

Planning Act 2008  
Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009  
Regulation 5(2)(b)  
Document reference: TR030001/DCO/~~65~~

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

23 ~~6~~ ~~November~~ ~~October~~ 2012  
Revision: ~~65~~  
Bircham Dyson Bell

**2012 No. XXXX**

**INFRASTRUCTURE PLANNING**

**HARBOURS, DOCKS, PIERS AND FERRIES**

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

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

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

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

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

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(a) 2008 c. 29, as amended

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

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

## PART 1

### PRELIMINARY

#### Citation and Commencement

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

#### Interpretation

2.—(1) In this Order—

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

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

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

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

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

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

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

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

“AB Ports” means Associated British Ports, company number ZC000195, ~~whose principal office is registered at 719-91 Aldwych, London WC2B 4HN;~~

**Comment [A1]:** As proposed by ABP

“the approach channel” means the area bounded by co-ordinates (53°39.5794'N, 00°13.2235'W), (53°39.094'N, 00°12.296'W), (53°38.956'N, 00°12.570'W), (53°38.97291'N, 00°12.63149'W) and (53°38.9565'N, 00°12.570697'W) and shown on sheets 8 and 9 of the works plan;

**Comment [adw2]:** These and other coordinates as confirmed by independent engineer

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

**Comment [A3]:** As proposed by HMH

“area of seaward construction activity” means the area of the sea within the Order limits shown on the ~~worksland~~ plans;

**Comment [A4]:** As proposed by HMH

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

**Comment [A5]:** As proposed by ABP

“the berthing pocket” means the area bounded by co-ordinates (53°39.50632'N, 00°13.416340'W), (53°39.496994'N, 00°13.448628'W), (53°38.951365'N,

**Comment [A6]:** The applicant rejects the deletion of these words as proposed by C.GEN/C.RO as the order contains other development

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

00°123.463697'W), (53°39.537'N, 00°13.376'W), (53°38.972'N, 00°12.631'W) and (53°38.946508'N, 00°12.67418'W) and shown on sheets 4, 8 and 9 of the works plans;

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

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

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

“Centrica” means Centrica Plc and all of its subsidiaries, and Group companies, transferees, assignees, etc, including but not limited to Centrica KPS Ltd, Centrica Storage Limited and Centrica Energy;

“Cherry Cobb sands ~~breachechannel~~” means the area bounded by co-ordinates (53°39.42734'N, 00°08.63344'W), (53°39.45728'N, 00°08.58134'W), (53°39.55425'N, 00°08.73738'W) and (53°39.52434'N, 00°08.78948'W);

**Comment [A7]:** At the suggestion of Mr Gibbs

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

**Comment [A8]:** At the suggestion of HMH

“the compensation environmental management and monitoring plan” means the plan for environmental management and monitoring on the north bank of the River Humber referred to in paragraph 17 of Schedule 11;

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

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

**Comment [A9]:** At the suggestion of HMH

~~C.RO~~ means C.RO Ports (Killingholme) Limited;

**Comment [A10]:** Consequential on other amendments

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

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

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

**Comment [A11]:** HMH suggests a deposit location plan – rejected as not necessary, supported by the MMO

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

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

**Comment [A12]:** At the suggestion of HMH

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

**Comment [A13]:** At the suggestion of HMH

“the Harbour Authority” means the Company in its capacity as harbour authority established by article 8 (jurisdiction of the Harbour Authority), or to the extent of any transfer under article 13(1)(a), any transferee;

**Comment [A14]:** At the suggestion of HMH

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

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

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

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

~~limits of the harbour~~ means the boundary line shown on the plan at Schedule 10;

**Comment [A15]:** At the suggestion of HMH

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

**Comment [A16]:** No limits of deviation definition has been added as suggested by C.RO as the phrase is only used in article 6.

“the marine environmental management and monitoring plan” means the plan for environmental management and monitoring below the high water mark referred to at paragraph 17 of Schedule 11;

“MMO” means the Marine Management Organisation;

**Comment [A17]:** At the suggestion of HMH

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

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

**Comment [A18]:** Various suggestions rejected as this uses the phrase from the Infrastructure Planning (Applications: Forms and Procedure) Regulations 2009

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

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

**Comment [A19]:** At the suggestion of C.GEN/C.RO

“the planning application drawings” are as defined in paragraph 4 of Schedule 11:

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

“the pumping station outfall” means the area bounded by co-ordinates (53°38.993N, 00°13.188W), (53°38.956N, 00°13.085W), and (53°38.926N, 00°13.138W) and shown on sheets 3 and 9 of the works plans;

“the quay limits” means the area bounded by co-ordinates (53°39.45764°N, 00°13.68179°W), (53°39.46470°N, 00°13.662°W), (53°39.44751°N, 00°13.6453°W), (53°39.487504°N, 00°13.546487°W), (53°39.47590°N, 00°13.511473°W), (53°39.5086°N, 00°13.4186°W), (53°38.9446°N, 00°12.6758°W), (53°38.876°N, 00°12.84956°W), (53°38.98467°N, 00°13.16527°W) and (53°38.98564°N, 00°13.17845°W) and shown on sheets 8 and 9 of the works plans;

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

**Comment [A20]:** A variation of the HMH’s suggestion – both authorities are unitary

“requirement” means the corresponding paragraph of Schedule 11;

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

“the sections” are as defined in paragraph 4 of Schedule 11:

**Comment [A21]:** Definition proposed by C.GEN/C.RO

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

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

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

“the terrestrial environmental management and monitoring plan” means the plan for environmental management and monitoring above the high water mark on the south bank of the River Humber referred to at paragraph 17 of Schedule 11;

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

**Comment [A22]:** At the suggestion of HMH

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

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

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

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

“turning area” means the area bounded by co-ordinates (53°39.40~~26~~<sup>34</sup>’N, 00°12.89~~73~~<sup>34</sup>’W), (53°39.41~~34~~<sup>34</sup>’N, 00°12.52~~34~~<sup>34</sup>’W), (53°39.112’N, 00°12.261’W) and (53°39.094’N, 00°12.296’W) and shown on sheets 8 and 9 of the works plans.

“the undertaker” means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act and articles 12 and 13;

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

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

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

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

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

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

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

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

~~(2)~~<sup>(1)</sup> In construing the 1847 Act as so incorporated—

- (a) the expression “the special Act” means this Order;
- (b) the expressions “the Promoters of the undertaking” and “the undertakers” mean the undertaker;
- (c) the expression “the harbour, dock or pier” means the authorised development within the area of jurisdiction;
- (d) the expressions “limits” and “prescribed limits” mean the area of jurisdiction;
- (e) the expression “near the pier” does not extend beyond the area of jurisdiction;
- (f) the expression “the harbour master”, in relation to the authorised development means the harbour master as defined in article 2;
- (g) the definition of “vessel” in article 2(1) shall be substituted for the definition in section 3 of the 1847 Act; and
- (h) any requirement to comply with a notice or direction given by the harbour master shall be construed as including a requirement that, in complying with such notice or direction, a person who is subject to the notice or direction shall also comply with any relevant notice or direction given by AB Ports or the harbour master in the exercise by either or both of them of any function conferred by or under any enactment (including this Order).

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## Modification of enactments

4. —~~(1)(3)~~ Sections 25 and 26 of the River Humber Conservancy Act 1852<sup>(a)</sup>, section 9 (licences for execution of works) of the Humber Conservancy Act 1899<sup>(b)</sup> and section 6(2) (no erections in Humber below river lines or without licence above river lines) of the Humber Conservancy Act 1905<sup>(c)</sup> do not apply to the authorised development.

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~~(2)(1)~~ The requirement to obtain consent under section 23(1) of the Land Drainage Act 1991<sup>(d)</sup> does not apply to the authorised development.

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## PART 2 PRINCIPAL POWERS

### Development consent etc. granted by the Order

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

(2) Subject to article 6 (limits of deviation) the authorised development shall be constructed or carried out in the lines and situations shown on the works plans and at the levels shown on the sections.

### Limits of deviation

6. In carrying out the authorised development the undertaker may—

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

### Period for completion of work

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

### Jurisdiction of the Harbour Authority

8. —~~(1)(4)~~ Without prejudice to the functions of AB Ports exercisable within its limits, the Company shall be the harbour authority for the area of jurisdiction.

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~~(2)(1)~~ Without prejudice to any provision of the 1847 Act as incorporated by article 3<sup>\*</sup> (incorporation of the Harbours, Docks and Piers Clauses Act 1847), the area within which the Harbour Authority and the dockmaster may exercise their functions under this Order shall be the area of jurisdiction.

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

~~(3)(2)~~ The jurisdiction of the Harbour Authority over vessels within the area of jurisdiction shall not extend to—

- (a) any vessel unless it is at anchor or otherwise moored or is causing an obstruction within the area of jurisdiction; or
- (b) signalling or any other activity connected with the movement of the vessel.

~~(4)(3)~~ Where any person referred to in paragraph (5)(a) considers that there is an actual or anticipated conflict between—

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

then that person may give notice to the relevant person in paragraph (5)(b).

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

- (a) AB Ports, **C.RO** and the harbour master; and
- (b) the Harbour Authority and the dockmaster.

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

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

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

~~(8)(7)~~ If—

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

~~(9)(8)~~ On receipt of a notice given under paragraph (4), the recipient of the notice shall comply with the notice.

~~(10)(9)~~ Save where expressly provided elsewhere in this Order, no person mentioned in paragraph (5)(b) is obliged to seek any permission or otherwise notify any person mentioned in paragraph (5)(a) prior to exercising any function.

~~(11)(10)~~ Subject to the requirements of any notice given under paragraph (4), the functions of the Harbour Authority and the dockmaster shall be exercised in accordance with Part 2 of Schedule 9 (for the protection of AB Ports) **and Part 6 of Schedule 9 (for the protection of C.RO)**.

#### Agreements entered into by Company, etc.

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

#### Maintenance of authorised development

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

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**Comment [A23]:** At the suggestion of C.RO

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**Comment [A24]:** At the suggestion of C.RO

**Comment [A25]:** Amendment suggested by ABP rejected, this is already a restriction from the model provisions

## Provision of works

11.—~~(1)(5)~~ The undertaker may from time to time within the area of jurisdiction provide and operate such harbour facilities, together with works ancillary to those facilities, as may be necessary or convenient for the construction of the authorised development or the operation of the undertaking, and for this purpose the undertaker may construct and maintain roads, railway lines, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances and such other works and conveniences as may be necessary or expedient.

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

- (a) works for the accommodation or convenience of vessels (including but not limited to berthing heads, mooring posts, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons);
- (b) works to divert, remove or replace apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines; and
- (c) landscaping and other works to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works.

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

## Benefit of Order

12. Subject to article 13 (consent to transfer benefit of Order), the provisions of this Order shall have effect solely for the benefit of the Company.

## Consent to transfer benefit of Order

13.—~~(1)(6)~~ The undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related rights as may be so agreed.

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

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

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

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

**Comment [A26]:** C.GEN/C.R  
O want this to be subject to article 11(3) – rejected as not necessary

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**Comment [A27]:** C.RO/C.GE  
N want this removed – rejected as retains flexibility and is preceded in the London Gateway Port Harbour Empowerment Order 2008 (article 10)

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**Comment [A28]:** At the suggestion of ABP

**Comment [A29]:** C.RO/C.GE  
N want to delete the rest of this article – rejected as reduces opportunity for mitigation and is preceded in the London Gateway Port Harbour Empowerment Order 2008 (article 10)

**Comment [A30]:** ABP  
suggest this is deleted – rejected as in the model provisions and allows permitted development in line with other projects

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

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

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

**Comment [A31]:** HMH suggests approval powers in this article – rejected since Secretary of State a sufficient check on transfer, and this consultation added as a compromise

### Guarantees in respect of payment

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

(a) the liabilities of the undertaker to pay compensation under this Order; and

(b) the liabilities of the undertaker to construct and maintain Work No. 5 (the compensatory environmental habitat) and any additional compensatory habitat identified in the compensation management and monitoring plan;

**Comment [A32]:** At the suggestion of ABP

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

**Comment [A33]:** ABP suggestion to change to Secretary of State rejected as planning authority deals with s106 agreements and other similar matters and this follows the precedent of the Rookery South Development Consent Order

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

## PART 3 STREETS

### Street works

15.—~~(1)(7)~~ The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—

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

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

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

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

**Comment [A34]:** C.GEN/C.R O want specific protection for Rosper Road. This has been added to the protective provisions instead.

