



**CLdN PORTS KILLINGHOLME LIMITED**

**RELEVANT REPRESENTATION IN RELATION TO THE PROPOSED IMMINGHAM  
EASTERN TERMINAL RO-RO DEVELOPMENT CONSENT ORDER**

**1. INTRODUCTION**

- 1.1 This Relevant Representation is submitted on behalf of CLdN Ports Killingholme Limited (Company Registration Number 00278815) of 130 Shaftesbury Avenue, 2nd Floor, London, W1D 5EU (**CLdN**).
- 1.2 Part of the CLdN Links group, a European integrated port, shipping and freight forwarding operator, CLdN is the owner of a long-established Ro-Ro terminal operating 24 hours seven days a week, servicing an average 5.5 scheduled Ro-Ro ferry sailings a day from/to the northern continental ferry ports, including lines operated by its affiliated shipping operator CLdN Shipping. It is one of the UK's major North Sea Ro-Ro terminals and alongside the ABP facilities at Immingham and Hull, CLdN operates a significant portion of existing Ro-Ro capacity on the river Humber.
- 1.3 CLdN is a statutory harbour authority pursuant to the North Killingholme Haven Harbour Empowerment Order 1994 and the Humber Sea Terminal (Phase III) Harbour Revision Order 2006. Copies of the respective Orders are attached at Appendix 1 and Appendix 2. The extent of the terrestrial and marine environment forming part of CLdN's undertaking is shown coloured yellow, pink and hatched blue on the plan at Appendix 3<sup>1</sup> and the limits of jurisdiction of CLdN are set out in article 4 of the 2006 Order. The statutory basis that underpins CLdN's operations, and the potential for the Proposed Development to obstruct access to CLdN's statutory undertaking, should be afforded special consideration in the Examination of the proposed DCO.
- 1.4 By a letter dated 23 February 2022, CLdN, under its previous company name (C.RO Ports Killingholme Limited) responded to the statutory pre-application consultation undertaken by Associated British Ports (**ABP**) between 19 January and 23 February 2022. By a letter dated 25 November 2022, CLdN also responded to a supplementary consultation undertaken by ABP between 28 October and 27 November 2022.
- 1.5 CLdN has received a notice from ABP dated 9 March 2023 confirming that the development consent order application (**DCO Application**) for the Immingham Eastern Terminal Ro-Ro (the **Proposed Development**) was accepted for Examination by the Planning Inspectorate on 6 March 2023. In accordance with the terms of that notice and section 56 of the Planning Act 2008, this letter constitutes CLdN's "Relevant Representation" in respect of the DCO Application.
- 1.6 This Relevant Representation outlines the main issues of concern that CLdN has identified with respect to the DCO Application. However, the documentation submitted in support of the DCO Application is substantial. This also includes complex and lengthy new technical documentation that was accepted by the Examining Authority less than two weeks ago. Accordingly, CLdN reserves its right to submit more detailed representations in respect of the matters raised herein, as well as to make representations in respect of new matters.

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<sup>1</sup> The yellow and pink areas on the plan at Appendix 3 relate to leases from ABP in its function as the Competent Harbour Authority for the Humber.

## 2. THE POLICY BASIS

- 2.1 It is a legal requirement that the Secretary of State (**SoS**) must decide a DCO application for port infrastructure in accordance with the National Policy Statement for Ports (**Ports NPS**) subject to certain exceptions<sup>2</sup>. In this regard CLdN makes the following observations:
- 2.1.1 The “fundamental policy” of government under the NPS is to encourage “...sustainable port development to cater for long-term forecast growth in volumes of imports and exports by sea”<sup>3</sup>. In assessing the need for new port infrastructure, the NPS directs that the Secretary of State must examine the long-term forecast growth in volumes of imports and exports by sea for all commodities indicated by demand forecast figures, taking into account capacity already consented<sup>4</sup>. **From the documentation that is available, ABP has not adequately explained how the Proposed Development constitutes “sustainable port development” that addresses an identified “need”. It follows that it is not clear that the Proposed Development is in accordance with the NPS for Ports.**
- 2.1.2 Where the SoS reaches the view that a proposal for port infrastructure is in accordance with this NPS, they will “...then have to weigh the suggested benefits, including the contribution that the scheme would make to the national, regional or more local need for the infrastructure, against anticipated adverse impacts, including cumulative impacts”. **Even if the SoS were ultimately to be satisfied that the Proposed Development is in accordance with the Ports NPS, CLdN has serious concerns as to whether the alleged benefits of the Proposed Development (including with respect to addressing a perceived “need”) outweigh its significant adverse impacts.**
- 2.1.3 The primary basis for undertaking the balancing exercise set out in the preceding paragraph will be by considering the likely significant effects of the Proposed Development (both beneficial and adverse) as set out in the Environmental Statement (**ES**)<sup>5</sup>. **The ES submitted with the DCO Application identifies that the Proposed Development will have significant adverse effects on the environment. The case has not been made out as to how the alleged benefits of the Proposed Development outweigh those adverse effects. In addition, CLdN has identified a number of potentially serious defects in the ES which require further environmental information and clarification before the SoS could be in a position to properly weigh the benefits of the Proposed Development against its adverse effects.**
- 2.1.4 The DCO Application must be determined in accordance with all statutory requirements including the Conservation of Habitats and Species Regulations 2017. **The Proposed Development will be located in and adjacent to the Humber Estuary Special Area of Conservation, Special Protection Area and Ramsar Site. Given the scale and nature of the Proposed Development and noting the conclusions of previous HRA assessments for major port development, including within the Humber Estuary, the**

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<sup>2</sup> S104(3) of the Planning Act 2008.

<sup>3</sup> Ports NPS, paragraph 3.3.1.

<sup>4</sup> Ports NPS, paragraph 3.5.1.

<sup>5</sup> Ports NPS, paragraph 4.8.1.

**conclusion of the Shadow HRA (that the Proposed Development will have “no adverse effect on the integrity” of protected habitats) must be robustly tested and scrutinised.**

2.2 In addition to the Ports NPS, the Planning Act 2008 states that the Secretary of State must also have regard to the appropriate marine policy documents, determined in accordance with section 59 of the Marine and Coastal Access Act 2009, in making their determination<sup>6</sup>. Compliance with marine policy is accordingly an important legal consideration that must be afforded due weight in the decision-making process. The Secretary of State must also have regard to other important and relevant matters<sup>7</sup> including national and local planning policy. **CLdN is not satisfied that ABP has demonstrated that the Proposed Development is compliant with the UK Marine Policy Statement, East Inshore and East Offshore Marine Plans or that it is compliant with other planning policy including the National Planning Policy Framework and policies contained in the North East Lincolnshire Local Plan.**

### 3. THE NEED CASE

3.1 The key pillar of ABP’s case for the Proposed Development is that it would address an “imperative need” to provide additional Ro-Ro freight capacity within the Humber Estuary<sup>8</sup>. In this regard, addressing a perceived “need” is not just one of many potential benefits that ABP presents in support of its proposals. Rather, it is absolutely fundamental to ABP’s case. It is also notable that ABP asserts that the Proposed Development is the only solution to meeting that perceived “need”<sup>9</sup>.

3.2 As outlined in Part 2, the “need case” lies at the heart of government policy. In turn, establishing whether the Proposed Development does indeed address that need is imperative to understanding the perceived benefits of the Proposed Development and, crucially, weighing those benefits up against its adverse effects. For those reasons, assessing the merits of ABP’s “need case” must be a principal issue and fully tested and explored through the Examination.

3.3 We make the following initial observations with respect to need:

3.3.1 Demonstrating “need” appears to be integral to a number of ES chapters and the Planning Statement, where the assessments and analysis appear to be geared towards demonstrating an alleged shortfall in capacity and based on optimistic assumptions of ever growing (and changing) demand.

3.3.2 CLdN fully intends to elaborate on these concerns during the Examination. However, in summary, CLdN has serious concerns regarding the accuracy of the information on capacity constraints and market demand that is presented in Chapter 4 of the ES (Need and Alternatives) and Appendix 4.1 (Market Forecast Study Report):

(a) The assessment gives the impression that the six Ro-Ro river berths at the Killingholme terminal are already in use. However, CLdN would point out that only three of the Ro-Ro river berths are in use: 2 berths are in use for CLdN services and one for Stena Line’s Hoek van Holland service. Of the remaining three, one is not in service

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<sup>6</sup> S104(2)(aa) of the Planning Act 2008.

<sup>7</sup> S104(2)(d).

<sup>8</sup> Environmental Statement: Volume 1 Chapter 4: Need and Alternatives, paragraph 3.4.1

<sup>9</sup> Planning Statement (incorporating Harbours Statement), paragraph 4.1.

(berth 6) but could be brought into service if required (by dredging), and two are generally free at all times. If Stena were to leave the Killingholme terminal today, four out of six berths would be free almost all of the time. Accordingly, the conclusion that “...*the active berths at the facility are extensively used with apparent limited ability for substantial additional use*” is simply not correct. There is in fact substantial additional capacity that is already available in the Humber and which can cater for credible market need projections.

- (b) The assumptions on changes in market demand towards unaccompanied freight over existing Ro-Ro passenger services appear to be overly optimistic and fail to take into account a continuing market preference for certain types of goods to use: a) the short straits and other Channel routes depending on origination; and b) the driver-accompanied model (including the Channel Tunnel).
- (c) The assessment that trade increases in line with GDP growth cumulatively year-on-year is at odds with actual downward and operators' expected trends in freight volumes. It is unreliable as a basis for establishing need, certainly the need for a wholly new terminal for one operator over the alternatives, and conflates market need with the demands of a single operator (see (f) below). Accordingly it must be given limited weight.
- (d) Calculations by ABP on space requirements for Stena are based on average freight dwell times of around 2.25 days. This is well in excess of the “real world” dwell times for freight including Stena Line's own cargoes at Killingholme (and elsewhere in CLdN's experience) and entirely at odds with the commercial incentives that underpin the transportation of unaccompanied freight (and indeed such dwell times are not reported or recognised at all from CLdN's experience), particularly for “just in time” cargos. It follows that ABP's submissions and assertions around a lack of space at Killingholme require much greater scrutiny.
- (e) There is no evidence provided of the contribution that Stena Line (or other customers of the new facility) would actually make towards this assumed growth, based on historic volume growth (or decline). Furthermore there is no evidence, for example in the form of business plans, of how Stena Line (or other operators) would serve any potential growth. Put simply, a general assertion by ABP as to growth in the unaccompanied freight market is inadequate. In formulating a credible need case, ABP must demonstrate that the new facility would actually capture that growth.
- (f) Crucially ABP's assessment conflates a market need for Ro-Ro capacity with the commercial preferences of a single operator (namely Stena). ABP appears to be seeking to demonstrate that the expected growth of Stena drives the need for the Proposed Development. Yet it is not at all certain that Stena itself will grow, or that Stena will have the commercial incentive to service growth specifically at the Proposed Development (for example by investing in new, larger, unaccompanied specialist ships). To this end, CLdN considers that the commercial arrangements between ABP and

Stena must be properly scrutinised during the Examination, and the “real world” factors that drive the market need for new capacity must be properly tested and taken into account.

- (g) The need for the Proposed Development on resilience grounds appears to be overstated and does not address need in accordance with the Ports NPS. There are already Ro-Ro facilities in river berths at Killingholme, Immingham and Hull. More importantly from a resilience perspective, there are four Ro-Ro operators from northern Europe (CLdN, Stena, DFDS and P&O). It follows that a freight unit can still readily be transported to Humberside if a river berth is out of operation (or otherwise go via another destination, which is borne out by experience when routes such as the short straits have been disrupted). To this end, in formulating its case that the Proposed Development improves resilience, ABP again appears to have conflated market need with the commercial preferences of a single operator (namely Stena).

