

**INFRASTRUCTURE PLANNING**

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

**THE ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER**

**TR030001**

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**Written Summary of the Oral Case on behalf of the Harbour Master, Humber  
put at the Specific Issue Hearings on the draft Development Consent Order  
and Deemed Marine Licence held on 21 & 22 November 2012**

(Rule 8 letter 31 May 2012 Annex C as revised by letter of 21 September 2012)

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## Introduction

1. This is the Written Summary of the case put by Mrs Jane Wakeham of Winckworth Sherwood LLP at the Specific Issue Hearings on the draft Development Consent Order and Deemed Marine Licence, on 21 and 22 November 2012 on behalf of Captain P J Cowing in his capacity as Harbour Master, Humber (“HMH”), representing Associated British Ports (“ABP”) as the statutory harbour and conservancy authority and, in relation to pilotage, the competent harbour authority for the river Humber. As the land with which HMH is concerned is held by ABP in its capacity as conservancy authority, in this document all the functions represented by the HMH are referred to as those of the Conservancy Authority.
2. This summary and the views expressed in it are separate and distinct from anything that may be received by the Examining Authority (“ExA”) from ABP in its capacity as a port operator within the Humber.
3. References below to numbered articles of and Schedules to the Order are based on the Applicant’s latest draft Order dated 26 October 2012.
4. On 30 October, HMH provided the ExA with a detailed commentary on the drafting of the Order, including a tracked version of the Applicant’s draft Order dated 9 October (provided for the convenience of the ExA as Appendix 1 to those comments). At the start of these hearings, Mrs Wakeham explained that, in relation to drafting points made in those earlier submissions, she would only speak to them if the Panel requested it or the Applicant indicated that it disagreed with those earlier comments. For the convenience of the ExA, this written summary includes those points that were aired at the hearings and also repeats the earlier representations into those proposed amendments to the draft Order that were not rehearsed at the hearings but which appear in the 30 October draft.
5. The content of the Development Consent Order (“DCO”) will vary according to (i) whether or not the ExA decides to grant powers of compulsory acquisition to the Applicant in respect of HMH’s property interests in plots 08001 and 09001 and (ii) whether the Secretary of State is minded to accept the Applicant’s proposed revisions to the book of reference which are intended to remove plots 02013, 10007, 11004, 12004 and 13004 from the scope of the Order. The different requirements that flow from this are dealt with in more detail in the rest of this Written Summary.

### **Summary of position in relation to compulsory acquisition – plots 02013, 10007, 11004, 12004 and 13004**

6. The Applicant’s letter to the ExA dated 9 October 2012 confirmed that the Applicant no longer requires powers of compulsory acquisition in relation to the riverbed and foreshore land comprised in the above-numbered plots. It stated:

*“The requisite amendments to the land plans and Book of Reference will be provided by the deadline of 26 October.”*

It referred to the plots by number and commented in relation thereto *“foreshore land no longer required”*.

Requisite amendments to the book of reference have been submitted to the ExA but plot 02013 is still shown in the table of land in Schedule 6 of the DCO, being land of which temporary possession may be taken. The Applicant’s solicitor has indicated that this is an oversight. Further, land plans 9, 10, 11, and 12 still show the above-numbered plots of land within the boundary of land required for or affected by the development in the vicinity of the Cherry Cobb compensation site. The Applicant’s solicitor has explained that the Order limit has remained unchanged because development may take place within it even

if no land is being acquired. It is understood that this is a reference to the dredging operations described as Associated Development in Schedule 1 to the DCO. However, given the Applicant's assurances and letter to the ExA referred to above, HMH submits that the land (or at least the numbering of these plots) should be removed from the land plans. As things stand, the land plans show numbered plots that are referred to nowhere else (the dredging operations are not defined by reference to numbered plots). In any event, if the Secretary of State is not minded to accept the amended book of reference, the HMH seeks amendments to be made to the DCO to exclude the relevant plots. Suitable amendments are proposed in Appendix 2 to this Written Summary and supersede equivalent amendments to the tracked DCO dated 30 October 2012.

### **Summary of position in relation to compulsory acquisition and underlease - plots 08001 and 09001**

7. HMH's position remains unchanged. On behalf of the Conservancy Authority, HMH is neutral as between who should have the advantage of operating within and adjacent to the river. There is a clear conflict between the Applicant and ABP. The Conservancy Authority, and hence HMH, cannot take sides or adopt a stance that might influence the decision-maker in deciding land use. For this reason, HMH is unable at this point to commit to agreeing with the Applicant an under-lease of ABP's leasehold in the riverbed and foreshore in plot 09001 in front of the triangle land (plots 03020, 03021, 03022 and 02033), although he remains willing to co-operate fully with whoever is authorised in due course to develop this land.
8. He is a willing lessor in respect of the foreshore and riverbed comprising plots 08001 and 09001 subject only to his neutrality in respect of the area directly abutting the "triangle land". It is not suggested by the Applicant that he is being at all unreasonable in taking this stance. Also, as ABP is disputing the compulsory acquisition of this land, his position is consistent with the concept of riparian rights under which the owner of property adjoining the water has the right to make reasonable use of it. There is no reason why normal commercial terms for an under-lease should not be settled with the Applicant that can apply to the triangle land if it transpires that the Applicant does develop it.
9. In order for any DCO to include powers of compulsory acquisition, the Secretary of State must be convinced first that the land in question is required for, or to facilitate or is incidental to, the development; and secondly that the applicant has made out a compelling case in the public interest for the land to be acquired compulsorily. It is not for the landowner to have to make a case against the grant of compulsory powers. Government Guidance<sup>1</sup> makes it clear that it also falls to the applicant to demonstrate that all reasonable alternatives to compulsory acquisition have been explored and that the compulsory purchase is proportionate.
10. The Applicant's case for compulsory acquisition should be made in the Statement of Reasons accompanying the application.<sup>2</sup> At the hearings on 16 and 17 October the Applicant did not seek to expand on its Statement of Reasons but in its written summary of the oral case put at the hearings on 16 and 17 October, the Applicant stated as follows:

*"The applicant must obtain ownership of the land where its quay will be situated in some form, whether through acquiring part of the harbour master's lease from the Crown or by subletting the land from the harbour master. The harbour master originally offered, and the applicant has accepted, the principle of a sub-lease."*

In relation to the foreshore and riverbed in front of the triangle land, Applicant's written

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<sup>1</sup> 'Guidance related to procedures for compulsory acquisition' – Department for Communities and Local Government – February 2010

<sup>2</sup> The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, reg. 5(2)(h)

summary went on to say:

*“The applicant remains keen to enter an agreement to lease all of the land from the harbour master. Since the terms of a lease of part of the land would be the same as for all of it, the applicant is willing to consider this on the understanding that it would be extended to the whole area if the applicant was granted compulsory purchase powers over ABP’s triangle.”*

11. Given that HMH is willing to enter into an agreement for an under-lease (subject to the special treatment of the “triangle land”) and that it is accepted by the Applicant that an under-lease will provide everything it needs in order to implement its development, the Examining Authority is invited to conclude that the Applicant does not satisfy the “compelling case” test in relation to the land sought to be acquired in the riverbed and foreshore vested in ABP.
12. Negotiations on the form of the proposed under-lease continue. HMH notes that ABP has made an application for an extension of the examination into this application. He supports the principle of an extension and would be grateful for any period that will allow the Conservancy Authority additional time to reach agreement with the Applicant on the proposed under-lease and appropriate side agreement or protective provisions.
13. The grant of an under-lease is critical because it allows for the Applicant to be legally obliged to comply with provisions that the HMH regards as essential for the proper performance and protection of his statutory functions and which flow from ownership of the land. These provisions are additional to the protection for those functions included Part 1 of Schedule 9 to the draft DCO. In case the Applicant does not agree these terms in an under-lease, they need to be replicated in some other way. Thus, HMH seeks equivalent protective provision in the DCO to give the same level of directly enforceable protection for his functions as would follow from the under-lease.
14. There is precedent for restricting the exercise of compulsory powers of acquisition to the acquisition of a lease. It is to be found in the protective provisions for the benefit of Heathrow Airport Limited at paragraph 3(1) of Schedule 4 to the Piccadilly Line (Heathrow Extension) Order 2002<sup>3</sup> (an order made under the Transport and Works Act 1992). The relevant paragraph follows:

*“The Company shall not under the powers of this Order acquire compulsorily any airport property except a leasehold interest in such land together with such ancillary easements or rights as are reasonably required for the purposes of the authorised works, or obtaining access thereto, in such position and upon such terms as may be agreed with the authority.”*
15. At the hearing on 21 November, the Panel expressed serious doubts about the ability of the Secretary of State to restrict compulsory purchase in this way and indicated that a powerful case would be required to persuade them that this course was available to them. Having reflected overnight, HMH indicated to the Panel that he would not pursue this route.
16. Although the end result HMH seeks would more usually be the subject of a side-agreement, it can readily be achieved by a protective provision that the applicant will not compulsorily acquire HMH’s land but that HMH will not unreasonable refuse to grant (a) an under-lease of that part of 08001 and 09001 as excludes the foreshore and river bed in front of the triangle land (including certain minimum terms relating to repair, development only with the Landlord’s approval, arrangements for inspection,

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<sup>3</sup> SI 2002/1065

arrangements to facilitate the Conservancy Authority in the carrying out of its statutory functions, insurance and re-entry) or (b) in the event of the applicant having powers to develop the triangle land, an under-lease of the entirety of those two plots. There is no reason why it should not form part of the protective provisions to an order consenting development under the Planning Act 2008. It will, in any event, be appropriate for HMH to identify additional protection in the DCO to cover the possible eventuality that the Secretary of State grants powers of outright acquisition over plots 08001 and 09001 or that his decision concerning the triangle land enables HMH to grant an under-lease for the foreshore and riverbed in front of that land but terms cannot be agreed between the parties. A draft provision containing appropriate amendments to cover these eventualities is annexed to this Written Summary at Appendix 3.

### **Proposed detailed amendments to the DCO and reasons for them**

17. The latest revised DCO (version 5, 26 October 2012) still gives rise to a number of issues of direct concern to HMH. Amendments, so far as it is possible to provide them, are shown in the amended draft DCO dated 30 October 2012, referred to above.

### **Contents**

18. The title of article 26 should be amended to "Lights on tidal works etc. during construction" in order to reflect the title of that article in the body of the DCO.
19. As a new point, the title of Part 1 of Schedule 9 should be amended to refer to the Humber Conservancy and not ABP.

### **Article 2 (Interpretation)**

20. In the definitions of "the approach channel" and "the berthing pocket" the references to "the land plan" and "the works plan" need to be amended to the plural.
21. The definition of "area of jurisdiction" introduces two further expressions when only one is required. There is no need for "boundary of jurisdiction ..." as well as "limits of harbour". There are no limits "so" shown in the defined sense: they are labelled "boundary" and the wording on the Schedule 10 plan should reflect the wording of the DCO. To compensate for the fact that it does not, a definition of "limits of the harbour" is required, which refers back to the boundary line in Schedule 10. The Applicant stated at the hearing that it is amenable to this amendment and a form of words is provided in HMH's 30 October draft.
22. "Area of seaward construction activity" remains defined by reference to the Order limits, which in turn are defined by reference to the works plans. The definition of "area of seaward construction activity" should therefore refer to the works plans rather than the land plans.
23. The definition of "the Company" only refers to the Applicant's registered office in Jersey. The Order must identify an address within the jurisdiction of the UK. It is evident from the application form that the Applicant has established a branch in the UK which should be registered for compliance with the Overseas Companies Regulations 2009 (SI 2009/1801). This UK address should be referred to in the definition.
24. In the definition of "the compensation environmental management and monitoring plan", the words limiting the plan to land above the high water mark have been removed. The Harbour Master, Humber has an interest in the foreshore and river below high water mark so provision must now be included in the DCO for him to be consulted on the plan insofar as it affects the river. This will involve amendments to paragraph 17 of Schedule 11 and, if it is adopted, to the table in paragraph 3 of Part 1 of Schedule 9 in HMH's 30 October draft. The Applicant agreed at the hearing to the principle that HMH must be

consulted on **all** matters affecting the river below high water mark and appropriate amendments need to be incorporated into the DCO to give effect to this, whether by the proposed paragraph 3 in Part 1 of Schedule 9 proposed in HMH's 30 October draft (which would have the benefit of listing all the relevant consultation and approval obligations in one place) or by amendments to the individual articles and requirements concerned.

25. The definition of "the Conservancy Authority" is not correct. It should refer to AB Ports, not the services division, and, given the Conservancy Authority's statutory status, "Humber Conservancy" should be replaced by "river".
26. Although HMH would consider it desirable for the deposit sites specified in the deemed marine licence to be shown on a plan, he notes that the MMO is satisfied with the existing arrangements. He accepts that the text of the DCO and DML provide sufficient information and that the cited destinations are well-established.
27. In the definition "an environmental management and monitoring plan", after the words "marine and environmental management plan" the "or" in the last line should be "and". Also, the "an" does not work in the only place in which these plans are referred to generically; and as there is only the one generic reference (Schedule 1, paragraph 5), HMH suggests that it is unnecessary.
28. In the definition of "harbour", it would be more consistent with article 10 and Schedule 10 if the words "limits of the harbour" were substituted for "area of jurisdiction".
29. The amended definition of "the Harbour Authority" has been extended to any transferee but not to lessees. If this approach is adopted, the reference here should be to article 13(1)(a).
30. A definition of "limits of the harbour" is required because it is a term referred to in article 10 and Schedule 10 of the DCO.
31. The definition of "MMO" cannot be left in Schedule 8 as the MMO is also referred to in Part 1 of Schedule 9.
32. HMH notes that the Applicant does not agree with his proposed amendments to the terms "Order land" and "Order limits". In relation to "Order land", despite the definition following the model provision, he remains concerned for the reasons detailed in his 30 October commentary. To summarise them, he considers that "Order land" should be defined by reference to the order limits, as would be conventional in a statutory instrument of this kind. In relation to the land plans, and "boundary of land required for or affected by the proposed development", neither "boundary" nor "land" is defined. One assumes "boundary" is the same as "limits" and that "proposed development" means the authorised development, but the vagueness on the face of the DCO is unsatisfactory. HMH agrees with submissions made by other interested party with regard to reliance on the model provisions without due regard too whether they are justified by the particular circumstances of the case.
33. A similar point arises on the definition of "the Order limits". The former reference to the authorised development (which is defined) has been replaced by reference to unspecified "development and works". The result is that the description of the limits is ambiguous.
34. The river Humber is variously referred to as the "River Humber" (body of Order), "the estuary" (undefined, in Schedule 8) and "the river" (Part 1 of Schedule 9). This could helpfully be tidied up.
35. It is not appropriate to define "relevant planning authority", as the "local authority". The

definition should capture the planning functions that are exercised by the local authority. As the object of the definition is to provide that the relevant planning authority is at district level rather than county level, the appropriate description is "district planning authority".

36. The Applicant has agreed that, in the definition of "tidal work", after "any work" the words "or operation" should be inserted to make it clear that the definition captures dredging operations. HMM regards this amendment as essential.
37. HMM is concerned about the accuracy of the co-ordinates provided by the Applicant and their plotting on the works plans. Much was made by the Applicant at the hearing about the new plans and details (provided on the penultimate day of the examination period) having been verified by an independent engineer. It became apparent, however, that even after a fairly cursory inspection, some of the detail on the plans was inaccurate, including co-ordinates for the quay limits appearing outside the limits of deviation for Work No. 1. It is disconcerting that even at this late stage the Applicant has not produced reliable information on what should be quite basic facts. HMM is arranging for his own checks of these co-ordinates but it will not be possible to have the information before the close of the examination. He will make further representations in the event that his checks give rise to further anomalies or other concerns.

#### **Article 7 (Jurisdiction of the Harbour Authority)**

38. HMM notes that C.RO seeks to be included in the list of persons in 5(a) who may give notice of actual or potential conflict between their functions and those of the Harbour Authority and Dockmaster. Although this is not a point made at the hearing, HMM wishes the ExA to note his support for this proposal, which he considers would assist him in his obligation to protect users of the river generally. Similarly, he would support the insertion of a reference to provisions for the protection of C.RO in 5(11).
39. HMM has also spotted for the first time that 5(11) needs to be amended so as to delete "Part 2 of Schedule 9 (for the protection of AB Ports)" and the substitution of "Part 1 of Schedule 9 (for the protection of the Humber Conservancy)".