### Temporary stopping up of streets

16.—~~(1)(8)~~ The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street and may for any reasonable time—

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

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

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

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

- (a) any street specified as mentioned in paragraph (3) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

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

#### Access to works

17.—~~(1)(9)~~ The undertaker may, for the purposes of the authorised development—

- (a) form and lay out means of access to a public highway, or improve existing means of access to a public highway, in the location specified in columns (1) and (2) of Schedule 4 (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access to a public highway or improve existing means of access to a public highway, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

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

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#### Agreements with street authorities

18.—~~(1)(10)~~ A street authority and the undertaker may enter into agreements with respect to—

- (a) the strengthening, improvement, repair or reconstruction of any street required as a result of the exercise of the powers conferred by this Order;
- (b) any stopping up, alteration or diversion of a street authorised by this Order; or
- (c) the carrying out in the street of any of the works referred to in article 15(1) (street works).

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

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

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#### Public rights of way

19.—~~(1)(11)~~ With effect from the date of certification by the local highway authority that the agreed alternative right of way has been created to the standard defined in the implementation plan, the section of each public right of way (being a footpath) specified in columns (1), (2) and (3) of Schedule 3 (footpaths to be diverted) is extinguished.

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~~(2)(1)~~ With effect from that same date, the alternative section of each footpath specified in column (4) of Schedule 5 is created.

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~~(3)(2)~~ In this article—

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

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

## PART 4

### SUPPLEMENTAL POWERS

#### Discharge of water

~~20.—(1)(12)~~ The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

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~~(3)(2)~~ The undertaker shall not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.

~~(4)(3)~~ The undertaker shall not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

~~(5)(4)~~ The undertaker shall not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

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~~(6)(5)~~ The undertaker shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

~~(7)(6)~~ This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010<sup>(b)</sup> (requirement for an environmental permit).

~~(8)(7)~~ In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964<sup>(c)</sup> (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in those Regulations.

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(a) 1991 c.56, as amended at the date of the coming into force of this Order.  
(b) S.I. 2010/675, as amended at the date of the coming into force of this Order.  
(c) 1964 c.40, as amended at the date of the coming into force of this Order.

## Protective work to buildings

21.—~~(1)(13)~~ Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

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~~(2)(1)~~ Protective works may be carried out—

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- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

~~(3)(2)~~ For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

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~~(4)(3)~~ For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

~~(5)(4)~~ Before exercising—

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

the undertaker shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

~~(6)(5)~~ Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 59 (arbitration).

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~~(7)(6)~~ The undertaker shall compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

~~(8)(7)~~ Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

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

~~(9)(8)~~ Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

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~~(10)(9)~~ Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

~~(11)(10)~~ In this article “protective works” in relation to a building means—



- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

#### Authority to survey and investigate the land

22.—~~(1)(14)~~ The undertaker may for the purposes of this Order enter on any land shown within the Order limits and—

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

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

(3) Any person entering land under this article on behalf of the undertaker—

- (a) shall, if so required upon entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article—

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

but such consent shall not be unreasonably withheld.

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

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

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

23.—~~(1)(15)~~ Unless its construction has commenced within five years of the coming into force of this Order, no tidal work shall be constructed, ~~altered, reconstructed, extended, enlarged, replaced or~~ relaid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before that work is begun.

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**Comment [A35]:** At the suggestion of HMH; others wanted it removed.

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

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



notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; or

- (b) if it appears to the Secretary of State urgently necessary so to do, the Secretary of State may remove the tidal work, or part of it, and restore the site to its former condition, and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the undertaker.

#### Abatement of works abandoned or decayed

24. ~~(1)(16)~~ Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the undertaker at its own expense either to repair and restore that work or any part, or to remove that work and restore the site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

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~~(2)(1)~~ Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion of it, in any notice under this article.

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~~(3)(2)~~ If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the undertaker

#### Survey of tidal works

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

#### Lights on tidal works etc. during construction

26. The undertaker shall at or near—

- (a) a tidal work, including any temporary work; or
- (b) any plant, equipment or other obstruction placed, in connection with any authorised development or any work authorised by article 11 (provision of works), within the area of seaward construction activity,

during the whole time of the construction, ~~alteration, reconstruction, extension, enlargement, replacement~~ or relaying, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State and the Conservancy Authority or, failing agreement between them, the Secretary of State may from time to time direct.

Comment [A36]: HMH want failure to comply to be a criminal offence. This is not in the model provisions and is rejected on the grounds of being a draconian power without sufficient justification in these circumstances

#### Provision against danger to navigation

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

## Permanent lights on tidal works

28. After the completion of a tidal work the undertaker shall at the outer extremity of it exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as the Conservancy Authority may from time to time direct.

## Power to appropriate

29.—~~(1)(17)~~ Notwithstanding anything in section 33 (harbour, dock, and pier to be free to the public on payment of rates) of the 1847 Act or any other enactment, the undertaker may from time to time set apart and appropriate any part of the harbour for the exclusive or preferential use and accommodation of any trade, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such charges and to such terms, conditions and regulations as the undertaker may think fit.

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~~(2)(1)~~ No person or vessel shall make use of any part of the harbour so set apart or appropriated without the consent of the harbour master, and—

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- (a) the harbour master may order any person or vessel making use of the harbour without such consent to leave or be removed; and
- (b) the provisions of section 58 of the 1847 Act (powers of harbour master as to mooring of vessels in harbour), as incorporated by this Order, shall extend and apply with the necessary modifications to any such vessel.

## PART 5

### POWERS OF ACQUISITION

#### Compulsory acquisition of land

30.—~~(1)(18)~~ The undertaker may acquire compulsorily so much of the Order land as is shown washed pink on the land plans as is required for the authorised development or to facilitate it.

~~(2)(1)~~ As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.

~~(3)(2)~~ Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

~~(4)(3)~~ No interest in Crown land may be acquired under this article unless the appropriate Crown authority consents to the acquisition.

~~(5)(4)~~ This article is subject to article 40 (temporary use of land for carrying out the authorised development).

**Comment [A37]:** C.RO/C.GE  
N wish to exclude railway parcels from this power. Rejected as the applicant continues to seek compulsory purchase powers. HMH wants to exclude the foreshore land parcels 08001, 09001 from compulsory powers in this and other articles – rejected as the applicant still needs these powers in reserve. HMH suggests explicit reference to no longer being able to acquire or occupy certain parcels but this is not necessary as these have been removed from the land plans and book of reference

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#### Power to override easements and other rights

31.—~~(1)(19)~~ Any authorised activity undertaken by the undertaker which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title under it) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
  - (b) a breach of a restriction as to the user of land arising by virtue of a contract.
- (2) In this article “authorised activity” means—
- (a) the erection, construction or carrying out, or maintenance of any building or work on land;

**Comment [A38]:** C.RO wish their easements to be outside the scope of this power. Rejected as they no longer have any easements within powers of compulsory purchase. C.GEN/C.RO want any agreements they have with Network Rail to be overridden. Rejected as this is not an appropriate place for this and the applicant cannot be made subject to unknown external agreements.

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- (b) the erection, construction, or maintenance or anything in, on, over or under land; or
- (c) the use of any land.

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

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

- (a) a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or
- (b) a right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.

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

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

- (a) shall be payable under section 7 or 10 of the 1965 Act; and
- (b) shall be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where—
  - (i) the compensation is to be estimated in connection with a purchase under those acts; or
  - (ii) the injury arises from the execution of works on or use of land acquired under those acts.

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

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

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

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

the liability shall be enforceable against the undertaker.

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

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

#### **Time limit for exercise of authority to acquire land compulsorily**

33.—~~(1)(20)~~ After the end of the period of ~~5~~ years beginning on the day on which this Order is made—

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

**Comment [A39]:** ABP wish to reduce this to 3 years because of the importance of their land. Rejected as this would apply to the whole project and ABP's land, undeveloped for 40 years, is no more special than other land subject to this time limit in many other orders.

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

- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 36 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(a).

(2) The authority conferred by article 40 (temporary use of land for carrying out the authorised development) shall cease at the end of the period referred to in paragraph (1), but nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### Compulsory acquisition of rights

34.—~~(1)(21)~~ The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the land plans.

~~(2)(1)~~ As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

~~(3)(2)~~ Subject to section 8 of the 1965 Act, as substituted by article 38 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.

~~(4)(3)~~ Any person who suffers loss as a result of the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

**Comment [A40]:** C.RO want their easements excluded. Rejected as they are no longer having any easements acquired.

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### Private rights of way

35.—~~(1)(22)~~ Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

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

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

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

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 42 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) shall have effect subject to—

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land,

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

- (ii) the undertaker's appropriation of it,
  - (iii) the undertaker's entry onto it, or
  - (iv) the undertaker's taking temporary possession of it,
- that any or all of those paragraphs shall not apply to any right of way specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.
- (7) If any such agreement as is referred to in paragraph (6)(b)—
- (a) is made with a person in or to whom the right of way is vested or belongs; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

### Application of the Compulsory Purchase (Vesting Declarations) Act 1981

36.—~~(1)(23)~~ The Compulsory Purchase (Vesting Declarations) Act 1981<sup>(a)</sup> shall apply as if this Order were a compulsory purchase order.

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~~(2)(1)~~ The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have effect with the following modifications.

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~~(3)(2)~~ In section 3 (preliminary notices), for subsection (1) there shall be substituted—

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

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

~~(4)(3)~~ In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

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~~(5)(4)~~ In that section, for subsections (5) and (6) there shall be substituted—

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

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

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

- (a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

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~~(7)(6)~~ In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

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~~(8)(7)~~ References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

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

### Acquisition of subsoil only

37.—(24) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 30 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

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~~(3)(2)~~ Paragraph (2) shall not prevent article 38 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

### Acquisition of part of certain properties

38.—~~(1)(25)~~ This article shall apply instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—

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

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

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

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

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

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

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

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

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

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

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

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the

additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

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

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

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

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

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

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

#### Rights under or over streets

~~39.~~ ~~(1)(26)~~ The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

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

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

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

~~(4)(3)~~ Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

#### Temporary use of land for carrying out the authorised development

~~40.~~ ~~(1)(27)~~ The undertaker may, in connection with the carrying out of the authorised development—

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- (a) enter on and take temporary possession of—
  - (i) the land specified in columns (1) and (2) of Schedule 6 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and



- (ii) any of the Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act or no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
  - (b) remove any buildings and vegetation from that land; and
  - (c) construct temporary works (including the provision of means of access) and buildings on that land.
- (2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.
- (3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) in the case of land of which temporary possession may be taken, after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 6;
  - (b) in the case of any Order land, after the end of the period of two years beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.
- (5) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of any power conferred by this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.
- (7) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).
- (8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker shall not be precluded from—
- (a) acquiring new rights over any part of that land under article 34 (compulsory acquisition of rights); or
  - (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 37 (acquisition of subsoil only).
- (9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

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

41.—~~(1)(28)~~ Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

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

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- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.
- (2) Paragraph (1) shall not authorise the undertaker to take temporary possession of—
  - (a) any house or garden belonging to a house; or
  - (b) any building (other than a house) if it is for the time being occupied.
- (3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.
- (4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.
- (5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.
- (7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.
- (8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).
- (9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).
- (11) In this article "the maintenance period", in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

#### Statutory undertakers

42.—(1) The undertaker may only exercise powers to extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers under this Part if such extinguishment, removal or repositioning is necessary for carrying out the authorised development.

