Able Humber Ports Ltd
Marine Energy Park
Proposal to build a quay and associated development on the south bank of the River Humber

Planning Inspectorate Reference: TR030001

Summary of oral representations and final submission of
The Environment Agency
at the DCO/DML Hearings held on
21st & 22nd November 2012
Unique Reference Number: 10015552

23 November 2012

At the hearings on 21st and 22nd November 2012 Ms Carol Bolt made the following submissions on behalf of the Environment Agency (EA).

Ms Bolt confirmed that the EA will need to request additional Requirements for the Development Consent Order (DCO), which have resulted from the additional 'October package' of information submitted by Able Humber Ports Ltd (the applicant). These Requirements have been discussed with the applicant, who is in agreement with them. We have been informed by Mr Walker of Bircham Dyson Bell that these Requirements will be included in the final version of the draft Development Consent Order to be lodged by the close of the examination.

1.0 Legal Agreements in respect of flood defence works

1.1 Ms Bolt advised that the EA has made efforts to progress various Legal Agreements with the applicant and although we hope that these will be finalised within the near future, we will suggest additional Protective Provisions for inclusion within the DCO if they are not completed before the Secretary of State issues his decision.

1.2 If the flood defence works legal agreements in respect of both Cherry Cobb Sands (CCS) and Able Marine Energy Park (AMEP) are not agreed and signed there will be an increased risk of flooding to people and property in the surrounding areas. The detail of this risk was outlined in our Written Representations (Appendix K Statement by Deborah Morris, Appendix L Statement by Daniel Normandale). There is also a risk that if development were to proceed without these agreements being in place, and to the standard required, the public purse may have to be used to rectify an unsatisfactory situation. These agreements have not been signed at the close of the Examination, and therefore we have an unresolved outstanding objection. The withdrawal of this objection is subject to the completion of these agreements.

1.3 Ms Bolt also submitted that in addition to the legal agreement in respect of Cherry Cobb Sands, the EA would request control in respect of the timing of the breach of the existing flood defence. We would request the inclusion of a requirement in Schedule 11 to this effect and the wording of a requirement to this effect has been agreed with the applicant (see Requirement 1 in Appendix A attached).

1.4 We have asked the applicant to prove to us that it has the ownership of the necessary land to carry out the obligations in the agreements which relate to flood risk concerns in relation to the AMEP and Cherry Cobb Sands sites. It has not done so to date. We hope we will able to confirm to the SoS in due course that we are satisfied on this. Plainly this is not a concern in relation to any land which the Secretary of State for Transport (SoS) authorises to be compulsorily purchased. In

relation to Cherry Cobb Sands the applicant must acquire this land from Crown Estates to able to fulfil its obligations.

1.5 We have also asked the applicant to provide financial security for long term maintenance of the flood defences as it is a Jersey based company. To date the applicant has not agreed to do so but we understand it is prepared to offer a parent company guarantee. We hope to agree a parent company guarantee which satisfies us on this and forward this to the SoS. We would ask the Examining Authority (ExA) to recommend to the SoS that a parent company guarantee is essential to guarantee the fulfilment of long term maintenance obligations in relation to the flood defences.

2.0 Old defence maintenance at Cherry Cobb Sands

2.1 Having considered the EX28.3 package of documents, it is our opinion that there is currently an inadequate assessment of the impacts on the existing defence at CCS and the long term future of the Regulated Tidal Exchange (RTE) scheme given this defence will only have a 1 in 18 year Standard of Protection by 2108 (EX36.4, paragraph 4.2). If the site were to deteriorate to a point where the site is 'opened up' to the marine environment there will be an unknown impact on Stone Creek, Cherry Cobb Sands Creek and Keyingham Drain. We would recommend that a further Requirement is imposed on the DCO to secure the undertaking of this assessment and ensure the applicant demonstrates how it will manage and sustain the site for 100 years (see Requirement 3 in Appendix A attached).