#### 4. THE ENVIRONMENTAL EFFECTS

- 4.1 As set out at Part 2, the benefits of the Proposed Development (including with respect to need) must be weighed against its potentially very significant environmental effects including (but not limited to) traffic and transport, air quality, terrestrial and marine ecology, climate change and navigational impacts.
- 4.2 With respect to the specific impacts on CLdN's operations, the Examining Authority is directed to CLdN's statutory pre-application consultation responses dated 23 February 2022 and 25 November 2022. For brevity CLdN will not repeat the content of those submissions other than to point out that a number of important concerns it had identified with the scope of the Preliminary Environmental Information Report have not been satisfactorily addressed in ABP's ES.
- 4.3 CLdN has undertaken an initial review of the ES and makes the following initial observations:
  - 4.3.1 Chapter 4 (Need and Alternatives): The alternatives assessment appears to have been based solely on the specific vessel design requirements for Stena based on the largest vessels (operated by CLdN Shipping (part of the CLdN Links group) – the Delphine and Celine) currently calling at the Humber. In turn, this has been used to rule out the alternative locations for additional Ro-Ro capacity. No consideration has been given to the use of an alternative size of vessel and whether the existing alternative locations could be utilised to provide additional capacity. No consideration has been given to the possibility of adapting existing berths to accept larger vessels. Furthermore, no comparison of the environmental effects has been provided on the basis that none of the alternatives is suitable. CLdN considers that the assumption of market preference for larger vessels which would require the longest/widest berths is fundamentally flawed and not supported by recent history of fleet commissioning and mix in registered vessels and industry communication on new vessel orders (or indeed orders for new vessels by CLdN Shipping), which indicate a continuing mixed fleet approach to serve the needs of the market. Whilst it is not disputed that there are benefits on some routes for larger vessels, operators typically deploy fleets of mixed sizes and increases in vessel size does not mean vessels are longer or wider. Typically they will have more decks, meaning that they are able to be handled at existing

facilities without (or with only minimal) adaptation. As set out at Part 3, ABP's assumptions in this regard are geared solely towards the preferences of a single operator for its own terminal (who may or may not ultimately fulfil this perceived demand). It is therefore unclear how the application assumptions cater for long-term forecast growth in volumes of imports and exports by sea for all commodities indicated by the demand forecast figures set out in the MDST forecasting report accepted by government, taking into account capacity already consented.

- 4.3.2 Chapter 11 (Coastal Protection, Flood Defence and Drainage): Flood Risk – There are concerns that the flood risk and surface water drainage calculations have not been undertaken correctly. CLdN also notes that a superseded definition is being relied upon to set out the requirements of the Sequential Test.
- 4.3.3 Chapter 15 (Cultural Heritage and Marine Archaeology): Terrestrial heritage receptors appear to have been erroneously scoped out of the ES. This is contrary to the advice in Historic England's response to the Scoping Opinion Request which highlighted that "...impacts on terrestrial archaeological features should also be considered, in order to properly understand the marine archaeological environment". The Heritage Gateway clearly shows a number of terrestrial heritage assets recorded in the onshore area of the application boundary and also identified in North East Lincolnshire Council's response to the Scoping Opinion Request.
- 4.3.4 Chapter 17 (Traffic and Transport): CLdN has concerns regarding the assumptions that underpin the assessment. Specifically it is unclear whether a "realistic worst case scenario" has been assessed that allows for market and/or operator assumptions to change with regards to the ratio of accompanied to unaccompanied trailers and the proportion of trailer units arriving or departing without a trailer. If only accompanied cargo volumes increased over time (and not unaccompanied) the traffic impacts would be materially different (and potentially worse than assessed) given that such units enter/leave the terminal almost immediately on arrival/prior to departure. This is a fundamental point: if ABP is simply assessing the traffic impact associated with Stena's commercial preferences, the draft DCO must constrain ABP (and its users) operations accordingly. Furthermore, the assessment of entry gate capacity and contributory factors related to collision risk do not appear to have been properly assessed within the Transport Assessment<sup>10</sup>. ABP also asserts that it controls and operates all the railway lines within the Port Estate. Whilst it is correct that the section of rail through Immingham is controlled by ABP, it then reverts to Network Rail control to the west, for the section that runs through the Able Marine Energy Park and the CLdN site. CLdN holds the benefit of agreements with Network Rail, that connect the sidings to the national network. The impact of the Proposed Development on the rail network is therefore not only a matter for ABP. The application is light on detail on rail proposals and, as a minimum, CLdN would require protective provisions to protect the exercise of its legal rights in respect of access to the rail network and to safeguard against its potential utilisation by ABP in respect of the Proposed Development.

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<sup>10</sup> CLdN notes that an updated Transport Assessment (some 500 plus pages longer in length) was accepted by the ExA on 6<sup>th</sup> April 2023. CLdN is reviewing this and may wish to raise new matters with respect to the transport impacts.

- 4.3.5 Chapter 20 (Cumulative and In-combination Effects): CLdN has concerns regarding the criteria set for selecting the short list of cumulative developments. The impacts resulting from a single scheme which may not be significant on their own but when combined with impacts resulting from other schemes, could potentially become significant, and have not been considered adequately. In addition, the assessment of cumulative impacts is on a project-by-project basis and there is no judgement of the cumulative impact of all the cumulative projects on a single receptor. It is also unclear how the Zone of Influence and the search areas relate to one another and whether the search area as recommended by Natural England with regards to designated sites has been appropriately considered.
- 4.4 In addition to the matters set out above, CLdN considers that the assessment of indirect effects must be further scrutinised during the Examination, taking into account the requirements under the EIA Regulations<sup>11</sup> and recent case law<sup>12</sup>.
5. **HRA**
- 5.1 CLdN notes that ABP's Habitats Regulations Assessment concluded that Likely Significant Effects could not be discounted with respect to three European sites, all with coincident boundaries: Humber Estuary SAC; Humber Estuary SPA; and Humber Estuary Ramsar site. These were accordingly "screened in" to the Stage 2 assessment.
- 5.2 CLdN notes that the Stage 2 assessment has concluded that:
- 5.2.1 for the majority of impact pathways that have been identified, there is no potential for an adverse effect on site integrity or any potential for the predicted effects to compromise any of the conservation objectives; and
- 5.2.2 for two potential impact pathways (airborne noise and visual disturbance during construction and operation, and underwater noise and vibration during piling on qualifying species) mitigation has been identified.
- 5.3 The conclusion of the HRA is that "*...based on scientific information and professional judgement, it is considered that the construction and consequent operation will create no adverse effects on the integrity of any European designated sites*"<sup>13</sup>.
- 5.4 CLdN would comment as follows:
- 5.4.1 The tests under the Habitats Regulations are prescriptive and operate in a way that places a legal obligation on the decision-maker to refuse any applications where the tests cannot be complied with. To this end the requirements under the Habitats Regulations are not simply a procedural requirement or a relevant and material consideration in the determination of any forthcoming application. Rather they are 'stop / go' requirements and so can be a decisive factor.
- 5.4.2 The decision as to whether the integrity of the site is adversely affected will ultimately be a matter for the Secretary of State for Transport as Competent

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<sup>11</sup> Regulation 14(2) and Schedule 4, paragraph 5 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

<sup>12</sup> *Finch On Behalf of the Weald Action Group, R (On the Application Of) v Surrey County Council & Ors* [2022] EWCA Civ 187.

<sup>13</sup> Habitats Regulation Assessment, paragraph 5.1.11.

Authority, in consultation with Natural England (**NE**). However, CLdN makes the following observations:

- (a) That the Proposed Development will result in a loss of up to 1.65 ha of intertidal habitat as a result of the proposed capital dredge and jetty.
- (b) That NE (the government's statutory adviser on HRA) has advised that "...a lasting and irreparable loss of European Site habitat would prevent a conclusion of no adverse effect on site integrity being reached, unless an Appropriate Assessment could ascertain otherwise"<sup>14</sup>.
- (c) That NE considers that any credible risk of a measurable loss of marine or terrestrial habitat, "no matter how small" from within a European site, is a 'likely significant effect' and the full significance of its impact on site integrity should be screened-in and further tested<sup>15</sup>.
- (d) That NE has identified that the impact of loss of intertidal and subtidal habitats, and the associated impact on a number of fish and coastal waterbirds species, must be robustly assessed<sup>16</sup>.
- (e) That NE expressed concern during pre-application consultation with respect to the justification for scoping out certain impact pathways<sup>17</sup>.

5.4.3 CLdN notes an HRA "derogation case" has usually been required for port infrastructure projects of a similar nature and scale, and which directly result in loss of protected habitat. That includes the Able Marine Energy Park DCO which required reclamation of land within the Humber Estuary and where only the benefits of that project associated with renewable energy production were sufficient for it to be consented (and with associated restrictions on use linked to that need secured in the DCO). CLdN is also aware of a number of other large scale port infrastructure projects where an HRA "derogation case" has been required<sup>18</sup>.

5.4.4 For the foregoing reasons, CLdN considers that the conclusions of the Shadow HRA, and in particular that the loss of protected habitat would not have an "adverse effect on integrity" of the designated sites, must be the subject of robust evidence and tested fully in Examination.

## 6. OTHER MATTERS

6.1 CLdN has identified the following additional initial matters that it considers require further consideration:

6.1.1 Article 34 of the draft DCO seeks to modify and repeal local legislation so that its provisions do not have general effect within the order limits of the DCO Application. As a statutory harbour authority, CLdN has an interest in

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<sup>14</sup> NE response to statutory consultation (February 2022).

<sup>15</sup> NE response to statutory consultation (February 2022).

<sup>16</sup> NE response to statutory consultation (February 2022).

<sup>17</sup> NE response to statutory consultation (February 2022).

<sup>18</sup>By way of an example, Dibden Bay project in Southampton and the Bathside Bay project in East Anglia.



modifications to local harbour legislation. CLdN notes that new documentation including local legislation was accepted by the Examining Authority on 6 April 2023. CLdN accordingly reserves its right to make representations in respect of changes to this legislation in due course.

6.1.2 Article 43 and Schedule 4 together give effect to the benefit of protective provisions. Despite ABP's clear acknowledgement of CLdN's established operations, and CLdN submitting two representations during the pre-application period outlining its concerns with respect to the impact on its operations, CLdN notes that there are no protective provisions in the draft DCO for the benefit of CLdN and its statutory undertaking. ABP has invited no discussions to date with respect to protective provisions and safeguarding CLdN's interests (which of themselves comprise operations of national significance). It is noted that the development consent order for the Able Marine Energy Park contained protective provisions to protect CLdN against interruptions to its scheduled services, during construction in particular<sup>19</sup>.

6.1.3 Schedule 2 to the draft DCO includes Requirements that must be discharged by the relevant planning authority. The matters approved pursuant to those Requirements are likely to have an impact on CLdN's operations and it must be in all parties' interests to ensure that such proposals have due regard to CLdN's interests and for the proper planning of the area. Accordingly, CLdN reserves its position with respect to seeking status as a statutory consultee on a number of the DCO Requirements.

## 7. CONCLUSION

For the reasons set out above, CLdN has a variety of material concerns about ABP's proposals and the adequacy of the information provided and therefore objects to the DCO Application in its current form. CLdN reserves its right to submit further representations once the Examination commences.

**19 April 2023**

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<sup>19</sup> Schedule 9, Part 6 of The Able Marine Energy Park Development Consent Order 2014.