**Comment [A41]:** This article has been included to support a decision by the Secretary of State under s138 of the Planning Act 2008, although it is acknowledged that it would come into force after such a decision is made. The applicant wishes to keep this article for that purpose but if the Secretary of State believes it to be of no purpose it may be removed.

#### Recovery of costs of new connections

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

(2)(1) Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 42, any person who is—

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

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

~~(3)(2)~~ This article shall not have effect in relation to apparatus to which Part 3 of the 1991 Act<sup>4</sup> applies.

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~~(4)(3)~~ In this article—

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

“public utility undertaker” has the same meaning as in the 1980 Act<sup>5</sup>.

**Comment [A42]:** ABP want a new article added where their triangle if acquired would revert to them in certain circumstances.. Rejected as not justified over and above typical powers of compensation, as for reduction in time limit.

## PART 6

### MISCELLANEOUS AND GENERAL

#### Deemed marine licence

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

#### Felling or lopping of trees

45.—~~(1)(30)~~ The undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

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

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

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

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

#### Trees subject to tree preservation orders

46.—~~(1)(31)~~ The undertaker may fell or lop any tree described in Schedule 7 and identified on the land plans, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

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

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

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

(a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and

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

(b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.

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

### **Railway and navigation undertakings**

47.—(32) Subject to the following provisions of this article, the undertaker may not under article 15 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or
- (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

(4) In this paragraph "navigation authority" means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.

### **Railway network**

48.—~~(1)(33)~~ The undertaker, or any person permitted by the undertaker, may operate and use the railway crossing the Order land together with any ancillary works as a system, or part of a system, for the carriage of goods.

~~(2)(1)~~ The Office of Rail Regulation, Network Rail and the undertaker may enter into agreements in connection with the operation and use of the railway crossing the Order land.

**Comment [A43]:** This paragraph is not necessary if the Secretary of State replaces the acquisition of the railway with the creation of new easements to cross the railway.

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### **Arrangements with Her Majesty's Revenue and Customs**

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

### **Application of landlord and tenant law**

50.—~~(1)(34)~~ This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

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

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

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

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

#### Operational land for purposes of the 1990 Act

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

**Comment [A44]:** ABP wish this to be within the limits of deviation for Work No. 1 – rejected as this is already a reduction from the Order limits and a further reduction is not necessary

#### Defence to proceedings in respect of statutory nuisance

52. ~~(1)(35)~~ Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(a)</sup> (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if

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- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974<sup>(b)</sup>; or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development in accordance with a scheme of monitoring and attenuation of noise agreed with the relevant planning authority as described in requirement 22; or
  - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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

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(a) 1990 c.43, as amended at the date of the coming into force of this Order.  
(b) 1974 c.40, as amended at the date of the coming into force of this Order.

## Protection of interests

53. Schedule 9 to this Order has effect.

## Saving for Trinity House

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

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

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

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

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

**Comment [A45]:** ABP wish this article to be deleted arguing that it has no application. The applicant would prefer to keep it as it is in other orders such as Rookery South as well as the model provisions and issues of permitted development rights applying to Development Consent Orders have not been fully settled.

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## Planning, etc. jurisdiction

56.—(1)(37) During the period beginning with the date when this Order comes into force and ending on the accretion date, the area within the Order limits of deviation for Work No. 1 shall, for the purposes of the Control of Pollution Act 1974(c) and the 1990 Act, be annexed to and incorporated with the area of the relevant planning authority.

(2)(1) In this article, “accretion date” means the date when the works authorised by this Order have been completed or, if earlier, the date when the benefits and rights granted by this Order cease to have effect pursuant to article 7 (period for completion of work).

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**Comment [A46]:** At the request of ABP

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## Certification of plans etc

57.—(1)(38) The undertaker shall, as soon as practicable after the making of this Order, submit to the decision-maker copies of—

- (a) the book of reference;
- (b) the ecology plans;
- (c) the land plans;
- (d) the rights of way plans;
- (e) the environmental statement as defined in paragraph 1 to Schedule 11; and
- (f) the works plans,

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

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

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**Comment [A47]:** ABP want the design drawings to be certified. Not appropriate as they may change. HMM wants the deposit location plan to be certified. Rejected as we do not feel one is necessary.

**Comment [adw48]:** Added voluntarily to make clear what the relevant environmental information consists of should the application be granted

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

## Service of notices

58.—~~(1)~~(39) A notice or other document required or authorised to be served for the purposes of this Order may be served—

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- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

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

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

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

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

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

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

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

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

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

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

- (a) that person shall give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.

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

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(a) 1978 c. 30.

## **Arbitration**

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

## **Requirements - appeals**

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

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

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

Signed by authority of the Secretary of State

[xxx] 2013

Department for Transport

# SCHEDULES

## SCHEDULE 1

Article 5

### AUTHORISED DEVELOPMENT

#### NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT

1. In the district of North Lincolnshire—

- (a) Work No. 1—a quay of solid construction comprising a quay wall and reclamation behind it on the south side of the River Humber, the quay wall being enclosed by the existing flood wall and the quay limits.

#### ASSOCIATED DEVELOPMENT

2. In the district of North Lincolnshire—

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

3. In the district of North Lincolnshire—

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

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

- (a) dredging the approach channel, the berthing pockets, the turning area, the pumping station outfall and the other areas within which dredging is deemed to be licensed by virtue of the deemed marine licence and land reclamation behind the new quay wall (Work No. 1) ~~that does not form part of the quay~~ in accordance with Schedule 8 (deemed marine licence);
- (b) ~~the provision of onshore facilities for the manufacture, assembly and storage of components and parts for offshore marine energy and related items;~~
- (c) improvement works to Rosper Road, ~~Eastfield Road, and the A160 and the A180;~~
- (d) surface and foul water disposal arrangements;
- (e) lighting;
- (f) parking;
- (g) ecological mitigation works in accordance with the environmental management and monitoring plans; and
- (h) the re-siting of apparatus.

5. In the district of the East Riding of Yorkshire and within the Order limits

- (a) the development of compensatory environmental habitat in accordance with the environmental management and monitoring plans, to include dredging and tidal works licensed in accordance with Schedule 8; and
- (b) dredging the Cherry Cobb Sands ~~breachechannel.~~

**Comment [A49]:** To deal with ABP comment to make distinction from NSIP

**Comment [A50]:** ABP suggest that this and parking be tied to the application drawings – not accepted as the new paragraph 3B and revised paragraph 4 covers this

**Comment [A51]:** This text has been moved to the restriction at paragraph 3A to Schedule 11

**Comment [A52]:** Removed since covered by s106 agreement

**Comment [A53]:** Royal Mail wished Pelham Road to be added – rejected as covered by unilateral s106 undertaking.



## SCHEDULE 2

Article 15

### STREETS SUBJECT TO STREET WORKS

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

# SCHEDULE 3

Article 16

## STREETS TO BE TEMPORARILY STOPPED UP

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

# SCHEDULE 4

Article 17

## ACCESS TO WORKS

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

# SCHEDULE 5

Article 19

## FOOTPATHS TO BE STOPPED UP

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

# SCHEDULE 6

Article 40

## LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

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

**Comment [A54]:** At the  
suggestion of HMH

**Comment [A55]:** Following  
discussion with Anglian Water

# SCHEDULE 7

Article 46

## TREES SUBJECT TO TREE PRESERVATION ORDERS

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

**Comment [A56]:** As  
suggested by HMH

## DEEMED MARINE LICENCE

## PART 1

## INTRODUCTORY

*Interpretation*

## 1. (1) In this Schedule:—

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

“the Centrica outfall” means the area bounded by co-ordinates (53°39.670’N, 00°13.696’W), (53°39.713’N, 00°13.570’W), (53°39.666’N, 00°13.523’W) and (53°39.6232’N, 00°13.6479’W) and shown on sheet 5 of the works plans;

**Comment [adw57]:** Correct coordinates calculated by engineer

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

“the E.ON outfall” means the area bounded by co-ordinates (53°39.5576’N, 00°13.5617’W), (53°39.600’N, 00°13.426’W), (53°39.550’N, 00°13.38240’W) and (53°39.508498’N, 00°13.517’W) and shown on sheet 5 of the works plans;

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

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

“HU080” means the area bounded by co-ordinates (53°36.3095’N, 00°003.6247’W), (53°36.4755’N, 00°002.342’E), (53°36.9530’N, 00°003.4762’W) and (53°36.5547’N, 00°002.432’W);

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

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

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

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

~~“MMO” means the Marine Management Organisation;~~

**Comment [A58]:** Moved to article 2 as also used in Schedule 9

“marine piles” means piles that will be in a free water condition during construction;

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

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

“percussive piles” means driven piles but excludes the handling, placing and vibro-driving of piles;

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

“sea bed” means the ground under the sea; and

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

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

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

#### *Addresses*

2. (1) Unless otherwise advised in writing by the MMO, the address for postal correspondence with the MMO for the purposes of this schedule is the Marine Management Organisation, Marine Licensing Team, Lancaster House, Newcastle Business Park, Newcastle upon Tyne, NE4 7YH and where contact to the MMO District Office is required, the following contact details should be used: Estuary House, Wharncliffe Road, Grimsby, Lincolnshire, DN31 3QL. Tel: 01472 355112 email: grimsby@marinemangement.org.uk.

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

## **PART 2**

### **LICENSED ACTIVITIES**

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

**Comment [A59]:** At suggestion of HMH

#### *Construction of the quay*

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

**Comment [A60]:** At suggestion of HMH

- (a) no more than 650 tubular and 1300 sheet steel perimeter piles may be driven into the bed of the estuary to form the external face of the quay, where such piles are to be installed from named vessels moored in the estuary;
- (b) two return walls may be constructed between the ends of the quay and the existing flood defence wall, comprising no more than 500 tubular and 1000 sheet piles driven into the bed of the estuary from named vessels and also earthwork revetments with no more than 100,000 tonnes of rock armour protection, such revetments and rock armour to be constructed using land-based plant;
- (c) no more than 750 flap anchor piles may be fixed to the landward face of the perimeter piles and seated in a trench on the bed of the estuary, to be installed from named vessels moored in the estuary;
- (d) no more than 100 steel anchor piles may be driven into the bed of the estuary and fixed to perimeter piles, to be installed from named vessels moored in the estuary;
- (e) the area of estuary approximately 50 metres landward of the quay perimeter piles may be reclaimed by depositing marine dredged sands and gravels from named vessels using rainbowing techniques;
- (f) the remaining area of estuary enclosed by the quay perimeter piles and the two return walls may be reclaimed using marine dredged sands and gravels by constructing two granular dams that extend from the existing flood defence wall to the area reclaimed under paragraph (e), so that the dams divide the remaining reclaim area into three approximately equal cells, whereupon named vessels shall pump fluidised granular material into each cell in sequence, allowing estuarine water that is retained within each cell to overflow the dams as the fluidised material is deposited and settles within the cell, such activity to continue until all cells attain their design levels; and
- (g) steel plates may be attached to the perimeter piles by welding and bolting, whereupon a fender may be attached to each steel plate by bolts, all such works being undertaken from a man basket suspended from a crane located on land.



(2) Drainage and disposal outfalls and cooling water outfalls may be incorporated into the quay but for the avoidance of doubt the use of these outfalls is not licensed by this Schedule.

