costs, and takes into account any representations which the Able Harbour Authority may make in response to the notice within 14 days of the receipt of the notice, the Able Harbour Authority shall pay the costs reasonably so incurred by the Conservancy Authority.

Navigational lights, buoys, etc.

14. In addition to any requirement under articles 25 (lights on tidal works during construction) and 27 (permanent lights on tidal works), the Able Harbour Authority shall, at or near every tidal work, and any other work of which the Able Harbour Authority is in possession in exercise of any of the powers of this Order (being in either case a work which is below mean high water level forming part of the river), exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the Conservancy Authority may from time to time reasonably require.

Removal of temporary works

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15. On completion of the construction of any part of a permanent authorised work, the Able Harbour Authority shall as soon as practicable remove—
any temporary tidal work carried out only for the purposes of that part of the permanent work; and
any materials, plant and equipment used for such construction,
and shall make good the site to the reasonable satisfaction of the Conservancy Authority.

Protective action

16.—(1) If any tidal work—
is constructed otherwise than in accordance with the requirements of this Schedule or with any condition in an approval given pursuant to paragraph 8(4); or
during construction gives rise to sedimentation, scouring, currents or wave action detrimental to traffic in, or the flow or regime of, the river,
then the Conservancy Authority may by notice in writing require the Able Harbour Authority at the Able Harbour Authority’s own expense to comply with the remedial requirements specified in the notice.

(2) The requirements that may be specified in a notice given under sub-paragraph (1) are—
in the case of a tidal work to which sub-paragraph (1)(a) applies, such requirements as may be specified in the notice for the purpose of giving effect to the requirements of—

- (i) this Schedule; or
- (ii) the condition that has been breached; or

in any case within sub-paragraph (1)(b), such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the river.

(3) If the Able Harbour Authority does not comply with a notice under sub-paragraph (1), or is unable to do so then the Conservancy Authority may in writing require the Able Harbour Authority to—

remove, alter or pull down the tidal work, and where the tidal work is removed to restore the site of that work (to such extent as the Conservancy Authority reasonably requires) to its former condition; or

take such other action as the Conservancy Authority may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.

(4) If a tidal work gives rise to environmental impacts over and above those anticipated by any environmental document, the Able Harbour Authority shall, in compliance with its duties under any enactment and, in particular, under section 48A of the 1964 Act, take such action as is necessary to prevent or mitigate those environmental impacts and in so doing shall consult and seek to agree the necessary measures with the Conservancy Authority.

(5) If the Conservancy Authority becomes aware that any tidal work is causing an environmental impact over and above those anticipated by any environmental document, the Conservancy Authority shall notify the Able Harbour Authority of that environmental impact, the reasons why the Conservancy Authority believes that the environmental impact is being caused by the tidal work and of measures that the Conservancy Authority reasonably believes are necessary to counter or mitigate that environmental impact. The Able Harbour Authority shall implement the measures that the Conservancy Authority has notified to the Able Harbour Authority or shall implement such other measures as the Able Harbour Authority believes are necessary to counter the environmental impact identified, giving reasons to the Conservancy Authority as to why it has implemented such other measures.

Abandoned or decayed works

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17.—(1) If any tidal work or any other work of which the Able Harbour Authority is in possession in exercise of any of the powers of this Order (being in either case a work which is below mean high water level) is abandoned or falls into decay, the Conservancy Authority may by notice in writing require the Able Harbour Authority to take such reasonable steps as may be specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as the Conservancy Authority reasonably requires) to restore the site to its former condition.

(2) If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation in the river, the Conservancy Authority may by notice in writing require the Able Harbour Authority to take such reasonable steps as may be specified in the notice—

to repair and restore the work or part of it; or

if the Able Harbour Authority so elects, to remove the tidal work and (to such extent as the Conservancy Authority reasonably requires) to restore the site to its former condition.

(3) If after such reasonable period as may be specified in a notice under this paragraph the Able Harbour Authority has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, the Conservancy Authority may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing shall be recoverable from the Able Harbour Authority.

Facilities for navigation

18.—(1) The Able Harbour Authority shall not in the exercise of the powers granted by this Order interfere with any marks, lights or other navigational aids in the river without the agreement of the Conservancy Authority, and shall ensure that access to such aids remains available during and following construction of any tidal works.