Pinsent Masons

**APPENDIX 1**

North Killingholme Haven Harbour Empowerment Order 1994

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STATUTORY INSTRUMENTS

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**1994 No. 1693**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The North Killingholme Haven  
Harbour Empowerment Order 1994**

*Made* - - - - 27th June 1994

*Coming into force* - - 8th July 1994

Whereas Simon Storage Group Limited have applied for a harbour empowerment order under section 16 of the Harbours Act 1964(1);

And whereas the Secretary of State for Transport having, in pursuance of paragraph 1A of Schedule 3 to the said Act(2), determined that the application is made in relation to a project which falls within Annex II to Council Directive 85/337/EEC(3) on the assessment of the effects of certain public and private projects on the environment and whose characteristics require that it should be made subject to an environmental assessment, has directed the applicant to supply him with the information referred to in Annex III to the Directive;

And whereas the Secretary of State for Transport has considered the information supplied under the said paragraph 1A;

And whereas objections to the application made pursuant to paragraph 3(a) of the said Schedule 3 have been withdrawn;

And whereas the Secretary of State for Transport is satisfied as mentioned in subsection (5) of the said section 16:

Now, therefore, the Secretary of State for Transport, in exercise of the powers conferred by the said section 16 and now vested in him(4), and of all other powers enabling him in that behalf, hereby makes the following Order:—

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- (1) 1964 c. 40; section 16 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 3,4(1) and 14, and by the Transport and Works Act 1992 (c. 42), Schedule 3, paragraph 2. For the definition of “the Minister” (mentioned in section 16) see section 57(1).
- (2) Schedule 3 was amended by the Transport Act 1981, section 18 and Schedule 6, paragraphs 4(2) to (7) and 12 and by the Transport and Works Act 1992, Schedule 3, paragraph 10. Paragraph 1A was inserted by the Harbour Works (Assessment of Environmental Effects) Regulations 1988 (S. I. 1988/1336), regulations 3 and 4 and amended by S. I. 1992/1421.
- (3) OJ No. L175, 5.7.85, p. 40.
- (4) S. I.1981/238.

## PART I

### PRELIMINARY

#### Citation and commencement

1. This Order may be cited as the North Killingholme Haven Harbour Empowerment Order 1994 and shall come into force on 8th July 1994.

#### Interpretation

2. (1) In this Order, except where the context otherwise requires—

“A.B. Ports” means Associated British Ports;

“the Company” means Simon Storage Group Limited (which is registered in England and Wales with the number 278815);

“deposited plan” and “deposited sections” mean respectively the plan and sections prepared in triplicate signed by an Assistant Secretary in the Department of Transport and marked “Plan and sections referred to in the North Killingholme Haven Harbour Empowerment Order 1994” of which copies are deposited at the offices of the Secretary of State for Transport, the offices of A.B. Ports and the registered office of the Company;

“the Harbour Master” means the harbour master appointed by A.B. Ports under section 5 (Appointment of harbour master) of the British Transport Docks Act 1972<sup>(5)</sup> and includes his deputies and assistants;

“the jetty premises” means the works and the land and premises at any time belonging to, or vested in, the Company and used or set aside for the purposes of, or in connection with, the commercial management and operation of the works;

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

“limits of deviation” means the limits of deviation shown on the deposited plan;

“the river” means the river Humber;

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

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

“vessel” means a ship, boat or raft of any description and includes any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily); and includes a hovercraft within the meaning of the Hovercraft Act 1968<sup>(6)</sup> or any other amphibious vehicle or a seaplane;

“the works” means Works Nos 1 and 2 authorised by article 5 (Power to construct works) of this Order, and any works constructed under article 7 (Subsidiary works) of this Order for or in connection with or subsidiary to either of those works and includes those works as reconstructed, renewed, altered, extended, enlarged, added to, replaced or relaid under paragraph (2) of the said article 5.

(2) Any reference in this Order to a distance or length in any description of works, powers or land shall be construed as if the words “or thereabouts” were inserted after that reference.

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(5) 1972 c. xxxvii.

(6) 1968 c. 59.

### **Incorporation of Harbours, Docks and Piers Clauses Act 1847**

3. (1) The Harbours, Docks, and Piers Clauses Act 1847<sup>(7)</sup> (except sections 6 to 19, 20 to 25, 31, the proviso to section 32, sections 33, 42, 48 to 50, 60 to 63, 66, 67, 73, and 77 to 82), so far as applicable to the purposes and not inconsistent with the provisions of this Order, is hereby incorporated with this Order subject to the modifications stated in paragraphs (2) to (5) below.

(2) Section 69 shall have effect as if for the words from “shall forfeit” to the end of the section there were substituted the words “shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale”.

(3) The byelaws which the Company may make by virtue of section 83 shall include such byelaws as they think fit for all or any of the following purposes—

- (a) the management, control and regulation of the jetty premises and of goods, wares, merchandise and vehicles using or passing over or frequenting or resorting to the jetty premises;
- (b) the control and regulation of vessels being within the prescribed limits;
- (c) the conduct of persons using or being on the jetty premises and the control or prohibition of smoking by such persons;
- (d) safety precautions to be observed by persons on vessels being within the prescribed limits or persons using or being on the jetty premises.

(4) (a) Section 85 shall have effect as if for the words from “in the prescribed manner” to the end there were substituted the words “by the Secretary of State”.

(b) The provisions of section 236(3) to (8) and (11) and 238 of the Local Government Act 1972<sup>(8)</sup> shall apply to any byelaws made by the Company under the said section 85 as incorporated with this Order; and those provisions, in their application to any such byelaws, shall have effect as if the references to a local authority were references to the Company.

(c) Subsection (7) of the said section 236, in its application to any such byelaws, shall have effect as if—

(i) after the words “The confirming authority may confirm” there were inserted the words “with or without modifications”; and

(ii) there were added at the end the following proviso—

“Provided that, where the Secretary of State proposes to make a modification to a byelaw which appears to him to be substantial, he shall inform the Company and require them to take any steps which he considers to be necessary for informing persons likely to be concerned with the modification; and he shall not confirm the byelaws until such period has elapsed as he thinks reasonable for the consideration of, and comment upon, the proposed modification by the Company and by any other persons who have, or are likely to have, been informed of it.”.

(d) The said section 238, in its application to any such byelaws, shall have effect as if the reference to the proper officer of the authority were a reference to the secretary of the Company.

(5) In construing the provisions of the said Act of 1847 as incorporated with this Order—

(a) the expression “the special Act” means this Order, the expressions

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(7) 1847 c. 27.

(8) 1972 c. 70.

“the Promoters of the undertaking” and “the undertakers” mean the Company, and the expression “the harbour, dock or pier” means the works;

- (b) the expression “the harbour master” means the person appointed by the Company to be the Dockmaster with reference to the works (in this Order referred to as “the Dockmaster of the Company”);
- (c) the meaning of the word “vessel” as defined in this Order shall be substituted for the meaning assigned to that word by section 3 of the Act of 1847;
- (d) section 52 of the Act of 1847 shall extend to empower the Dockmaster of the Company to give directions prohibiting the mooring of vessels within the prescribed limits;
- (e) the reference in section 53 of the Act of 1847 to notice of a direction by the harbourmaster served upon a vessel shall not be construed as requiring the notice to be in writing if in the circumstances it is not reasonably practicable for the Dockmaster of the Company to serve a written notice on the master, and in such circumstances the said reference may be construed as including the communication of the notice orally or otherwise.

## PART II

### LIMITS OF JURISDICTION

#### **Limits of jurisdiction**

4. (1) The area within which the Company shall exercise jurisdiction as a harbour authority and within which the powers of their Dockmaster shall be exercised shall comprise the jetty premises together with so much of the river as lies within the area of water adjacent to those premises and which is bounded by an imaginary line 100 metres from the works.

(2) The jurisdiction of the Company as a harbour authority and the powers of their Dockmaster conferred under or by virtue of this Order shall be exercised only in relation to vessels going to, moored at or departing from the works and, without prejudice to the generality of the foregoing, shall not be exercised in relation to any vessel navigating or at anchor in the river unless any such vessel is obstructing the approaches to the works.

(3) In case of conflict between any direction given by the Harbour Master and any direction given by the Dockmaster of the Company, the direction of the Harbour Master shall prevail.

## PART III

### WORKS

#### **Power to construct works**

5. (1) Subject to the provisions of this Order, the Company may, in the lines or situations and within the limits of deviation and according to the levels shown on the deposited sections, make and maintain the works hereinafter described, in the district of Glanford, with all necessary works and conveniences connected therewith—

#### *Work No. 1*

A fixed jetty of open construction with bearing piles, breasting and mooring structures, ramps and pontoons, and a reinforced concrete and steel platform commencing at point TA 1667020702 and terminating at point TA 1699420291, and having an overall length of 523 metres and an overall width of 104 metres.

*Work No. 2*

An approach bridge to Work No. 1 of open construction with bearing piles and a reinforced concrete and steel platform, commencing at point TA1653220264 and terminating at point TA1678820467, and having an overall length of 327 metres and an overall width of 40 metres.

(2) Subject to the provisions of this Order, the Company may within the limits of deviation reconstruct, renew, alter, extend, enlarge, add to, replace or relay the works and may maintain the same as reconstructed, renewed, altered, extended, enlarged, added to, replaced or relaid.

(3) The points specified in paragraph (1) above are Ordnance Survey National Grid reference points.

**Power to deviate**

6. In the construction of the works the Company may deviate laterally from the lines or situations thereof shown on the deposited plan to any extent not exceeding the limits of deviation and may deviate vertically from the levels of those works shown on the deposited sections to any extent not exceeding 3 metres upwards and to any extent downwards as may be found necessary or convenient.

**Subsidiary works**

7. Subject to the provisions of this Order, the Company may from time to time within the limits of deviation erect, construct and maintain whether temporarily or permanently all such works and conveniences as may be requisite or expedient for the purposes of or in connection with the construction, maintenance or use of the works.

**Period for commencement of works**

8. If the works are not commenced within ten years from the coming into force of this Order or such extended time as the Secretary of State may on the application of the Company allow, then on the expiration of that period or such extended time (as the case may be) the powers by this Order granted to the Company for making and maintaining the works shall cease.

**Works to be within county of Humberside etc.**

9. (1) So much of the works as are beyond mean low water shall be deemed to be within—
- (a) the county of Humberside;
  - (b) the district of Glanford;
  - (c) the petty sessional division of Barton on Humber;
  - (d) the Ferry electoral division; and
  - (e) the Humber ward.

(2) During the period between the coming into force of this Order and the date when the works have been completed each of the areas mentioned in paragraph (1) above shall be deemed to include all lands beyond mean low water which are within the limits of deviation.

(3) Nothing in this article shall require the performance of any functions under the Ordnance Survey Act 1841(9) until the Company have certified in writing to the Director General of Ordnance Survey that the works have been completed.

### **Power to dredge**

**10.** (1) Subject to article 25 (Crown rights) of this Order, the Company may, for the purposes of constructing and maintaining the works from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the river as adjoin or are near to the works and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894<sup>(10)</sup>) from time to time dredged by them.

(2) No materials so dredged, other than those dredged for the purpose of constructing the works or filling in and reclaiming from the harbour and foreshore so much of the harbour and foreshore as is situated within the limits of deviation, shall be deposited below the level of high water except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Secretary of State.

(3) The Company shall not exercise the powers conferred on them by this article except with the written consent of A.B.Ports (which it shall not unreasonably withhold) and in accordance with such conditions and restrictions as may be reasonably prescribed by A.B.Ports.

### **Obstruction of works**

**11.** Any person who intentionally obstructs any person acting under the authority of the Company in setting out the lines of the works, or who interferes with, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out, shall for every such offence be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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

**12.** (1) A tidal work shall not be constructed, reconstructed, renewed, added to, 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 him before the work is begun.

(2) If a tidal work is constructed, reconstructed, renewed, added to, extended, enlarged, altered, replaced or relaid in contravention of this article—

- (a) the Secretary of State may by notice in writing require the Company at their own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if, on the expiration of 30 days from the date when the notice is served upon the Company they have failed to take reasonable steps to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or
- (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 Company.

### **Lights on tidal works during construction**

**13.** (1) The Company shall at or near a tidal work during the whole time of the construction, reconstruction, renewal, addition, extension, enlargement, alteration, replacement or relaying thereof or addition thereto, 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 or A.B.Ports or as, failing agreement between them, the Secretary of State shall from time to time direct.

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(10) 1894 c. 60.



(2) If the Company fail to comply with any requirement of a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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

**14.** (1) In case of injury to or destruction or decay of a tidal work or any part thereof the Company shall as soon as reasonably practicable notify A.B.Ports and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as A.B.Ports shall from time to time direct.