3.0 Long Term Monitoring Agreement

3.1 The legal agreement in respect of long term monitoring of estuary processes and potential impacts on flood defences has not yet been agreed and signed. There is a risk that if development were to proceed without this agreement being in place, the public purse may have to be used to rectify any unpredicted long-term effects at significant expense and lead to risks outlined in paragraph 1.2 above. This agreement has not been signed at the close of the Examination, and as such there is an unresolved outstanding objection. If it is not signed before the Secretary of State makes his determination, we would request the imposition of the following Requirement (which is also repeated in Appendix A attached as Requirement 6):

3.2 **Requirement:** No development shall commence until a scheme for the short, medium and long-term monitoring of erosion impacts and sedimentation and impacts of changes in wave dynamics resulting from the project has been submitted to and approved by the Environment Agency. The scheme shall include, but not be limited to, a monitoring schedule, targets and remedial actions to be undertaken as necessary.

4.0 Impacts on Stone Creek/Cherry Cobb Sands Creek

4.1 The assessment currently presented is inadequate. We have asked for additional Requirements (which have been agreed with the applicant) to ensure the assessment and design are adequate prior to the commencement of development (see Requirements 4 and 5 in Appendix A attached).

5.0 Stone Creek monitoring and remedial action

5.1 In respect of the Stone Creek Monitoring and remedial action we request an amendment to Requirement 37 of Schedule 11 (page 78) (please see the amended Requirement in Appendix A attached).

5.2 Mr Upton requested those with a remit in respect of Stone Creek provide him with reassurance in respect of the assessment/arrangements proposed. The EA raised concern to the applicant in respect of its latest modelling of the managed realignment site at Cherry Cobb Sands (Letter of 9th November 2012, paragraphs 2.1-2.5). The applicant has responded to this (letter to EA 21st November 2012). We note that this has been modelled at +2.2mAOD and it is unclear if this relates just to the managed realignment area or the RTE fields. The applicant's assessment (EX28.3, Part 3) refers to the RTE fields being below the +2.2mAOD, field 2 will be set at +1.9mAOD and fields 1 and 4 are set at +2.05mAOD. In the time available to us we have not been able to fully assess the implication of this on Stone Creek, and can only point out that there appears to be anomalies in the model set up. We cannot concur with the applicant's view that the impacts during the warping phase of the RTE have been adequately assessed. However, Schedule 11, Requirement 37 does provide for monitoring of sedimentation and remedial action if trigger levels are exceeded.

6.0 RTE and Reservoir Act 1975/Floods and Water Management Act 2010

6.1 The applicant has recently (letter to EA of 21st November) confirmed to us that the storage volumes within the RTE fields will be such that they will have to be classified as reservoirs when this aspect of the Flood and Water Management Act 2010 comes into force. Although this is not thought to be imminent, it may occur before the development commences.

6.2 The implications of this are that the embankments in the RTE scheme will need to be designed by, and constructed under the supervision of, a panel engineer. In order to comply with this new legislation, it is likely that the embankments will need to be designed and constructed in a way that is very different to a regular earth embankment and spillways will be required on the site. At present we cannot comment on the exact detail of what will be required, other than to say that complying with the Act may have implications on the habitat extent and function.

7.0 Deemed Marine Licence (Schedule 8)

7.1 Mr Booth made a submission on behalf of Associated British Port (ABP) in respect of an alleged difference of approach taken by the EA and others between the Able Marine Energy Park (AMEP) project and that of his client in respect of Green Port Hull (GPH). Ms Bolt advised that we had not had prior sight of the amendments suggested to conditions 35, 37, 39 and 41 of Schedule 8 (Deemed Marine Licence) being put forward at the hearing on 22 November, and confirmed that the EA is satisfied the conditions included in Schedule 8 were necessary and appropriate and had been agreed by it in consultation with the Marine Management Organisation and Natural England.

8.0 Mitigation and compensation for migratory salmon

8.1 We would also advise the ExA that we are currently in discussions with the applicant in respect of a suitable compensation package to offset the residual impacts on migratory salmon from piling noise. We would advice that the exact detail of this has not yet been finalised but this compensation package is intended to be proportionate and justified in relation to the similarities and differences between the AMEP and GPH projects.