(2) The Able Harbour Authority shall provide at any tidal works, or shall afford reasonable facilities at such works (including an electricity supply) for the Conservancy Authority to provide at the Able Harbour Authority's cost, from time to time, such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation of users of the river in general as the Conservancy Authority may deem necessary by reason of the construction of any tidal works, and shall ensure that access remains available to apparatus during and following construction of such works.

(3) The Able Harbour Authority shall comply with the directions of the Humber Harbour Master from time to time with regard to the lighting on the tidal works or within the harbour, or the screening of such lighting, so as to ensure safe navigation on the river.

Survey of riverbed

19.—(1) Before the commencement of construction of the first tidal work to be constructed following approval pursuant to article 22 (tidal works not to be constructed without approval of the Secretary of State), the Conservancy Authority may, at the Able Harbour Authority's reasonable expense, carry out a survey of such parts of the river as might be affected by sedimentation, scouring, currents or wave action that might result from the construction of such of the authorised works as would constitute tidal works if they were to be constructed, for the purposes of establishing the condition of the river at that time.

(2) Before the commencement of construction of any other tidal work approved pursuant to article 22, the Conservancy Authority may, at the Able Harbour Authority's reasonable expense, carry out a survey of such parts of the river as might be affected by sedimentation, scouring, currents or wave action resulting from that tidal work for the purpose of establishing the condition of the river at that time.

(3) The Conservancy Authority may carry out such surveys of the river as are reasonably required during the construction of any tidal work to ascertain the effect of that tidal work on the

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river and the Conservancy Authority shall make available to the Able Harbour Authority the results of any such survey in electronic and paper format.

(4) After completion of, respectively, any tidal work and all the tidal works constructed under this Order, the Conservancy Authority may, at the Able Harbour Authority's expense carry out a further survey of the parts of the river which were surveyed prior to the construction of that work, or as the case may be a survey of the completed tidal works as so constructed, for the purpose of establishing the condition of the river and the effect that the tidal work is, or as the case may be the tidal works are, having on navigation, the flow and the regime of the river and the exercise of the Conservancy Authority' functions.

(5) The Conservancy Authority shall not under this paragraph carry out a survey of any part of the river as respects which the Able Harbour Authority has provided to the Conservancy Authority survey material which the Conservancy Authority is reasonably satisfied establishes the condition of the river, and in the case of a survey under sub-paragraph (3), the effect of the tidal work, or as the case may be the tidal works.

Sedimentation, etc.: remedial action

20.—(1) This paragraph applies if any part of the river becomes subject to sedimentation, scouring, currents or wave action which—

is, during the period beginning with the commencement of the construction of that tidal work and ending with the expiration of 10 years after the date on which all the tidal works constructed under this Order are completed, wholly or partly caused by a tidal work; and

for the safety of navigation or for the protection of works in the river, should in the reasonable opinion of the Conservancy Authority be removed or made good.

(2) The Able Harbour Authority shall either—

pay to the Conservancy Authority any additional expense to which the Conservancy Authority may reasonably be put in dredging the river to remove the sedimentation or in making good the scouring so far as (in either case) it is attributable to the tidal work; or

carry out the necessary dredging at its own expense and subject to the prior approval of the Conservancy Authority, such prior approval not to be unreasonably withheld or delayed; and the reasonable expenses payable by the Able Harbour Authority under this paragraph include any additional expenses accrued or incurred by the Conservancy Authority in carrying out surveys or studies in connection with the implementation of this paragraph.

Indemnity

21.—(1) The Able Harbour Authority shall be responsible for and make good to the Conservancy Authority all reasonable financial costs or losses not otherwise provided for in this Schedule which may reasonably be incurred or suffered by the Conservancy Authority by reason of—

the construction or operation of the authorised works or the failure of the authorised works;

anything done in relation to a mooring or buoy pursuant to paragraph 13; or;

any act or omission of the Able Harbour Authority, its employees, contractors or agents or others whilst engaged upon the construction or operation of the authorised works or dealing with any failure of the authorised works;

and the Able Harbour Authority shall indemnify the Conservancy Authority from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission.

(2) The fact that any act or thing may have been done—

by the Conservancy Authority on behalf of the Able Harbour Authority; or

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by the Able Harbour Authority, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Conservancy Authority, or in a manner approved by the Conservancy Authority, or under its supervision or the supervision of its duly authorised representative;

shall not (if it was done or required without negligence on the part of the Conservancy Authority or its duly authorised representative, employee, contractor or agent) excuse the Able Harbour Authority from liability under the provisions of this paragraph.