(2) If the Company fail to notify A.B.Ports as required by this article or to comply with any requirement of a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### **Abatement of works abandoned or decayed**

**15.** (1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State or A.B.Ports may by notice in writing require the Company at their own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State or A.B.Ports or as, failing agreement between them, 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 a 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 or A.B.Ports may include that part of the work, or any portion thereof, in any notice under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Company, they have failed to comply with the requirements of the notice, the Secretary of State or A.B.Ports may execute the works specified in the notice and any expenditure incurred by him or A.B.Ports in so doing shall be recoverable from the Company.

#### **Survey of tidal works**

**16.** If the Secretary of State or A.B.Ports deems it expedient to do so, the Secretary of State or A.B.Ports may order a survey and examination of a tidal work or of the site upon which it is proposed to construct the work, and any expenditure incurred by the Secretary of State or A.B.Ports in any such survey and examination shall be recoverable from the Company.

#### **Permanent lights on tidal works**

**17.** (1) After the completion of a tidal work the Company shall at the outer extremity thereof 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 A.B.Ports may from time to time direct.

(2) If the Company fail to comply in any respect with a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## PART IV

### MISCELLANEOUS AND GENERAL

#### **Power to mortgage jetty premises**

18. The Company may mortgage, charge or otherwise encumber the jetty premises.

#### **Power to make charges**

19. (1) Subject to paragraph (2) below, the Company may make such reasonable charges as they think fit for services and facilities provided by them.

(2) Paragraph (1) above does not authorise the levying of ship, passenger or goods dues within the meaning of the Harbours Act 1964.

(3) Nothing in this article shall affect any power of the Company to demand, take or recover charges which they may have under or by virtue of any enactment or rule of law.

#### **Further provisions as to byelaws**

20. (1) The Company shall consult A.B.Ports and the National Rivers Authority not less than three months before making any byelaw under or by virtue of this Order.

(2) The Company shall not under or by virtue of this Order—

- (a) make any byelaw for the control or regulation of vessels not going to, moored at or departing from the works;
- (b) make any byelaw which in the reasonable opinion of the Harbour Master would conflict with any byelaws made by A.B.Ports or with any powers exercisable by A.B.Ports or the Harbour Master for the regulation of navigation in the river; or
- (c) make any byelaw regulating any vessel owned or used by A.B.Ports or regulating the conduct of officers of A.B.Ports whilst in the exercise of their duties as such.

(3) The Company shall not make any byelaw under or by virtue of this Order so as to conflict with any byelaws of the National Rivers Authority.

#### **Local inquiries**

21. The Secretary of State may cause to be held such inquiries as he may consider necessary in regard to the exercise of any powers or duties conferred or imposed upon him and the giving of any consent or approval under this Order, and subsections (2) to (5) of section 250 of the Local Government Act 1972(11) shall apply to any such inquiry as if it were an inquiry held in pursuance of subsection (1) of that section and the Company were a local authority.

#### **Defence of due diligence**

22. (1) (a) In proceedings for an offence under any provision of this Order mentioned in subparagraph (b) below it shall be a defence for the Company to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

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(11) Subsection 2 has been amended by the Statute Law (Repeals) Act 1989 (c. 43), Schedule 1, Part IV; subsection (3) by the Criminal Justice Act 1982 (c. 48), sections 38 and 46; and subsection (4) by the Housing and Planning Act 1986 (c. 63), Schedule 12, Part III.

- (b) The provisions referred to in sub-paragraph (a) above are— article 13 (Lights on tidal works during construction); article 14 (Provision against danger to navigation); article 17 (Permanent lights on tidal works).

- (2) If in any case the defence provided by sub-paragraph (a) of paragraph

(1) above involves the allegation that the commission of the offence was due to the act or default of another person, the Company shall not, without leave of the court, be entitled to rely on that defence unless, within a period of seven clear days before the hearing, they have served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in their possession.

### **Power to remove goods**

**23.** (1) If any goods are left on or in any part of the jetty premises the Company may require the owner of the goods to remove them, and if the goods are not so removed within six hours after such requirement the Company may cause them to be removed to the Company's or any other public warehouse or store, and such removal shall be carried out at the expense and risk of the owner:

Provided that notwithstanding such removal on behalf of the Company, the goods shall be subject to a lien for the cost of removal, and for any charges payable to the Company by the owner in respect of the goods.

- (2) In this article, "goods" includes vehicles and equipment.

### **Obstruction of officers**

**24.** (1) Any person who—

- (a) intentionally obstructs an officer of the Company acting in pursuance of this Order; or
- (b) without reasonable excuse fails to comply with a requirement properly made by such an officer; or
- (c) without reasonable excuse fails to give such an officer any information which he may require for the purpose of the performance of his functions; shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) Any person who in giving such information makes a statement which he knows to be false shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **Crown rights**

**25.** (1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular and without prejudice to the generality of the foregoing, nothing herein contained shall authorise any person to take, use, enter upon or in any manner interfere with, any land or hereditaments or any rights of whatsoever description (including any portion of the shore or bed of the sea or of 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) above may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

### **Saving for Trinity House**

**26.** None of the provisions of this Order shall prejudice or derogate from any of the rights, duties or privileges of Trinity House.

### **Protection of interests**

**27.** (1) The Schedule to this Order shall have effect for protecting the interests of the bodies specified in that Schedule (being bodies who may be affected by other provisions of this Order).

(2) Where under the Schedule to this Order any difference is to be determined by arbitration, the difference shall be referred to, and settled by, a single arbitrator to be agreed between the parties or, in default of agreement, to be appointed on the application of either party, after notice in writing to the other, by the President of the Institution of Civil Engineers.

### **Special exemptions**

**28.** Section 5 (Removal of obstructions) of the Humber Conservancy Act 1899(**12**) and section 6 (No erections in Humber below river lines or without license above river lines) of the Humber Conservancy Act 1905(**13**) shall not apply to the works, and section 8 (Sand &c. not to be removed from bed or foreshore of River Humber without license of Commissioners) of the said Act of 1905 shall not apply to the exercise by the Company of the powers of article 10 (Power to dredge) of this Order.

Signed by authority of the Secretary of State for Transport

27th June 1994

*J. D. Henes*  
An Under Secretary in the  
Department of Transport

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(12) 1899 c. cci.  
(13) 1905 c. clxxix.

## SCHEDULE

### PROTECTIVE PROVISIONS

Article 27(1)

#### Part I

#### PROTECTION OF ASSOCIATED BRITISH PORTS

1. In this Part of this Schedule—

“accumulation” means any accumulation of silt or other material which constitutes an impediment to navigation;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying, and removal, and

“constructed” shall be construed accordingly;

“erosion” means any erosion of the bed or banks of the river or any jetty or other structure of whatever nature owned or occupied by A.B. Ports;

“plans” includes sections, descriptions, drawings and specifications.

2. (1) Before commencing the construction of a tidal work the Company shall furnish to A.B.Ports for its approval, which it shall not unreasonably withhold, plans of the work showing the general mode of construction and such work shall not be constructed otherwise than in accordance with such plans as may be approved by A.B.Ports or as may be determined as hereinafter provided and all such works shall be executed to the reasonable satisfaction of A.B.Ports.

(2) When submitting plans to the Secretary of State pursuant to article 12 (Tidal works not to be executed without approval of Secretary of State) of this Order, the Company shall send a copy thereof to A.B.Ports and the Company shall, on receipt of approval of plans or of any conditions or restrictions imposed under that article, send a copy to A.B.Ports.

(3) In the event of A.B.Ports failing to express its disapproval of any plans within 56 days after they have been delivered to it under this paragraph, it shall be deemed to have approved them.

3. The Company shall give to A.B.Ports not less than fourteen days' written notice of their intention to commence the construction of a tidal work and, not more than fourteen days after completion of such construction, shall give to A.B.Ports written notice of such completion.

4. The Company shall at all reasonable times during construction of the works and thereafter allow A.B.Ports, its servants and agents, access to the works and all reasonable facilities for inspecting any tidal work.

5. After the purpose of any temporary works has been accomplished the Company shall with all reasonable dispatch, or after a reasonable period of notice in writing from A.B.Ports requiring them 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 Company and, on their failing so to do within a reasonable period after receiving such notice, A.B.Ports may remove the same and charge the Company with the reasonable expense of so doing, which expense the Company shall repay to A.B.Ports.

6. (1) If, during the construction of a tidal work or within 10 years after the completion of such work and wholly or partly in consequence of its construction or, if during the exercise of the powers conferred by article 10 (Power to dredge) of this Order or within 10 years thereafter and wholly or partly in consequence thereof there is caused or created an accumulation or erosion, the Company, if so requested by A.B.Ports before or within the period of 10 years after such completion or exercise, shall remedy such accumulation or erosion in the manner specified in sub-paragraph (3) below and, if they refuse or fail so to do, A.B.Ports may itself cause the work to be done and may recover the reasonable cost thereof from the Company.

(2) Should any accumulation or erosion in consequence of such construction or exercise arise within the said period of 10 years and be remedied in accordance with sub-paragraph (3) below, any recurrence of such accumulation or erosion shall from time to time be so remedied by the Company during the said period of 10 years and at any time thereafter, save that the Company's obligation under this paragraph shall cease in the event that following the remedying of any accumulation or erosion a period of 10 years elapses without any further accumulation or erosion being caused or created in consequence of such construction or exercise.

(3) For the purposes of sub-paragraphs (1) and (2) above—

- (a) in the case of an accumulation, the remedy shall be its removal; and
- (b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be necessary.

(4) In the event that surveys, inspections, tests and sampling carried out pursuant to paragraph 8(1)(b) of this Part of this Schedule establish that such accumulation or erosion would have been caused in any event by factors other than the construction of a tidal work or the exercise of the powers conferred by the said article 10, the Company shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction or exercise as aforesaid.

(5) For the purposes of sub-paragraph (1) above the date of completion of a work shall be the date on which it is brought into use.

7. The Company shall—

- (a) 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;
- (b) provide and maintain on the works such fog-signalling apparatus as may be reasonably required by A.B.Ports and shall properly operate such apparatus during periods of restricted visibility for the purpose of warning vessels of the existence of the works; and
- (c) afford to A.B.Ports such facilities as it may reasonably require for the placing and maintenance on the works of signals, tide-boards, tide-gauges or other apparatus for the safety or benefit of navigation.

8. (1) Without prejudice to the other provisions of this Part of this Schedule, the Company shall be responsible for, and make good to A.B. Ports, all losses, costs, charges, damages and expenses however caused (including a 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 or the regulation of the exercise of powers conferred by article 10 (Power to dredge) of this Order by A.B.Ports or its duly authorised representative;
- (b) the carrying out of surveys, inspections, tests and sampling within and of the river (including the bed and banks thereof)—

- (i) to establish the marine conditions prevailing prior to the construction of any of the tidal works in such area of the river as A.B.Ports has reasonable cause to believe may subsequently be affected by any accumulation or erosion which the Company are liable to remedy under paragraph 6 of this Part of this Schedule; and
  - (ii) where A.B.Ports has reasonable cause to believe that the construction of any of the tidal works or the exercise of the powers conferred by the said article 10 is causing or has caused any accumulation or erosion as aforesaid;
- (c) the construction of any of the tidal works or the exercise of the powers conferred by the said article 10, the failure of any of the tidal works or the undertaking by A.B.Ports of works or measures to prevent or remedy danger or impediment to navigation or damage to any property of A.B.Ports arising from such construction, exercise or failure;
- (d) any act or omission of the Company or their servants or agents whilst engaged in the construction of any of the tidal works or the exercise of the powers conferred by the said article 10.
- (2) Without prejudice to the generality of sub-paragraph (1) of this paragraph, the Company shall indemnify A.B.Ports from and against all claims and demands arising out of, or in connection with, such construction, exercise, failure or act or omission as is mentioned in that sub-paragraph.
- (3) Nothing in this paragraph shall impose any liability on the Company to the extent that any losses, costs, charges, damages, expenses, claims or demands as referred to in sub-paragraphs (1) and (2) above are attributable to negligence on the part of A.B.Ports or of any person in its employ or of its contractors or agents.
- (4) A.B.Ports shall give to the Company notice of any claim or demand for which the Company may be liable under this paragraph and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the Company.
- 9.** The fact that any work or thing has been executed or done with the consent of A.B.Ports and in accordance with any conditions or restrictions prescribed by A.B.Ports or in accordance with plans approved or deemed to be approved by A.B.Ports or to its satisfaction or in accordance with any directions or award of an arbitrator or in accordance with any plans approved by the Secretary of State and any conditions or restrictions imposed by him, shall not relieve the Company from any liability under the provisions of this Part of this Schedule.
- 10.** With the exception of any duty owed by A.B.Ports to the Company expressly provided for in the foregoing provisions of this Part of this Schedule, nothing in this Order shall be construed as imposing upon A.B. Ports, either directly or indirectly, any form of duty or liability to which A.B.Ports would not otherwise be subject which is enforceable by proceedings before any court.
- 11.** Nothing in this Order shall affect prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, A.B.Ports or the Harbour Master at the commencement of this Order or any title of A.B. Ports in, to or over any lands or foreshore held or acquired by it.
- 12.** Any difference arising between the Company and A.B. Ports under this Part of this Schedule shall be determined by arbitration.