8.2 Ms Bolt advised the ExA of the need for a further Requirement (for which the applicant has agreed to include in the DCO to be lodge by the close of the examination) in respect of the compensation package and request this is added into Schedule 11 (see Requirement 2 in Appendix A attached).

9.0 Water Framework Directive (WFD)

9.1 The applicant has not provided a satisfactory assessment to enable us to provide definitive advice to the Secretary of State on this issue. We have received further iterations this week but have not had adequate time to undertake a thorough review of these. We cannot, therefore, provide definitive advice on whether or not the proposal will cause deterioration to water body status, and is hence compliant with the Directive.

9.4 We have repeatedly informed the applicant that we do not believe their assessment of cumulative impacts was adequate (Section 10 3rd August submission; In combination section, 7th September submission; and, 18.1 in our 9th November submission) under the Environmental Impact Assessment Regulations. As such we do not believe we have had the necessary information available, or within a reasonable period of time, to enable us to carry out an assessment as to whether the cumulative impacts would mean this application will be compliant or not with the Directive, or whether Article 4.7 may need to be applied.

9.5 We have not been comfortable with the assessment to date in order to be able to make a reasonable judgement and have received a further late submission (21st November). We have not had the time to review this assessment and still have some outstanding concerns, in particular related to the cumulative impacts. As such we are unable to give

advice to the ExA or the Secretary of State for Transport as to whether the development is compliant with the WFD. As such, we believe there is a potential risk in determining this application when we have been unable to provide the necessary advice on cumulative impacts to the Secretary of State.

9.6 The ExA raised the question of whether Requirement 13 in Schedule 11 was necessary, given the development of the Environment Management and Monitoring Plans. The EA requested Requirement 13 and remains of the opinion that it is necessary to secure the wider environmental protection and enhancement objectives of the WFD.

10.0 Over-Compensation at East Halton

10.1 We have outlined our opinion as to why this is not deliverable in our submission of 9 November. Although this is not a point on which we raise an objection, it is an issue we would highlight for the decision maker.

11.0 Compensatory Wet Grassland at Cherry Cobb Sands

11.1 We wish to highlight to the ExA the potential risks with securing the deliverability of this wet grassland. This is being pursued by way of a planning application, which is being determined outside this DCO process, but upon which the DCO is reliant in order to deliver sufficient compensatory habitat under the Habitat Regulations to meet the assessed functional loss at North Killingholme Marshes. At present we have not had sufficient time to review all the documentation submitted to East Riding of Yorkshire Council (ERYC), but from a brief review we note that there is potential land raising to achieve the wet grassland and increased groundwater volumes. We will need to be confident that this will not lead to additional flood risk to the surrounding area as a consequence of this development being constructed. At present our advice on the viability, and any risk to delivery, of this scheme cannot be given at this present time, and this is not possible before the close of the examination. It is likely that we will lodge a holding objection to the planning application with ERYC, pending receipt of further flood risk assessment information.

12.0 Environmental Management and Monitoring Plans

12.1 We have been forwarded further iterations of these on 22nd November and have not had time to undertake a full review of these. We are not able to do this before the close of the Examination. At a brief glance it appears there have been significant improvements made in their drafting, however they are still not satisfactory for the following reasons:

12.2 **Compensation EMMP -** There is no provision in this document for the monitoring and management of fish within the Cherry Cobb Sands site. It was our understanding that the compensation site was to provide part of the applicant's overall package of mitigation and compensation for fish (as demonstrated in Able's letters to us of 11th May and 6th July

2012 – please note we are unable to supply copies of these letter, which are marked 'commercial in confidence'). As such, as per our advice contained in our 9th and 19th November submissions, we would have expected to see objectives, targets and monitoring for fish within this EMMP in order that we would be able to assess the value of this compensation to the applicant's overall delivery.

12.3 There is no specific reference to WFD methodologies in the EMMP to the monitoring that is presented within the document. It has been our advice throughout this process that it would be prudent that any monitoring undertaken within the compensation site should be WFD compliant. We provided the applicant with specific documents to assist with this process on 9th November. This, in particular, applies to benthic invertebrates, saltmarsh, particle size analysis and fish (should this be included at a later date).