(3) Monitoring equipment fixed to buoys shall be deployed at locations in the estuary before, during and after the piling works permitted by sub-paragraph (1) in accordance with the marine environmental management and monitoring plan.

#### *Temporary dolphins*

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

(2) Monitoring equipment fixed to buoys shall be deployed at locations in the estuary during the piling works permitted by sub-paragraph (1) in accordance with the marine environmental management and monitoring plan referred to in paragraph ~~15~~<sup>13</sup>.

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

#### *Berthing pocket infill*

6. Following or during the dredging of the berthing pocket, the licence holder is permitted to deposit up to 300,000 tonnes of gravel and rock from named vessels into the berthing pocket up to a maximum level of -11.5 metres chart datum and must not undertake maintenance dredging below the level of -11 metres chart datum.

#### *Pumping station*

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

- (a) a temporary steel cofferdam for the installation of up to six drainage pipes may be installed through the existing flood defence and extend onto the foreshore, whereupon the flood defence wall shall be reinstated to its original seaward profile using inert soil materials and concrete;
- (b) a stone mattress may be placed within the drainage channel created under (b) over a distance of 20 metres seawards of the outfall pipes; and
- (c) a pumping station may be constructed such that its seaward extent is above the stone mattress.

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

#### *Compensation site creation*

8. The licence holder is permitted to remove a 250 metre section of the existing flood wall to create the Cherry Cobb Sands ~~breach~~<sup>channel</sup> under the following conditions:—

- (a) the Cherry Cobb Sands ~~breach~~<sup>channel</sup> cannot be created until a new flood defence has been constructed landward of the existing flood defence;
- (b) the Cherry Cobb Sands ~~breach~~<sup>channel</sup> cannot be created until a channel has been excavated from the site of the breach to the foreshore at the level of the breach; and
- (c) all material is to be removed using land-based plant.

#### *Capital dredging*

9. The licence holder is permitted to deposit rock armouring to the northern extent of the flood defence breach at Cherry Cobb Sands under the following conditions:

- (a) the quantity of rock to be placed must be agreed with the MMO at least 4 weeks prior to works commencement.

**Comment [adw61]:** Except where otherwise indicated the changes are as agreed with the MMO (all MMO changes are agreed, but other parties made further comments)

- (b) the exact location must be agreed with the MMO at least 4 weeks prior to works commencement, and
- (c) the placement of rock armouring shall only be carried out in accordance with the agreed location and rock quantity.

**10.** (1) The licence holder is permitted to deposit temporary bog matting upon the foreshore at the Cherry Cob Sands site for the purposes of construction plant movement.

(2) The licence holder must ensure the bog matting is removed as soon as practicable once the activities for which they have been deposited have been completed.

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

- (a) the area within the quay limits to a depth of -6.5 metres Chart Datum;
- (b) the berthing pocket to a depth of -14.5 metres Chart Datum;
- (c) the approach channel to a depth of -9 metres Chart Datum;
- (d) the turning area to a depth of -9 metres Chart Datum;
- (e) the pumping station outfall to a depth of +2.~~04~~ metres Chart Datum; and
- (f) the Cherry Cobb Sands ~~breachechannel~~ to a depth of ~~+3-5.0~~ metres Chart Datum.

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

Location	Material	Maximum tonnage per year	Deposit location	Total licensed tonnage
Area within the quay limits	Gravel	50,000	HU080	725,000
	Sand	110,000		
	Silt	390,000		
	Clay	175,000	HU082	
The berthing pocket			HU080	1,835,750,000
	Gravel	5,000		
	Sand	50,000		
	Silt	1450,000		
	Clay	5350,000	HU082	
	Clay	1,100,000		
The approach channel	Gravel	150,000	Within the quay limits	1,650,000
	Gravel	15300,000	HU080	
	Sand	600,000		
	Silt	500,000		
	Clay	250,000		
The turning area	Gravel	35,000	HU080	250,000
	Sand	95,000		
	Silt	80,000		
	Clay	40,000	HU082	
The pumping station outfall	Sand	500	HU080	82,5000
	Silt	27,0500		
The Cherry Cobb Sands breach channel	Sand	2,000	If the dredged material is suitable, the intertidal area within the proposed managed realignment site landward of the Cherry Cobb Sands channel, otherwise HU080	10,000
	Silt	8,000		

#### Maintenance dredging

10.12. (1) The licence holder is permitted to carry out maintenance dredging at the following locations within the period specified in paragraph 1412(3):—

- the berthing pocket to a depth of -11 metres Chart Datum;
- the approach channel to a depth of -9 metres Chart Datum;
- the turning area to a depth of -9 metres Chart Datum;
- the E.ON outfall to keep it free of siltation by means of plough dredging;
- the Centrica outfall to keep it free of siltation by means of plough dredging;
- the pumping station outfall to a depth of +32.04 metres Chart Datum; and
- the Cherry Cobb Sands breachechannel to a depth of +3.0-5.7 metres Chart Datum.

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

- maintaining the authorised development;
- maintaining access to the authorised development;

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**Comment [adw62]:** As suggested by HMF

- (c) maintaining access to neighbouring developments; and
- (d) removing siltation caused by the authorised development.

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

<i>Location</i>	<i>Material</i>	<i>Maximum tonnage per year</i>	<i>Deposit location</i>	<i>Total licensed tonnage</i>
The berthing pocket	Sand	150,000	HU080	<del>+3,220</del> 5,000
	Silt	925,000		
The approach channel	Sand	10,000	HU080	150,000
	Silt	40,000		
The turning area	Sand	10,000	HU080	150,000
	Silt	40,000		
The E.ON outfall	Sand	500	none	72,500
	Silt	2,000		
The Centrica outfall	Sand	500	none	27,500
	Silt	2,000		
The pumping station outfall	Sand	50	HU080	+300
	Silt	50		

### PART 3

#### ENFORCEMENT

~~14.13.~~ Any breach of this Schedule shall not constitute a breach of this Order but shall be subject to the enforcement regime in Chapter 3 of Part 4 of the 2009 Act as if this Schedule were a licence granted under that Act.

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### PART 4

#### CONDITIONS

##### *General conditions*

~~12.14.~~ (1) The conditions set out at paragraphs ~~1543~~ to ~~469~~ are licence conditions attached to the deemed marine licence granted by article 44.

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

(3) This licence is for 6 years from the date of coming into force of this Order whereby—

- (a) the construction and capital dredge activities are carried out within the first three years; and
- (b) maintenance dredging is permitted within the second three years.

~~13.15.~~ (1) No licensed activities shall be carried out until four weeks after a marine environmental management and mitigation plan has been supplied to the MMO, Natural England and the Environment Agency in accordance with paragraph 17 of Schedule 11.

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(2) Before commencing any licensed activities, the licence holder shall consult ~~the harbour master, CRO Ports (Killingholme) Ltd, E.ON UK plc and Centrica~~ on the contents of the marine environmental management and monitoring plan in relation to those elements of the maintenance dredging licensed under paragraph ~~1240~~ that may affect those parties' interests.

**Comment [A63]:** At the suggestion of HMH

**Comment [A64]:** Now defined term

(3) The licence holder ~~must will~~ have regard to any consultation responses received from C.RO Ports (Killingholme) Ltd, E.ON UK plc and Centrica.

**Comment [adw65]:** At the request of E.ON

~~14.16.~~ No licensed activity shall be carried out until four weeks after a vessel movement management plan has been agreed in writing by the MMO, and the licensed activities shall be carried out in accordance with the vessel movement management plan.

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~~15.17.~~ The MMO must be notified by the licence holder at least ten working days before the commencement of any licensed activity of its acceptance of the provisions of this Schedule and that the company and any agents or contractors employed by it to carry out the licensed activities have knowledge of the provisions of this Schedule.

~~16.18.~~ The licence holder must ensure that the MMO District Marine Office is notified of the timetable of works and operations at least 10 days prior to the commencement of any licensed activity.

~~17.19.~~ The MMO must be notified by the licence holder in writing of any agents, contractors or sub-contractors that will be carrying out any licensed activity on behalf of the licence holder at least four weeks before the commencement of the licensed activity.

~~18.20.~~ The licence holder must ensure that a copy of this Schedule and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or sub-contractors that will be carrying out any licensed activity on behalf of the licence holder.

~~19.21.~~ The licence holder must ensure that the names of vessels are provided to the MMO and agreed in writing at least four weeks prior to the commencement of works, such notification setting out

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

~~20.22.~~ The licence holder must ensure that a copy of this Schedule and any subsequent revisions or amendments has been provided to, read and understood by the master of any vessel being used to undertake any licensed activity, and that a copy of this Schedule is held on board any such vessel.

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~~21.23.~~ Should the licence holder become aware that any of the information on which the granting of this deemed marine licence was based has changed or is likely to change, the licence holder must notify the MMO at the earliest opportunity.

#### *Project wide conditions*

~~22.24.~~ The works shall be carried out in accordance with a works schedule to be agreed in writing between the licence holder and the MMO prior to the commencement of the works, and any changes to the works schedule are also to be agreed in writing with the MMO.

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~~23.25.~~ (1) The following dependencies apply to the licensed activities in paragraphs 4 to ~~12.40.~~

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

- (a) carry out the activity licensed under paragraph 8 (compensation site creation) in the June following the creation of the compensation site, which in turn must be done during the first earthworks season following the commencement of the activity licensed under paragraph 4;
- (b) carry out the activity licensed under paragraph 7 (pumping station);
- (c) carry out the activity licensed under paragraph ~~12.40.~~(1)(d) (the E.On outfall maintenance dredging) unless agreed in writing with E.ON; and

(d) carry out the activity licensed under paragraph ~~12+0~~(1)(e) (the Centrica outfall maintenance dredging) unless agreed in writing with Centrica.

(3) If the licence holder carries out the activity licensed under paragraph ~~119~~(1)(b) (berthing pocket capital dredging) then it must carry out the activity licensed under paragraph 6 (berthing pocket infill) but must not undertake maintenance dredging below the level of -11.5 metres Chart Datum.

~~24.26.~~ The licence holder must ensure that any coatings and treatments used are approved by the Health and Safety Executive as suitable for use in the marine environment and are used in accordance with Environment Agency Pollution Prevention Control Guidelines. The licence holder must ensure that the Environment Agency's Pollution Prevention Guidelines for works in or near water (PPG5) are adhered to at all times.

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~~25.27.~~ (1)-The licence holder must only work and access the works site within a defined and marked out area thereby limiting personnel and plant access to the site.

(2) Co-ordinates (in WGS84) and plan diagrams of the work area and access routes must be submitted to the MMO at least 4 weeks prior to the commencement of works.

(3) The written approval of the co-ordinates and plan diagrams by the MMO is required prior to works commencing.

~~26.28.~~ The licence holder must ensure that during the works all wastes are stored in designated areas that are isolated from surface water drains, open water and bunded to contain any spillage.

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~~27.29.~~ The licence holder must ensure that any equipment, temporary structures, waste and debris associated with the works are removed within 6 weeks of completion of the works.

~~28.30.~~ (1) The licence holder must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment.

(2) Concrete and cement mixing and washing areas should be contained and sited at least 10 metres from any watercourse or surface water drain to minimise the risk of run off entering a watercourse.

~~29.31.~~ (1) Prior to any works commencing below the level of Mean High Water Springs, the licence holder must submit detailed method statements to the MMO for approval for each stage of works at least 4 weeks prior to the commencement of works.-

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(2) All works must be undertaken in accordance with agreed and approved method statements.

~~30.32.~~ The licence holder must install bunding and storage facilities to contain and prevent the release of fuel, oils, and chemicals associated with plant, refuelling and construction equipment, into the marine environment such that secondary containment should be used with a capacity of not less than 110% of any container's storage capacity.