(3) The Conservancy Authority shall give the Able Harbour Authority reasonable notice of any such claim or demand as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand shall be made without the prior consent of the Able Harbour Authority.

Entry for survey, etc.

22.—(1) Before exercising the powers of article 21 to enter any land situated below the level of high water the undertaker shall provide the Harbour Master with written particulars of—

(a) the location of the land (including a plan);

(b) the nature of the things proposed to be done in that land in exercise of that article;

(c) the duration and frequency of the undertaker's intended presence on the land;

(d) any vehicles or equipment proposed to be brought on the land; and such other details as the Harbour Master may reasonably request.

(2) The undertaker may not enter any land the subject of written particulars provided under sub-paragraph (1) except in accordance with such conditions as the Harbour Master may impose, including conditions as to the time of entry and the way in which activities are to be carried out.

Statutory functions

23.—(1) Subject to article 4(1) and this paragraph, any function of the Able Harbour Authority or any officer of the Able Harbour Authority, whether conferred by or under this Order or any other enactment, shall be subject to—

any enactment relating to the Conservancy Authority;

any byelaw, direction or other requirement made by the Conservancy Authority or the Humber Harbour Master under any enactment; and

any other exercise by the Conservancy Authority or the Humber Harbour Master of any function conferred by or under any enactment.

(2) The Able Harbour Authority or Able Dockmaster shall not take any action in the river outside the area of jurisdiction under sections 57 and 65 of the 1847 Act as incorporated by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847) except with the consent of the Humber Harbour Master, which shall not be unreasonably withheld.

(3) The Able Dockmaster shall not give or enforce any special direction to any vessel under section 52 of the 1847 Act, as incorporated by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847), if to do so would conflict with a special direction given to the same vessel by the Humber Harbour Master.

(4) The Conservancy Authority shall consult the Able Harbour Authority before making any byelaw which directly applies to or which could directly affect the construction, operation or maintenance of the Able Marine Energy Park.

(5) The Conservancy Authority or the Humber Harbour Master (as appropriate) shall consult the Able Harbour Authority before giving any general direction which directly affects the construction, operation or maintenance of the Able Marine Energy Park.

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Consideration for dredged material

24.—(1) Subject to any agreement concluded between the Able Harbour Authority, the Conservancy Authority and any other party benefiting from material dredged by the Conservancy Authority, the Able Harbour Authority shall pay the Conservancy Authority for material dredged by the Conservancy Authority under this Order from so much of the river as is vested in the Conservancy Authority, consideration calculated at a rate agreed between them and otherwise in accordance with this paragraph.

(2) The Able Harbour Authority shall pay reasonable consideration under sub-paragraph (1) as respects material dredged in the course of the construction of the works authorised by article 21 (right to dredge) based on the quantity of such material that—

is not used for the construction of—

- (i) the authorised works;
- (ii) any other works related to the construction of Able Marine Energy Park; or
- (iii) the related development; and

is not owned by the undertaker, and

is sold by the Able Harbour Authority or by any other person exercising any powers under this Order.

Removal of wrecks and obstructions, etc.

25.—(1) Before exercising any power under section 252 of the Merchant Shipping Act 1995(a) or under section 56 of the 1847 Act, the Able Dockmaster shall notify the Humber Harbour Master.

(2) The Able Dockmaster shall comply with any reasonable instructions that the Humber Harbour Master may give in relation to the exercise of the powers referred to in sub-paragraph (1).

Disputes

26. Any dispute arising between the Able Harbour Authority and the Conservancy Authority under this Schedule shall be determined by arbitration as provided in article 66 (arbitration).

PART 3

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

27. For the protection of the Environment Agency, the following provisions shall, unless otherwise agreed in writing between the undertaker and the Environment Agency, have effect.

28. The requirement for consent under section 109 of the Water Resources Act 1991 and byelaw 27 of the Anglian Region Land Drainage and Sea Defence Byelaws 1987 shall not be required for the authorised development subject to the conditions contained in paragraphs 7 to 10.

29. The authorised development should be carried out to ensure minimum obstruction to flows in the watercourse at all times.

30. The requirements set out in the Environment Agency's Pollution Prevention Guideline 5 (Works and Maintenance in or near Water) must be complied with to ensure that the works are carried out in a proper manner and do not adversely affect the watercourse.

31. On completion of the works, all debris and surplus material shall be removed from the banks of the watercourse and that the banks are left in a stable condition with adequate protection provided to avoid erosion, to the satisfaction of the Environment Agency.