## Part II

### PROTECTION OF NATIONAL RIVERS AUTHORITY

**1.** In this Part of this Schedule—

“accumulation” means any accumulation of silt or other material which affects the operation of any outfall;

“the Authority” means the National Rivers Authority;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying and removal; and

“construct” and “constructed” have corresponding meanings;

“drainage work” means any watercourse and includes any land used for providing flood storage capacity for any watercourse and any bank, wall, embankment or other structure or appliance constructed or used for defence against water (including sea water);

“erosion” means any erosion of the bed or banks of the river or any jetty or other structure of whatever nature, including the Humber sea defences, under the jurisdiction of the Authority for the purposes of the Water Resources Act 1991(14);

“the fishery” means fish in, or migrating to or from, any river and the spawn, habitat or food of such fish;

“plans” includes sections, descriptions, drawings, specifications and method statements and other such particulars;

“specified work” means so much of any permanent or temporary work or operation authorised by this Order (which includes, for the avoidance of doubt, any dredging and any exploratory geotechnical investigations that may be undertaken) as is undertaken between low water mark and the Humber Bank sea defence embankment or is otherwise situated in, on, under, over or within 16 metres of a drainage work or which is otherwise likely to—

- (a) affect any drainage work or the volumetric flow rate of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse;
- (c) cause obstruction to the free passage of fish in any watercourse;
- (d) affect the conservation, distribution or use of water resources; and

“watercourse” has the meaning given in section 221(1) of the Water Resources Act 1991.

**2.** (1) Before beginning to construct any specified work, the Company shall submit to the Authority plans of the work and such further particulars available to them as the Authority may 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 Authority, or determined in accordance with paragraph 16 below.

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

- (a) shall not be unreasonably withheld;
- (b) shall be deemed to have been given if it is neither given nor refused in writing and with a statement of the grounds for refusal within two months of the submission of plans for approval;
- (c) may be given subject to such reasonable requirements as the Authority may impose for the protection of any drainage work or fishery or water resources, for the prevention of flooding and water pollution and in the discharge of its environmental and recreational duties.

**3.** Without prejudice to the generality of paragraph 2 above, the requirements which the Authority may impose under that paragraph include—

- (a) conditions as to the time at which and the manner in which any work is to be carried out;
- (b) conditions requiring the Company at their own expense—

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(14) 1991 c. 57.



- (i) to provide or maintain means of access for the Authority;
- (ii) to construct such protective works whether temporary or permanent during the construction of the specified works (including the provision of flood banks, walls or embankments and other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary to safeguard any drainage work against damage or 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;
- (iii) to provide, maintain and operate arrangements for dealing with any pollution incidents which may occur;
- (iv) to undertake monitoring of any accumulation, scouring or erosion which may be caused by any specified work.

4. Any specified work, and all protective works required by the Authority under paragraph 2 above, shall be constructed to the reasonable satisfaction of the Authority, and the Authority shall be entitled by its officer to watch and inspect the construction of such works.

5. The Company shall give to the Authority notice in writing of the commencement of any specified work not less than 14 days prior to its commencement and notice in writing of its completion not later than 7 days after such completion.

6. (1) If, during the construction of a specified work or within 10 years after the completion of such work and wholly or partly in consequence of its construction there is caused or created an accumulation or erosion, the Company, if so requested by the Authority before or within the period of 10 years after such completion shall remedy such accumulation or erosion in the manner specified in sub-paragraph (3) below and, if they refuse or fail so to do, the Authority may itself cause the work to be done and may recover the reasonable cost thereof from the Company.

(2) Should any accumulation or erosion in consequence of such construction arise within the said period of 10 years and be remedied in accordance with sub-paragraph (3) below, any recurrence of such accumulation or erosion shall from time to time be so remedied by the Company during the said period of 10 years and at any time thereafter, save that the Company's obligation under this paragraph shall cease in the event that following the remedying of any accumulation or erosion a period of 10 years elapses without any further accumulation or erosion being caused or created in consequence of such construction.

(3) For the purposes of sub-paragraphs (1) and (2) above—

- (a) in the case of an accumulation, the remedy shall be its removal; and
- (b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be reasonably required by the Authority.

(4) In the event that surveys, inspections, tests or sampling establish to the reasonable satisfaction of the Authority that such accumulation or erosion would have been caused in any event by factors other than the construction of a specified work, the Company shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction or exercise as aforesaid.

7. For the purposes of paragraphs 5 and 6(1) above the date of completion of a work shall be the date on which it is brought into use.

8. (1) Any specified work which provides a defence against flooding shall be maintained by and at the expense of the Company to the reasonable satisfaction of the Authority.

(2) If any such work is no longer required by the Company or is not maintained to the reasonable satisfaction of the Authority, the Authority may by notice in writing require the Company at the

Company's own expense to repair and restore the work, or any part thereof, or to remove the work and restore the site (including any sea defences) to its former condition, to such an extent and within such limits as the Authority think proper.

(3) If, on the expiration of 30 days from the date on which a notice is served upon the Company, the Company have failed to comply with the requirements of the notice, the Authority may execute the works specified in the notice, and any expenditure incurred by it in so doing shall be recoverable from the Company.

**9.** If by reason of the construction of any specified work or by reason of the failure of that work or of the Company to maintain it the efficiency of any drainage work for flood defence purposes is impaired or that work is damaged, such impairment or damage shall be made good by the Company to the reasonable satisfaction of the Authority and, if the Company fail to do so, the Authority may make good the same and recover from the Company the expense reasonably incurred by it in so doing.

**10.** In the event that any works are constructed by the Authority in relation to a sea defence, the Company shall have no claim against the Authority in respect of any additional costs which may be incurred by the Company as a result of such works.

**11.** The Company shall indemnify the Authority in respect of all costs, charges and expenses which the Authority 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;
- (b) in the inspection of the construction of the specified works or any protective works required by the Authority under this Part of this Schedule.

**12.** (1) Without prejudice to the other provisions of this Part of this Schedule the Company shall indemnify the Authority against all claims, demands, proceedings, costs, damages or expenses or loss which may be made or taken against, or recovered from or incurred by, the Authority by reason of the construction of any of the works or by reason of their maintenance, repair, alteration, renewal, removal, existence or use or any act or omission of the Company, their contractors, agents, workmen or servants whilst engaged upon any such work.

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

**13.** (1) Plans of any specified work submitted by the Company to the Secretary of State under article 12 (Tidal works not to be executed without approval of Secretary of State) of this Order shall be consistent with the plans of that work submitted to the Authority under this Part of this Schedule and, if, on the submission of plans to the Secretary of State he requires any alteration of the plans as submitted to the Authority or approved by it or settled under this Part of this Schedule, or of any requirement relating thereto, the Company shall inform the Authority of such alteration.

(2) When submitting any plans to the Secretary of State under the said article 12, the Company shall send a copy of the plans to the Authority; and the Company shall, on receipt of approval of plans or of any conditions or restrictions imposed under that article, send a copy to the Authority.

**14.** The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the Authority, 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.

**15.** Except as otherwise provided by this Part of this Schedule, nothing in this Order shall prejudice or affect in their application to the Authority the powers, rights, jurisdiction and obligations

conferred, arising or imposed under the Land Drainage Act 1991<sup>(15)</sup>, the Salmon and Freshwater Fisheries Act 1975<sup>(16)</sup>, the Water Resources Act 1991 or any other enactment, byelaw or regulation relating to the Authority.

16. Any difference arising between the Company and the Authority under this Part of this Schedule shall be determined by arbitration.

## Part III

### PROTECTION OF POWERGEN PLC

1. In this Part of this Schedule—

“accumulation” means any accumulation of silt or other material which constitutes an impediment to the operation or maintenance of the PowerGen works;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying and removal;

“erosion” means any erosion of the bed or banks of the river in the immediate vicinity of the PowerGen works affecting the operation and stability of those works;

“PowerGen” means PowerGen Plc;

“the PowerGen works” means any of the works PowerGen is empowered to construct under Part II of the Killingholme Generating Stations (Ancillary Powers) Act 1991<sup>(17)</sup>.

2. (1) If, during the construction of a tidal work or within 10 years after the completion of such work and wholly or partly in consequence of its construction or, if during the exercise of the powers conferred by article 10 (Power to dredge) of this Order or within 10 years thereafter and wholly or partly in consequence thereof there is caused or created an accumulation or erosion, the Company, if so requested by PowerGen, before or within the period of 10 years after such completion or exercise, shall remedy such accumulation or erosion in the manner specified in sub-paragraph (3) below and, if they refuse or fail so to do, PowerGen may itself cause the work to be done and may recover the reasonable cost thereof from the Company.

(2) Should any accumulation or erosion in consequence of such construction or exercise arise within the said period of 10 years and be remedied in accordance with sub-paragraph (3) below, any recurrence of such accumulation or erosion shall from time to time be so remedied by the Company during the said period of 10 years and at any time thereafter, save that the Company’s obligation under this paragraph shall cease in the event that following the remedying of any accumulation or erosion a period of 10 years elapses without any further accumulation or erosion being caused or created in consequence of such construction or exercise.

(3) For the purposes of sub-paragraphs (1) and (2) above—

(a) in the case of an accumulation, the remedy shall be its removal; and

(b) in the case of erosion, the remedy shall be the carrying out of such protective works or measures as may be necessary and the reimbursing to PowerGen of its reasonable costs of carrying out such reconstruction works as may be necessary:

Provided that in the event that surveys, inspections, tests or sampling establish to the reasonable satisfaction of PowerGen that such accumulation or erosion would have been caused in any event by factors other than the construction of a tidal work or the exercise of the powers conferred by the said article 10, the Company shall be liable to remedy such accumulation

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<sup>(15)</sup> 1991 c. 59.

<sup>(16)</sup> 1975 c. 51.

<sup>(17)</sup> 1991 c. viii.

or erosion only to the extent that the same is attributable to such construction or exercise as aforesaid.

(4) For the purposes of sub-paragraph (1) above the date of completion of a work shall be the date on which it is brought into use.

3. (1) This paragraph applies where—

(a) either—

(i) any costs, charges, damages or expenses are occasioned to or reasonably incurred by PowerGen by reason of—

(A) the failure of the works; or

(B) any act or omission of the Company or of any persons in their employment or of their contractors or others whilst engaged upon the construction or maintenance of the works or upon operations carried out under article (Power to dredge) of this Order; or

(ii) any claim or demand arises out of or in connection with the construction or maintenance of the works or any such failure, act or omission as aforesaid; and

(b) as a result of any such failure, act or omission or of the construction or maintenance of the works, any thing forming part of the works or used in connection with the construction or maintenance of the works or in connection with any such operations as aforesaid is carried downstream and causes damage to the PowerGen works.