#### **Article 13 (Consent to transfer benefit of Order)**

40. HMM is aware that this article follows the model provisions and notes that the Applicant does not accept his proposed amendments. The model provision is difficult to interpret as "the benefit of the provisions of the Order" does not readily identify statutory functions against physical asset, either of which might be transferred or leased. It would not be difficult for the whole statutory undertaking and its physical assets to be fragmented among different entities and interests. HMM regards this as a particular risk in this case, given the scale and design of the development which would lend itself more readily to fragmentation than other port developments on the Humber (even if those harbour authorities had the requisite powers). HMM's concern is that following construction, parts of the development could be transferred or leased that would include part of the statutory undertaking, potentially creating a number of statutory harbour authorities in that area of the estuary, each with its own statutory functions.
41. Mr Walker submitted for the Applicant that any harbour authority could fragment itself. He is wrong. This provision, if adopted, would be entirely novel in the context of a harbour authority. HMM draws the attention of the ExA to the decision of King J in the recent case of R (on application of Humber Oil Terminals Trustee Ltd) v Marine Management Organisation [2012] EWHC 3058 (QB).
42. In that case, Humber Oil Terminals Trustee Ltd (HOTT) had operated an oil terminal at ABP's Port of Immingham under various leases and wayleaves from ABP for a number of years. These leases were coming to a close, and a dispute had arisen about their renewal which was also subject to court proceedings regarding the Landlord and Tenant

Act 1954. Whilst that was still ongoing, HOTT had applied for a Harbour Revision Order (“HRO”) to remove the oil terminal from the control of ABP and vest control in a new harbour authority to be run by HOTT. The MMO, considering the application on behalf of the Secretary of State had turned down the request at the preliminary stage on the grounds it did not fall within one of the necessary grounds. HOTT had applied for a judicial review into the matter. HOTT made four grounds of challenge, including that the MMO misdirected itself in concluding a HRO could not be made.

43. In his judgement, King J drew the following conclusions on the misdirection point. He stated that the question of misdirection turned upon whether a HRO could be made to establish a new harbour authority in lieu of an old one in respect of only part of the harbour. King J held that for this to be the case, it would have to fall within one of the relevant grounds for making an HRO found in Schedule 2 Harbours Act 1964. HOTT had submitted that paragraph 1 of Schedule 2, namely “Reconstituting the harbour authority by whom the harbour is being improved, maintaining or managed or altering their constitutions or establishing as the harbour authority in lieu of the existing one an existing body designated in that behalf or a body established for this purpose” gave the relevant ground, or that alternatively paragraph 17 of Schedule 2 “Any object which, though not falling within any of the foregoing paragraph, appears to be the appropriate Minister to be one the achievement of which will be conducive to the efficient running of the harbour” would suffice. King J held that paragraph 1 could not be read as being a suitable ground for HOTT’s purposes, as “in lieu of” had to mean on the natural meaning of the words the wholesale replacement of the whole of the harbour managed by the existing authority. Accordingly, paragraph 1 did not give grounds for a partial replacement. King J also held that the “sweeping up” paragraph 17 could not be interpreted so widely as to render the foregoing 16 paragraphs superfluous verbiage, and accordingly it had to be read in accordance with these. King J also rejected that any of the other sections of the 1964 Act could assist, saying these only applied if the relevant ground could be found in Schedule 2; one could not use a section of the Act to get around the fact none of the grounds in Schedule 2 applied.
44. The important aspect of this so far as Article 13 of the proposed DCO in this case is concerned is that King J formed the view that the Act had been drafted specifically to avoid a proliferation of harbour authorities, and was in fact reasonably clear on that point. Accordingly, he held that Parliament had deliberately omitted words such as “all or any part of the harbour” from paragraph 1 of Schedule 2 when it had included these in other paragraphs. Anyone wanting a partial replacement would have to apply for a Harbour Empowerment Order (“HEO”) under s16 of the Act, which had an additional requirement (not required for an HRO) that neither the applicant nor any other person had powers or sufficient powers to secure the objects of the HEO. That would NOT be the situation in a case where the Applicant sought to exercise the powers of Article 13.
45. Although this is not an application under the Harbours Act, HMH submits that the principle is clear. It is undesirable to have a proliferation of harbour authorities and it would not be permitted under the Harbours Act regime. Thus, although the model provision would be acceptable in a normal commercial context, it is inappropriate in the context of a harbour, where each disposal could carry with it its own statutory functions potentially creating a proliferation of entities with perpetual succession. As was pointed out at the hearing, the Localism Act 2011 (specifically Part 20 of Schedule 25 (Repeals and revocations) repeals s.38 of the Planning Act relating to the status of the model provisions) and there is no good reason to follow them in this instance.
46. The appropriate course, if the Applicant wishes to obtain the same result is to make an application in the usual way under the relevant statutory consenting regime; a process that would ensure that the disposal was appropriate and that the person acquiring the undertaking was suitable.



47. As things stand, third parties would have no way of identifying the holder of any specific function, an impossible position for HMH who must be able to deal with bodies whose statutory status is transparent and ascertainable without special proof. It would be more usual in a harbour context to refer to the benefit of the “undertaking”, which would capture the totality of everything required to carry on the statutory undertaking. However, there is no example of a similar provision to assist the ExA.
48. Paragraph 23 of Schedule 9, which would require the undertaker to give HMH notice of any transfer or lease made or granted under article 13 is still required. This does not address the problem of identification by other third parties. Neither does it ensure that HMH is made aware of the physical assets that have been transferred or leased, which it will be essential for him to know. Most importantly, it provides no assurance of financial means to assume the benefit transferred or granted. HMH ought not to have to undertake a due diligence.
49. It was suggested at the hearing that the fact that the Secretary of State will have to approve a transfer or grant under article 13 provides all the necessary safeguards. However, that is not a good reason for having a novel and inappropriate framework that conflicts with the Harbours Act regime. If this provision is to be included, further safeguards are needed to ensure that any disposal is to a fit and proper person; for example, the DCO should be amended to provide that only physical assets can be leased and not statutory powers and that the Applicant should not be empowered to transfer part only of its statutory functions (a harbour authority is an entity with perpetual succession and it would be undesirable for this to be transferred in part or leased for a term of years).
50. In case the Secretary of State decides to make the Order on the strength of the current financial information (or lack of it), HMH still seeks an amendment requiring his approval as well, as allowing for a possibly more rigorous test so far as HMH is concerned. This appears at paragraph 23 of his revised draft DCO dated 30 October 2012. The amendment would require the prior approval of the Conservancy Authority to any request to the Secretary of State and would enable the Conservancy Authority to refuse its permission if it considers that the proposed transferee or lessee lacks the financial or technical competence to assume the statutory functions or liabilities that would follow from that transfer or lease. These comments do not seek to inflate the importance of the HMH. He must know who else has statutory powers and functions relating to the river and that such persons are suitable.

#### **Article 14 (Guarantees in respect of payment)**

51. HMH agrees with the submissions made by C.RO. This article is altogether inadequate to safeguard against the risk of the Applicant being granted statutory powers without having the financial means to implement them. The limited scope of the proposed guarantee would not provide any assurance in respect of the Applicant’s overall ability to implement (which include long term functions and liabilities), while the identity of the guarantor or other providers of security is not provided for. For the same reasons, article 14 provides no assurance against the (non-statutory) blight that would be caused in the Humber and its existing port and similar operations by the grant of powers that are not exercised.
52. In Rookery South there was a raft of guarantees underpinned by an immense, and known, American organisation. The situation here is different as there is no obvious entity of substance behind this scheme. The DCO should make provision for specific tangible security such as an insurance policy or bank bond.
53. Further, approval ought not to be in the hands of the planning authority. The Secretary of State, as decision-maker, should be responsible for approval.

54. A separate issue is that this provision relates solely to compensation and mitigation liabilities. It should be extended to all the Applicant's obligations under the DCO, including the obligation to make good abandoned works.

**Article 23 (Tidal works not to be executed without approval of Secretary of State)**

55. The Applicant agreed at the hearing that the words "extended, enlarged," should be omitted where they appear in paragraphs (1) and (2) and the word "altered" inserted. (The justification for this appears in HMH's 30 October commentary.)

**Article 26 (Lights on tidal works, etc. during construction)**

56. The Applicant agrees that references to "extension" and "enlargement" should be omitted and the word "alteration" substituted (for the reasons given in relation to article 23).
57. The model provisions do not include a precedent for failure to comply, but since their publication, the Localism Act 2011 has amended section 120(1) of the Planning Act 2008 to allow for the imposition of penalties. There is ample precedent for the imposition of such penalties; for example, article 12 (Offences) of the River Humber (Upper Burcom Tidal Stream Generator) Order 2008 (made under the Transport and Works Act 1992) and article 18 of the London Gateway Port Harbour Empowerment Order 2008 (made under the Harbours Act 1964), which authorised a very similar scheme in the river Thames. Copies of those articles are provided in Appendix 4 to this summary. The reason for it is clear; this is a busy river and there is a risk of danger to navigation from breach of this article, which could result in loss of life and vessels. Although the Applicant, unsurprisingly, does not agree, a criminal sanction is appropriate.

**Article 30 (Compulsory acquisition of land)**

**Article 31 (Power to override easements and other rights)**

**Article 34 (Compulsory acquisition of rights)**

**Article 40 (Temporary use of land for carrying out the authorised development)**

**Article 41 (Temporary use of land for maintaining authorised development)**

58. As set out above, the Applicant no longer seeks compulsory powers over plots 02013, 10007, 11004, 12004 and 13004 and has removed them from the book of reference. In the event that the Secretary of State is not minded to accept the revised book of reference, HMH seeks amendments to exclude this land from the scope of the above provisions. (The draft provisions are included at Appendix 2.)

**Schedule 6**

59. The Applicant has agreed that plot 02013 must be removed from the table of land of which temporary possession may be taken in Schedule 6.

**Schedule 7**

60. The reference to "the ecology plans" in Schedule 7 (in the heading for column (2)) now needs to be plural (see definition in article 2(1)).

**Schedule 8**

61. HMH considers that without a definition of "disposal" in paragraph 4(2) of Schedule 8 a reader of the DCO would not be able to ascertain with any certainty what it is intended to apply to. However, he notes that the MMO is comfortable with the wording.
62. New additional wording in the Applicant's 26 October draft provides that the use of the outfalls in paragraph 4 is not licensed by this Schedule. The effect appears to be that the

Applicant may (but is not required to) build Work No.1 with passive provision for replacement outfalls, but there will be no certainty that the replacements can ever be used. This provides no assurance to HMH that passive provision will protect against potential siltation of the existing outfalls.

63. In paragraph 6, HMH has proposed a requirement that the licenceholder must rockdress all material deposited under this provision or take such other steps as the HMH may require in order to prevent movement of the berthing pocket infill. Without this, there is nothing in Schedule 8 to safeguard against the risk that the backfill may not stay in place, identified by HMH in paragraph 5 of his response to Q46 in the Second Round of Written Questions.
64. The Applicant accepted that paragraph 7(1) no longer makes sense as original sub-paragraph (b) has been deleted but is still referred to in the new sub-paragraph (b).
65. The Applicant has also agreed that “riverward” would be a more appropriate word than “seaward” where it appears in the DCO and DML.
66. The amendment proposed by HMH in paragraph 7 (1)(d) provides for the pumping station to occupy the same area as the mattress. This is intended to clarify what is intended.
67. Paragraph 9(2) allocates the approximate quantities to specific locations. In relation to deposit of material at the Cherry Cobb Sands channel, the table states under “deposit location” “If the dredged material is suitable, the intertidal area...” There is nothing to indicate who will decide whether or not the material is suitable so presumably this would be at the discretion of the undertaker. HMH stated at the hearing that he does not regard this as satisfactory and notes that the MMO has a number of concerns about the table, including this one. Both seek greater clarity.
68. In the table in paragraph 10, “none” in the column relating to the two outfalls appears to result in there being a licensed tonnage for deposit with no deposit site. The reason provided by the Applicant is that the material concerned will be dispersed rather than deposited. The DCO should make clear what is intended, otherwise it looks on the face of the DCO as if the table must be wrong. It appears that even at this late stage the tables in the DML have not been settled to the satisfaction of the MMO.
69. In paragraph 13, “mitigation” needs to be amended to “monitoring”.
70. It is now agreed by the Applicant that there should be provisions in paragraphs 13 and 14 for HMH to be consulted on the marine plan and any vessel management plan before they are submitted to the MMO for approval. Indeed by their very nature, all plans, schedules and other documents to be prepared by the licence holder under Schedule 8 for submission to various named parties for approval or agreement can only benefit from the input of HMH as the person responsible for management of navigation and works in the river.
71. Paragraphs 30 and 31 of Schedule 8 impose obligations on the licence holder in relation to safe storage of fuel, oil and chemicals and notification to the MMO in the case of any spill of such materials in the marine environment. HMH understands that the licence holder will be obliged by The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998 to prepare an “oil pollution emergency plan for approval by the Maritime and Coastguard Agency. He seeks additional provision in this section to require the licence holder to ensure that such plan is compatible with the Authority’s own plan, “Humber Clean”. It is suggested that a suitable form of words would be as follows:

*“The licence holder must consult the harbour master before submitting any oil pollution emergency plan to the Maritime and Coastguard Agency and must ensure that any such plan is compatible with the Conservancy Authority’s existing plan known as “Humber Clean” or such other plan as supersedes “Humber Clean”.*

72. The requirement for spills of pollutant material to be reported to the MMO in paragraph 31 should also require reporting to be made to HMH.

73. A new paragraph 32 requires the licence holder to ensure that a “Notice to Mariners” is issued prior to commencement of the works. The Applicant accepts that this condition is incapable of performance by the licence holder because the only body with locus to issue a Notice to Mariners at this stage is the Conservancy Authority. HMH seeks an amendment to this provision to make this clear and to provide for payment of his costs in accordance with the published rate for such notices and he proposes the following form of words:

*“The licence holder must take appropriate action to ensure that a Notice to Mariners is issued by the Conservancy Authority at least 10 days prior to works commencing warning of the start date for the construction of the works and updated as appropriate and must reimburse the Conservancy Authority for the costs of issuing such notice or notices in accordance with that authority’s published rate for Notices to Mariners.*

74. The active monitoring scheme required by paragraph 37 will include details of the locations of active monitoring buoys. As the placing of buoys is a potential obstruction to navigation, the Applicant agreed at the hearing that this scheme must be subject to HMH’s approval.

75. In paragraph 42, the number “32” should be “42”.

76. The dredge and disposal strategy required by paragraph 43 will address matters that are HMH’s direct concern and is one of the documents on which he will now be consulted. HMH’s approval of dredging proposals is achieved by defining “tidal work” as including dredging operations (see above).

77. Although this was not raised at the hearing, HMH notices that paragraph 56 refers to the “Humber Maritime Dredging Baseline Document”. As this document is not generally available or traceable, a citation is needed, or some other means of finding it.

#### **Schedule 9, Part 1 (For the protection of the Humber Conservancy)**

78. HMH has proposed amendments to paragraph 3(1) and (2) which provide for HMH’s role in the preparation of the documents mentioned in those paragraphs. These, together with the other documents agreed at the hearings on 21 and 22 November, need to be carried through into the final version of the DCO or appropriate amendments must be made to the relevant provisions throughout the DCO and DML. For the convenience of the ExA, a list of documents appears at Appendix 5.

79. At HMH’s suggestion, the Applicant agreed to amend “Humber Harbour Master” to refer to the harbour master (defined in article 2). That amendment needs to be followed through at paragraph 4 of Schedule 9.

80. In the event that the Secretary of State decides to grant the Applicant powers of compulsory purchase over plots 08001 and/or 09001, HMH seeks an additional paragraph 25 to Part 1 of Schedule 9 (“Scenario 1”) in the form appended to this summary at Appendix 1.

