

## Appendix H

Alternative Protective Provisions sought by Harbour Master Humber

### 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 at 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.