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32.The Company must bring the conditions contained in paragraphs 7 to 9 to the attention of any agent or contractor responsible for carrying out the authorised development.

PART 4
FOR THE PROTECTION OF THE HIGHWAYS AGENCY

33. For the protection of the Highways Agency, no part of the authorised development shall be occupied until improvements to the following junctions (or alternatives approved in writing by the local planning authority in consultation with the Highways Agency) have been implemented in accordance with details approved by the local planning authority in consultation with the Highways Agency:

- A160/A1173/Humber Road (Manby Road Roundabout),
- A160/Top Road/Habrough Road,
- A160/A1077 Ulceby Road,
- A160/Eastfield Road (signalised junction), and
- A180/A160 Merge/Diverge (Brocklesby Interchange).

PART 5
FOR THE PROTECTION OF NETWORK RAIL

34. For the protection of Network Rail, the following provisions shall, unless otherwise agreed in writing between the undertaker and Network Rail, have effect.

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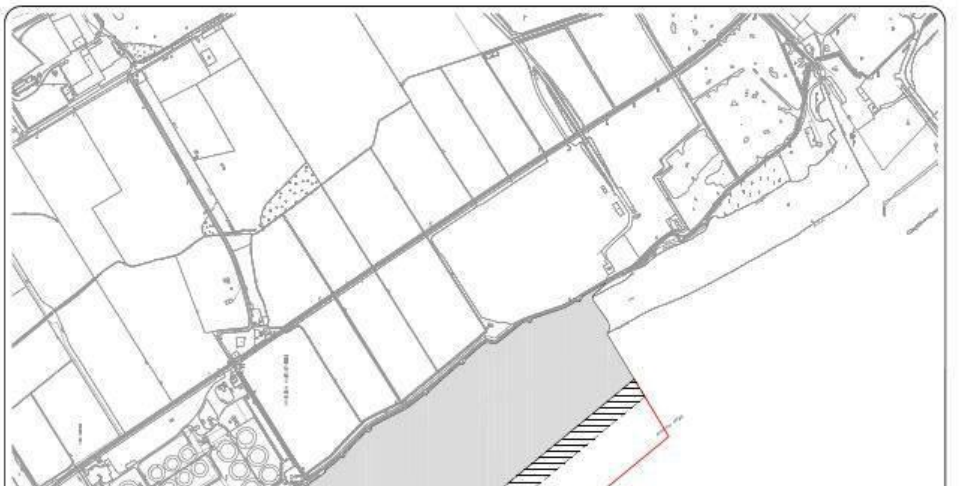
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SCHEDULE 10

LIMITS OF HARBOUR

Article 2



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SCHEDULE 11

Article 5

REQUIREMENTS

1. In this Schedule—

“the 1990 Act” means the Town and Country Planning Act 1990;

“the 2008 Act” means the Planning Act 2008;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“environmental statement” means the statement submitted under regulation 5(2)(a) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a), together with any supplementary statement;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the relevant planning authority” means North Lincolnshire Council for land in that council’s area and East Riding of Yorkshire Council for land in that council’s area;

Time limits

2. The authorised development must be begun within 7 years of the date of this Order.

Stages of the development

3. No part of the authorised development shall commence until a written scheme setting out all the stages of the authorised development has, after consultation with the highway authority, been submitted to and approved by the relevant planning authority.

Detailed design approval

4. The authorised development shall be carried out in accordance with the works plans and the design drawings, all of which form part of this Order.

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Provision of landscaping

5. No stage of the authorised development, other than tidal works, shall commence until a written landscaping scheme has been submitted to and approved by the relevant planning authority. The landscaping scheme must include details of all proposed hard and soft landscaping works, including—

location, number, species, size and planting density of any proposed planting;

cultivation, importing of materials and other operations to ensure plant establishment;

proposed finished ground levels;

hard surfacing materials;

vehicular and pedestrian access, parking and circulation areas;

minor structures, such as furniture, refuse or other storage units, signs and lighting;

proposed and existing functional services above ground, including drainage, power and communications cables and pipelines and supports;

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(a) S.I. 2009/2264

details of existing trees to be retained, with measures for their protection during the construction period;
retained historic landscape features and proposals for restoration, where relevant; and
implementation timetables for all landscaping works.

Implementation and maintenance of landscaping

6.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under requirement 5 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(2) The landscaping works must be carried out in accordance with implementation timetables approved under requirement 5.