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~~31.33.~~ The licence holder must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO Marine Pollution Response Team: 0870 785 1050 (office hours), 07770 977 825 (outside office hours) and dispersants@marinemanagement.org.uk or such replacement numbers or email address notified to the licence holder by the MMO in writing.

~~32.34.~~ The licence holder must ensure that a Notice to Mariners is issued at least 10 days prior to works commencing warning of the start date for the construction of the works and updated as appropriate.

~~33.35.~~ The licence holder must ensure that all materials used in construction of any part of the development (including the compensation site) are suitable and approved for use within the marine environment.

~~34.36.~~ (1) The licence holder must ensure that a protocol for archaeological discoveries (PAD) is in place before works commence for the reporting of unexpected remains made during

construction activities. This protocol must draw upon the format outlined in the BMAPA/English Heritage (2005), COWRIE (2007) and the Crown Estate (2010) guidelines.

(2) This protocol must be submitted to the MMO at least 4 weeks prior to the commencement of works.

#### *Piling conditions*

~~35.37.~~ ~~(1)(40)~~ No operations consisting of piling shall commence until a piling method statement has been submitted to and agreed in writing by the MMO, following consultation with the Environment Agency and Natural England, such statement to include the following:—

- (a) the use of pile pads and pile shrouds at all times,
- (b) the maximum pile diameter to be 2.1 metres unless otherwise agreed in writing by the MMO, following consultation with Natural England and the Environment Agency,
- (c) soft start procedures to be followed to include a requirement for a soft start of at least 180 seconds for percussive piling of marine piles,
- (d) marine mammal observation (within 100 metres of the pile being driven) and the cessation of piling while any marine mammals are within this zone,
- (e) implementation of an active monitoring scheme under paragraph ~~39~~~~37~~, and
- (f) details of the anticipated spread of piling activity throughout a working day

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

~~36.38.~~ No operations consisting of piling shall commence until a cold weather piling restriction strategy is submitted and agreed with the MMO, following consultation with Natural England, such strategy to include:

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

(2) Percussive piling shall only be carried out in accordance with the cold weather piling restriction strategy.

~~37.39.~~ (1) No development shall be commenced until an active monitoring scheme has been submitted to and agreed in writing by the MMO, following consultation with the Environment Agency and Natural England, such scheme to include the following details:—

- (a) the location of active monitoring buoys and the depth and design of sensors,
- (b) the frequency of measurement of temperature and dissolved oxygen,
- (c) 24 hours a day, 7 days a week monitoring of noise,
- (d) when monitoring shall commence and cease, to include a two-week period of pre- and post-construction monitoring to establish baseline conditions and the return to baseline conditions respectively,
- (e) a log of the number and approximate locations of piling rigs that are in operation on any given day, and

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**Comment [A66]:** Suggested by MMO

**Comment [A67]:** ABP sought to reduce this to be in line with Hull – rejected as agreed with MMO/EA/NE as appropriate for this development

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**Comment [A68]:** At the request of MMO and EA

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- (f) details of how the monitored information will be accessed by or communicated to the site contractor, the MMO the Environment Agency and Natural England as necessary.

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

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

~~38.40~~ No percussive piling shall take place between 7 April and 1 June inclusive in any calendar year.

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~~39.41~~ (1) Percussive piling shall be restricted at other times as follows:—

- (a) from 2 June to 22 July inclusive in any year, the maximum amount of percussive piling permitted within any four-week period shall not exceed:—
  - (i) 101 hours where a single piling rig is in operation, or
  - (ii) a total of ~~168~~ hours where two or more rigs are in operation;
- (b) from 23 July to 10 September inclusive in any year, the maximum amount of percussive piling permitted within any week-long period shall not exceed:—
  - (i) 25 hours where a single piling rig is in operation, or
  - (ii) a total of 42 hours where two or more rigs are in operation;
- (c) from 11 September to 31 October inclusive in any year, the maximum amount of percussive piling permitted within any four-week period shall not exceed:—
  - (i) 134 hours where a single piling rig is in operation, or
  - (ii) a total of 224 hours where two or more rigs are in operation.
- (d) from 1 November in any year to 6 April in the following year inclusive, the maximum amount of percussive piling permitted within any eight-week period shall not exceed:—
  - (i) 336 hours where a single piling rig is in operation, or
  - (ii) a total of 560 hours where two or more rigs are in operation.

**Comment [A69]:** ABP sought to reduce this and other hours to be in line with Hull – rejected as agreed with MMO/EA/NE as appropriate for this development

(2) The measurement of time during each work-block shall begin at the start of each timeframe, roll throughout it, then cease at the end, where measurement will begin again at the start of the next timeframe, such process to be repeated until the end of piling works.

~~40.42~~ No percussive piling shall take place before 0600 hours or after 2200 hours on any day.

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~~41.43~~ The maximum diameter of marine piles shall be 2.1 metres unless otherwise agreed in writing with the MMO, following consultation with Natural England and the Environment Agency.

#### *General dredging and disposal conditions*

~~42.44~~ Conditions 32 to ~~6967~~ shall apply to licensed activities consisting of dredging and disposal.

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~~43.45~~ (1) The licence holder must agree a dredge and disposal strategy with the MMO at least four weeks before the commencement of any licensed activities.

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

~~44.46~~ The licence holder must ensure that

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- (a) as a result of the capital dredging activities in paragraph ~~119~~:
  - (i) no inerodible material and no more than ~~2,218363~~ 2,000,000 tonnes of erodible material site is disposed to site HU080 and
  - (ii) no erodible material and no more than 1,000,000 tonnes of inerodible material is disposed of to site HU082; and



- (b) as a result of the maintenance dredging activities in paragraph ~~12+0~~ no inerodible material and no more than 1,180,0100 tonnes of erodible material per annum is disposed to site HU080.

~~45.47.~~ (1) The licence holder must ensure that certified returns of quantities of dredged material deposited under this licence are submitted to the MMO by the 31st January (for the months August to January inclusive) and the 31st July (for the months February to July inclusive) each year.

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(2) The returns must specify the full licence number and amounts deposited (in tonnes) each calendar month at each authorised deposit area.

(3) Where no deposit is made in a given period a NIL return is required.

(4) The disposal method used must also be submitted with the returns.

~~46.48.~~ (1) The licence holder must ensure that dredged material is passed through grid screens no larger than 30cm to minimise the amount of man-made materials disposed of at sea.

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(2) Any man-made material must be separated from the dredged material and disposed of to land.

~~47.49.~~ Should disposal of material be found to be the cause of any detrimental effects to the disposal site then disposal must cease with immediate effect.

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#### *Capital dredging and disposal conditions*

~~48.50.~~ The licence holder must ensure that during the course of disposal, non-erodible material is placed in the depressions of HU082, and that the site is filled to a gradient in keeping with the surrounding bathymetry and ensure that no depths within the disposal site are reduced to less than 5.3m below admiralty Chart Datum at its shallowest point.

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~~49.51.~~ The licence holder must undertake regular bathymetric surveys to ensure that the disposal of dredged material at site HU082 has been undertaken in line with the requirements of this licence.

~~50.52.~~ (1) The licence holder must ensure that no gravel is disposed of to HU080 until sampling of the existing seabed has been undertaken and an assessment made which demonstrates that disposal of gravel to the site is acceptable.

(2) The assessment must be submitted to and agreed by the MMO, prior to disposal activity being undertaken.

(3) If following the assessment gravel is found not to be suitable to disposal to site HU080 the gravel material must be reused or disposed of elsewhere.

~~51.53.~~ The licence holder must ensure that during the course of disposal, material is distributed evenly over disposal site HU080.

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~~52.54.~~ (1) The licence holder must employ methods to minimise resuspension of sediment during the construction and dredging operations.

(2) The methodology must be submitted to the MMO at least 4 weeks prior to the commencement of the works.

(3) Written approval by the MMO is required prior to works commencing.

#### *Maintenance dredging and disposal conditions*

~~53.55.~~ (1) The licence holder must undertake sampling and chemical analysis for contaminated sediments within 6 months prior of the commencement of Maintenance dredge and disposal operation to ensure the material is still suitable for sea disposal.

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(2) The Licence Holder must consult the MMO on the sampling plan and methodology for chemical analysis prior to sampling and analysis being undertaken.

(3) No disposal at sea can take place without the approval of the MMO.

54.56. The licence holder must ensure that during the course of disposal, material is distributed evenly over disposal site HU080.

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55.57. (1) The licence holder must monitor disposal site HU080 to ensure that the material is dispersing as predicted.

(2) A Monitoring Plan must be agreed in writing with the MMO at least 4 weeks prior to the commencement of works.

(3) The monitoring must be carried out in accordance with the Monitoring Plan agreed.

56.58. (1) The licence holder must update the Humber Maintenance Dredging Baseline Document to incorporate the dredging and disposal of dredged material consented.

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(2) The updated Humber Maintenance Dredging Baseline Document must be submitted with any subsequent application made to the MMO for maintenance dredging activities associated with the works.

57.59. The berthing pocket must be maintained to no deeper than -11.0m CD to ensure that no gravel infill material migrates from the berthing pocket or is dredged and disposed of to unsuitable disposal grounds.

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58.60. (1) The licence holder must employ methods to minimise resuspension of sediment during dredging operations.

(2) The methodology must be submitted to the MMO at least 4 weeks prior to the commencement of the works.

(3) Written approval/agreement by the MMO is required prior to works commencing.

*Placement of rock and gravel materials below mean high water springs*

59.61. (1) Any rock or gravel material to be placed within the marine environment must be from a recognised source agreed by the MMO.

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(2) Details of such information should be provided to the MMO at least 4 weeks prior to the commencement of works.

60.62. Any rock armour surplus to that specified in paragraph 4(1)(b) must be returned to land.

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61.63. Any rock or gravel surplus to that specified in paragraph 6 must be returned to land.

62.64. (1) The licence holder must ensure that a full method statement and location of the transshipment area and barge approach routes is submitted to the MMO at least 4 weeks prior to the commencement of works.

(2) Written approval by the MMO is required prior to works commencing.

63.65. The licence holder must ensure that pre and post works trawl surveys are conducted within any transshipment area and barge approach routes, or Fisheries Liaison Officers are employed on the transshipping vessel to observe all transshipment operations and record any losses.

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64.66. (1) The licence holder must ensure that any vessels used for rock and gravel transshipment or delivery operations are suitably constructed and loaded to prevent rock and gravel falling over the side by accident.

(2) Suitable screening should be used to prevent rock and gravel loss through drainage holes.

65.67. The licence holder must ensure that sea going tug or tugs capable of towing the barge in a loaded condition can be made available within a 12 hour period to tow the barge sheltered waters in adverse weather conditions.

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66.68. The licence holder must ensure that any rock misplaced or lost below mean high water springs is reported to the MMO District Marine Office within 48 hours, and located and recovered.

67.69. Any rock that is misplaced or lost below mean high water springs and cannot be recovered must be located and its position notified to the MMO within 48 hours.

## PROTECTIVE PROVISIONS

## PART 1

## FOR THE PROTECTION OF THE HUMBER CONSERVANCY

*Interpretation*

## 1. In this Part—

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

“environmental document” means—

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

(b) any other document containing environmental information provided by the Harbour Authority to the Secretary of State or the Conservancy Authority for the purposes of any tidal works approval under article 23 (tidal works not to be constructed without approval of the Secretary of State) or this Schedule; and

“the river” means the River Humber.

*General*

2.—~~(1)(41)~~ The provisions of this Schedule shall, unless otherwise agreed in writing between the Harbour Authority and the Conservancy Authority, have effect for the protection of the Conservancy Authority and the users of the river.

~~(2)(1)~~ For the purposes of this Schedule, the definition of “tidal work” shall be taken to include—

- (a) any projection over the river outside the area of jurisdiction by booms, cranes and similar plant or machinery, whether or not situated within the area of jurisdiction; and
- (b) any authorised work which affects the river or any functions of the Conservancy Authority, whether or not that authorised work is within the limits of the Conservancy Authority.