81. In the event that the Secretary of State decides to grant compulsory powers over plots

08001 and 09001 but declines to include sub-paragraph 25(1) to (3) in the protective provisions (which would restrict the undertaker's exercise of compulsory powers and oblige HMH to grant an under-lease), HMH would still seek the provisions numbered 25(4) to (12) so as to achieve equivalent protection in key areas that he would otherwise enjoy as landlord.

82. The proposed provisions relating to compulsory acquisition and the under-lease are intended to replace those amended in HMH's revised DCO dated 30 October 2012 (Appendix 1 to his Comments on the revised draft Order dated 9 October 2012) relating to compulsory acquisition (articles 30, 31, 34, 40 and 41).
83. HMH resists any inference that his property lawyers have been dragging their heels over the form of under-lease. In particular there is no evidence or substance whatsoever supporting Mr Jones' repeated assertions that ABP may be exerting some kind of pressure or influence to delay the negotiations. Indeed, HMH cannot see how it would be in ABP's interests to do so, as any agreement for under-lease would be conditional upon the Applicant's development being consented and going ahead. As paragraph 30 of HMH's written summary after the compulsory purchase hearings explained, an examination of the email correspondence demonstrates that neither side to the negotiations were acting with any degree of urgency. Following the compulsory purchase hearings, HMH's property lawyer provided a draft lease to the Applicant on 26 October but, despite requests to do so, the Applicant has provided no feedback on its terms.
84. In any event, the proposals put forward by HMH give the Applicant everything it can possibly require in order to construct and operate its development and HMH remains very willing to continue negotiations expeditiously to seek a negotiated settlement.

#### **Part 6 of Schedule 9 (for the protection of C.RO Ports (Killingholme) Limited**

85. HMH is concerned that the location of C.RO's six berth facility means that it will be particularly affected by the construction and operation of the proposed development. The overlapping jurisdictions, approach channels and marine licences of the two operators make this a unique situation. HMH generally supports the proposition that, as C.RO is the existing operator, it is incumbent on the Applicant to accommodate C.RO's activities rather than the other way round. For this reason he has been keen for the parties to reach an agreement that would govern their areas of interface in the event that the DCO is made. In the absence of such formal arrangements, he supports C.RO's proposed protective provisions.

#### **Provisions relating to precedence of commercial vessels (C.RO and ABP)**

86. In the day to day exercise of his statutory functions, HMH would in any event ensure that construction/dredging vessels keep clear of vessels arriving at and leaving C.RO's berths and those of ABP. HMH was asked to confirm in the hearing, and did so confirm, that he has the necessary powers to accomplish this and, in practice, it is unlikely that any conflict would arise. However, the question HMH was asked does not deal with the entirety of the situation. The mere fact he has the power to give directions, does not mean that the responsibility for giving precedence to commercial vessels should not rest with the Applicant who will operate the vessels that have the potential to cause the obstructions. HMH is aware that protective provisions of the kind sought by C.RO and AB Ports are well-precedented and add more than mere comfort to the recipient, since they establish the respective responsibilities and liabilities of the operators concerned and they make it easier for HMH to fulfil his own role without it giving rise to conflict or dissatisfaction. He notes that it would not be normal for a mirror provision to be incorporated since any new development would have to be consented and that consent would itself include any relevant protections for Able.

## **Requirements**

87. It is objectionable per se that paragraph 15 refers to a document that is not going to be available to the reader of the DCO. The same point is made as regarding paragraph 56 of Schedule 8.
88. The Applicant agrees that HMH should be consulted on the content of the marine and compensation environmental management and monitoring plans required by paragraph 17. Similarly the Applicant agrees that HMH should be consulted before the written scheme for control of emissions in paragraph 24 is submitted for approval. These both appear in the list at Appendix 5.

**Winckworth Sherwood LLP  
23 November 2012**

**INFRASTRUCTURE PLANNING**

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

**THE ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER**

**TR030001**

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**Appendix 1 to Written Summary of the Oral Case on behalf of the Harbour Master, Humber put at the Specific Issue Hearings on the draft Development Consent Order and Deemed Marine Licence held on 21 & 22 November 2012**

**Copy of revised draft Order dated 9 October 2012 with tracked amendments by Harbour Master, Humber (originally submitted as Appendix 1 to the Comments of the Harbour Master, Humber on the revised draft order dated 9 October 2012, document ref:CO9.10App1)**

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Rule No.	17
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Planning Act 2008  
Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009  
Regulation 5(2)(b)  
Document reference: TR030001/DCO/4

The proposed Able Marine Energy Park  
Draft Development Consent Order

| [922](#) October 2012

Revision: 4

| ~~Bircham Dyson Bell~~ [Winckworth Sherwood LLP](#)



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.

## 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(b);

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

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

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

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

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

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

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

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

“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 plans;

“area of jurisdiction” means the area ~~shown bounded by within 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~~limits of the harbour;

(a) 2008 c. 29, as amended.

(b) 1847 (10 & 11 Vict) c. 27, as amended at the date of the coming into force of this Order.

(c) 1961 c. 33, as amended at the date of the coming into force of this Order.

(d) 1965 c. 56, as amended at the date of the coming into force of this Order.

(e) 1980 c. 66, as amended at the date of the coming into force of this Order.

(f) 1984 c. 27, as amended at the date of the coming into force of this Order.

(g) 1990 c. 8, as amended at the date of the coming into force of this Order.

(h) 1991 c. 22, as amended at the date of the coming into force of this Order.

(i) 2008 c. 29, as amended at the date of the coming into force of this Order.

“area of seaward construction activity” means the area of the sea within the Order limits shown on the [worksland plans](#);

“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 plans;

“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;

“Cherry Cobb sands channel” means the area bounded by co-ordinates (53°39.34’N, 00°08.44’W), (53°39.28’N, 00°08.34’W), (53°39.25’N, 00°08.38’W) and (53°39.31’N, 00°08.48’W);

“the Company” means Able Humber Ports Limited, company number 107029, registered at Ogier House, The Esplanade, St Helier, Jersey, JE4 9WG [and whose registered UK branch is at Able House, Billingham Reach Industrial Estate, Billingham, Teesside, TS23 1PX](#);

“the compensation environmental management and monitoring plan” means the plan for environmental management and monitoring above the high water mark on the north bank of the River Humber referred to in paragraph 16 of Schedule 11;

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

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

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

[“the deposit location plan” means the plan showing the location of the sites for the deposit of dredged materials specified in paragraphs 9 and 10 of Schedule 8 and certified by the decision-maker as the deposit location plan for the purposes of this Order;](#)

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

“an environmental management and monitoring plan” means all or any of the compensation environmental management and monitoring plan, the marine environmental and monitoring plan or the terrestrial environmental management and monitoring plan;

“harbour” means the authorised development within the ~~area of jurisdiction~~[limits of the harbour](#), and includes any works, land, buildings, ancillary works, plant, property and conveniences connected with it, as from time to time existing within the ~~area of jurisdiction~~[limits of the harbour](#);

“the Harbour Authority” means the Company in its capacity as harbour authority established by article 7 (jurisdiction of the Harbour Authority), or to the extent of any transfer under article 12(1)(a), any transferee;

“the harbour master” means the harbour master appointed by the Conservancy Authority for the purposes of the Humber Conservancy Acts 1852 to 1951 and the Humber Harbour Reorganisation Scheme 1966 to be a harbour master for an area that includes the area of jurisdiction and includes the harbour master’s deputies and assistants;

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

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

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

“limits of the harbour” means the boundary line so shown on the plan at Schedule 10;

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

“MMO” means the Marine Management Organisation;

“the marine environmental management and monitoring plan” means the plan for environmental management and monitoring below the high water mark referred to at paragraph 16 of Schedule 11;

“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 plans as within the ~~order limits-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 on the works plans as the limits within which the authorised development and works may be carried out on the works plans;

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

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

“relevant planning authority” means the ~~local district planning~~ 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 plans” means the plans certified as the rights of way plans 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;

“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;

“the terrestrial environmental management and monitoring plan” means the plan for environmental management and monitoring above the high water mark on the south bank of the River Humber referred to at paragraph 16 of Schedule 11;

“tidal work” means so much of any work or operation 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;

“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 plans.

“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

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

and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans certified as the works plans 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, 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—

- (a) the expression “the special Act” means this Order;
- (b) the expressions “the Promoters of the undertaking” and “the undertakers” mean the undertaker;
- (c) the expression “the harbour, dock or pier” means the authorised development within the area of jurisdiction;
- (d) the expressions “limits” and “prescribed limits” mean the area of jurisdiction;
- (e) the expression “near the pier” does not extend beyond the area of jurisdiction;
- (f) the expression “the harbour master”, in relation to the authorised development means the harbour master as defined in article 2;
- (g) the definition of “vessel” in article 2(1) shall be substituted for the definition in section 3 of the 1847 Act; and
- (h) 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 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.

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(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.

## PART 2

### PRINCIPAL POWERS

#### **Development consent etc. granted by the Order**

5.—(1) 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.

(2) Subject to article 5A (limits of deviation) the authorised development shall be constructed or carried out in the lines and situations shown on the works plans and at the levels shown on the sections.

#### **Limits of deviation**

**5A.** In carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on the plans; and
- (b) deviate vertically from the levels of the authorised development shown on the sections—
  - (i) to any extent not exceeding 1 metre upwards; or
  - (ii) to any extent downwards as may be found necessary or convenient.

#### **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—

- (a) any vessel unless it is at anchor or otherwise moored or is causing an obstruction within the area of jurisdiction; or
- (b) 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—

- (a) the exercise of any function of any person mentioned in paragraph (5)(a); and
- (b) 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).

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

- (a) AB Ports and the harbour master; and
- (b) 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—

- (a) make general provision in relation to the exercise of functions over time; or
- (b) make specific provision about the exercise of a particular function or functions on a particular occasion.

(8) If—

- (a) a notice sets out requirements falling within paragraph (7)(a) it must be made in writing; and
- (b) 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 the Harbour Authority by article 7 (jurisdiction of the Harbour Authority) unless any provision of the agreement or undertaking would be outside the statutory functions 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 relay 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 area of jurisdiction 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—

- (a) 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);
- (b) works to divert, remove or replace apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines; and
- (c) 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 Part 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—

- (a) 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
- (b) 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) The powers of paragraph (1)(a) may only be exercised by the Company or a transferee.

(3) A lessee (‘the granting lessee’) may not make a grant under paragraph (1)(b)—

- (a) for a longer period than the period of the grant to the granting lessee; or
- (b) conferring any benefit or right that is not conferred by the grant to the granting lessee.

(4) 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.

(5) 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.

(6) Before giving consent under this article, the Secretary of State shall consult such parties as the Secretary of State thinks appropriate.

### **Guarantees in respect of payment**

12A.—(1) The authorised development must not be commenced and the undertaker must not begin to exercise the powers of Part 5 unless either guarantees or alternative forms of security for that purpose in respect of

- (a) the liabilities of the undertaker to pay compensation under this Order; and
- (b) the liabilities of the undertaker to construct and maintain Work No. 5 (the compensatory environmental habitat)

are in place which has been approved by the relevant planning authority.

(2) A guarantee given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor by any person to whom such compensation is payable.

## **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—

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

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) 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.

(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—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker shall provide reasonable access for pedestrians, and where reasonably practicable vehicles, 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—

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

- (a) 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
- (b) 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—

- (a) the strengthening, improvement, repair or reconstruction of any street required as a result of the exercise of the powers conferred by this Order;
  - (b) any stopping up, alteration or diversion of a street authorised by this Order; or
  - (c) 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)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
  - (c) 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—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and
- (b) 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.

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(a) 1991 c.56, as amended at the date of the coming into force of this Order.

(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(a) (requirement for an environmental permit).

(8) In this article—

- (a) “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(b) (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
- (b) 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—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) 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))—

- (a) enter the building and any land within its curtilage; and
- (b) 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) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) 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—

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(a) S.I. 2010/675, as amended at the date of the coming into force of this Order.  
(b) 1964 c.40, as amended at the date of the coming into force of this Order.

- (a) protective works are carried out under this article to a building; and
- (b) 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 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—

- (a) 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
- (b) 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 and—

- (a) survey or investigate the land;
- (b) 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;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) 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—

- (a) shall, if so required upon entering the land, produce written evidence of their authority to do so; and
- (b) 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—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) 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.

(6) Nothing in this article shall avoid any necessity to obtain permits or consents under the Conservation of Habitats and Species Regulations 2010 or the Wildlife and Countryside Act 1981.

### **Power~~Right~~ 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 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—

- (a) in contravention of the provisions of any enactment as respects the disposal of waste; or
- (b) 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.

### **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~~altered, 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~~altered, replaced or relaid in contravention of paragraph (1) or of any condition or restriction imposed under that paragraph—

- (a) 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
- (b) 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.

### Lights on tidal works etc. during construction

25. The undertaker shall at or near—

- (a) a tidal work, including any temporary work; or
- (b) 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, alteration,~~ 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 Conservancy Authority or, failing agreement between them, the Secretary of State may from time to time direct.

(2) If the undertaker fails to comply with any requirement of a direction given under this article it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine,

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### 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 Conservancy Authority 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 Conservancy Authority or, failing agreement between them, the Conservancy Authority 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 Conservancy Authority may from time to time direct.

### Power to appropriate

28.—(1) Notwithstanding anything in section 33 (harbour, dock, and pier to be free to the public on payment of rates) of the 1847 Act or any other enactment, 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

- (a) the harbour master may order any person or vessel making use of the harbour without such consent to leave or be removed; and
- (b) 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 plans 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.

(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 does not authorise the compulsory acquisition of any interest in Order land below the level of high water which is land in which the Conservancy Authority has an interest.

(45) No interest in Crown land may be acquired under this article unless the appropriate Crown authority consents to the acquisition.

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

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#### 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—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

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

- (a) the erection, construction or carrying out, or maintenance of any building or work on land;
- (b) the erection, construction, or maintenance of anything in, on, over or under land; or
- (c) 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) a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or
- (b) 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—

- (a) shall be payable under section 7 or 10 of the 1965 Act; and
- (b) 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—

- (a) is liable to pay compensation, and
- (b) fails to discharge that liability,

the liability shall be enforceable against the undertaker.

(10) This article does not apply to any land within the Order limits and below the level of high water which is land in which the Conservancy Authority has an interest.

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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—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
- (b) 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 plans.

(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.

(5) This article does not apply to any land below the level of high water which is land in which the

(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.

| [Conservancy Authority has an interest.](#)

### **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—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) 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 plans, 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.

(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—

- (a) 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

- (b) 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)—

- (a) is made with a person in or to whom the right of way is vested or belongs; and
- (b) 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<sup>(a)</sup> 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—

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

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

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) 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—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) 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—

- (a) 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
- (b) 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—

- (a) 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
- (b) 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—

- (a) any subway or underground building; or

(b) 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.

(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—

(a) 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;

(b) remove any buildings and vegetation from that land; and

(c) 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—

(a) 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;

(b) 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—

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

rights); or

(b) 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.

(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).

[\(11\) This article is not exercisable in respect of any Order land below the level of high water which is land in which the Conservancy Authority has an interest.](#)

### **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—

- (a) 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
- (b) 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—

- (a) any house or garden belonging to a house; or
- (b) 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).

[\(11\) This article is not exercisable in respect of any Order land below the level of high water which is land in which the Conservancy Authority has an interest.](#)

~~(12)~~ 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.**—(1) The undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired and described in the book of reference;
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the land plans and described in the book of reference; and
- (c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plans and described in the book of reference.

(2) Nothing in paragraph (1) removes any requirement to obtain a certificate under section 138 of the 2008 Act.

### **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—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) 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—

- (a) 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

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



(b) 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.

#### **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 plans, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

(a) 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

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

(a) 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

(b) 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)—

(a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or

(b) 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 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.

(2) 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.

### **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—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) 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—

- (a) 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;
- (b) 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
- (c) 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 within the area of jurisdiction 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

- (a) 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.

- (b) the defendant shows that the nuisance—
- (i) 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 22; or
  - (ii) 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—

- (a) do not form part of the plan and project which was subject to an assessment under the Habitats Regulations in connection with the making of this Order; and
- (b) 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).

#### **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—

- (a) the book of reference;

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(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.