12.4 There is no provision or inclusion of objectives, targets or monitoring for the East Halton over-compensation proposal. It is our opinion that information should have been included in this EMMP to inform the Examining Authority as to how this would be monitored. This would enable an assessment of its potential effectiveness and assist the Secretary of State in his decision with respect to the contribution this proposal could make in securing the coherence of the Natura 2000 network.

12.5 **Marine EMMP –** It appears that some of the objectives/ targets are tied to the incorrect supplementary information. We note that there is no reference to EX8.7A where some of the potential wave action on our flood defences on the north bank of the estuary is presented.

12.6 We have had insufficient time to check the targets. For example those presented for benthos relate to a target of Moderate by 2015. We have previously advised the applicant that benthic invertebrates are at the moderate/good boundary, and did indeed reach good status in 2011. We are not in a position to advise the panel on our agreement to these targets in the time available. As such we cannot agree that they definitely meet the requirements under the WFD directive.

12.7 As mentioned above, we have not had sufficient time to consider these documents and will, therefore, have to undertaken a more detailed review following the close of the Examination. However, the above comments are an indication that further amendments will be necessary.

13.0 RTE Sustainability

13.1 The EA has concerns regarding the long-term sustainability of this proposal, which is outlined in detail in Paragraphs 8.8-8.9 of our letter to the applicant of 9 November 2012.

14.0 In-combination assessment

14.1 Although the applicant has undertaken various in-combination assessments (Chapter 44, EX 44.1, EX 44.2, EX8.7A, EX8.16, EX10.8), it is our opinion that as currently presented it makes it very difficult to assess the in-combination and cumulative impacts of this proposal as a whole. At present the onus is on the consultees (and ultimately the decision maker) to filter the various sources of information into a coherent, robust assessment of the total in combination and cumulative impacts of the project.

14.2 We wish to explain the applicant's current use of the figure of 513ha of additional habitat creation in EX44.2. As currently presented by the applicant this does not reflect the zones of management that the Environment Agency has to adhere to in terms of estuary losses and gains for coastal squeeze under the Habitat Regulations. This is explained within the document from which the applicant has taken the table (Humber Flood Risk Management Strategy (HFRMS) Habitats Regulation Assessment (HRA), 2011, previously provided to the panel). The middle estuary, which will be impacted by this development, the figure is 102 ha and not 513 ha. The 513 ha the applicant has referred to covers the whole estuary from Keadby Bridge on the Trent and Boothferry Bridge on the Ouse to the estuary meeting the North Sea. It also does not reflect that the HFRMS covers a 100 year period, not the current 50 years we have HRA approval for, as such we need to be credit, not deficit, at the end of the 50 year period, hence the 102 ha excess.

15.0 CONCLUSION

15.1 The Environment Agency has made strenuous efforts to conclude legal agreements with the applicant so that it can be satisfied that its interests will be properly protected and be in a position to withdraw its objections on various matters.

15.2 We set out clearly in our Written Representations made 29th June 2012 that we would require legal obligations in relation to flood risk issues in relation to both the AMEP and Cherry Cobb Sands sites and also that we believed that compensation for the adverse effect of piling noise on the salmon fishery should be provided by the applicant (see Statements of Debbie Morris, Daniel Normandale and Adrian Fewings). We believe that the issues we have are capable of resolution rather than being objections of principle and we are disappointed that despite significant progress having been made with the preparation of legal agreements the applicant has not to date been prepared to agree a form of draft agreement which is acceptable to both parties.

15.3 We hope that it will still be possible to conclude suitable legal agreements after the close of the examination and that we will be able to send these to the Secretary of State for Transport with confirmation that our concerns have been fully addressed.