(2) Where this paragraph applies, then (subject to paragraphs (3) and (4) below) the Company shall—

(a) be responsible for and make good to PowerGen all such costs, charges, damages and expenses as are mentioned in paragraph (1)(a)(i) above; and

(b) indemnify PowerGen from and against all such claims and demands as are mentioned in paragraph (1)(a)(ii) above.

(3) Nothing in this paragraph shall impose any liability on the Company in respect of any such claim or demand in so far as and to the extent to which it is attributable to the act, neglect or default of any person other than the Company, their contractors, agents, workmen or servants.

(4) PowerGen shall give to the Company immediate notice of any such claim or demand as is mentioned in paragraph(1)(a)(ii) above, and no settlement or compromise thereof shall be made except with the consent of the Company who (if they so elect) shall at their expense have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the same.

4. Any difference arising between the Company and PowerGen under this Part of this Schedule shall be determined by arbitration.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order authorises Simon Storage Group Limited to construct and maintain specified works at North Killingholme and to carry out subsidiary works. The specified works, together with adjacent land of the Company used for the business form the “jetty premises”.

The Order defines the limits of jurisdiction of the Company as a harbour authority in relation to the jetty premises and confers various powers on the Company for the operation and maintenance of the works.



Pinsent Masons

**APPENDIX 2**

Humber Sea Terminal (Phase III) Harbour Revision Order 2006

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STATUTORY INSTRUMENTS

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**2006 No. 2604**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Humber Sea Terminal (Phase  
III) Harbour Revision Order 2006**

*Made* - - - - 21st September 2006

*Coming into force* - - 12th October 2006

Humber Sea Terminal Limited has applied for a harbour revision order under section 14 of the Harbours Act 1964(1);

The Secretary of State is satisfied as mentioned in section 14(2)(b) of that Act;

The Secretary of State (being the appropriate Minister under sub-section (7) of section 14(2) of that Act), in exercise of the powers conferred by that section and now vested in him(3) makes the following Order:

**PART 1**

**PRELIMINARY**

**Citation and Commencement**

1.—(1) This Order may be cited as the Humber Sea Terminal (Phase III) Harbour Revision Order 2006 and comes into force on 12th October 2006.

(2) The North Killingholme Haven Harbour Empowerment Order 1994(4) and this Order may be cited together as the Humber Sea Terminal Orders 1994 to 2006.

**Interpretation**

2.—(1) In this Order—

“1994 Order” means the North Killingholme Haven Harbour Empowerment Order 1994;

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(1) 1964 c. 40; section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2 to 4(1) and 14, section 40 and Schedule 12 (Part II) and by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3, paragraph 1. See also the Criminal Justice Act 1982, section 37 and 46.

(2) For the definition of “the Minister” (mentioned in section 14(7)) see section 57(1).

(3) S.I. 1981/238, S.I. 1997/2568 and S.I. 2002/2626.

(4) S.I. 1994/1693.

“A.B. Ports” means Associated British Ports;

“the Company” means Humber Sea Terminal Limited (previously called Simon Storage Group Limited) which is registered in England and Wales with the number 278815;

“deposited plan” and “deposited sections” mean respectively the plan and sections prepared in triplicate signed by the Head of Ports Division in the Department for Transport and marked “Plan and sections referred to in the Humber Sea Terminal (Phase III) Harbour Revision Order 2006” one copy of which is deposited at the offices of the Secretary of State for Transport, one at the principal office of A.B. Ports and one at the registered office of the Company;

“the Dockmaster” means the Dockmaster of the Company at Humber Sea Terminal;

“the Harbour Master” means the harbour master appointed by A.B. Ports under section 5 (Appointment of harbour master) of the British Transport Docks Act 1972<sup>(5)</sup> and includes his deputies and assistants;

“the jetty premises” means the works authorised by the Humber Sea Terminal Orders 1994 to 2006 and the land and premises at any time belonging to, or vested in, the Company and used or set aside for the purposes of, or in connection with, the commercial management and operation of those works;

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

“limits of deviation” means the limits of deviation shown on the deposited plans;

“the river” means the River Humber;

“tidal work” means so much of the works as is on, under or over tidal waters or tidal lands below the level of high water;

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

“vessel” means every description of vessel, however propelled or moved, including a hovercraft (within the meaning of the Hovercraft Act 1968)<sup>(6)</sup>, a hydrofoil vessel and anything constructed or used to carry persons or goods by water; and

“the works” means the works authorised by this Order.

(2) All points, directions, lengths, areas and other measurements stated in this Order (other than the limits of deviation) shall be construed as if the words “or thereabouts” were inserted after each such point, direction, length, area or other measurement.

(3) Reference points specified in this Order shall be construed as references to Ordnance Survey National Grid reference points.

### **Incorporation of the North Killingholme Haven Harbour Empowerment Order 1994**

3. The provisions of Articles 3, and 19 to 25 of the 1994 Order, so far as applicable to the purposes of and not inconsistent with the provisions of this Order, are hereby incorporated with this Order and apply to the works authorised by this Order.

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(5) 1972 c. xxxvii.

(6) 1968 c. 59.



## PART 2

### LIMITS OF JURISDICTION

#### Limits of jurisdiction

4.—(1) The area within which the Company shall exercise jurisdiction as a harbour authority and within which the powers of its Dockmaster shall be exercised shall comprise the jetty premises together with so much of the river as is within the area of water adjacent to those premises and which is bounded by an imaginary line 100 metres from the jetty premises.

(2) The jurisdiction of the Company as a harbour authority and the powers of its Dockmaster conferred under or by virtue of the Humber Sea Terminal Orders 1994 to 2006 shall be exercised only in relation to vessels going to, moored at or departing from the jetty premises and, without prejudice to the generality of the foregoing, shall not be exercised in relation to any vessel navigating or at anchor in the river unless any such vessel is obstructing the approaches to the works.

(3) In case of conflict between any direction given by the Harbour Master and any direction given by the Dockmaster of the Company, the direction of the Harbour Master shall prevail.

## PART 3

### WORKS

#### Power to construct works

5.—(1) The Company may, in the lines or situations and within the limits of deviation and according to the levels shown on the deposited sections, make and maintain the following works, in North Lincolnshire—

*Work No. 1*

A fixed jetty of open construction with bearing piles, breasting and mooring structures, access structures and a reinforced steel or concrete platform commencing at point TA 16813, 20401 and terminating at point TA 16943, 20234, and having an overall length of 211 metres and an overall width of 14 metres.

*Work No. 2*

A reinforced concrete or steel pontoon providing access to Work No. 1 with bearing/restraining piles and access ramps/stairways commencing at point TA 16746, 20373 and terminating at point TA 16843, 20449 and having an overall length of 123 metres and an overall width of 40 metres.

*Work No. 3*

An approach bridge and linkspan from the works constructed pursuant to the 1994 Order to Work No. 2 of open construction with bearing piles and a reinforced concrete and steel platform, commencing at point TA 16615, 20282 and terminating at point TA 16764, 20399 and having an overall length of 190 metres and an overall width of 22 metres.

(2) The Company may within the limits of deviation reconstruct, renew, alter, extend, enlarge, add to, replace or relay the works and may maintain the same as reconstructed, renewed, altered, extended, enlarged, added to, replaced or relaid.

(3) Notwithstanding any provision of the North Killingholme Pier Act 1912<sup>(7)</sup>, the North Killingholme Admiralty Pier Act 1931<sup>(8)</sup> and the Killingholme Jetty Act 1963<sup>(9)</sup> the Company may break out and remove the existing timber jetty structure shown on the deposited plans.

(4) No part of the works shall involve the Company undertaking piling works between 1 November 2006 and 31 January 2007 or 15 October to 15 February inclusive in any subsequent year, unless the carrying out of such piling works between those dates has been approved in writing by the Secretary of State for Transport and English Nature.

(5) The works shall for all purposes form part of the undertaking of the Company.

### **Power to deviate**

6. In the construction of the works the Company may deviate laterally from the lines or situations thereof shown on the deposited plan to the extent of the limits of deviation and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding three metres upwards and to any extent downwards as may be found necessary or convenient.

### **Subsidiary works**

7. The Company may from time to time within the limits of deviation make such trial boreholes or erect, construct and maintain whether temporarily or permanently all such works and conveniences as may be necessary or convenient for the purposes of or in connection with or incidental to the construction, maintenance or use of the works.

### **Period for commencement of works**

8. If the works are not commenced within ten years from the coming into force of this Order or such extended time as the Secretary of State may on the application of the Company allow, then the powers by this Order granted to the Company for making and maintaining the works shall cease except as to so much thereof as is then substantially complete.

### **Works to be within district of North Lincolnshire, etc**

9.—(1) So much of the works as are beyond mean low water shall be deemed to be within—

- (a) the district of North Lincolnshire;
- (b) the petty sessional division of Barton on Humber;
- (c) the Ferry ward.

(2) During the period between the coming into force of this Order and the date when the works have been completed each of the areas mentioned in paragraph (1) above shall be deemed to include all lands beyond mean low water which are within the limits of deviation.

(3) Nothing in this article shall require the performance of any functions under the Ordnance Survey Act 1841<sup>(10)</sup> until the Company has certified in writing to the Director General of Ordnance Survey that the works have been completed.

### **Power to dredge**

10.—(1) Subject to article 20, the Company may, for the purposes of constructing and maintaining the works and of affording access to the works by vessels, from time to time deepen, dredge, scour,

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(7) 1912 c. clxvi.

(8) 1931 c. lxiv.

(9) 1963 c. xxxiii.

(10) 1841 c. 30.

cleanse, alter and improve so much of the bed, shores and channels of the river adjoining or near to the works in accordance with the deposited plans and sections (unless the Secretary of State for Transport and English Nature shall approve otherwise in writing) and may use, appropriate or dispose of the materials from time to time dredged by them.

(2) No materials referred to in this article shall—

- (a) be disposed of in contravention of the provisions of any enactment relating to the disposal of waste; or
- (b) be deposited below the level of mean high-water springs otherwise than in such places and under such conditions and restrictions as may be approved or prescribed by the Secretary of State.

(3) The power to use, appropriate or dispose of materials referred to in this article does not extend to wreck (within the meaning of Part IX (Salvage and Wreck) of the Merchant Shipping Act 1995)(11).

(4) The Company shall not exercise the powers conferred upon them by this article except with the written consent of A.B. Ports (which it shall not unreasonably withhold) and in accordance with such conditions and restrictions as may be reasonably prescribed by A.B. Ports.

### **Obstruction of works**

**11.** Any person who intentionally obstructs any person acting under the authority of the Company in setting out the lines of the works, or who interferes with, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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

**12.—(1)** A tidal work shall not be constructed, reconstructed, renewed, added to, 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 him before the work is begun.

(2) If a tidal work is constructed, reconstructed, renewed, added to, extended, enlarged, altered, replaced or relaid in contravention of this article—

- (a) the Secretary of State may by notice in writing require the Company at its own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if, on the expiration of 30 days from the date when the notice is served upon the Company it has failed to take reasonable steps to comply with the requirements of the notice, the Secretary of State may take the steps specified in the notice; or
- (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 Company.

### **Lights on tidal works during construction**

**13.—(1)** The Company shall at or near a tidal work during the whole time of its construction, reconstruction, renewal, extension, enlargement, alteration, replacement or relaying or the making of any addition to it, exhibit every night from sunset to sunrise such lights, if any, and take such other

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(11) 1995 c. 21.

steps for the prevention of danger to navigation as the Secretary of State and A.B. Ports, or (failing agreement between them) the Secretary of State, shall from time to time direct.

(2) If the Company 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 level 4 on the standard scale.

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

**14.—**(1) In case of injury to or destruction or decay of a tidal work or any part thereof the Company shall as soon as reasonably practicable notify A.B. Ports and shall 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 the Company fail to notify A.B. Ports as required by this article or 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 level 4 on the standard scale.