(3) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

Trees

7. No stage of the authorised development, other than tidal works, shall commence until written details of any proposed tree planting and the proposed times of planting have been approved in writing by the relevant planning authority; and all tree planting shall be carried out in accordance with those details and at those times.

Highway access

8.—(1) No stage of the authorised development shall commence until for that stage, written details of the siting, design and layout of any new permanent or temporary means of access to a public highway to be used by vehicular traffic, or any alteration to an existing means of access to a public highway used by vehicular traffic, has, after consultation with the relevant highway authority, been submitted to and approved by the relevant planning authority.

(2) The public highway accesses must be constructed, or, as the case may be, altered, in accordance with the approved details.

(3) No stage of the authorised development shall commence until for that stage, a written scheme (the “Access Management Scheme”) has, after consultation with the relevant highway authority, been submitted to and approved by the relevant planning authority.

(4) The Access Management Scheme must be carried out in accordance with the approved details.

Public rights of way

9.—(1) No stage of the authorised development shall commence that would affect North Lincolnshire Footpath 50 or East Riding of Yorkshire Paull Footpath 6 until a written implementation plan and specification for the making up of an alternative right of way has, after consultation with the relevant highway authority, been submitted to and approved by the relevant planning authority.

(2) The alternative Footpath 50 and Paull Footpath 6 shall be implemented in accordance with the relevant approved plan and specification.

Fencing and other means of enclosure

10.—(1) No stage of the authorised development shall commence until, for that stage, written details of all proposed permanent and temporary fences, walls or other means of enclosure have been submitted to and approved by the relevant planning authority.

(2) Any temporary fencing must be removed on completion of the authorised development.

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(3) Any approved permanent fencing of the authorised development must be completed before the authorised development is brought into use.

Surface water drainage

11.—(1) No stage of the authorised development shall commence until, for that stage, written details of the surface and foul water drainage system (including means of pollution control and funding arrangements) have, after consultation with the sewerage and drainage authority, been submitted to and approved by the relevant planning authority.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details.

Contaminated land

12.—(1) No stage of the authorised development shall commence until a written scheme applicable to that stage, to deal with the contamination of any land, including groundwater and ground gas, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the Environment Agency, been submitted to and approved by the relevant planning authority.

(2) The scheme shall include an investigation and assessment report, prepared by a suitably qualified person, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(3) Remediation must be carried out in accordance with the approved scheme.

Archaeology

13.—(1) No stage of the authorised development shall commence until, for that stage, a written scheme for the investigation of areas of archaeological interest as identified in chapters 18 and 40 of the environmental statement has been submitted to and approved by the relevant planning authority.

(2) The scheme shall identify areas where fieldwork and/or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief carried out under the scheme must be by a suitably qualified person or body.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

Ecological mitigation

14.—(1) No stage of the authorised development shall commence until a written ecological management plan for that stage reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement, after consultation shall be submitted to and approved by the relevant planning authority.

(2) The ecological management plan shall include an implementation timetable and must be carried out as approved.

When all hydrology and sedimentation assessments have been concluded, appropriate requirements must be added to ensure that any identified mitigation measures are carried out.

Code of construction practice

15. —(1) No stage of the authorised development shall commence until a code of construction practice for that stage has been submitted to and approved by the relevant planning authority.

(2) All construction works shall be undertaken in accordance with the approved code, unless otherwise agreed by the relevant planning authority.

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Design of roads

16.—(1) No stage of the authorised development consisting of the construction or alteration of a street which is a trunk road, including any traffic management and control measures, shall commence until written details of the design of the street have been submitted to and approved by the Highways Agency.

(2) The authorised development construction or alteration of the street or the taking of traffic management and control measures shall be carried out in accordance with the approved design.

External lighting

17. No stage of the authorised development, shall commence until written details of any external lighting to be installed at any of the construction sites within that stage, including measures to prevent light spillage, have, after consultation with the highway authority, been submitted to and approved by the relevant planning authority; and, subject to any direction given by Trinity House or the conservancy authority under article 26, any approved means of lighting must subsequently be installed and retained for the duration of the construction period.

Construction traffic

18.—(1) No stage of the authorised development shall commence until written details of the preferred route for that stage to be used by construction traffic on public highways, after consultation with the highway authority, is submitted to and approved by the relevant planning authority.

(2) Notices shall be erected and maintained throughout the period of construction at every construction site exit to a public highway, indicating to drivers the route agreed by the relevant planning authority for traffic entering and leaving the site.