15.4 In the event that it is not possible to conclude and complete such agreements the EA would invite the ExA to recommend to the Secretary of State for Transport that in the absence of such legal agreements he should include within the Development Consent Order the attached Protective Provisions (see Appendix B). This form of Protective Provisions has been included in other Development Consent Orders (the North Doncaster Chord DCO and the Ipswich Chord DCO) and previously in various Transport and Works Act Orders. These Protective Provisions deal with some of the matters that the EA anticipated would be covered in the legal agreements.

15.5 However a number of the our concerns, in particular about long term maintenance of the flood defences on the AMEP site and at Cherry Cobb Sands to an appropriate Standard of Protection would remain even if the event that such provisions were included and our objection on this issue would remain.

Appendix A

Additional Requirements for Schedule 11 of the Development Consent Order

Draft Additional Requirements for inclusion in DCO put forward by the Environment Agency

We would request the inclusion of the following Requirements for Schedule 11.

New Requirements

Requirement 1

Following construction of the new flood defence embankment at Cherry Cobb Sands, the breach (as defined in Drawing ???) shall not be made in the existing flood defences without the prior written consent of the Environment Agency, in consultation with Natural England and the Marine Management Organisation. This shall not take place until the new embankment has had an adequate period of time (likely, but not limited to, one winter period (November to April inclusive)) in which to stabilise and for vegetation to become established on the embankment to ensure the integrity of the new flood defences.

Requirement 2

No development shall commence until a scheme to compensate for the impacts of piling noise on migratory salmon from the construction of the authorised development has been agreed with the Environment Agency. This shall include, but not be limited to, a monitoring scheme to ensure the intended benefits of the scheme are realised and necessary actions are taken.

Requirement 3

No development shall commence until an assessment of the impacts on the existing flood defences at Cherry Cobb Sands and the long term future of the Regulated Tidal Exchange system has been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency. The assessment shall include the consideration of potential impacts on Stone Creek, Cherry Cobb Sands Creek and Keyingham Drain, and outline remedial action that shall be undertaken if impacts are predicted or found to materialise as a result of the development.

Any remedial action that is identified as necessary by the assessment shall be carried out.

Requirement 4

No development shall commence until the final detailed design of the Regulated Tidal Exchange (RTE) sluices has been submitted to and approved in writing by the relevant planning authority, in consultation with the Environment Agency. Outflows from the RTE during the warping phase must be restricted to those assessed and presented within EX28.3 Part 3, unless agreed otherwise in writing with the Environment Agency. The detailed design information must include the size and flow capacity of the sluices within the RTE scheme.

Requirement 5

No development shall commence until the final dimensions of the channel leaving the Managed Realignment site and the invert level have been submitted to and approved in writing by the relevant planning authority, in consultation with the Environment Agency, this shall include:

1) Detailed design drawings, including dimensions
2) The discharge channel exiting the realignment site shall be no larger than that currently presented and assessed in EX 28.3 Part 3 (11.6m bed width (invert level 1.5 mAOD) with 1V:3H side slopes rising to an edge weir level of 2.0 mAOD), unless otherwise agreed with the Environment Agency
3) The invert level of the drainage channel shall be no higher than that currently presented and assessed in EX28.3 Part 3 (1.5 mAOD), unless agreed otherwise in writing with the Environment Agency

Requirement 6

No development shall commence until a scheme for the short, medium and long-term monitoring of erosion impacts and sedimentation and impacts of changes in wave dynamics resulting from the project has been submitted to and approved by the Environment Agency. The scheme shall include, but not be limited to, a monitoring schedule, targets and remedial actions to be undertaken as necessary.

Amended Requirement

In respect of the Stone Creek monitoring and remedial action we request an amendment to Requirement 37 of Schedule 11 (page 78 of the 26 October version of the draft DCO):

(1) 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, in consultation with the Environment Agency, such scheme to include:

(a) details of monitoring proposals, including location and frequency, and

(b) details of trigger levels or other pre-determined changes and remedial works required if these are exceeded or have taken place.

(2)The Environment Agency shall be consulted when any remedial works is required as defined in clause (b) above.

(3) The methodology for any remedial works shall be agreed in writing with the Environment Agency in advance of any remedial works being undertaken where its operational activities or outfall structures at either Stone Creek or Keyingham Drain are shown by the monitoring results to have been affected.