- (b) the [deposit location plan](#);
- (c) the ecology plans;
- (de) the land plans;
- (ed) the rights of way plans; and
- (fe) the works plans,

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—

- (a) by post; or
- (b) 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—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) 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—

- (a) 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
- (b) 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—

- (a) 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;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(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—

- (a) that person shall give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

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(a) 1978 c. 30.

(b) 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.—(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by a requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

Signed by authority of the Secretary of State

[xxx] 2013

Department for Transport

## SCHEDULES

### SCHEDULE 1

Article 5

#### AUTHORISED DEVELOPMENT

##### NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT

1. In the district of North Lincolnshire—

- (a) 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 being enclosed by the existing flood wall and the area described by points (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).

##### ASSOCIATED DEVELOPMENT

2. In the district of North Lincolnshire—

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

3. In the district of North Lincolnshire—

Work No. 3—a passing loop on the North Killingholme Branch Line;

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

- (a) 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 and land reclamation behind the new quay wall (Work No. 1) in accordance with Schedule 8 (deemed marine licence);
- (b) the provision of onshore facilities for the manufacture, assembly and storage of components and parts for offshore marine energy and related items;
- (c) improvement works to Rosper Road, Eastfield Road, the A160 and the A180;
- (d) surface and foul water disposal arrangements;
- (e) lighting;
- (f) parking;
- (g) ecological mitigation works in accordance with the environmental management and monitoring plans; and
- (h) the re-siting of apparatus.

5. In the district of the East Riding of Yorkshire and within the Order limits, the development of compensatory environmental habitat in accordance with the environmental management and monitoring plans, to include dredging and tidal works licensed in accordance with Schedule 8.

**SCHEDULE 2**  
**STREETS SUBJECT TO STREET WORKS**

Article 13

<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

**SCHEDULE 3**  
**STREETS TO BE TEMPORARILY STOPPED UP**

Article 14

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Area Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
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



SCHEDULE 4  
ACCESS TO WORKS

Article 15

<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

**SCHEDULE 5**  
**FOOTPATHS TO BE STOPPED UP**

Article 17

<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

SCHEDULE 6

Article 39

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> Area	<i>(2)</i> Number of land shown on land plans	<i>(3) Purpose for which</i> temporary possession may be taken	<i>(4)</i> Relevant part of the authorised development
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

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 plans</i>	<i>(3)</i> <i>Work to be carried out</i>
District of North Lincolnshire	Marked with T1 on sheet 3 of the ecology plans	Felling to allow authorised development to proceed
	Marked with T2 on sheet 3 of the ecology plans	Felling to allow authorised development to proceed

## SCHEDULE 8

Article 43

### TREES SUBJECT TO TREE PRESERVATION ORDERS

#### 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 (53°39.67’N, 00°13.696’W), (53°39.714’N, 00°13.57’W), (53°39.667’N, 00°13.523’W) and (53°39.663’N, 00°13.648’W) and shown on sheet 5 of the works plans;

“clay” means dredged materials with a diameter of less than 31.25 micrometres; “the E.ON outfall” means the area bounded by co-ordinates (53°39.557’N, 00°13.562’W), (53°39.600’N, 00°13.426’W), (53°39.551’N, 00°13.382’W) and (53°39.507’N, 00°13.517’W) and shown on sheet 5 of the works plans;

“earthworks season” means the period from April to October or such other period set out in British Standard 6031;

“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);

“licence holder” means the Company and any agent or contractor acting on its behalf; “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;

“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 pumping station site” means the area bounded by co-ordinates (53°38.59’N, 00°13.10’W), (53°38.58’N, 00°13.08’W), and (53°38.58’N, 00°13.09’W) and shown on sheets 3 and 9 of the works plans;

“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 plans;

“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; and

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

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

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(3) Tonnages of dredged materials are expressed in wet tonnes.

#### 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](mailto:marine.consents@marinemangement.org.uk).

## PART 2

### LICENSED ACTIVITIES

3. For the purpose of constructing and maintaining the authorised development the licence holder may carry out the activities set out in this Part as if ~~those~~ activities were licensed under the 2009 Act.

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#### Construction of the quay

4. (1) The licence holder is permitted to construct the quay ~~consisting of~~ (Work No. 1) and carry out associated land reclamation within the quay limits and according to the following specification:—

- (a) no more than 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;
- (b) two return walls may be constructed between the ends of the quay and the existing flood defence wall, comprising no more than 23,000 steel piles driven into the bed of the estuary from named vessels and also earthwork revetments with no more than 75,000 tonnes of rock armour protection, such revetments and rock armour to be constructed using land-based plant;
- (c) no more than 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;
- (d) no more than 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;
- (e) 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;
- (f) 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 (e), 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 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
- (g) 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 the marine environmental management and monitoring plan.

#### Temporary dolphins

5. (1) The licence holder 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.

(2) 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.

(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 the marine environmental mitigation and monitoring plan referred to in paragraph 13.

(4) 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. (1) Following or during the dredging of the berthing pocket, the licence holder 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 -11.5 metres chart datum.

(2) The licenceholder must rock dress all material deposited under sub-paragraph (1) or take such other steps as may be required by the Conservancy Authority so as to prevent movement of the material.

#### Pumping station

7. (1) The licence holder is permitted to construct a pumping station at the pumping station site according to the following specification:—

- (a) a temporary steel cofferdam containing up to 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;
- (b) a section of drainage channel may be created by excavating the foreshore seariverwards 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;
- (c) a stone mattress may be placed within the drainage channel created under (b) over a distance of 20 metres seariverwards of the outfall pipes; and
- (d) a pumping station may be constructed such that its seaward extent is above on and within the area covered by 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 licence holder is permitted to remove a 250 metre section of the existing flood wall to create the Cherry Cobb Sands channel under the following conditions:—

- (a) the Cherry Cobb Sands channel cannot be created until a new flood defence has been constructed landward of the existing flood defence;
- (b) the Cherry Cobb Sands channel cannot be created until a channel has been excavated from the site of the breach to the foreshore at the level of the breach;
- (c) all material is to be removed using land-based plant;
- (d) all excavated material is to be disposed of in the intertidal area created between the old and new flood defences.

#### Capital dredging

9. (1) The licence holder is permitted to carry out capital dredging at the following locations:—

- (a) within the quay limits the quay site to a depth of -6.5 metres Chart Datum;

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- (b) the berthing pocket to a depth of -14.5 metres Chart Datum;
- (c) the approach channel to a depth of -9 metres Chart Datum;
- (d) the turning area to a depth of -9 metres Chart Datum;
- (e) the pumping station channel to a depth of 0.5 metres Chart Datum; and
- (f) the Cherry Cobb Sands channel to a depth of 5.7 metres Chart Datum.

(2) The materials must be dredged in the approximate quantities and deposited at the locations [shown on the deposit location plan](#) according to the following table:

Location	Material	Maximum tonnage per year	Deposit location	Total licensed tonnage
Quay site	Gravel	50,000	HU080	725,000
	Sand	110,000		
	Silt	390,000		
	Clay	175,000	HU082	
The berthing pocket			HU080	1,675,000
	Sand	50,000		
	Silt	150,000		
	Clay	1,475,000	HU082	
The approach channel	Gravel	300,000	HU080	1,650,000
	Sand	600,000		
	Silt	500,000		
	Clay	250,000	HU082	
The turning area	Gravel	35,000	HU080	250,000
	Sand	95,000		
	Silt	80,000		
	Clay	40,000	HU082	
The pumping station channel	Sand	500	HU080	2,500
	Silt	2,000		
The Cherry Cobb Sands channel	Sand	2,000	The intertidal area landward of the Cherry Cobb Sands channel	10,000
	Silt	8,000		

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#### Maintenance dredging

10. (1) The licence holder is permitted to carry out maintenance dredging at the following locations:—

- (a) the berthing pocket to a depth of -11 metres Chart Datum;
- (b) the approach channel to a depth of -9 metres Chart Datum;
- (c) the turning area to a depth of -9 metres Chart Datum;
- (d) the E.ON outfall to keep it free of siltation;
- (e) the Centrica outfall to keep it free of siltation;
- (f) the pumping station channel to a depth of -3 metres Chart Datum; and
- (g) the Cherry Cobb Sands channel to a depth of -5.7 metres Chart Datum.

(2) The dredging under sub-paragraph (1) may only be carried out for the purpose of:—

- (a) maintaining the authorised development;
- (b) maintaining access to the authorised development;
- (c) maintaining access to neighbouring developments; and



(d) removing siltation caused by the authorised development.

(3) The materials must be dredged in the approximate quantities and deposited at the locations [shown on the deposit location plan](#) according to the following table:

<i>Location</i>	<i>Material</i>	<i>Maximum tonnage per year</i>	<i>Deposit location</i>	<i>Total licensed tonnage</i>
The berthing pocket	Sand	150,000	HU080	1,075,000
	Silt	925,000		
The approach channel	Sand	10,000	HU080	50,000
	Silt	40,000		
The turning area	Sand	10,000	HU080	50,000
	Silt	40,000		
The E.ON outfall	Sand	500	HU080	2,500
	Silt	2,000		
The Centrica outfall	Sand	500	HU080	2,500
	Silt	2,000		
The pumping station channel	Sand	50	HU080	100
	Silt	50		

#### PART 3

#### ENFORCEMENT

11. Any breach of this Schedule shall not constitute a breach of this Order but shall be subject to the enforcement regime in Chapter 3 of Part 4 of the 2009 Act as if this Schedule were a licence granted under that Act.

#### PART 4

#### CONDITIONS

##### General conditions

12. (1) The conditions set out at paragraphs 13 to 37 are licence conditions attached to the deemed marine licence granted by article 43.

(2) 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. (1) The licensed activities shall be carried out in accordance with the marine environmental management and ~~monitoring~~ [mitigation](#) plan produced and agreed with the MMO under paragraph ~~16~~ [17\(2\)](#) of Schedule 11.

(2) The licence holder shall consult [the harbour master](#), C.RO Ports (Killingholme) Ltd, E.ON UK plc and Centrica on the contents of the marine environmental management and monitoring plan in relation to those elements of the maintenance dredging licensed under paragraph 10 that may affect those parties' interests.

14. No licensed activity shall be carried out until a vessel movement management plan has been agreed in writing by the MMO, and the licensed activities shall be carried out in accordance with the vessel movement management plan.

15. The MMO must be notified by the licence holder at least five working days before the commencement of any licensed activity of its acceptance of the provisions of this Schedule and that the company and any agents or contractors employed by it to carry out the licensed activities have knowledge of the provisions of this Schedule.

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

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

18. The licence holder 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 licence holder.

19. 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

- (a) the vessel type,
- (b) the vessel International Maritime Organization (IMO) number; and
- (c) the vessel owner or operating company.

20. The licence holder 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.

21. Should the licence holder 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 licence holder must notify the MMO at the earliest opportunity.

#### Project wide conditions

22. The works shall be carried out in accordance with a works schedule to be agreed in writing between the licence holder 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.

23. (1) The following dependencies apply to the licensed activities in paragraphs 4 to 11.

(2) If the licence holder carries out any of the activities licensed under paragraph 4 (construction of the quay), then it must:

- (a) carry out the activity licensed under paragraph 8 (compensation site creation) in the June following the creation of the compensation site, which in turn must be done during the first earthworks season following the commencement of the activity licensed under paragraph 4;
- (b) carry out the activity licensed under paragraph 7 (pumping station);
- (c) carry out the activity licensed under paragraph 10(1)(d) (the E.On outfall maintenance dredging) unless agreed in writing with E.ON; and
- (d) carry out the activity licensed under paragraph 10(1)(e) (the Centrica outfall maintenance dredging) unless agreed in writing with Centrica.

(3) If the licence holder carries out the activity licensed under paragraph 10(1)(b) (berthing pocket capital dredging) then it must carry out the activity licensed under paragraph 6 (berthing pocket infill) to the extent that the dredging is below -11 metres Chart Datum.

#### Piling conditions

24.—(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:—

- (a) the use of pile pads,
- (b) the use of pile shrouds,

- (c) the specification of piles to be used,
  - (d) soft start procedures to be followed to include a requirement for a soft start of at least 180 seconds for percussive piling of marine piles,
  - (e) marine mammal observation (within 100 metres of the pile being driven),
  - (f) implementation of an active monitoring scheme under paragraph 26, and
  - (g) details of the anticipated spread of piling activity throughout a working day
- (2) Percussive piling shall only be carried out in accordance with the relevant piling method statement.

25. No operations consisting of piling shall commence until a cold weather piling restriction strategy is submitted and agreed with the MMO, following consultation with Natural England, such strategy to include:

- (a) a requirement for temporary cessation of percussive piling (other than to finish driving any pile that is in the process of being driven at the point of imposition of the temporary cessation) following 7 consecutive days of zero or sub-zero temperatures (such “freezing days” to be fully defined in the strategy),
- (b) the establishment of 3 temperature monitoring points within the Humber Estuary,
- (c) provision for the restriction on piling to be lifted on a probationary basis after 24 hours of above freezing temperatures if Meteorological Office forecasts indicate that freezing conditions will not return for the next 5 days (“the probationary period”) on the proviso that if any day within the probationary period is a freezing day the restriction on piling will be imposed at the end of that day,
- (d) provision for the restriction on piling to be lifted entirely on expiry of the probationary period if none of the days in that period are freezing days (until such a time as the conditions in paragraph (a) are met).

26. (1) No development shall be commenced until an active monitoring scheme has been submitted to and agreed in writing by the MMO, following consultation with the [harbour master, the Environment Agency](#) and Natural England, such scheme to include the following details:—

- (a) the locations of active monitoring buoys and the depth and design of sensors,
- (b) the frequency of measurement of temperature and dissolved oxygen,
- (c) 24 hours a day, 7 days a week monitoring of noise,
- (d) 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,
- (e) a log of the number and approximate locations of piling rigs that are in operation on any given day, and
- (f) details of how the monitored information will be accessed by or communicated to the site contractor, the MMO the Environment Agency and Natural England 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.

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

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

- (a) 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) 101 hours where a single piling rig is in operation, or
  - (ii) a total of 168 hours where two or more rigs are in operation;
- (b) from 23 July to 10 September inclusive in any year, the maximum amount of percussive piling permitted within any week-long period shall not exceed:—

- (i) 25 hours where a single piling rig is in operation, or
  - (ii) a total of 42 hours where two or more rigs are in operation;
  - (c) 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:—
    - (i) 134 hours where a single piling rig is in operation, or
    - (ii) a total of 224 hours where two or more rigs are in operation.
  - (d) from 1 November in any year to 6 April in the following year inclusive, the maximum amount of percussive piling permitted within any eight-week period shall not exceed:—
    - (i) 336 hours where a single piling rig is in operation, or
    - (ii) 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.

29. No percussive piling shall take place before 0600 hours or after 2200 hours on any day.

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

#### Dredge and disposal conditions

31. Conditions 32 to 37 shall apply to licensed activities consisting of dredging and disposal.

32. (1) The licence holder 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.

33. The licence holder must install bunding and/or storage facilities to contain and prevent the release of fuel, oils, and chemicals associated with plant, refuelling and construction equipment, into the marine environment such that secondary containment should be used with a capacity of not less than 110% of any container's storage capacity.

34. The licence holder must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO Marine Pollution Response Team (0870 7851050 and dispersants@marinemangement.org.uk)

35. The licence holder must ensure that to minimise the amount of man-made materials disposed of at sea any man-made material must be separated from the dredged material and disposed of to land.

36. The licence holder must employ methods to minimise resuspension of sediment during dredging operations.

37. The licence holder must ensure that the Environment Agency's Pollution Prevention Guidelines for works in or near water (PPG5) are adhered to at all times.

## SCHEDULE 9

Article 52

### PROTECTIVE PROVISIONS

#### PART 1

#### FOR THE PROTECTION OF THE HUMBER CONSERVANCY

##### Interpretation

1. In this Part—

“authorised works” means any work, operation or activity that the harbour authority is authorised by this Order to construct or carry out; ~~and~~

“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 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

“the river” means the River Humber.

##### General

2.—(1) The provisions of this Schedule shall, unless otherwise agreed in writing between the 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—

- (a) 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
- (b) 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.