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*Tidal Works: approval of detailed design*3.—~~(1)(42)~~ Before—

- (a) submitting any plans and sections for any tidal work to the Secretary of State for his approval under article 23 (tidal works not to be constructed without approval of the Secretary of State);
- (b) agreeing a vessel movement management plan with the MMO under paragraph 1614 of Schedule 8;
- (c) agreeing a dredge and disposal strategy with the MMO under paragraph 3432 of Schedule 8;
- (d) seeking approval from the relevant planning authority for any alteration of the drawings under paragraph 4 of Schedule 11 that affect the area below mean high water mark;

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**Comment [A70]:** This and following sub-paragraphs at the suggestion of HMH, last two amended to refer to those affecting his area only.

- (e) seeking approval from the relevant planning authority for any external lighting details under paragraph 20 of Schedule 11 that affect the area below mean high water mark;
- (f) commencing any operation for the construction of a tidal work where approval of the Secretary of State under article 23 is not required; or
- (g) commencing any operation for the maintenance of a tidal work,
- the Harbour Authority shall submit to the Conservancy Authority plans and sections of the tidal work or operation and such further particulars as the Conservancy Authority may, within 28 days from the day on which plans and sections are submitted under this sub-paragraph, reasonably require.

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

**Comment [A71]:** As suggested by HMH

<u>TABLE</u>		
<u>(1)</u> <u>Document</u>	<u>(2)</u> <u>Provision of Order</u>	<u>(3)</u> <u>Provision requiring</u> <u>Conservancy Authority</u> <u>approval</u>
<u>Marine environmental management and monitoring plan</u>	<u>Schedule 11, paragraph 17</u>	<u>Provision relating to monitoring equipment fixed to buoys</u>
<u>Works schedule</u>	<u>Schedule 8, paragraph 24<del>22</del></u>	<u>None</u>
<u>Active monitoring scheme</u>	<u>Schedule 8, paragraph 28<del>26</del></u>	<u>Provision relating to the locations of active monitoring buoys</u>
<u>Stages of the development scheme</u>	<u>Schedule 11, paragraph 3</u>	<u>None</u>
<u>Code of construction practice</u>	<u>Schedule 11, paragraph 18</u>	<u>None</u>

(3) No application for the Secretary of State's approval under article 23 shall be made in respect of a tidal work until plans and sections in respect of that tidal work submitted under sub-paragraph (1) have been approved by the Conservancy Authority.

(4) Any tidal work not requiring the Secretary of State's approval under article 23 shall not be constructed, and no tidal work shall be maintained, except in accordance with such plans as may be approved in writing by the Conservancy Authority or determined under paragraph 24.

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

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

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

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

(7) Subject to sub-paragraphs (7) and (8), any such approval shall be deemed to have been refused if it is neither given nor refused within 42 days of the specified day.

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

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

(10) In this paragraph “the specified day” means, in relation to any tidal work—

- (a) the day on which plans of that work are submitted to the Conservancy Authority under sub-paragraph (1); or
- (b) the day on which the Harbour Authority provides the Conservancy Authority with all such particulars of the work as have been reasonably requested by the Conservancy Authority under that sub-paragraph;

whichever is the later.

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

4. ~~WhenBefore~~ submitting any document specied in the Table in paragraph 3(2) to the MMO or the relevant planning authority as the case may be, plan, schedule method statement, scheme or strategy to the Marine Management Organisation in accordance with paragraphs 13, 21, 22, 35(1) or 43(1) of Schedule 8, the Harbour Authority shall submit such plan, schedule, method statement, scheme or strategy to the Humber Harbour Master, and shall forward any comments received from the harbour master in response to the consultation undertaken with the harbour master in accordance with that paragraph within 28 days of such submission to the Marine Management Organisation.;

**Comment [A72]:** As suggested by HMMH

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

*Discharges, etc.*

6. ~~(1)(43)~~ The Harbour Authority shall not without the consent of the Conservancy Authority—

- (a) deposit in or allow to fall or be washed into the river any gravel, soil or other material; or
- (b) discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise.

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

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

(4) In its application to the discharge of water into the river, article 20 (discharge of water) shall have effect subject to the terms of any conditions attached to a consent given under this paragraph.

7. The Harbour Authority shall not, in exercise of the powers conferred by article 20, damage or interfere with the beds or banks of any watercourse forming part of the river unless such damage or interference is approved as a tidal work under this Order or is otherwise approved in writing by the Conservancy Authority.

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*Obstruction in river*

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

- (a) cut the obstruction off at such level below the bed of the river as the Conservancy Authority may reasonably direct; or
- (b) take such other steps to make the obstruction safe as the Conservancy Authority may reasonably require.

*Removal, etc. of the Conservancy Authority moorings and buoys*

9. If—

- (a) by reason of the construction of any tidal work it is reasonably necessary for the Conservancy Authority to incur reasonable costs in temporarily or permanently altering, removing, re-siting, repositioning or reinstating existing moorings or aids to navigation (including navigation marks or lights) owned by the Conservancy Authority, or laying down and removing substituted moorings or buoys, or carrying out dredging operations for any such purpose, not being costs which it would have incurred for any other reason; and
- (b) the Conservancy Authority gives to the Harbour Authority not less than 28 days' notice of its intention to incur such costs, and takes into account any representations which the Harbour Authority may make in response to the notice within 14 days of the receipt of the notice,

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

*Navigational lights, buoys, etc.*

10. In addition to any requirement under articles 26 (lights on tidal works during construction) and 27 (permanent lights on tidal works), the Harbour Authority shall, at or near every tidal work, and any other work of which the Harbour Authority is in possession in exercise of any of the powers of this Order (being in either case a work which is below mean high water level forming part of the river), exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the Conservancy Authority may from time to time reasonably require.

*Removal of temporary works*

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

- (a) any temporary tidal work carried out only for the purposes of that part of the permanent work; and
  - (b) any materials, plant and equipment used for such construction,
- and shall make good the site to the reasonable satisfaction of the Conservancy Authority.

*Protective action*

12. ~~(1)(44)~~ If any tidal work—

- (a) is constructed otherwise than in accordance with the requirements of this Schedule or with any condition in an approval given pursuant to paragraph 3(4); or
- (b) during construction gives rise to sedimentation, scouring, currents or wave action detrimental to traffic in, or the flow or regime of, the river,

then the Conservancy Authority may by notice in writing require the Harbour Authority at the Harbour Authority's own expense to comply with the remedial requirements specified in the notice.

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- (2) The requirements that may be specified in a notice given under sub-paragraph (1) are—
- (a) in the case of a tidal work to which sub-paragraph (1)(a) applies, such requirements as may be specified in the notice for the purpose of giving effect to the requirements of—
    - (i) this Schedule; or
    - (ii) the condition that has been breached; or
  - (b) in any case within sub-paragraph (1)(b), such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the river.
- (3) If the Harbour Authority does not comply with a notice under sub-paragraph (1), or is unable to do so then the Conservancy Authority may in writing require the Harbour Authority to—
- (a) remove, alter or pull down the tidal work, and where the tidal work is removed to restore the site of that work (to such extent as the Conservancy Authority reasonably requires) to its former condition; or
  - (b) take such other action as the Conservancy Authority may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.
- (4) If a tidal work gives rise to environmental impacts over and above those anticipated by any environmental document, the Harbour Authority shall, in compliance with its duties under any enactment and, in particular, under section 48A of the 1964 Act, take such action as is necessary to prevent or mitigate those environmental impacts and in so doing shall consult and seek to agree the necessary measures with the Conservancy Authority.
- (5) If the Conservancy Authority becomes aware that any tidal work is causing an environmental impact over and above those anticipated by any environmental document, the Conservancy Authority shall notify the Harbour Authority of that environmental impact, the reasons why the Conservancy Authority believes that the environmental impact is being caused by the tidal work and of measures that the Conservancy Authority reasonably believes are necessary to counter or mitigate that environmental impact. The Harbour Authority shall implement the measures that the Conservancy Authority has notified to the Harbour Authority or shall implement such other measures as the Harbour Authority believes are necessary to counter the environmental impact identified, giving reasons to the Conservancy Authority as to why it has implemented such other measures.

*Abandoned or decayed works*

13.—~~(1)(45)~~ If any tidal work or any other work of which the Harbour Authority is in possession in exercise of any of the powers of this Order (being in either case a work which is below mean high water level) is abandoned or falls into decay, the Conservancy Authority may by notice in writing require the Harbour Authority to take such reasonable steps as may be specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as the Conservancy Authority reasonably requires) to restore the site to its former condition.

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~~(2)(1)~~ If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation in the river, the Conservancy Authority may by notice in writing require the Harbour Authority to take such reasonable steps as may be specified in the notice—

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- (a) to repair and restore the work or part of it; or
- (b) if the Harbour Authority so elects, to remove the tidal work and (to such extent as the Conservancy Authority reasonably requires) to restore the site to its former condition.

~~(3)(2)~~ If after such reasonable period as may be specified in a notice under this paragraph the Harbour Authority has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, the Conservancy Authority may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing shall be recoverable from the Harbour Authority.

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#### *Facilities for navigation*

14.—~~(1)(46)~~ The Harbour Authority shall not in the exercise of the powers granted by this Order interfere with any marks, lights or other navigational aids in the river without the agreement of the Conservancy Authority, and shall ensure that access to such aids remains available during and following construction of any tidal works.

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~~(2)(1)~~ The Harbour Authority shall provide at any tidal works, or shall afford reasonable facilities at such works (including an electricity supply) for the Conservancy Authority to provide at the Harbour Authority's cost, from time to time, such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation of users of the river in general as the Conservancy Authority may deem necessary by reason of the construction of any tidal works, and shall ensure that access remains available to apparatus during and following construction of such works.

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~~(3)(2)~~ The Harbour Authority shall comply with the directions of the Humber Harbour Master from time to time with regard to the lighting on the tidal works or within the harbour, or the screening of such lighting, so as to ensure safe navigation on the river.

#### *Survey of riverbed*

15.—~~(47)~~ Before the commencement of construction of the first tidal work to be constructed following approval pursuant to article 23 (tidal works not to be constructed without approval of the Secretary of State), the Conservancy Authority may, at the Harbour Authority's reasonable expense, carry out a survey of such parts of the river as might be affected by sedimentation, scouring, currents or wave action that might result from the construction of such of the authorised works as would constitute tidal works if they were to be constructed, for the purposes of establishing the condition of the river at that time.

~~(2)(1)~~ Before the commencement of construction of any other tidal work approved pursuant to article 23, the Conservancy Authority may, at the Harbour Authority's reasonable expense, carry out a survey of such parts of the river as might be affected by sedimentation, scouring, currents or wave action resulting from that tidal work for the purpose of establishing the condition of the river at that time.

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~~(3)(2)~~ The Conservancy Authority may carry out such surveys of the river as are reasonably required during the construction of any tidal work to ascertain the effect of that tidal work on the river and the Conservancy Authority shall make available to the Harbour Authority the results of any such survey in electronic and paper format.

~~(4)(3)~~ After completion of, respectively, any tidal work and all the tidal works constructed under this Order, the Conservancy Authority may, at the Harbour Authority's expense carry out a further survey of the parts of the river which were surveyed prior to the construction of that work, or as the case may be a survey of the completed tidal works as so constructed, for the purpose of establishing the condition of the river and the effect that the tidal work is, or as the case may be the tidal works are, having on navigation, the flow and the regime of the river and the exercise of the Conservancy Authority's functions.