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

23 November 2012

Appendix B

Provisions for the protection of the Environment Agency
Schedule 9, Part 2 of the Development Consent Order

PROTECTIVE PROVISIONS

PART 2

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1.—(1) The following provisions shall apply for the protection of the Agency unless otherwise agreed in writing between the Company and the Agency.

(2) In this part of this Schedule—

"the Agency" means the Environment Agency;

"the Company" means Able Humber Ports Limited

"construction" includes execution, placing, altering, replacing, relaying and removal and "construct" and "constructed" shall be construed accordingly;

"drainage work" means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring and any ancillary works constructed as a consequence of works carried out for drainage purposes;

"the fishery" means any waters containing fish and fish in such waters and the spawn, habitat or food of such fish;

"plans" includes sections, drawings, specifications and method statements;

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

(a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;

(c) cause obstruction to the free passage of fish or damage to any fishery; or

(d) affect the conservation, distribution or use of water resources; and

"watercourse" includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer.

2.—(1) Before beginning to construct any specified work, the Company shall submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably require.

(2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 11.

(3) Any approval of the Agency required under this paragraph—

(a) shall not be unreasonably withheld or delayed;

(b) shall be deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been required by the Agency for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work or the fishery or for the

protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency shall use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

3. Without prejudice to the generality of paragraph 2 but subject always to the provision of that paragraph as to reasonableness, the requirements which the Agency may make under that paragraph include conditions requiring the Company at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

4.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 3, shall be constructed—

(a) with all reasonable despatch in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and

(b) to the reasonable satisfaction of the Agency,

and the Agency shall be entitled by its officer to watch and inspect the construction of such works.

(2) The Company shall give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency shall reasonably require, the Company shall construct all or part of the protective works so that they are in place prior to the construction of any specific work..

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require the Company at the Company's own expense to comply with the requirements of this part of this Schedule or (if the Company so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6) and paragraph 8, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served upon the Company, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the Company.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

5.—(1) Subject to sub-paragraph (6) the Company shall from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the Company for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the Company is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the Company to repair and restore the work, or any part of such work, or (if the Company so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to paragraph 8, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the Company, the Company has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Company.

(4) If there is any failure by the Company to obtain consent or comply with conditions imposed by the Agency in accordance with the Protective Provisions the Agency may serve written notice requiring the Company to cease all or part of the specified works and the Company shall cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2) , the Agency shall not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(6) This paragraph does not apply to drainage works which are vested in the Agency, or which the Agency or anther person is liable to maintain and is not prescribed by the powers of the Order from doing so.

6. Subject to paragraph 8, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage shall be made good by the Company to the reasonable satisfaction of the Agency and if the Company fails to do so, the Agency may make good the same and recover from the Company the expense reasonably incurred by it in so doing.

7.—(1) The Company shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

(a) the construction of any specified work; or

(b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the Company requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 8, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the Company fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the Company the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 8, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the Company the reasonable cost of so doing provided that notice specifying those steps is served on the Company as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

8. The Company shall indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

(a) in the examination or approval of plans under this part of this Schedule; and

(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this part of this Schedule

(c) the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

9.—(1) Without prejudice to the other provisions of this part of this Schedule, the Company shall indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the Agency by reason of—

(a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;

(b) any damage to the fishery;

(c) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses;

(d) any flooding or increased flooding of any such lands, or

(e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of the Company, its contractors, agents or employees whilst engaged upon the work.

(2) The Agency shall give to the Company reasonable notice of any such claim or demand and no settlement or compromise shall be made without the agreement of the Company which agreement shall not be unreasonably withheld or delayed.

10. The fact that any work or thing has been executed or done by the Company in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the Company from any liability under the provisions of this part of this Schedule.

11. Any dispute arising between the Company and the Agency under this part of this Schedule shall, if the parties agree, be determined by arbitration under article 42 (arbitration), but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by the Company or the Agency, after notice in writing by one to the other.