##### Tidal Works: approval of detailed design

3.—(1) Before—

- (a) submitting any plans ~~and sections for of~~ any tidal work to the Secretary of State for his 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) agreeing a vessel movement management plan with MMO under paragraph 14 of Schedule 8;
- (d) agreeing a dredge and disposal strategy with the MMO under paragraph 32 of Schedule 8;
- (e) seeking approval from the relevant planning authority of any alteration of the design drawings under paragraph 4 of Schedule 11;
- (f) seeking approval from the relevant planning authority of any external lighting details under paragraph 20 of Schedule 11; or
- (g) commencing any operation for the maintenance of a tidal work,

the Harbour Authority shall submit to the Conservancy Authority plans and sections of the tidal work ~~or operation~~ 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) Before submitting for approval, agreement or otherwise as provided by this Order any document specified in columns (1) and (2) of the following table, the Harbour Authority shall submit a copy to the Conservancy Authority for approval of the matters specified in column (3) of the Table and shall consult the Conservancy Authority on the remainder of each such document.

TABLE

<u>(1)</u> <u>Document</u>	<u>(2)</u> <u>Provision of Order</u>	<u>(3)</u> <u>Provision requiring</u> <u>Conservancy Authority approval</u>
<u>Marine environmental management and monitoring plan</u>	<u>Schedule 8, paragraph 13(1)</u> <u>Schedule 11, paragraph 17</u>	<u>Provision relating to monitoring equipment fixed to buoys (Schedule 8, paragraphs 4(3) and 5(3)).</u>
<u>Works schedule</u>	<u>Schedule 8, paragraph 22</u>	<u>-</u>
<u>Active monitoring scheme</u>	<u>Schedule 8, paragraph 26</u>	<u>Provision relating to the locations of active monitoring buoys (Schedule 8, paragraph 26(1)(a)).</u>
<u>Stages of the development scheme</u>	<u>Schedule 11, paragraph 3</u>	<u>-</u>
<u>Code of construction practice</u>	<u>Schedule 11, paragraph 18</u>	<u>-</u>

(32) 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.

(43) 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 24.

(54) 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—

- (a) traffic in, or the flow or regime of, the river;
- (b) the use of its operational land or the river for the purposes of performing its functions; or
- (c) the performance of any of its functions connected with environmental protection.

(65) Requirements made under sub-paragraph (54) may include conditions as to—

- (a) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the tidal work; and
- (b) the expiry of the approval if the Harbour Authority does not commence construction of the tidal work approved within a prescribed period.

(76) Subject to sub-paragraphs (78) and (89), any such approval shall be deemed to have been refused if it is neither given nor refused within 42 days of the specified day.

(87) 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.

(98) 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 (76) 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.

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

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

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

4. ~~Before~~ When submitting any document specified in the Table in paragraph 3(2) to the MMO under Schedule 8 or, as the case may be, the relevant planning authority under Schedule 11, 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, the Harbour Authority shall ~~submit such plan, schedule, method statement, scheme or strategy to the Humber Harbour Master~~ forward any comments received from the harbour master within 28 days of such submission to the Marine Management Organisation in response to the consultation with him undertaken in accordance with that paragraph;

5. Any operations for the construction of any tidal work approved in accordance with this Order shall, once commenced, be carried out by the 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' 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.

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

- (a) deposit in or allow to fall or be washed into the river any gravel, soil or other material; or
- (b) 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.

7. The 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

8. 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 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—

- (a) cut the obstruction off at such level below the bed of the river as the Conservancy Authority

may reasonably direct; or

- (b) 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

9. If—

- (a) 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
- (b) the Conservancy Authority gives to the Harbour Authority not less than 28 days' notice of its intention to incur such costs, and takes into account any representations which the Harbour Authority may make in response to the notice within 14 days of the receipt of the notice,

the Harbour Authority shall pay the costs reasonably so incurred by the Conservancy Authority.

#### Navigational lights, buoys, etc.

10. In addition to any requirement under articles 25 (lights on tidal works during construction) and 27 (permanent lights on tidal works), the Harbour Authority shall, at or near every tidal work, and any other work of which the 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

11. On completion of the construction of any part of a permanent authorised work, the Harbour Authority shall as soon as practicable remove—

- (a) any temporary tidal work carried out only for the purposes of that part of the permanent work; and
- (b) 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

12.—(1) If any tidal work—

- (a) is constructed otherwise than in accordance with the requirements of this Schedule or with any condition in an approval given pursuant to paragraph 3(4); or
- (b) 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 Harbour Authority at the 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—

- (a) 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
- (b) 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 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 Harbour Authority to—

- (a) 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
- (b) 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 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 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 Harbour Authority shall implement the measures that the Conservancy Authority has notified to the Harbour Authority or shall implement such other measures as the 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

13.—(1) If any tidal work or any other work of which the 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 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 Harbour Authority to take such reasonable steps as may be specified in the notice—

- (a) to repair and restore the work or part of it; or
- (b) if the 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 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 Harbour Authority.

#### Facilities for navigation

14.—(1) The 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 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 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 Harbour Authority shall comply with the directions of the ~~Humber H~~harbour ~~M~~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

15.—(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 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 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 river and the Conservancy Authority shall make available to the 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 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's functions.

(5) The Conservancy Authority shall not under this paragraph carry out a survey of any part of the river as respects which the 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

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

- (a) 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
- (b) 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 Harbour Authority shall either—

- (a) 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
- (b) 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 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

17.—(1) The 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—

- (a) the construction or operation of the authorised works or the failure of the authorised works;
- (b) anything done in relation to a mooring or buoy pursuant to paragraph 9; or;
- (c) any act or omission of the 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 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—

- (a) by the Conservancy Authority on behalf of the Harbour Authority; or
- (b) by the 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 Harbour Authority from liability under the provisions of this paragraph.

(3) The Conservancy Authority shall give the 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 Harbour Authority.

## Entry for survey, etc.

18.—(1) Before exercising the powers of article 20 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

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

- (a) any enactment relating to the Conservancy Authority;
- (b) any byelaw, direction or other requirement made by the Conservancy Authority or the Humber Harbour Master under any enactment; and
- (c) any other exercise by the Conservancy Authority or the ~~Humber H~~harbour ~~M~~master of any function conferred by or under any enactment.

(2) The Harbour Authority or 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 H~~harbour ~~M~~master, which shall not be unreasonably withheld.

(3) The 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 H~~harbour ~~M~~master.

(4) The Conservancy Authority shall consult the 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 H~~harbour ~~M~~master (as appropriate) shall consult the Harbour Authority before giving any general direction which directly affects the construction, operation or maintenance of the Able Marine Energy Park.

(6) The dockmaster shall consult the ~~Humber H~~harbour ~~M~~master in relation to the initiation, operation and any change in the Port Marine Safety Code as having effect in relation to the harbour, and the Harbour Authority shall comply with any requirement of the ~~Humber H~~harbour ~~M~~master for the adjustment of the Port Marine Safety Code as affecting the River Humber and the functions of the Conservancy Authority or the ~~Humber H~~harbour ~~M~~master.

#### Operating procedures

20. Before commencing harbour operations the Harbour ~~master-A~~uthority shall submit to the ~~Humber H~~harbour ~~M~~master for approval a written statement of proposed safe operating procedures for access to and egress from the harbour and shall operate the harbour only in accordance with such procedure as approved, including any approved alteration made from time to time.

#### Consideration for dredged material

21.—(1) Subject to any agreement concluded between the Harbour Authority, the Conservancy Authority and any other party benefiting from material dredged by the Conservancy Authority, the 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 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—

- (a) 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
- (b) is not owned by the undertaker, and
- (c) is sold by the Harbour Authority or by any other person exercising any powers under this Order.

#### Removal of wrecks and obstructions, etc.

22.—(1) Before exercising any power under section 252 of the Merchant Shipping Act 1995(a) or under section 56 of the 1847 Act, the dockmaster shall notify the ~~Humber H~~harbour ~~M~~master.

(2) The dockmaster shall comply with any reasonable instructions that the ~~Humber H~~harbour ~~M~~master may give in relation to the exercise of the powers referred to in sub-paragraph (1).

#### Transfer of benefit of Order

23.—(1) The undertaker shall not make any application to the Secretary of State for consent under article 12 (consent to transfer benefit of Order) unless it has obtained the Conservancy Authority's approval of the proposed transferee or lessee.

(2) The Conservancy Authority may refuse its approval under sub-paragraph (1) if it considers that the proposed transferee or lessee has not demonstrated its financial or other competence to assume the statutory functions or the liabilities relating to the authorised development that go with the transfer or lease; but the harbour master's approval may not otherwise be withheld.

(3) Within 14 days after the date of any transfer or grant under article 12 (consent to transfer benefit of Order), the undertaker who made the transfer or grant shall serve notice on the ~~Humber H~~harbour ~~M~~master containing the name and address of the transferee or lessee, the territorial extent of the transfer or grant and, in the case of a grant, the period for which it is granted and the extent of benefits and rights granted.

#### Disputes

24. Any dispute arising between the Harbour Authority and the Conservancy Authority under this Schedule shall be determined by arbitration as provided in article 58 (arbitration).

## PART 2

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

25. 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.

26. The authorised development should be carried out in a way that ensures minimum obstruction to flows in the watercourse at all times.

27. 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.

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

29. The Company must bring the conditions contained in paragraphs 26 to 29 to the attention of any agent or contractor responsible for carrying out the authorised development.

## PART 3

### FOR THE PROTECTION OF THE HIGHWAYS AGENCY

30. 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:

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

## PART 4

### FOR THE PROTECTION OF NETWORK RAIL

31. For the protection of Network Rail, the following provisions shall, unless otherwise agreed in

writing between the undertaker and Network Rail, have effect.

32. In this part of this Schedule,

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held by or used for the benefit of Network Rail for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised project as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

33.—(1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval shall not be unreasonably withheld or delayed but may be subject to reasonable conditions (while recognising that the engineer has sole discretion in matters relating to safety) and is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail shall—

- (a) co-operate with the Company with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised project pursuant to this Order.

34.—(1) The Company shall not exercise the powers conferred by article 20 (authority to survey and investigate the land) or the powers conferred by section 11(3) of the 1965 Act as applied to this Order by the 2008 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The Company shall not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

35. – (1) The Company shall before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work shall not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under subparagraph (1) shall not be unreasonably withheld or delayed, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the Company may serve upon the written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the Company. If by expiry of the further period of 28 days the engineer has not intimated his approval or disapproval, he engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail, Network Rail gives notice to the Company that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Company desires such part of the specified work to be constructed, Network Rail shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the Company in accordance with the plans approved or deemed to be approved or settled under this paragraph.

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail but at the expense of the Company, or if Network Rail so desires such protective works shall be carried out by the Company at its own expense with all reasonable dispatch, and the Company shall not commence the construction of the specified works until the engineer has notified the Company that the protective works have been completed to his reasonable satisfaction.

36.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 35(4) shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 38;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the Company shall, notwithstanding any approval described in paragraph 35(1)(a), make good such damage and shall pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule shall impose—

- (a) any liability on the Company with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents; or
- (b) any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of the Company or its servants, contractors or agents.

37. The Company shall—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

38. Network Rail shall at all times afford reasonable facilities to the Company and its agents for access to any works carried out by Network Rail under this Schedule during their construction and shall supply the Company with such information as it may reasonably require with regard to such works or the method of constructing them.

39.—(1) If any permanent or temporary alterations or additions to railway property, or any protective works under paragraph 35(4), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening for public use of any part of the authorised project that includes a specified work, in consequence of the construction of that specified work, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Company reasonable notice of its intention to carry out such alterations or additions, the Company shall pay to Network Rail

all costs reasonably and properly incurred in constructing those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the Company, Network Rail gives notice to the Company that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Company desires that part of the specified work to be constructed, Network Rail shall assume construction of that part of the specified work and the Company shall, notwithstanding any such approval of a specified work under paragraph 38(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving shall be set off against any sum payable by the Company to Network Rail under this paragraph.

40. The Company shall repay to Network Rail all fees, costs, charges and expenses reasonably and properly incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the Company as provided by paragraph 34(3) or in constructing any protective works under the provisions of paragraph 34(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the Company and the supervision by him of the construction of a specified work and otherwise in connection with the implementation of the provisions of this Part;
- (c) in respect of the employment or procurement of the services of any inspectors and other persons whom it shall be reasonably necessary to appoint for inspecting, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of a specified work; and
- (e) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason.

41. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the Company informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the Company shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

42. Any additional expenses which Network Rail may reasonably and properly incur in altering, reconstructing, maintaining or working railway property under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction, maintenance or working has been given to the Company, be repaid by the Company to Network Rail.

43.—(1) The Company shall pay to Network Rail all costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably and properly incurred by Network Rail—



- (a) by reason of the construction, working or maintenance of a specified work, or the failure thereof; or
- (b) by reason of any act or omission of the Company or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

(2) Network Rail shall give the Company reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the Company.

(3) The sums payable by the Company under sub-paragraph (1) may include a sum equivalent to the relevant costs.

44. Network Rail shall, on receipt of a request from the Company, from time to time provide the Company free of charge with written estimates of the costs, charges, expenses and other liabilities for which the Company is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 43) and with such information as may reasonably enable the Company to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

45. In the assessment of any sums payable to Network Rail under this Part there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the Company under this Schedule or increasing the sums so payable.

46. The Company shall no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 56 are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory certified by the Secretary of State in accordance with article 56 are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

## PART 5

### FOR THE PROTECTION OF C.GEN KILLINGHOLME LTD

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

48. The undertaker shall not in the exercise of the powers conferred by this Order prevent C.GEN's access to the railway crossing the Order land.

49. The construction and operation of the authorised development must not cause unreasonable interference with or prevent the safe use by C.GEN of the railway crossing the Order land by up to five trains per day.

50. With the exception of any duty owed by C.GEN to the undertaker which is expressly provided for in this Part of this Schedule, nothing in this Order shall be construed as imposing upon C.GEN either directly or indirectly, any duty or liability to which C.GEN would not otherwise be subject and which is enforceable by proceedings before any court.

51. Unless otherwise agreed in writing, any dispute arising between the undertaker and C.GEN under this Schedule shall be determined by arbitration as provided in article 58 (arbitration).

## PART 6

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

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

53. In this part of this Schedule, 'CPK' means C.RO Ports Killingholme, a statutory harbour authority located upriver of the authorised development.

54. (1)-Before:

- (a) submitting any plans and sections for any tidal work within 500 metres of CPK to the Secretary of State for approval under Article 22 of this Order (tidal works not to be constructed without approval of the Secretary of State);
- (b) submitting any works schedules to the Marine Management Organisation in accordance with Schedule 8;

the Harbour Authority shall consult C.RO and shall forward any response received within 28 days of such consultation from C.RO to the Secretary of State or the Marine Management Organisation, as appropriate.

55. The 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 relating to CPK without the agreement of C.RO, and shall ensure that access to such aids remains available during and following construction of any tidal works.

56. The undertaker shall pay to C.RO the reasonable costs incurred by C.RO of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or in consequence of the construction of a tidal work.

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

58. After the purpose of any temporary tidal work within 500 metres of CPK or within its the approach channel has been accomplished and after a reasonable period of notice in writing from C.RO requiring it do so, the undertaker shall with all reasonable dispatch, remove that work or any materials relating thereto which may have been placed below the level of high water by or on behalf of the undertaker and, on its failing so to do within a reasonable period after receiving such notice, C.RO may remove the same and charge the undertaker with the reasonable expense of doing so, which expense the undertaker shall repay to C.RO.

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

#### Railway

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

61. The construction and operation of the authorised development must not cause unreasonable interference with or prevent the safe use by C.RO of the railway crossing the Order land in connection with the use of CPK.

62. With the exception of any duty owed by C.RO to the undertaker which is expressly provided for in this Part of this Schedule, nothing in this Order shall be construed as imposing upon C.RO either directly or indirectly, any duty or liability to which C.RO would not otherwise be subject and which is enforceable by proceedings before any court.

63. Unless otherwise agreed in writing, any dispute arising between the undertaker and C.RO

under this Schedule shall be determined by arbitration as provided in article 58 (arbitration).