~~(5)(4)~~ The Conservancy Authority shall not under this paragraph carry out a survey of any part of the river as respects which the Harbour Authority has provided to the Conservancy Authority survey material which the Conservancy Authority is reasonably satisfied establishes the condition of the river, and in the case of a survey under sub-paragraph (3), the effect of the tidal work, or as the case may be the tidal works.

#### *Sedimentation, etc.: remedial action*

16.—~~(1)(48)~~ This paragraph applies if any part of the river becomes subject to sedimentation, scouring, currents or wave action which—

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

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

(2) The Harbour Authority shall either—

- (a) pay to the Conservancy Authority any additional expense to which the Conservancy Authority may reasonably be put in dredging the river to remove the sedimentation or in making good the scouring so far as (in either case) it is attributable to the tidal work; or
- (b) carry out the necessary dredging at its own expense and subject to the prior approval of the Conservancy Authority, such prior approval not to be unreasonably withheld or delayed;

and the reasonable expenses payable by the Harbour Authority under this paragraph include any additional expenses accrued or incurred by the Conservancy Authority in carrying out surveys or studies in connection with the implementation of this paragraph.

#### *Indemnity*

17.—~~(1)(49)~~ The Harbour Authority shall be responsible for and make good to the Conservancy Authority all reasonable financial costs or losses not otherwise provided for in this Schedule which may reasonably be incurred or suffered by the Conservancy Authority by reason of—

- (a) the construction or operation of the authorised works or the failure of the authorised works;
- (b) anything done in relation to a mooring or buoy pursuant to paragraph 9; or
- (c) any act or omission of the Harbour Authority, its employees, contractors or agents or others whilst engaged upon the construction or operation of the authorised works or dealing with any failure of the authorised works;

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

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

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

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

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

#### *Entry for survey, etc.*

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

- (a) the location of the land (including a plan);
- (b) the nature of the things proposed to be done in that land in exercise of that article;
- (c) the duration and frequency of the undertaker's intended presence on the land;
- (d) any vehicles or equipment proposed to be brought on the land;

and such other details as the ~~h~~Harbour ~~m~~Master may reasonably request.

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

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### *Statutory functions*

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

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

**Comment [A73]:** At the suggestion of HMH – amendment to paragraph 18 not spotted by HMH!

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

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

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

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

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

### *Operating procedures*

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

### *Consideration for dredged material*

21.—~~(1)(51)~~ Subject to any agreement concluded between the Harbour Authority, the Conservancy Authority and any other party benefiting from material dredged by the Conservancy Authority, the Harbour Authority shall pay the Conservancy Authority for material dredged by the Conservancy Authority under this Order from so much of the river as is vested in the Conservancy Authority, consideration calculated at a rate agreed between them and otherwise in accordance with this paragraph.

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~~(2)(1)~~ The Harbour Authority shall pay reasonable consideration under sub-paragraph (1) as respects material dredged in the course of the construction of the works authorised by Schedule 8 (deemed marine licence) based on the quantity of such material that—

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- (a) is not used for the construction of—
  - (i) the authorised works;
  - (ii) any other works related to the construction of Able Marine Energy Park; or
  - (iii) the related development; and
- (b) is not owned by the undertaker, and

- (c) is sold by the Harbour Authority or by any other person exercising any powers under this Order.

*Removal of wrecks and obstructions, etc.*

22. ~~(1)(52)~~ Before exercising any power under section 252 of the Merchant Shipping Act 1995(a) or under section 56 of the 1847 Act, the dockmaster shall notify the ~~Humber-h~~ Harbour ~~m~~Master.

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

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*Transfer of benefit of Order*

23. ~~Within~~ 14 days after the date of any transfer or grant under article 13 (consent to transfer benefit of Order), the undertaker who made the transfer or grant shall serve notice on the ~~Humber-h~~ Harbour ~~m~~Master containing the name and address of the transferee or lessee, the territorial extent of the transfer or grant and, in the case of a grant, the period for which it is granted and the extent of benefits and rights granted.

**Comment [A74]:** HMH suggested his approval before applying under article 12 – rejected as SoS approval considered sufficient, but SoS to consult HMH as a compromise

*Disputes*

24. Any dispute arising between the Harbour Authority and the Conservancy Authority under this Schedule shall be determined by arbitration as provided in article 59 (arbitration).

**Comment [adw75]:** HMH has suggested an additional paragraph removing compulsory powers over the foreshore and giving the conditions he would wish to be attached to the lease – these are rejected because the applicant must maintain its compulsory acquisition powers; this will be land that will become onshore land; furthermore at the compulsory acquisition hearing four terms for the lease were described, but in fact the article has nine terms and is considerably more onerous.

## PART 2

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

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

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

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

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

29. The Company must bring the conditions contained in paragraphs 26 to 28 to the attention of any agent or contractor responsible for carrying out the authorised development.

## PART 3

### FOR THE PROTECTION OF THE HIGHWAYS AGENCY

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

- (a) A160/A1173/Humber Road (Manby Road Roundabout),
- (b) A160/Top Road/Habrough Road,
- (c) A160/A1077 Ulceby Road,

- (d) A160/Eastfield Road (signalised junction), and
- (e) A180/A160 Merge/Diverge (Brocklesby Interchange).

## PART 4

### FOR THE PROTECTION OF NETWORK RAIL

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

**32.** In this part of this Schedule,

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

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held by or used for the benefit of Network Rail for the purposes of such railway or works, apparatus or equipment; and

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

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

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

(a) co-operate with the Company with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised project pursuant to this Order.

**34.—**(1) The Company shall not exercise the powers conferred by article 22 (authority to survey and investigate the land) or the powers conferred by section 11(3) of the 1965 Act as applied to this Order by the 2008 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

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

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld or delayed, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the Company may serve upon the written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning

**Comment [A76]:** NR suggests consent of NR for compulsory acquisition to be inserted here – rejected as applicant has made case for compulsory acquisition without consent of NR (which would therefore not be compulsory, save for addition of unreasonableness term).

with the date upon which the engineer receives written notice from the Company. If by expiry of the further period of 28 days the engineer has not intimated his approval or disapproval, he engineer shall be deemed to have approved the plans as submitted.

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

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

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

(a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 35;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the Company shall, notwithstanding any approval described in paragraph 36(1)(a), make good such damage and shall pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule shall impose—

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

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

**37.** The Company shall—

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

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

**39.—(1)** If any permanent or temporary alterations or additions to railway property, or any protective works under paragraph 35(4), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening for public use of any part of the authorised project that includes a specified work, in consequence of the construction of that specified work, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Company reasonable notice of its intention to carry out such alterations or additions, the Company shall pay to Network Rail all costs reasonably and properly incurred in constructing those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the Company, Network Rail gives notice to the Company that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Company desires that part of the specified work to be constructed, Network Rail shall assume construction of that part of the specified work and the Company shall, notwithstanding any such approval of a specified work under paragraph 35(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

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

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

(a) in constructing any part of a specified work on behalf of the Company as provided by paragraph 34(3) or in constructing any protective works under the provisions of paragraph 34(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the Company and the supervision by him of the construction of a specified work and otherwise in connection with the implementation of the provisions of this Part;

(c) in respect of the employment or procurement of the services of any inspectors and other persons whom it shall be reasonably necessary to appoint for inspecting, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of a specified work; and

(e) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution of diversion of services which may be reasonably necessary for the same reason.

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

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

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

(a) by reason of the construction, working or maintenance of a specified work, or the failure thereof; or

(b) by reason of any act or omission of the Company or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

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

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

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

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

46. The Company shall no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 57 are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

**Comment [A77]:** NR had inserted indemnity against claims from railway companies etc. here – rejected as in general the applicant does not accept indemnities because the indemnified party may settle with the claimant at an higher level than the applicant would have done, not having an incentive to reach a lower settlement; NR would have recourse through the courts for any losses incurred as a result of the applicant's actions

## PART 5

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

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

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



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

Rosper Road

49A. The undertaker shall not in the exercise of the powers conferred by this Order unreasonably prevent C.GEN's access to and use of Rosper Road.

49B. The construction and operation of the authorised development must not unreasonably interfere with or obstruct the free, uninterrupted and safe use of Rosper Road or any traffic on Rosper Road, unless an alternative access that is suitable and commodious is provided prior to and for the duration of any such interference.

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

51. Unless otherwise agreed in writing, any dispute arising between the undertaker and C.GEN under this Schedule shall be determined by arbitration as provided in article 59 (arbitration).

**Comment [adw78]:** C.GEN has asked that this be removed but the applicant cannot agree to accommodate an open-ended commitment for a future development. The figure of a maximum of five is taken from C.GEN's own preliminary environmental information.

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**Comment [adw79]:** C.GEN has proposed a further paragraph about indemnities and liabilities but this is rejected for the same reasons as for Network Rail above

## PART 6

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

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

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

"CPK approach channel" means the approach channel and manoeuvring area for CPK.

54. (1)-Before:

- (a) submitting any plans and sections for any tidal work in or that may affect the CPK approach channel within 500 metres of CPK to the Secretary of State for approval under article 23 of this Order (tidal works not to be constructed without approval of the Secretary of State);
- (b) commencing any operation for the construction of a tidal work in or that may affect the CPK approach channel where approval of the Secretary of State under article 23 is not required;
- ~~(b)(c)~~ (c) submitting any works schedules to the Marine Management Organisation in accordance with Schedule 8 for works in or that may affect the CPK approach channel;
- (d) submitting any plans and sections for any tidal work or operation in or that may affect the CPK approach channel to the Conservancy Authority in accordance with Part 1 of Schedule 9;
- (e) submitting any written scheme or proposed alteration in the design drawings that may affect the CPK approach channel to the relevant planning authority in accordance with Schedule 11; or
- (f) commencing any operation for the maintenance of a tidal work in or that may affect the CPK approach channel
- (g) the Harbour Authority shall consult C.RO in accordance with the procedure set out in paragraph 54(2) and shall forward any response received within 28 days of such consultation from C.RO to the Secretary of State or the Marine Management Organisation, as appropriate.

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(2) The consultation that the undertaker shall carry out with CPK under paragraph 54(1) is as follows:

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(a) not less than 42 days prior to carrying out any activity to which paragraph 54(1) applies the undertaker shall submit to C.RO plans and sections of any tidal works or any written scheme or proposed alteration to the design drawings to which paragraph 54 applies and such further particulars as C.RO may, within 14 days from the day on which plans and sections are submitted under this paragraph, reasonably require; and

(b) the undertaker shall allow C.RO a period of 28 days beginning with the date on which the information required under sub-paragraph (2)(a) has been submitted to C.RO for C.RO to respond for the purposes of consultation, or if later a further period of 28 days from when such further particulars as required by C.RO are submitted by the undertaker to C.RO.

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(3) The undertaker shall have regard to any consultation response received from C.RO under paragraph 54(2) and shall forward a copy of that response as part of the material it submits to the Secretary of State or the Marine Management Organisation or the Conservancy Authority or any written scheme or proposed alteration to the design drawings that it submits to the relevant planning authority, to which paragraph 54 applies, together with a statement explaining how it has had regard to any consultation response received from C.RO under this paragraph.

54A. Any operations for the construction of any tidal work approved in accordance with this Order and to which paragraph 54 of this Part applies, shall, once commenced, be carried out by the undertaker so that C.RO shall not suffer more interference than is reasonably practicable, and C.RO shall be entitled by its officer or other appointed person at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

55. The Harbour Authority shall not in the exercise of the powers granted by this Order interfere with any marks, lights or other navigational aids in the river relating to CPK without the agreement of C.RO, and shall ensure that access to such aids remains available during and following construction of any tidal works.