#### **Abatement of works abandoned or decayed**

**15.—**(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State or A.B. Ports may by notice in writing require the Company at its own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State and A.B. Ports, or (failing agreement between them) 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 a 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 or A.B. Ports may include that part of the work, or any portion thereof, in any notice under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Company, it has failed to comply with the requirements of the notice, the Secretary of State or A.B. Ports may take the steps specified in the notice and may recover the reasonable costs incurred in doing so from the Company.

#### **Survey of tidal works**

**16.** If the Secretary of State or A.B. Ports deems it expedient to do so, the Secretary of State or A.B. Ports may order a survey and examination of a tidal work or of the site upon which it is proposed to construct such a work, and may recover the reasonable costs of that survey and examination from the Company.

#### **Permanent lights on tidal works**

**17.—**(1) After the completion of a tidal work the Company shall at the outer extremity thereof 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 A.B. Ports may from time to time direct.

(2) If the Company fail to comply in any respect with a direction given under this article it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## PART 4

### MISCELLANEOUS AND GENERAL

#### Power to mortgage jetty premises

18. The Company may mortgage, charge or otherwise encumber the jetty premises.

#### Disapplication of regulation 60 of the Conservation (Natural Habitats &c) Regulations 1994

19.—(1) Regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994<sup>(12)</sup> (“the Habitats Regulations”) shall not apply to any planning permission which relates to the works and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995<sup>(13)</sup> 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 the works—

- (a) do not form part of the plan and project which was subject to an appropriate assessment in accordance with regulation 48 of the Habitats Regulations in connection with the making of this Order; and
- (b) are not subject to a further consent, permission or authorisation by a competent authority as defined in the Habitats Regulations.

#### Crown rights

20.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular and without prejudice to the generality of the foregoing, nothing in this Order authorises any person to take, use, enter upon or in any manner interfere with, any land or hereditaments or any rights of whatsoever description (including any portion of the shore or bed of the sea or of 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) above may be given unconditionally or subject to such conditions and upon such terms as may be considered necessary or appropriate.

#### Saving for Trinity House

21. None of the provisions of this Order shall prejudice or derogate from any of the rights, duties or privileges of Trinity House.

#### Protection of interests

22.—(1) The Schedule to this Order shall have effect for protecting the interests of the bodies specified in that Schedule (being bodies who may be affected by other provisions of this Order).

(2) Where under the Schedule to this Order any difference is to be determined by arbitration and a contrary intention is not elsewhere expressed, the difference shall be referred to, and settled by, a single arbitrator to be agreed between the parties or in default of agreement, to be appointed

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<sup>(12)</sup> S.I. 1994/2716.

<sup>(13)</sup> S.I. 1995/418.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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on the application of either party, after giving notice in writing to the other, by the President of the Institution of Civil Engineers.

**Special exemptions**

**23.** Section 5 (Removal of obstructions) of the Humber Conservancy Act 1899<sup>(14)</sup> and section 6 (No erections in Humber below river lines or without licence above river lines) of the Humber Conservancy Act 1905<sup>(15)</sup> shall not apply to the works, and section 8 (Sand &c. not to be removed from bed or foreshore of River Humber without licence of Commissioners) of the latter Act shall not apply to the exercise by the Company of the powers of article 10 of this Order.

Signed by authority of the Secretary of State for Transport

21st September 2006

*Phil Carey*  
Head of Ports Division  
Department for Transport

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<sup>(14)</sup> 1899 c. cci.  
<sup>(15)</sup> 1905 c. clxxix.

SCHEDULE 1

Article 23(1)

PROTECTIVE PROVISIONS

PART 1

PROTECTION OF ASSOCIATED BRITISH PORTS

1. In this Part of this Schedule—

“accumulation” means any accumulation of silt or other material which constitutes an impediment to navigation;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying, and removal, and “construct” and “constructed” shall be construed accordingly;

“erosion” means any erosion of the bed or banks of the river or any jetty or other structure of whatever nature owned or occupied by A.B. Ports;

“plans” includes sections, descriptions, drawings and specifications.

2.—(1) Before commencing the construction of a tidal work the Company shall furnish to A.B. Ports for its approval, which it shall not unreasonably withhold, plans of the work showing the general mode of construction; and that such works

(a) shall not be constructed otherwise than in accordance with such plans as may be approved by A.B. Ports or as may be determined as hereinafter provided, and

(b) shall be executed to the reasonable satisfaction of A.B. Ports.

(2) When submitting plans to the Secretary of State pursuant to article 12 of this Order, the Company shall

(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) In the event of A.B. Ports failing to express its disapproval of any plans within 56 days after they have been delivered to it under this paragraph, it shall be deemed to have approved them.

3. The Company 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.

4. The Company shall at all reasonable times during construction of the works and thereafter allow A.B. Ports, its servants and agents, access to the works and all reasonable facilities for inspection of any tidal work.

5. After the purpose of any temporary works has been accomplished the Company shall with all reasonable dispatch, or after a reasonable period of notice in writing from A.B. Ports requiring the Company 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 Company; and, on failing to so do 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 Company.

6.—(1) If—

(a) during the construction of a tidal work or within 10 years after the completion of that work and wholly or partly in consequence of its construction or,

- (b) during the exercise of the powers conferred by article 10 of this Order or within 10 years thereafter and wholly or partly in consequence thereof

there is caused or created an accumulation or erosion, the Company, if so requested by A.B. Ports acting reasonably before or within the period of 19 years after such completion or exercise, 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) and, if it 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 Company.

(2) If any accumulation or erosion in consequence of such construction or exercise of the powers conferred under article 10 arises within the said period of 10 years and is remedied in accordance with sub-paragraph (3), any recurrence of such accumulation or erosion shall from time to time be so remedied by the Company during the said period of 10 years and at any time thereafter, save that the Company's obligation under this paragraph shall cease if, following the remedying of any accumulation or erosion, a period of 10 years elapses without any further accumulation or erosion being caused or created in consequence of such construction or exercise.

(3) For the purposes of sub-paragraphs (1) and (2) above—

- (a) in the case of an accumulation, the remedy shall be its removal; and  
 (b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be necessary.

(4) In the event that surveys, inspection, tests and sampling carried out pursuant to paragraph 8(1)(b) of this Part of this Schedule establish that such accumulation or erosion would have been caused in any event by factors other than the construction of a tidal work or the exercise of the powers conferred by article 10, the Company shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction or exercise.

(5) For the purposes of sub-paragraph (1) the date of completion of a work shall be the date on which it is brought into use.

7. The Company shall—

- (a) 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;  
 (b) provide and maintain on any tidal work such fog-signalling apparatus as may be reasonably required by A.B. Ports and properly operate such apparatus during periods of restricted visibility for the purpose of warning vessels of the existence of those works; and  
 (c) afford to A.B. Ports such facilities as it may reasonably require for the placing and maintenance on any tidal work of signals, tide-boards, tide-gauges or other apparatus for the safety or benefit of navigation.

8.—(1) Without prejudice to the other provisions of this Part of this Schedule, the Company 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 or the regulation of the exercise of powers conferred by article 10 by A.B. Ports or its duly authorised representative;  
 (b) the carrying out of surveys, inspections, tests and sampling within and of the river (including the bed and banks thereof)—  
 (i) to establish the marine conditions prevailing prior to the construction of any of the tidal works in such area of the river as A.B. Ports has reasonable cause to believe



may subsequently be affected by any accumulation or erosion which the Company is liable to remedy under paragraph 6; and

(ii) where A.B. Ports has reasonable cause to believe that the construction of any of the tidal works or the exercise of the powers conferred by article 10 is causing or has caused any accumulation or erosion as aforesaid;

(c) the construction of any of the tidal works or the exercise of the powers conferred by the said article 10, the failure of any of the tidal works or the undertaking by A.B. Ports of works or measures to prevent or remedy danger or impediment to navigation or damage to any property of A.B. Ports arising from such construction, exercise or failure;

(d) any act or omission of the Company or their servants or agents whilst engaged in the construction of any of the tidal works or the exercise of the powers conferred by article 10.

(2) Without prejudice to the generality of sub-paragraph (1), the Company shall indemnify A.B. Ports from and against all claims and demands arising out of, or in connection with, such construction, exercise, failure or act or omission as is mentioned in that sub-paragraph.

(3) Nothing in this paragraph shall impose any liability on the Company to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraphs (1) or (2) is attributable to negligence on the part of A.B. Ports or of any person in its employ or of its contractors or agents.

(4) A.B. Ports shall give to the Company notice in writing of any claim or demand for which the Company may be liable under this paragraph and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the Company.

**9.** The fact that any work or thing has been executed or done with the consent of A.B. Ports and in accordance with any conditions or restrictions prescribed by A.B. Ports or in accordance with plans approved or deemed to be approved by A.B. Ports or to its satisfaction or in accordance with any directions or award of any arbitrator or in accordance with any plans approved by the Secretary of State and any conditions or restrictions imposed by him, shall not relieve the Company from any liability under the provisions of this Part of this Schedule.

**10.** With the exception of any duty owed by A.B. Ports to the Company expressly provided for in the foregoing provisions of this Part of this Schedule, nothing in this Order shall be construed as imposing upon A.B. Ports, either directly or indirectly, any form of duty or liability to which A.B. Ports would not otherwise be subject which is enforceable by proceedings before any court.

**11.** Nothing in this Order shall affect prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, A.B. Ports or the Harbour Master at the commencement of this Order or any title of A.B. Ports in, to or over any lands or foreshore held or acquired by it.

**12.** Any difference arising between the Company and A.B. Ports under this Part of this Schedule shall be determined by arbitration.

## PART 2

### 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—

“accumulation” means any accumulation of silt or other material;

“the Agency” means the Environment Agency;

“completion” in relation to a work means when it is brought into use;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying and removal and “construct” and “constructed” shall be construed accordingly;

“damage” includes scouring, erosion and environmental damage and “damaged” 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;

“erosion” means any erosion of the bed or shore of the sea or the bed or banks of the river or any jetty or other structure of whatever nature, including the Humber Sea Defences;

“the fishery” means any waters containing fish and fish in, or migrating to or from such waters and the spawn, habitat or food of such fish;

“the Humber Sea Defences” includes any wall, bank, embankment, (including any berm, counterwall or cross wall connected thereto) barrier, tidal sluice or other defences whether natural or artificial against the tidal waters of the River Humber;

“plans” includes sections, drawings, specifications and method statements;

“specified work” means any permanent or temporary work or operation authorised by this Order (including any dredging and any exploratory geotechnical investigations that may be undertaken) riverward of, but including any work to, the Humber Sea Defences;

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows (whether or not the flow is intermittent) except a public sewer.

**2.—(1)** Before beginning to construct any specified work, the Company shall submit to the Agency plans of the work and such further particulars available to it as the Agency may within 28 days of the submission 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 14.

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

- (a) shall not be unreasonably withheld;
- (b) shall be deemed to have been given if it is neither given nor refused in writing and in the case of a refusal, accompanied by a statement of the grounds for refusal within two months of the submission of the plans for approval; and
- (c) may be given subject to such reasonable requirements as the Agency may make in the discharge of its environmental and recreational duties 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.

**3.** Without prejudice to the generality of paragraph 2, the requirements which the Agency may make under that paragraph include—

- (a) conditions as to the time and the manner in which any work or operation is to be carried out;
- (b) conditions requiring the Company at its own expense—
  - (i) to provide or maintain means of access for the Agency;
  - (ii) to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls

or embankments, outfalls and other new works and the strengthening, repair or renewal of existing banks, walls or embankments, outfalls or other works) as are reasonably necessary to safeguard any drainage work against damage or 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;

(iii) to monitor accumulation, erosion or alteration of the tidal flow arising during the construction or following the completion of the specified works;

(iv) to provide, maintain and operate arrangements for dealing with any pollution incidents which may occur during and as a result of the construction of the specified works.

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

(a) within such reasonable period (if any) as the Agency may approve at the time of approval or upon an application by the Company thereafter (such approval not to be unreasonably withheld);

(b) in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and

(c) 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' prior notice in writing of the commencement of construction of any specified work and notice in writing of its completion not later than 7 days after the date thereof.