## PART 7 FOR THE PROTECTION OF PHILLIPS 66 LIMITED

64. In this Part

“P66” means Phillips 66 Limited (Company number 00529086); and

“the pipelines” means the 4 pipelines crossing the Order land owned and operated by P66 used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the Pipelines as are specified by Section 65(2) of the Pipelines Act 1962

65. Before commencing any part of the authorised development or the operation of the authorised undertaking which would have an effect on the operation and maintenance of the pipelines and access thereto the undertaker shall submit to P66 plans and sections of the proposed works and such further particulars as P66 may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

66. No works comprising any part of the authorised development or the operation of the authorised undertaking which would have an effect in full or in part on the operation, maintenance, repair, replacement and abandonment of the pipelines and access thereto shall be commenced until plans and sections in respect of those works submitted under paragraph 58 have been approved by P66.

67. Any approval of P66 required under paragraph 59 shall not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as P66 may require to be made for-

- (a) the continuing safety and operational viability of the pipelines;
- (b) the requirement for P66 to have uninterrupted and unimpeded access to the pipelines at all times.

## PART 98

### FOR THE PROTECTION OF NATIONAL GRID

68. In this Part

“National Grid” means National Grid Plc and shall include any reference to National Grid Gas Plc.;

The “Electric Line” shall mean line 2AJ Killingholme Substation to Humber Refinery Substation and the term electric line shall have the same meaning as contained in section 64(1) of the Electricity Act 1989.

69. For the protection of National Grid the following provisions shall, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

70. Before extinguishing any existing rights for National Grid to keep, inspect, renew and maintain its infrastructure on, over or in the Order land, the undertaker shall, with the agreement of National Grid, create a new right to keep, inspect, renew and maintain the infrastructure in the same location that is reasonably convenient for National Grid, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 58.

#### General

71. Any dispute arising between the undertaker and National Grid under this Schedule shall be determined by arbitration as provided in Article 58 (arbitration).

## PART 9

### FOR THE PROTECTION OF E.ON UK PLC

72. In this Part:

“E.ON” means E.ON UK Plc whose registered office is at Westwood Way, Westwood Business Park, Coventry, West Midlands CV4 8LG (company registration number 02366970).

“the outfall and intake” means that part of the pipelines which are located in the river at grid reference [grid reference to be confirmed between E.ON and the undertaker].

“the pipelines” means the intake and outfall pipelines situated within plots 04023, 04024, 04027, 04028, 04029, 05003 to 05016 (inclusive), 05019, 05026, 05027, 05028, 05036, 05037, 05038, 05044, and 06006 which are the subject of a Deed of Easement dated 9 July 2004 between Able UK Limited and E.ON.

“the river” means the River Humber.

73. For the protection of E.ON the following provisions shall, unless otherwise agreed in writing between the undertaker and E.ON, have effect.

74. Before extinguishing any existing rights for E.ON to keep, inspect, renew and maintain its infrastructure on or in the Order land, the undertaker shall, with the agreement of E.ON, create a new right to keep, inspect, renew and maintain the infrastructure in the same location that is reasonably convenient for E.ON, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 58.

#### The Pipelines

75.—(1) Notwithstanding the provisions of Article 41, no stage of the authorised development shall commence until a construction method statement to protect the pipelines (offshore and onshore) and intake and outfall has been prepared by the undertaker and submitted to and agreed with E.ON.

(2). The construction method statement shall include provisions in respect of:

- (a) the location and methods of reinforcement of crossing points over the pipelines;
- (b) a mechanism for the enforcement of the undertaker’s use of designated crossing points over the pipelines and the agreed reinforcement methods; and
- (c) adoption of a prior notification and consent regime which would require the undertaker to:
  - (i) notify E.ON of its intention to carry out any development within the vicinity of the pipelines and intake and outfall, such notification to be provided at least 48 hours prior to any such development occurring; and
  - (ii) seek E.ON’s consent to the carrying out of the proposed development within the vicinity of the pipelines and intake and outfall, such consent not to be unreasonably withheld; and

the authorised development shall thereafter be carried out in accordance with the approved construction method statement.

#### General

76. Any dispute arising between the undertaker and E.ON under this Schedule shall be determined by arbitration as provided in article 58 (arbitration).

## PART 10

### FOR THE PROTECTION OF CENTRICA PLC

77. For the protection of Centrica the following provisions shall, unless otherwise agreed in writing between the undertaker and Centrica, have effect.

78. In this Part

“Centrica” means Centrica plc; and

“the pipelines” means Centrica’s cooling water pipelines and condensate pipeline,

79. Before extinguishing any existing rights for Centrica to keep, inspect, renew and maintain its infrastructure on, over or in the Order land, the undertaker shall, with the agreement of Centrica, create a new right to keep, inspect, renew and maintain the infrastructure in the same location that is reasonably convenient for Centrica, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 58

#### The Pipelines

80.—(1) Notwithstanding the provisions of Article 41, no stage of the authorised development shall commence until a construction method statement to protect the pipelines (offshore and onshore) and intake and outfall has been prepared by the undertaker and submitted to and agreed with Centrica.

(2). The construction method statement shall include provisions in respect of:

- (a) the location and methods of reinforcement of crossing points over the pipelines;
- (b) a mechanism for the enforcement of the undertaker’s use of designated crossing points over the pipelines and the agreed reinforcement methods; and
- (c) adoption of a prior notification and consent regime which would require the undertaker to:
  - (i) notify Centrica of its intention to carry out any development within the vicinity of the pipelines and intake and outfall, such notification to be provided at least 48 hours prior to any such development occurring; and
  - (ii) seek Centrica’s consent to the carrying out of the proposed development within the vicinity of the pipelines and intake and outfall, such consent not to be unreasonably withheld; and

the authorised development shall thereafter be carried out in accordance with the approved construction method statement.

#### General

81. Any dispute arising between the undertaker and Centrica under this Schedule shall be determined by arbitration as provided in article 58 (arbitration).

## PART 11

### FOR THE PROTECTION OF ANGLIAN WATER

82. For the protection of Anglian Water, the following provisions shall, unless otherwise agreed in writing between the undertaker and Anglian Water, have effect

83. The Company shall not interfere with any assets of Anglian Water within the Order land unless otherwise agreed in writing with Anglian Water, such provision being brought to the attention of any agent or contractor responsible for carrying out the authorised development.

84. The re-location of any assets belonging to Anglian Water shall not be implemented until any requirement for any permits under the Environmental Permitting Regulations 2010 for

- (a) the sludge and brine waste pipelines and
- (b) the South Killingholme Sewage Treatment Works

and any other associated consents are approved, such approvals not be unreasonably withheld.

85. The re-location of any assets belonging to Anglian Water shall not be implemented until Anglian Water has agreed of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld, and the relocation shall be carried out in consultation with E.ON UK plc.

86. Before extinguishing any existing rights for Anglian Water to keep, inspect, renew and maintain its infrastructure on or in the Order land, the undertaker shall, with the agreement of Anglian Water, create a new right to keep, inspect, renew and maintain the infrastructure that is reasonably convenient for Anglian Water, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 58.

## PART 12

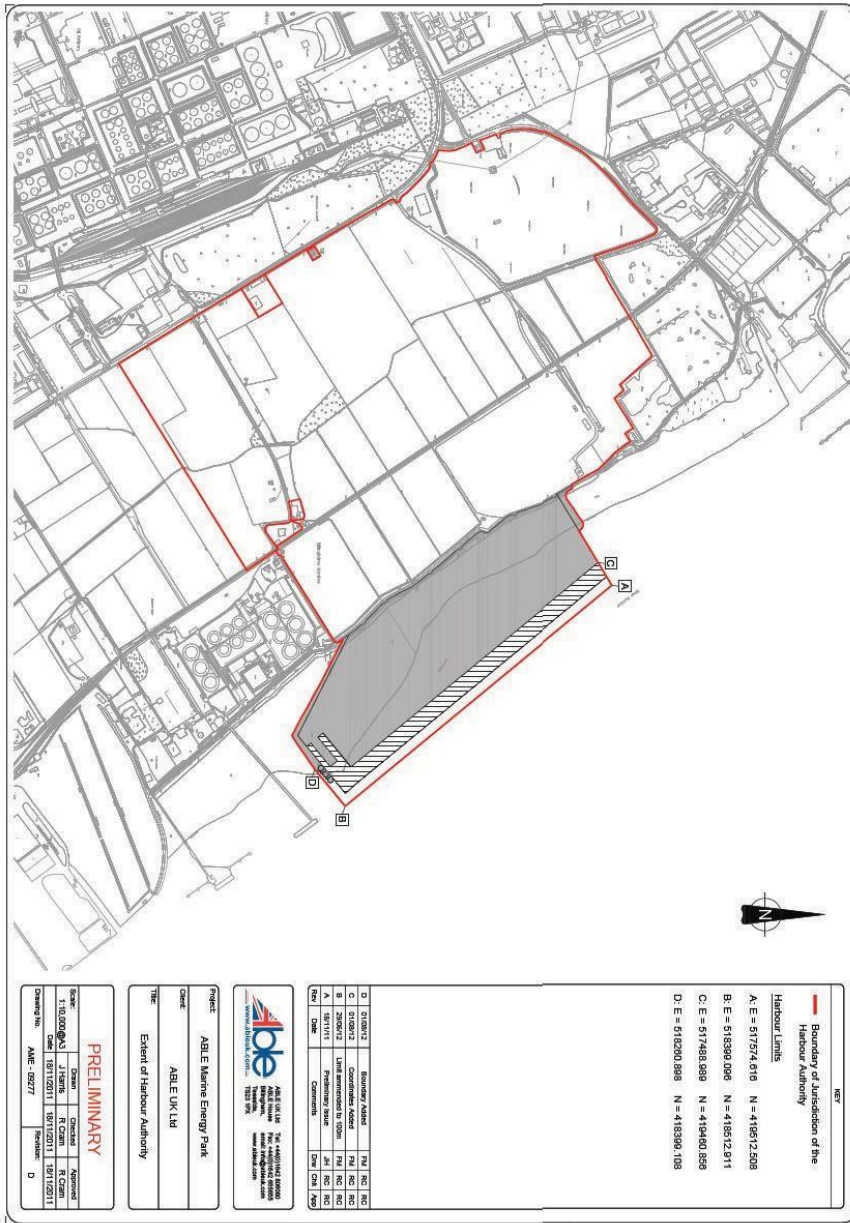
### FOR THE PROTECTION OF BETHANY JAYNE LTD

87. Before extinguishing any existing rights for Bethany Jayne Ltd to pass along parcel 03009 (Station Road), the undertaker shall, with the agreement of Bethany Jayne Ltd, create a new right of way that is reasonably convenient for Bethany Jayne Ltd, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 58.

SCHEDULE 10

Article 2

LIMITS OF HARBOUR





## 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<sup>(a)</sup>, 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;

“the water framework directive” means European Union Directive 2000/60/EC”

#### 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 harbour master and](#) the highway authority, been submitted to and approved by the relevant planning authority.

#### Cargo restriction

3A.—(1) The cargo for which the authorised development is authorised to handle the embarkation and disembarkation shall be restricted to items associated with marine energy infrastructure and any cargo that is incidental or ancillary to such items.

(2) If further categories of cargo are authorised by means of planning permission or an order under section 14 of the Harbours Act 1964 or section 1 of the Transport and Works Act 1992, then the implementation of such authorisations shall not constitute a breach of this order.

#### Detailed design approval

4. The authorised development shall be carried out in accordance with the design drawings listed below, unless otherwise approved in writing by the relevant planning authority and the altered development falls within the Order limits and has no significant environmental effects beyond those assessed in the Environmental Statement accompanying the application:

- (a) those of planning application drawings with reference TR030001/APP/24a comprising:
  - (i) drawing "AME-02006",
  - (ii) drawing "AME-02007",
  - (iii) drawing "AME-02008",
  - (iv) drawing "AME-02009",
  - (v) drawing "AME-02010",
  - (vi) drawing "AME-02011",
  - (vii) drawing "AME-02012",

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a S.I. 2009/2264.

- (viii) drawing "AME-02013",
  - (ix) drawing "AME-02014",
  - (x) drawing "AME-02016",
  - (xi) drawing "AME-02017", and
  - (xii) drawing "AME-02018".
- (b) those of the design drawings with reference TR030001/APP/24b comprising:
- (i) drawing "AMEP\_PID\_D\_001",
  - (ii) drawing "AMEP\_PID\_D\_002",
  - (iii) drawing "AMEP\_PID\_D\_003",
  - (iv) drawing "AMEP\_PID\_D\_004",
  - (v) drawing "AMEP\_PID\_D\_005",
  - (vi) drawing "AMEP\_PID\_D\_006",
  - (vii) drawing "AMEP\_PID\_D\_007",
  - (viii) drawing "AMEP\_PID\_D\_009",
  - (ix) drawing "AMEP\_PID\_D\_101",
  - (x) drawing "AMEP\_PID\_D\_102",
  - (xi) drawing "AMEP\_PID\_D\_103",
  - (xii) drawing "AMEP\_PID\_D\_104",
  - (xiii) drawing "AMEP\_PID\_D\_105",
  - (xiv) drawing "AMEP\_PID\_D\_106", and
  - (xv) drawing "AMEP\_PID\_D\_107".

#### 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 after consultation with National Grid. The landscaping scheme must include details of all proposed hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) vehicular and pedestrian access, parking and circulation areas;
- (f) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (g) proposed and existing functional services above ground, including drainage, power and communications cables and pipelines and supports;
- (h) details of existing trees to be retained, with measures for their protection during the construction period;
- (i) retained historic landscape features and proposals for restoration, where relevant; and
- (j) 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 after consultation with National Grid; 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 and Centrica plc, 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.

(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 a detailed surface water drainage strategy (based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, and including means of pollution control and funding arrangements) for that stage has been submitted to and approved in writing by the local planning authority, after consultation with Anglian Water, E.On and Centrica plc.

(2) The authorised scheme shall be constructed in accordance with the approved surface water drainage strategy including any timetable embedded within it.

#### Foul water drainage

12.—(1) No stage of the authorised development shall commence until a detailed foul water drainage strategy (including means of pollution control and funding arrangements) for that stage has been submitted to and approved by the relevant local planning authority, after consultation with Anglian Water, E.On and Centrica plc.

(2) The authorised scheme shall be constructed in accordance with the approved foul water drainage strategy including any timetable embedded within it.

#### River basin management

13.—(1) The authorised development shall not commence until a monitoring and management strategy document has been submitted to and approved by the Environment Agency, the purpose of such strategy document being to ensure that the authorised development is carried out in compliance with the water framework directive.

(2) The monitoring and management strategy document shall in particular consider the spatial and temporal extent of the impact of the approved scheme on—

- (a) those “biological elements” and “ecological potential elements” as defined in the Humber River Basin Management Plan for the Humber Middle and Humber Lower Water Bodies (GB53040269201 and GB30402609202), to include, but not limited to: macro algae, angiosperms, macrophytes, benthic/macro invertebrates, fish, and
- (b) those biological and ecological elements defined as “water-dependent habitats or species for which the Protected Area was designated” as defined in Annex D of the Humber River Basin Management Plan.

(3) The authorised scheme shall be constructed and managed in accordance with the approved strategy document and the monitoring detailed in the approved strategy document shall be implemented.

#### Contaminated land

14.—(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 and the management plan.

#### Archaeology

15.—(1) No stage of the authorised development shall commence until, for that stage, a written project design 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 project design shall accord with the evaluation results and mitigation measures included in the document Able UK Ltd Marine Energy Park: Framework for archaeological investigation and mitigation strategies prepared by AC archaeology Ltd (ref: ACW283/3/1 revised June 2012), and the Written Scheme of Investigation: Coastal and Marine prepared by Wessex Archaeology (ref 79490.02 revised March 2012) subsequent updates to be agreed in writing by the relevant planning authority.

(3) The project design shall identify

- (a) areas where fieldwork is required,
- (b) measures to be taken to identify, protect, record and recover any archaeological remains that may be found including artefacts and ecofacts;
- (c) methodologies for post-excavation assessment and analysis of artefacts and ecofacts;

- (d) arrangements for dissemination and publication of reports;
  - (e) preparation of archive material and its deposition with recognised repositories;
  - (f) an implementation timetable;
  - (g) monitoring arrangements, including notification and commencement of work;
  - (h) details of contractors involved in the implementation of archaeological works; and
  - (i) proposals for publicity and community outreach work.
- (4) Any archaeological works carried out under the scheme must be by a suitably qualified person or body.
- (5) Any archaeological works must be carried out in accordance with the approved scheme and timings, subject to any variation approved by the relevant planning authority.