Control of noise during construction

19.—(1) No stage of the authorised development shall commence until a written scheme for noise management during construction and maintenance of that stage has been submitted to the relevant planning authority.

(2) The scheme shall set out the particulars of—
the works, and the method by which they are to be carried out;
the noise attenuation measures to be taken to minimise noise resulting from the works, including any noise limits; and
a scheme for monitoring the noise during the works to ensure compliance with the noise limits and the effectiveness of the attenuation measures.

(3) The approved noise management scheme must be implemented before and maintained during construction and maintenance of the relevant stage of the authorised development.

(4) The construction and maintenance works must be undertaken in accordance with the approved noise management scheme.

Control of emissions

20.—(1) No stage of the authorised development shall commence until a written scheme for that stage—

for the management and mitigation of emissions of—

- (i) odour,
- (ii) artificial light,
- (iii) dust,
- (iv) smoke,
- (v) steam; and
- (vi) other pollutants; and

to ensure the prevention of infestation or emanation of insects

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from the authorised development has been submitted to and approved by the relevant planning authority.

(2) The approved scheme must be implemented before and maintained during the construction, operation and decommissioning of the relevant stage of the authorised development.

(3) For the purposes of this requirement, “insects” excludes insects that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981((a)) (animals which are protected), unless they are included in respect of section 9(5) of that Act only.

Travel plan

21.—(1) No stage of the of the authorised development shall commence until, for that stage, after consultation with the highway authority, a travel plan, which must include details of the expected means of travel to and from the authorised development and any parking to be provided, has been submitted to and approved by the relevant planning authority.

(2) No part of the authorised development shall be brought into use until, after consultation with the highway authority, a travel plan, which must include details of the expected means of travel to and from the authorised development and any parking to be provided, has been submitted to and approved by the relevant planning authority.

(3) The plan approved under paragraph (1) must be implemented during the construction of the authorised development and the plan approved under paragraph (2) must be implemented within one month of the authorised development being brought into use and shall continue to be implemented for as long as the authorised development is used.

European protected species

22.—(1) No stage of the authorised development shall be begun that is likely to affect a European protected species until, after consultation with Natural England and the Secretary of State for the Environment, Food and Rural Affairs, a scheme of protection and mitigation measures for that species has been submitted to and approved by the relevant planning authority; and the authorised development shall be carried out in accordance with the approved scheme.

(2) “European protected species” has the same meaning as in regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010.

Requirement for written approval

23. Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be given in writing.

Alteration, reconstruction or replacement of tidal works

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24. No alteration, reconstruction or replacement of a tidal work shall be carried out under article 9 (maintenance of authorised development) except in accordance with plans and specifications approved by the relevant planning authority.

Amendments to approved details

25. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details shall be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.

Requirement for consent of Civil Aviation Authority and Ministry of Defence

26. No stage of the authorised development shall commence until for that stage, after consultation with the Civil Aviation Authority and the Ministry of Defence, written details for the operation of the authorised development and its effect on radar have been submitted to and agreed by the relevant planning authority.

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(a) 1981 c. 69, as amended at the date that this Order comes into force

Flood warning and evacuation plan

27. No building of the authorised development shall be occupied until, after consultation with the relevant planning authority, written details of a flood warning and evacuation plan, which must include details of expected means of evacuation or safe refuge during a tidal flood event, has been submitted to and approved by the relevant planning authority.

Listed buildings

28. No stage of the authorised development shall commence until a listed building management plan applicable to that stage, which must include details of protection of any building referred to from vibration damage and the renovation or re-use of the building, has been submitted to and approved by the relevant planning authority in consultation with English Heritage.

Tall structures

29. No structure shall be erected over 45 metres in height above finished ground level until written details of a lighting scheme applicable to that structure has been submitted to and approved in writing by the relevant planning authority following consultation with the Civil Aviation Authority.

Flood and sea defences

30. No stage of the authorised development shall commence until a written scheme applicable to that stage, to deal with the design and construction of tidal defences, has been submitted to and approved by the relevant planning authority after consultation with the Environment Agency.

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EXPLANATORY NOTE

(This note is not part of the Order)

This order authorises the construction and operation of a quay, associated onshore facilities and other development, to be situated on the south bank of the River Humber to the north east of Immingham, together with the creation of a compensatory environmental habitat on the north bank of the River Humber to the north east of the quay.

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2012 No. XXXX

INFRASTRUCTURE PLANNING

HARBOURS, DOCKS, PIERS AND FERRIES

The Able Marine Energy Park
Development Consent Order 2012

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