(3) If any part of the works comprising a structure in, over or under a watercourse is constructed otherwise than in accordance with the requirements of this Part 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) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent as the Agency reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the Company, the Company has failed to begin taking steps to comply with the reasonable requirements of the notice and thereafter to complete them within such reasonable period as may be specified in such notice, the Agency may take the steps specified in the notice and may recover the reasonable costs of doing so from the Company.

(5) 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 sub-paragraph (3), 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) If, during the construction of a specified work of within 10 years after the completion of such work, there is caused or created an accumulation or erosion or alteration of the tidal flow or littoral drift which in whole or in part is reasonably attributable to that work, the Company shall, if so required by the Agency before or within the period of 10 years after such completion and to the extent that it is so attributable, remedy such accumulation, erosion, alteration of tidal flow or littoral drift, in the manner specified in sub-paragraph (3) and, if it refuses or fails to do so, the Agency may itself cause such remedy to be carried out and may recover the reasonable cost of doing so from the Company.

(2) If any accumulation or erosion or alternation of the tidal flow or littoral drift arise in consequence of such construction within the said period of 10 years and be required to be remedied in accordance with sub-paragraph (1), any continuation or recurrence of such accumulation or erosion or alternation of the tidal flow or littoral drift shall from time to time be so remedied by the Company during the said period of 10 years and at any time thereafter, save that the Company's obligation under this paragraph shall cease if following the remedying of any accumulation or erosion or alternation of the tidal flow or littoral drift, a period of 10 years elapses without any further accumulation or erosion or alternation of the tidal flow or littoral drift.

(3) For the purposes of sub-paragraphs (1) and (2)

- (a) in the case of an accumulation, the remedy shall be its removal or such other protective works or measures as may be reasonably required by the Agency; and
- (b) in the case of erosion or alternation of tidal flow or littoral drift, the remedy shall be the carrying out of such reconstruction works and/or other protective works or measures as may be reasonably required by the Agency.

(4) To the extent that the Company establishes by surveys, inspections, tests or sampling and without unreasonably delaying the execution of any remedial action required under sub-paragraph (2) that such accumulation or erosion or alternation of tidal flow or littoral drift would have been caused in any event by factors other than the construction of a specified work the Company shall not be liable to remedy such accumulation or erosion or alternation of tidal flow or littoral drift.

**6.—(1)** Before commencing the construction of a specified work the Company shall procure at its expense in liaison with and to the reasonable satisfaction of the Agency a survey of any drainage work liable to be affected by that specified work.

(2) Any specified work, which provides a defence against flooding, shall be maintained by and at the expense of the Company to the reasonable satisfaction of the Agency;

(3) Without prejudice to sub-paragraph (2) but subject to sub-paragraph (4), the Company shall, from the commencement of the construction of the specified works and except to the extent that any approval given by the Agency under this Part of this Schedule permits otherwise, maintain in good repair and condition and free from obstruction any drainage work which is situated both within the limits of deviation and on land owned by the Company or which it otherwise has control of or is in occupation of for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers of this Order or is already in existence.

(4) The obligation imposed on the Company by sub-paragraph (3) does not apply where the Agency or another person is liable to maintain the drainage work in question and is not precluded by the exercise of the powers of this Order from doing so.

(5) If any drainage work referred to in paragraph (3) is not maintained in good repair and free from obstruction the Agency may by notice in writing require the Company to repair and restore the work, or any part of it, or (if the Company so elects and the Agency in writing consents, such consent not to be unreasonably withheld), to remove the work and restore the site (including sea defences) to its former condition, to such extent and within such limits as the Agency thinks proper.

(6) If, within a reasonable period being not less than 28 days from the date when a written notice under sub-paragraph (5) is served on the Company, the Company has failed to begin taking steps to comply with the reasonable requirements of the notice and thereafter to complete them within such reasonable period as may be specified in the notice, the Agency may take the steps specified in the notice and may recover the reasonable costs of doing so from the Company.

(7) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (5), the Agency shall not except in an emergency exercise the powers conferred by sub-paragraph (6) until the dispute has been finally determined.

7. If by reason of the construction of any specified work or by reason of the failure of any such work or of the Company to maintain it, the efficiency of any drainage work for flood defence purposes is impaired, or such a drainage work is otherwise damaged, that 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 within such reasonable period as the Agency may require by notice in writing to the Company, the Agency may make good the same and may recover the reasonable costs of doing so from the Company.

8.—(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 written 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) 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 the written notice served under sub-paragraph (2), the Agency may take those steps and may recover the reasonable costs of doing so from the Company.

(4) 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 the reasonable costs of doing so from the Company provided that written 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.

9. The Company shall indemnify the Agency in respect of all reasonable and proper 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;
- (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.

10. If any works are constructed by the Agency in relation to a drainage work, the Company shall have no claim against the Agency in respect of any additional costs which may be incurred by the Company as a result of such works.

11.—(1) Without prejudice to the other provisions of this part of this Part of this Schedule, the Company shall indemnify the Agency from all claims, demands, proceedings, costs, damages expenses or losses, which may be made or taken against, or recovered from or incurred by the Agency by reason of the construction of any of the works or by reason of their existence or use or any act or omission of the Company, its contractors, agents, workmen or servants whilst engaged upon the work or compensatory habitat.

(2) The Agency shall give to the Company reasonable written notice of any such claim, demand, proceedings, costs, damages expenses or losses and no settlement or compromise of any such claim, demand, proceedings, costs, damages expenses or losses shall be made without the consent of the Company, which shall not be unreasonably withheld.

(3) Prior to incurring any expense which it may seek to recover under this paragraph, the Agency shall, except in a case of urgency, serve written notice on the Company informing it of the Agency's

intentions and requiring it within such time as the Agency may reasonably specify to take such steps as may be reasonably practicable to avoid the need for the Agency to incur such expense.

(4) Nothing in this part of this Schedule shall impose any liability on the Company in respect of any damage to the extent that it is attributable to the negligent act or omission of the Agency, its officers, servants, contractors or agents (other than the Company).

**12.** 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.

**13.** For the purposes of Chapter II of Part II of the Water Resources Act 1991(**16**) (abstraction and impounding of water) and section 109 of that Act (as to structures in, over or under watercourses) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Agency under this Part of this Schedule with respect to such construction shall be deemed also to constitute a licence under that Chapter to obstruct or impede the flow of inland waters at that point by means of impounding works or, as the case may be, a consent or approval under section 109 of that Act.

**14.—(1)** Unless the parties agree to arbitration, any difference arising between the Company and the Agency under this Part of this Schedule shall be determined by the Secretary of State for Environment, Food and Rural Affairs on a reference to him by either party after notice in writing to the other.

(2) If the parties agree to arbitration, a difference arising between them under this Part of this Schedule shall be referred to and settled by a single arbitrator appointed by agreement between the parties, on a reference to him by either party after notice in writing to the other, or, in default of agreement, by the President of the Institution of Civil Engineers.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order authorises Humber Sea Terminal Limited (the applicants for the Order) to construct and maintain a new jetty and access pontoon, with associated works at North Killingholme and to carry out subsidiary works. The specified works, together with adjacent land of the Company used for the business form the “jetty premises”.

The powers conferred by the North Killingholme Haven Harbour Empowerment Order 1994 are extended by this Order.

The Order also extends the limits of jurisdiction of the Company as harbour authority.

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(16) 1991 c. 57; section 109 was amended by the Environment Act 1995 (c. 25), section 120(1), schedule 22, paragraph 128.



Pinsent Masons

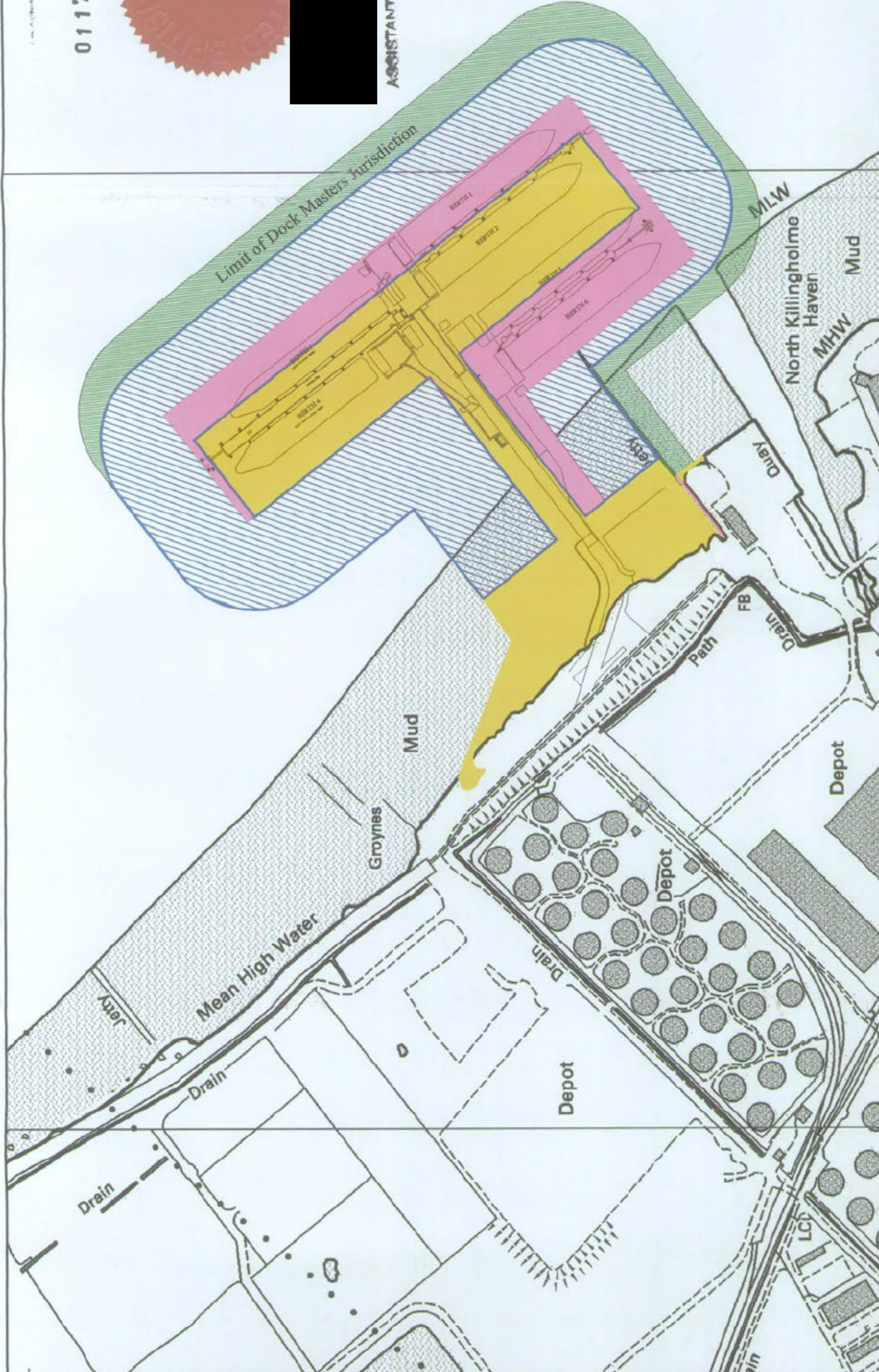
**APPENDIX 3**

CLdN's Operational Land

011737



ASSISTANT SECRETARY



**NO DIMENSIONS TO BE SCALED FROM THIS DRAWING**

Date: 02/06/08  
 Drawn by: C. Robson  
 Scale: 1:4000  
 Reviewer: [Redacted]  
 REF: 35HS-10353-08.A

Client: North Killingholme Humber Sea Terminal Ltd

**ABP ASSOCIATED BRITISH PORTS HULL & GOOLE**  
 Regional Property Department  
 Riverside House  
 King George Dock, Hull  
 Tel: (01482)327171 Fax: (01482)714505

Revision	Description	Date

Scale: 1:4000  
 Title: PLAN

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