#### Listed building

16.—(1) No stage of the authorised development shall commence until a written management plan for the Killingholme North Low Lighthouse ('the building') has been submitted to and approved by the relevant planning authority, including the following:

- (a) a structural survey to be submitted to and approved in writing by the relevant planning authority;
- (b) implementation of mitigation measures;
- (c) a schedule of repair works that ensure the long-term survival of the building;
- (d) an implementation timetable for all stages of work including timings to ensure that the mitigation measures and repair work is undertaken and completed in accordance with the plan;
- (e) monitoring arrangements with the relevant planning authority, including notification of the commencement of work;
- (f) details of all contractors to be involved in implementation of works to the building; and
- (g) details of the use of the building including proposals for community access and interpretation.

#### Environmental management and monitoring plans

17.—(1) No stage of the authorised development shall commence until the compensation environmental management and monitoring plan for that stage reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement and the undertaker's proposed compensation package, has been submitted to and approved by Natural England after consultation with the relevant planning authority.

(2) No stage of the authorised development shall commence until the marine environmental management and monitoring plan for that stage, reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement, has been submitted to and approved by the Marine Management Organisation in consultation with Natural England and the relevant planning authority.

(3) No stage of the authorised development shall commence until the terrestrial environmental management and monitoring plan for that stage, reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement, has been submitted to and approved by Natural England in consultation with the relevant planning authority.

(4) The compensation environmental management and monitoring plan, marine environmental management and monitoring plan and terrestrial environmental management and monitoring plan shall include an implementation timetable and must be carried out as approved.

#### Code of construction practice

18.—(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.

#### Design of roads

19.—(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, after consultation with Centrica plc.

(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

20.—(1) 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 and Natural England, been submitted to and approved by the relevant planning authority; and any approved means of lighting must subsequently be installed and retained for the duration of the construction period, and removed within six months of the completion of construction.

(2) Sub-paragraph (1) is subject to any direction given to the undertaker by the ~~Humber H~~harbour ~~M~~master or Trinity House.

#### Construction traffic

21.—(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 and Centrica plc, 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

22.—(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—

- (a) the works, and the method by which they are to be carried out;
- (b) the noise attenuation measures to be taken to minimise noise resulting from the works, including any noise limits; and
- (c) 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

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

(a) for the management and mitigation of emissions of—

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

(vi) any other pollutant

(b) to ensure the prevention of infestation or emanation of insects

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<sup>(a)</sup> (animals which are protected), unless they are included in respect of section 9(5) of that Act only.

Travel plan

24.—(1) No stage of the of the authorised development shall commence until, for that stage, after consultation with the highway authority, North East Lincolnshire Council and Contrica plc, 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

25.—(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, and any licence has been obtained from Natural England pursuant to regulation 53 of the Conservation of Habitats and Species Regulations 2010.

(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

26. 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.

Amendments to approved details

27. 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

28. 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.

Flood warning and evacuation plan

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

29.—(1) 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 with safe refuge areas at at least 6.84 metres Ordnance Datum Newlyn, has been submitted to and approved by the relevant planning authority.

(2) Unless otherwise agreed in writing with the relevant planning authority, the finished floor level of all buildings shall be set a minimum of 300mm above the level of the external storage areas and the buildings shall incorporate flood resistant and resilient design with their construction.

#### Listed buildings

30. 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

31. 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.

#### Cooling water intakes and outfalls

32.—(1) No development shall commence until a scheme for the monitoring of sedimentation along the lines of and in front of the Centrica and E.ON cooling intakes and outfalls has been submitted to and approved in writing by the Marine Management Organisation, in consultation with the Environment Agency, Centrica plc and E.ON UK plc. The scheme shall include:

- (a) details of monitoring proposals, including location and frequency; and
- (b) details of trigger levels and resultant actions/mitigation required if trigger levels are exceeded.

(2) Development shall proceed fully in accordance with the approved scheme and timetable contained therein.

#### Piling

33. For any piling to take place above high water mark, the piling conditions at paragraphs 25 to 30 of Schedule 8 (deemed marine licence) shall apply as if references to the MMO were to the relevant local planning authority.

#### Sedimentation

34.—(1) No development shall commence until a scheme for the monitoring of the foreshore and sediment levels around the quay have been submitted to and agreed in writing by the Marine Management Organisation, in consultation with the Environment Agency, C.RO and E.ON UK plc.

(2) Annual monitoring reports shall be submitted to the MMO within 6 weeks of the anniversary of implementation up to 2033.

(4) The approved monitoring scheme shall be implemented and complied with at all times.

35. No development shall commence until a scheme for the monitoring of sediment and siltation for Stone Creek has been submitted to and approved in writing by the relevant planning authority, such scheme to include:

- (a) details of monitoring proposals, including location and frequency, and
- (b) details of trigger levels and resultant actions required if trigger levels are exceeded.

(2) Development shall proceed fully in accordance with the approved scheme and timetable contained therein, unless agreed otherwise in writing by the relevant planning authority.



#### Contaminants and remediation

36.—(1) Prior to the commencement of the relevant stage of the authorised development, the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the relevant planning authority:

- (a) a preliminary risk assessment which has identified:
  - (i) all previous uses,
  - (ii) potential contaminants associated with those uses,
  - (iii) a conceptual model of the site indicating sources, pathways and receptors, and
  - (iv) potentially unacceptable risks arising from contamination at the site;
- (b) a site investigation scheme, based on sub-paragraph (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site;
- (c) the results of the site investigation and detailed risk assessment referred to in sub-paragraph (b) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken;
- (d) a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in sub-paragraph (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

(2) The scheme shall be implemented as approved, and any changes to these components require the express consent of the relevant planning authority.

37.—(1) Prior to carrying out paragraph 8 of Schedule 8 (deemed marine licence – compensation site creation), a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the relevant planning authority.

(2) The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met, and shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the relevant planning authority.

(3) The long-term monitoring and maintenance plan shall be implemented as approved unless otherwise confirmed in writing by the relevant planning authority.

#### Mitigation requirements

38.—(1) During the operation of the authorised development, no storage shall take place

- (a) at a height greater than 10m from ground level within 200 metres of the North Killingholme Haven Pits Site of Special Scientific Interest, or
- (b) at a height greater than 10m from ground level within the 60m operational buffer strip adjacent to Mitigation Area 'A'

unless otherwise agreed in writing by the relevant planning authority.

(2) Before any storage on the Order land takes place, the exclusion areas referred to in sub-paragraph (1) shall be clearly marked to the written satisfaction of the relevant planning authority.

(3) The operation of the works shall not be permitted to be carried out to the extent that it causes noise levels measured as L90 to exceed 55 dB (A) or the background noise level measured over an eight-hour period, whichever is greater, anywhere in the North Killingholme Haven Pits Site of Special Scientific Interest, unless otherwise agreed in writing by the relevant planning authority in consultation with Natural England.

(4) The operation of the works shall not be permitted to be carried out to the extent that it causes noise levels to exceed 55 dB (A) or the background noise level measured over an eight-hour period, whichever is greater, anywhere in the Core Area of Mitigation Area 'A' (separated from the operational boundary of AMEP by a 90m green buffer strip), unless otherwise agreed in writing by the relevant planning authority in consultation with Natural England.

## 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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STATUTORY INSTRUMENTS

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2012 No. XXXX INFRASTRUCTURE  
PLANNING HARBOURS, DOCKS, PIERS AND  
FERRIES

The Able Marine Energy Park  
Development Consent Order 2012

BIRCHAM DYSON BELL LLP  
50 Broadway  
London SW1H 0BL Solicitors and  
Parliamentary Agents  
8222187.1 — 30.11.11

**INFRASTRUCTURE PLANNING**

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

**THE ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER**

**TR030001**

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**Appendix 2 to Written Summary of the Oral Case on behalf of the Harbour Master, Humber  
put at the Specific Issue Hearings on the draft Development Consent Order  
and Deemed Marine Licence held on 21 & 22 November 2012**

**Proposed amendments to Part 5 of the draft Development Consent Order if the decision-maker is  
minded to exclude only plots 02013, 10007, 11004, 12004 and 13004 from compulsory acquisition**

(Rule 8 letter 31 May 2012 Annex C as revised by letter of 21 September 2012)

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Unique Reference Number	URN10015524
Rule No.	8(1)(k)
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Author	Harbour Master, Humber
Date	23 November 2012
Date of revision & version number	23 November 2012 (Revision 1.0)

**Winckworth Sherwood LLP  
Minerva House  
5 Montague Close  
London  
SE1 9BB**

**PROPOSED AMENDMENTS IF THE DECISION-MAKER IS MINDED TO EXCLUDE ONLY FROM COMPULSORY ACQUISITION ONLY THOSE PLOTS THAT THE APPLICANT NO LONGER INTENDS TO USE**

**PART 5**

**POWERS OF ACQUISITION**

**Compulsory acquisition of land**

30.—(1) The undertaker may acquire compulsorily so much of the Order land as is shown washed pink on the land plans 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.

(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 does not authorise the compulsory acquisition of any interest in the land numbered 02013, 10007, 11004, 12004 and 13004 on the land plans and described in the Book of Reference submitted with the application for this Order.

(5) No interest in Crown land may be acquired under this article unless the appropriate Crown authority consents to the acquisition.

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

**Power to override easements and other rights**

31.—(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—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

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

- (a) the erection, construction or carrying out, or maintenance of any building or work on land;
- (b) the erection, construction, or maintenance or anything in, on, over or under land; or
- (c) 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) a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or
- (b) 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—

- (a) shall be payable under section 7 or 10 of the 1965 Act; and
- (b) 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—

- (a) is liable to pay compensation, and
- (b) fails to discharge that liability,

the liability shall be enforceable against the undertaker.

[\(10\) This article does not apply to the land numbered 02013, 10007, 11004, 12004 and 13004 on the land plans and described in the Book of Reference submitted with the application for this Order.](#)

### **Compulsory acquisition of land – incorporation of the mineral code**

**32.** Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981<sup>(a)</sup> (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**

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

- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
- (b) 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)<sup>(b)</sup>.

(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**

**34.—**(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 plans.

(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

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

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

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.

(5) This article does not apply to the land numbered 02013, 10007, 11004, 12004 and 13004 on the land plans and described in the Book of Reference submitted with the application for this Order.

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### Private rights of way

35.—(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—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) 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 plans, 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.

(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—

- (a) 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

- (b) 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)—

- (a) is made with a person in or to whom the right of way is vested or belongs; and
- (b) 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**

36.—(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
- (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)—

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

37.—(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**

38.—(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) 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

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

with a park or garden (“the land subject to the notice to treat”); and

(b) 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—

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

(b) 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—

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

(b) 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—

(a) 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

(b) 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—

(a) 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

(b) 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**

**39.**—(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—

- (a) any subway or underground building; or
- (b) 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.

(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**

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

- (a) 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;
- (b) remove any buildings and vegetation from that land; and
- (c) 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—

- (a) 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;
- (b) 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—

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

(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).

[\(11\) This article is not exercisable in respect of any of the land numbered 02013, 10007, 11004, 12004 and 13004 on the land plans and described in the Book of Reference submitted with the application for this Order.](#)

#### **Temporary use of land for maintaining authorised development**

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

- (a) 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
- (b) 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—

- (a) any house or garden belonging to a house; or
- (b) 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).

[\(11\) This article is not exercisable in respect of any of the land numbered 02013, 10007, 11004, 12004 and 13004 on the land plans and described in the Book of Reference submitted with the application for this Order.](#)

(12) 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.

**INFRASTRUCTURE PLANNING**

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

**THE ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER**

**TR030001**

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**Appendix 3 to Written Summary of the Oral Case on behalf of the Harbour Master, Humber  
put at the Specific Issue Hearings on the draft Development Consent Order  
and Deemed Marine Licence held on 21 & 22 November 2012**

**Amendments sought by the Harbour Master, Humber (“HMH”) in relation to land acquisition and  
in lieu of an agreed underlease of the riverbed and foreshore**

(Rule 8 letter 31 May 2012 Annex C as revised by letter of 21 September 2012)

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**Winckworth Sherwood LLP  
Minerva House  
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London  
SE1 9BB**

**Amendments sought by the Harbour Master, Humber (“HMH”) in relation to land acquisition and  
in lieu of an agreed underlease of the riverbed and foreshore**

**NOTES:**

1. Set out below are provisions of the DCO as regards which HMH seeks amendments relating to the powers of compulsory acquisition. They include amendments required in lieu of an agreed Underlease of the Conservancy Authority’s riverbed and foreshore.
2. The HMH seeks the inclusion of these additional protective provisions if the Secretary of State decides to grant the Applicant powers of compulsory purchase over plots 08001 and/or 09001 (“Scenario 1”).
3. In the event that the Secretary of State decides to grant compulsory powers over plots 08001 and 09001 but declines to include sub-paragraph 25(1) to (3) in the protective provisions, HMH would still seek the provisions numbered 25(4) to (12) so as to achieve equivalent protection in key areas that he would enjoy as landlord (“Scenario 2”).
4. In the event that the Secretary of State decides not to accept the amended Book of Reference and declines to accept sub-paragraph 25(1), then the HMH will seek to include an exclusion for plots 02013, 10007, 11004, 12004 and 13004 in the body of the DCO as well as these equivalent under-lease provisions in relation to plots 08001 and 09001.
5. These proposed provisions are intended to replace those amended in HMH’s revised DCO dated 30 October 2012 (Appendix 1 to his Comments on the revised draft Order dated 9 October 2012) relating to compulsory acquisition (articles 30, 31, 34, 40 and 41).

SCHEDULE 9  
PROTECTIVE PROVISIONS  
PART 1  
FOR THE PROTECTION OF THE HUMBER CONSERVANCY

*Underlease of riverbed and foreshore*

25.—(1) The undertaker shall not under the powers of this Order acquire compulsorily any land within Order limits and below the level of high water which is land in which the Conservancy Authority has an interest.

(2) The Conservancy Authority shall not unreasonably refuse to grant to the undertaker an under-lease out of the existing lease vested in the Conservancy Authority of so much of the land numbered 08001 and 09001 on the land plans and described in the book of reference as excludes the foreshore and riverbed abutting the land numbered 03023 on the land plans, such underlease being for a term not exceeding 60 years and including the minimum terms set out in sub-paragraphs (4) to (12) below together with such other terms as may be agreed with the Conservancy Authority.

(3) In the event that the undertaker is granted powers to compulsorily acquire the land numbered 03020,

03021, 03022 and 03023 on the land plans, the Conservancy Authority shall not unreasonably refuse to grant to the undertaker an underlease of the entirety of the land numbered 08001 and 09001 upon the same terms as are set out in sub-paragraph (2).

(4) The undertaker shall keep the acquired land in good and substantial repair and condition and shall keep the perimeter of the acquired land neat and tidy.

(5) The undertaker shall not make any alterations or additions to the acquired land nor carry out on or in the acquired land any works amounting to development within the meaning of the Town and Country Planning Act 1990 or any statutory modification or re-enactment thereof without the prior approval of the Harbour Master (such approval not to be unreasonably withheld).

(6) The undertaker shall, if requested by the Conservancy Authority, and in any event no less frequently than annually, ensure (i) that the structure of any work within the acquired land is fully inspected by a structural engineer (a member of The Institution of Structural Engineers), (ii) that a Structural Engineers Report is produced by the structural engineer; (iii) that all requirements and recommendations contained in the Structural Engineers Report are promptly carried out; and (iv) that a copy of each Structural Engineers Report and details of any works or actions to be carried out pursuant to any such requirements or recommendations are supplied in writing to the Conservancy Authority without undue delay.

(7) In carrying out its statutory functions, but subject to sub-paragraph (8), the Conservancy Authority shall be entitled to:

- (i) berth vessels within the berthing pocket;
- (ii) enter and use the acquired land for the purposes of complying with its statutory duties and obligations;
- (iii) carry out such works within the acquired land as, in the opinion of the Harbour Master, are necessary for the proper operation of the Conservancy Authority's functions including, but not limited to, the purposes of repairing maintaining or inspecting any adjoining property of the Conservancy Authority and of carrying out any alterations and improvements to the river and its navigation or any adjoining or neighbouring land or interests of the Conservancy Authority that the Harbour Master considers necessary; and
- (iv) to enter and inspect the condition of the acquired land and to make schedules of its condition.

(8) The rights referred to in sub-paragraph (7) may be exercised at all reasonable times on prior notice (or in case of emergency at any time).

(9) In the exercise of the rights referred to in sub-paragraph (7), the Conservancy Authority shall cause as little damage to and interference with the undertaker's property and operations as reasonably practicable and shall make good as soon as reasonably practicable all damage caused by or in the exercise of such rights to the undertaker's property.

(10) The undertaker shall insure and keep insured the acquired land from loss or damage by an "All Risks" policy to the full replacement cost of the acquired land and any works in at on or under it.

(11) In the event that an act of insolvency occurs or the undertaker abandons the acquired land then it shall be lawful for the Conservancy Authority at any time to re-enter the acquired land or any part of the acquired land in the name of the whole and the same to have possess and enjoy as of the AB Ports former estate but without prejudice to any right or remedies of the Conservancy Authority then subsisting.

(12) In this paragraph:

"Abandonment" for the purposes of sub-paragraph (11) means the relinquishment of all right, title, claim to and possession of the acquired land with the intention of not reclaiming it and without it vesting in another person pursuant to article 13.

"the acquired land" means any part of the foreshore and/or riverbed of the river in relation to which the interests of AB Ports are acquired by the undertaker;

"Act of Insolvency" means in relation to the undertaker or a guarantor under article 14 any of the following:

- (i) the taking of a step in connection with any voluntary arrangement or any other



- compromise or arrangement for the benefit of any of its creditors;
- (ii) the making of an application for an administration order;
  - (iii) the giving of any notice of intention to appoint an administrator, or the filing at court of the prescribed documents in connection with the appointment of an administrator, or the appointment of an administrator;
  - (iv) the appointment of a receiver or manager or an administrative receiver in relation to any of its property or income;
  - (v) the commencement of a voluntary winding-up except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies;
  - (vi) the making of a petition for a winding-up order or a winding-up order;
  - (vii) the striking off of the undertaker or any guarantor under article 14 from the Register of Companies or the making of an application for the undertaker or any guarantor under article 14 to be struck off;
  - (viii) the undertaker or any guarantor under article 14 ceasing to exist;
  - (ix) the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against it;
  - (x) any analogous proceedings or events taken against it in another jurisdiction.

**INFRASTRUCTURE PLANNING**

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

**THE ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER**

**TR030001**

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**Appendix 4 to Written Summary of the Oral Case on behalf of the Harbour Master, Humber  
put at the Specific Issue Hearings on the draft Development Consent Order  
and Deemed Marine Licence held on 21 & 22 November 2012**

**Penalty provisions  
Extract from The London Gateway Port Harbour Empowerment Order 2008 - Article 18 (Lights on  
tidal works,etc.) & Copy of The River Humber (Upper Burcom Tidal Stream Generator) Order 2008**

(Rule 8 letter 31 May 2012 Annex C as revised by letter of 21 September 2012)

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**Winckworth Sherwood LLP  
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London  
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STATUTORY INSTRUMENTS

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**2008 No. 1261**

**The London Gateway Port Harbour Empowerment Order 2008**

**PART 3**

**WORKS PROVISIONS**

**Lights on tidal works, etc.**

**Lights on tidal works, etc.**

18.—(1) In the locations specified in paragraph (2), the Harbour Authority shall—

- (a) at the times specified in paragraph (3), exhibit such lights, if any, and take such other steps for the prevention of danger to navigation as the PLA may from time to time direct; and
- (b) provide or afford reasonable facilities (including an electricity supply) for the PLA to provide from time to time (at the Harbour Authority's cost), such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation as the PLA may deem necessary.

(2) The locations referred to in paragraph (1) are—

- (a) once a tidal work (other than one authorised under article 13 (power to dredge)) is completed, at or near the outer extremity of that tidal work; and
- (b) whilst any tidal work is being constructed, at or near appropriate points in relation to that tidal work.

(3) The times referred to in paragraph (1)(a) are—

- (a) every night from sunset to sunrise; and
- (b) at all times when there are conditions of restricted visibility in the vicinity of the tidal work.

(4) The Harbour Authority shall not in the exercise of the powers granted by this Order interfere with the marks, lights and other aids to navigation in the river without the agreement of the PLA and shall ensure access remains available to such aids during and following construction of any tidal work.

(5) Without prejudice to section 133 of the 1968 Act, the Harbour Authority shall comply with the directions of the Harbour Master from time to time with regard to the lights on any tidal work or within the port premises, or the screening of such lights, to ensure that the lights are not a hazard to navigation on the river.

(6) The Harbour Authority shall be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment to a fine,

for a failure to comply with a direction given under this article.

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STATUTORY INSTRUMENTS

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**2008 No. 969**

**TRANSPORT AND WORKS, ENGLAND  
OFFSHORE INSTALLATIONS, ENGLAND  
ELECTRICITY, ENGLAND**

**The River Humber (Upper Burcom  
Tidal Stream Generator) Order 2008**

*Made - - - - 2nd April 2008*

*Coming into force in accordance with article 1*

This Order is made in exercise of the powers conferred on the Secretary of State for Business, Enterprise and Regulatory Reform (“the Secretary of State”) by sections 3 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11 and 15 to 17 of Schedule 1 to, the Transport and Works Act 1992(1) (“the 1992 Act”).

In accordance with section 6 of the 1992 Act the Secretary of State has received an application for an order under section 3 of that Act, that complies with and the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(2) (“the 2006 Rules”).

In accordance with section 13(1) of the 1992 Act the Secretary of State has determined to make an Order under section 3 of that Act giving effect to the proposals comprised in the application.

Accordingly the Secretary of State makes the following Order:

**PART 1**

**PRELIMINARY**

**Citation and commencement**

1.—(1) This Order may be cited as the River Humber (Upper Burcom Tidal Stream Generator) Order 2008.

(2) This Order comes into force on the date on which the notice required by section 14(1)(b) of the Transport and Works Act 1992(3) is first published.

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(1) 1992 c.42.

(2) S.I. 2006/1466.

(3) 1992 c.42; section 14 was amended by regulation 2 of the Transport and Works (Assessment of Environmental Effects) Regulations 2006 (S.I. 2006/958).

for the purposes of, in connection with, or in consequence of, the construction or maintenance of the scheduled works, namely—

- (a) temporary or permanent landing places, jetties, or moorings or other means of accommodating vessels in the construction or maintenance of the scheduled works;
- (b) buoys, beacons, fenders and other navigational warning or ship impact protection works;
- (c) works to alter the position of apparatus, including cables;
- (d) landscaping and other works to mitigate any adverse affects of the construction, maintenance or operation of the scheduled works;
- (e) works for the benefit or protection of land affected by the scheduled works;
- (f) such other works and apparatus, plant and machinery of whatever nature as may be necessary or expedient.

#### **Power to deviate**

4. In constructing or maintaining any scheduled works, the undertaker may deviate—
- (a) laterally from the lines or situations shown on the works plans to any extent within the limits of deviation; and
  - (b) vertically from the levels shown on the sections to any extent not exceeding 2 metres upwards and to any extent downwards.

#### Protection of navigation

#### **Tidal works not to be executed without approval of the Secretary of State**

5.—(1) A tidal work shall not be constructed or altered 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 the work is begun.

(2) If a tidal work is constructed or altered in contravention of this article or any condition or restriction imposed under this article—

- (a) 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
- (b) if it appears to the Secretary of State urgently necessary so to do, he 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.

#### **Provision against danger to navigation**

6.—(1) In case of damage to, or destruction or decay of, a tidal work or any part thereof the undertaker shall as soon as reasonably practicable—

- (a) notify A. B. Ports; and
- (b) lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as A. B. Ports may from time to time direct.

(2) If it appears to A. B. Ports urgently necessary to do so in order to secure the safe navigation of the river by all vessels, it may lay down such buoys and exhibit such lights and take such other steps for preventing danger to navigation as A. B. Ports may direct are reasonably necessary.

(3) Any expenditure incurred by A. B. Ports in consequence of it exercising powers under paragraph (2) shall be recoverable from the undertaker.

### **Execution of works in default**

11.—(1) If, on the expiration of 30 days from the date when a notice under article 5(2)(a) or 7(1) is served upon the undertaker it has failed, without reasonable excuse, to comply with the requirements of the notice, the Secretary of State or A. B. Ports (as the case may be) may execute the works specified in the notice.

(2) Any expenditure incurred by the Secretary of State or A. B. Ports (as the case may be) in so doing shall be recoverable from the undertaker.

### **Offences**

12. If the undertaker, without reasonable excuse, fails to—

- (a) comply with a direction given under article 6, 9 or 10; or
- (b) give notification as required by article 6,

it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **PART 3**

### **MISCELLANEOUS AND GENERAL**

#### **Power to operate and use works**

13. Subject to article 15, the undertaker may operate and use the authorised works as a system for generating and transmitting electricity.

#### **Disapplication of section 9 of the Humber Conservancy Act 1899 and section 6 of the Humber Conservancy Act 1905**

14. Section 9(ii) (licences for execution of works) of the Humber Conservancy Act 1899(5) and section 6(2) (no erections in Humber below river lines or without licence above river lines) of the Humber Conservancy Act 1905(6) shall not apply to the authorised works.

#### **Removal of authorised works**

15. The undertaker shall remove—

- (a) Work No. 1 (except that, in relation to the two piles, it shall only remove as much as is practicable); and
- (b) Works Nos. 2 and 3,

no later than three years after the date on which this Order is made and shall, subject to the exception in paragraph (a), restore the sites of the works to their former condition, subject to natural change.

#### **Obstruction and misuse of authorised works**

16. Any person who without reasonable excuse—

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(5) 1899 c.cci.  
(6) 1905 c.elxxxix.

### **Transfer of powers**

20.—(1) The undertaker may, with the consent of the Secretary of State, enter into, and carry into effect, agreements for the transfer to another person of all or any of the powers conferred on the undertaker by this Order.

(2) The exercise of any power conferred by this Order by any other person in accordance with an agreement under paragraph (1) shall be subject to the same obligations and liabilities under this Order as would apply if that power were exercised by the undertaker.

(3) Not later than 21 days before any such agreement comes into effect which provides for the transfer to another person of powers relating to any tidal works the undertaker shall give written notice to the Secretary of State and to A. B. Ports stating the name and address of the person to whom the powers are being transferred and the date when the transfer is to take effect.

### **For protection of A. B. Ports**

21. The provisions of Schedule 2 to this Order shall have effect.

### **Saving for Trinity House**

22. Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of the Corporation of Trinity House of Deptford Strond.

### **Crown rights**

23.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown, and in particular, nothing in this Order authorises the undertaker to take, use, enter upon or in any manner interfere with any land, hereditaments, or rights of whatsoever description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or
- (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

(2) A consent under paragraph (1) may be given unconditionally or subject to such conditions or upon such terms as may be considered necessary or appropriate.

Signed by authority of the Secretary of State for Business, Enterprise and Regulatory Reform

*Richard Mellish*  
Director, Development Consents and Licensing  
Reform,  
Department for Business, Enterprise and  
Regulatory Reform

2nd April 2008

- (a) send a copy of those plans to A. B. Ports; and
  - (b) on receipt of approval of plans or of any conditions or restrictions imposed by the Secretary of State, send a copy to A. B. Ports.
- (3) If A. B. Ports fails to express its disapproval of any plans within 56 days after they have been delivered to it under sub-paragraph (1), it shall be deemed to have approved them.
4. The undertaker shall give to A. B. Ports not less than 14 days' written notice of its intention to commence the construction of a tidal work and, not more than 14 days after completion of such construction, shall give to A. B. Ports written notice of such completion.
5. The undertaker shall at all reasonable times during construction of the tidal works and thereafter allow A. B. Ports, its servants and agents, access to the tidal works and all reasonable facilities for inspection of any tidal work.
- 6.—(1) After the purpose of any temporary works has been accomplished the undertaker shall with all reasonable dispatch, or after a reasonable period of notice in writing from A. B. Ports requiring the undertaker so to do, remove any such temporary works or any materials relating thereto which may have been placed below the level of high water by or on behalf of the undertaker.
- (2) If the undertaker fails to do so within a reasonable period after receiving such notice, A. B. Ports may remove the same and may recover the reasonable costs of doing so from the undertaker.
- 7.—(1) If during the construction of a tidal work it is agreed, or in the absence of agreement it is proved to the satisfaction of an arbitrator appointed under paragraph 13, that any accumulation or erosion has been caused wholly or partly by the construction of any of the works, the undertaker, if so requested by A. B. Ports acting reasonably, shall remedy such accumulation or erosion to the extent attributable to such construction or exercise of powers in the manner specified in sub-paragraph (3).
- (2) If the undertaker refuses or fails to do so, A. B. Ports may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.
- (3) For the purposes of sub-paragraph (1)—
- (a) in the case of an accumulation, the remedy shall be its removal; and
  - (b) in the case of erosion, the remedy shall be carrying out of such reconstruction works and other protective works or measures as may be necessary.
- (4) Where an arbitrator has established that such accumulation or erosion has been caused in any event by factors other than the construction of a tidal work the undertaker shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction or exercise.
8. The undertaker shall pay to A. B. Ports the reasonable costs of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or in consequence of the construction of a tidal work.
- 9.—(1) Without prejudice to the other provisions of this Schedule, the undertaker shall be responsible for, and make good to A. B. Ports, all losses, costs, charges, damages and expenses however caused (including a reasonable and proper proportion of the overhead charges of A. B. Ports) which may reasonably be incurred by or occasioned to A. B. Ports by reason of or arising from or in connection with—
- (a) the perusal of plans and the inspection of any of the tidal works by A. B. Ports or its duly authorised representative;
  - (b) the carrying out of such surveys, inspections, tests and sampling within the river as A. B. Ports after consultation with the undertaker reasonably considers necessary to establish whether or not the discharge or dispersal of water into the river by means of any of the



A copy of the works plans and sections prescribed by rule 12(1), (2), (3) and (5) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (S.I. 2006/1466) and certified in accordance with article 19 of this Order may be inspected at the offices of Pulse Tidal Limited at Innovation Technology Centre, Advanced Manufacturing Park, Brunel Way, Catcliffe, Rotherham, S60 5WG.

**INFRASTRUCTURE PLANNING**

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

**THE ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER**

**TR030001**

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**Appendix 5 to Written Summary of the Oral Case on behalf of the Harbour Master, Humber  
put at the Specific Issue Hearings on the draft Development Consent Order  
and Deemed Marine Licence held on 21 & 22 November 2012**

**List of documents to be submitted to the Harbour Master, Humber for consultation or approval**

(Rule 8 letter 31 May 2012 Annex C as revised by letter of 21 September 2012)

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LIST OF DOCUMENTS TO BE SUBMITTED TO THE HARBOUR MASTER, HUMBER  
FOR CONSULTATION OR APPROVAL

(Additional to those covered by the definition of plans.)

Tidal works	Approval
Vessel movement management plan	Consultation
Dredge and disposal strategy	Consultation
Design drawings	Consultation in respect of amendments relating to land below Mean High Water Mark
External lighting details	Consultation
Marine environmental management and monitoring plan	Consultation and approval of provisions relating to monitoring equipment fixed to bouys
Compensation environmental management and monitoring plan	Consultation in respect of land below Mean High Water Mark
Works Schedules (paragraph 22 of Schedule 8)	Consultation
Active monitoring scheme	Consultation and approval of provisions relating to the location of active monitoring bouys
Stages of the development scheme	Consultation
Code of construction practice	Consultation insofar as may affect navigation and/or the land below Mean High Water Mark
Scheme for control of emissions	Consultation insofar as may affect navigation and/or the land below Mean High Water Mark
Amendments to approved details	Consultation insofar as may affect navigation and/or the land below Mean High Water Mark
Scheme for the monitoring of sedimentation at cooling water intakes and outfalls	Consultation
Scheme for monitoring of foreshore and sedimentation levels around the quay	Consultation
Scheme for monitoring of foreshore and sedimentation levels around Stone Creek	Consultation