56. The undertaker shall pay to C.RO the reasonable costs incurred by C.RO of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or in consequence of the construction of a tidal work or the use of the authorised development, including but without limitation, paying the reasonable costs of C.RO incurred in raising the height of the IsoGWR.4 s sector light positioned in the entrance of North Killingholme Haven at CPK, in the event that activities related to the construction or operation of the authorised development obscure or obstruct the visibility of this sector light to vessels approaching CPK and in its approach channels. The undertaker shall pay to C.RO the reasonable costs incurred by C.RO of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or in consequence of the construction of a tidal work.

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

57A. The undertaker shall provide and maintain on any tidal works such fog signalling apparatus as may be reasonably required by C.RO and shall properly operate such apparatus during periods of restricted visibility for the purpose of warning vessels of the existence of the relevant works.

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

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

#### Dredging

59C. (1) The undertaker shall not dredge in the approach channel to CPK without prior approval of C.RO and C.RO shall not dredge in the turning area without prior approval of the undertaker.

(2) Any dredging that is carried out with C.RO's or the undertaker's approval must be carried out in accordance with any conditions attached thereto.

(3) C.RO's and the undertaker's approval under paragraph 59C(1) must not be unreasonably withheld or delayed and if by the end of the period of 5 days beginning with the date on which the dredging request has been supplied to C.RO or the undertaker, C.RO or the undertaker, as the case may be, has not intimated its disapproval of the request and the grounds of its disapproval each party may serve upon the other written notice requiring the other to intimate its approval or disapproval within a further period of 5 days beginning with the date upon which it receives written notice from the undertaker. If by the expiry of the further period of 5 days the other party has not intimated its approval or disapproval, it shall be deemed to have approved the request as submitted.

**Comment [adw80]:** C.RO proposes a provision relating to operating procedures but the applicant prefers to yield to the decisions of HMH and so has not accepted this.

**Comment [adw81]:** C.RO proposes a provision relating to dredging but this has been amended to be a mirror provision since C.RO and the undertaker will be on an equal footing.

#### Railway

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

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

#### Rosper Road

61A. The undertaker shall not in the exercise of the powers conferred by this Order unreasonably prevent C.RO's access to and use of Rosper Road.

61B. The construction and operation of the authorised development must not unreasonably interfere with or obstruct the free, uninterrupted and safe use of Rosper Road or any traffic on Rosper Road, unless an alternative access that is suitable and commodious is provided prior to and for the duration of any such interference.

#### Recovery of expenses

61C. (1) C.RO may recover from the undertaker any reasonable expenses howsoever caused which C.RO incur—

- (a) arising from the approval of plans and the inspection of the construction or carrying out of any tidal work;
- (b) by reason of any act or omission of the undertaker, or of any person in their employ, or of their contractors or workmen whilst engaged upon any tidal work or the construction and operation of the authorised development;
- (c) in dredging away any accumulation consequent upon the execution or maintenance of a tidal work;
- (d) in obtaining and depositing in the river such material as is necessary in the reasonable opinion of C.RO to protect C.RO's operations from the effects of scouring of the river bed consequent upon the execution or maintenance of a tidal work;
- (e) in altering any mooring in any way which in the reasonable opinion of C.RO may be rendered necessary by reason of the execution or maintenance of a tidal work;

(f) n carrying out reasonable surveys, inspections, tests and sampling within and of the river (including the bed and banks of the river) —

(i) to establish the marine conditions prevailing prior to the construction of a tidal work in such area of the river as C.RO have reasonable cause to believe may subsequently be affected by any siltation, scouring or other alteration which the undertaker is liable to remedy under this paragraph; and

(ii) where C.RO have reasonable cause to believe that the construction of a tidal work is causing or has caused any siltation, scouring or other alteration as aforesaid;

(g) arising from the carrying out of construction of a tidal work or the failure of a tidal work or the undertaking by C.RO of works or measures to prevent or remedy danger or impediment to navigation or damage to any property arising from such carrying out of construction, exercise or failure.

(2) Subject to paragraph 3, the undertaker shall not be required to pay any expense unless—

(a) C.RO has given the undertaker reasonable notice that it intends to incur the expense including details of the works proposed and an estimate therefor; and

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(b) The undertaker has given its consent to C.RO incurring that expense, which may include the undertaker offering to carry out any works to which this paragraph applies with the consent of C.RO.

(3) The undertaker's approval under sub-paragraph (2)(b) must not be unreasonably withheld or delayed, and if by the end of the period of 14 days beginning with the date on which the notice has been supplied to the undertaker, the undertaker shall be deemed to have approved the request as submitted;

(4) Nothing in this paragraph 61C shall be deemed to prevent C.RO from -

(a) carrying out works to which this paragraph applies without the prior consent of the undertaker; or

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(b) recovering expenses from the undertaker for any such work it has carried out;

where such works are in the reasonable opinion of C.RO urgently necessary to ensure the safe and efficient operation of CPK and C.RO shall give notice of its intention to carry out such works to the undertaker

(5) Where C.RO has carried out works under sub-paragraph (4) it shall without undue delay submit the expenses for those works including any details of the works to the undertaker for approval and the undertaker's approval therefor shall not be unreasonably withheld.

(6) Any amount of expenditure approved by the undertaker under this paragraph shall be paid to C.RO by the undertaker within 28 days of a demand therefor.

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

**Comment [adw82]:** C.RO suggests an indemnity and liability clause that are not agreed for reasons similar to those for Network Rail above

63. Unless otherwise agreed in writing, any dispute arising between the undertaker and C.RO under this Schedule shall be determined by arbitration as provided in article 59 (arbitration).

## PART 7

### FOR THE PROTECTION OF PHILLIPS 66 LIMITED

64. In this Part

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

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

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

66. No works comprising any part of the authorised development or the operation of the authorised undertaking which would have an effect in full or in part on the operation, maintenance, repair , replacement and abandonment of the pipelines and access thereto shall be commenced until plans and sections in respect of those works submitted under paragraph 65 have been approved by P66.

67. Any approval of P66 required under paragraph 66 shall not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as P66 may require to be made for-

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

**Comment [A83]:** Deliberate mistake spotted by several parties

## PART 89

### FOR THE PROTECTION OF NATIONAL GRID

68. In this Part of this Schedule—

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by National Grid;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon land;

**Comment [adw84]:** This is a modified version of provisions supplied by National Grid – indemnities have been removed for the same reasons as given for Network Rail above. The only other change is that expenses for approval of plans has been removed.

67. In this Part

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“National Grid” means National Grid Plc and shall include any reference to National Grid Gas Plc.;The “Electric Line” shall mean line 2AJ Killingholme Substation to Humber Refinery Substation and the term electric line shall have the same meaning as contained in section 64(1) of the Electricity Act 1989

“plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“promoter” means the undertaker as defined in article 2 of this Order.

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

~~69. Before extinguishing any existing rights for National Grid to keep, inspect, renew and maintain its infrastructure on, over or in the Order land, the undertaker shall, with the agreement of National Grid, create a new right to keep, inspect, renew and maintain the infrastructure in the same location that is reasonably convenient for National Grid, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 59.~~

**Comment [adw85]:** This has been removed since no rights will be extinguished.

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70.—(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to or in the vicinity of (as defined by reference to the relevant distances contained in the policies applied by National Grid's ENA43-8 (Electric Lines) and T/SP/SSW/22 (Gas Pipelines) or such other standards as may supersede them from time to time), or will or may affect, any apparatus the removal of which has not been required by the promoter under the Order, the promoter shall submit to National Grid a plan.

(1) In relation to works which will or may be situated within the tolerances set out in ENA 43-8 (Electricity Lines) and T/SP/SSW/22 (Gas Pipelines) respectively from any apparatus measured in any direction the plan to be submitted to National Grid under sub-paragraph (1) shall be detailed describing—

- (a) the exact position of the works;
- (b) the level at which these works are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all apparatus; and
- (e) by way of detailed drawings all proposed works

(2) The promoter shall not commence the construction or renewal of any works to which sub-paragraph (2) applies until National Grid has given written approval of the plan so submitted.

(3) Any approval of National Grid required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) shall not be unreasonably withheld; and
- (c) shall be deemed to have been given if it is neither given nor refused within 56 days of the submission of plans for approval.

(4) In relation to a work to which sub-paragraph (2) applies, the specified undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any Apparatus.

(5) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(6) Where National Grid requires any protective works to be carried out either themselves or by the promoter (whether of a temporary or permanent nature) such protective works shall be carried out to National Grid's satisfaction prior to the carrying out of works authorised by the Order and National Grid shall give 28 days notice of such works from the date of submission of a plan in line with sub paragraph (1) (except in an Emergency).

(7) Nothing in this paragraph shall preclude the promoter from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(8) The promoter shall not be required to comply with sub-paragraph (1) where it needs to carry out Emergency Works as defined in the New Roads and Street Works Act 1991 but in that case it shall give to National Grid notice as soon as is reasonably practicable and a plan of those works as



soon as reasonably practicable thereafter and shall: (1) comply with sub-paragraph (6) insofar as is reasonably practicable in the circumstances and (2) comply with sub paragraph 10 at all times.

(9) At all times when carrying out any works authorised under paragraph 10 to comply with National Grid's policies for safe working in proximity to electrical or gas Apparatus ENA43-8 and T/SP/SSW/22 respectively.

70A.—Subject to the following provisions of this paragraph, the promoter shall repay to National Grid on demand all charges, costs and expenses reasonably incurred by National Grid in connection with, the inspection and protection of any apparatus which may be required in consequence of the execution of any such works as are required under this Schedule including—

- (a) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works if applicable;
- (b) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

70B. Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the promoter and National Grid in respect of any apparatus laid or erected in land belonging to the promoter on or after the date on which this Order is made.

70C. If in consequence of the exercise of any powers under this Order the access to any apparatus is materially obstructed, the promoter shall provide such alternative means of access to such apparatus as will enable the undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

#### *General*

71. Any dispute arising between the undertaker and National Grid under this Schedule shall be determined by arbitration as provided in article 59 (arbitration).

## PART 9

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

72. In this Part:

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

“the outfall and intake” means that part of the pipelines which are located in the river at grid references (517455.3871, 419565.3965) and (517396.2407, 419527.8371) respectively ~~[grid reference to be confirmed between E.ON and the undertaker].~~

**Comment [adw86]:** As supplied by E.ON

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

“the river” means the River Humber.

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

74. Before extinguishing any existing rights for E.ON to keep, inspect, renew and maintain its infrastructure on or in the Order land, the undertaker shall, with the agreement of E.ON, create a new right to keep, inspect, renew and maintain the infrastructure in the same location that is

reasonably convenient for E.ON, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 59.

#### *The Pipelines*

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

(2). The construction method statement shall include provisions in respect of: (a) the location and methods of reinforcement of crossing points over the pipelines;

(b) a mechanism for the enforcement of the undertaker's use of designated crossing points over the pipelines and the agreed reinforcement methods; and

(c) adoption of a prior notification and consent regime which would require the undertaker to:

(i) ~~seek E.ON's consent to the carrying out of the proposed development within the vicinity of the pipelines and intake and outfall, such consent not to be unreasonably withheld; and~~

**Comment [adw87]:** Swapped at the request of E.ON

(ii) notify E.ON of its intention to carry out any development within the vicinity of the pipelines and intake and outfall, such notification to be provided at least 48 hours prior to any such development occurring; and

~~(ii) seek E.ON's consent to the carrying out of the proposed development within the vicinity of the pipelines and intake and outfall, such consent not to be unreasonably withheld; and~~

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

#### *General*

76. Any dispute arising between the undertaker and E.ON under this Schedule shall be determined by arbitration as provided in article 59 (arbitration).

## PART 10

### FOR THE PROTECTION OF CENTRICA PLC

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

78. In this Part

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

79. Before extinguishing any existing rights for Centrica to keep, inspect, renew and maintain its infrastructure on, over or in the Order land or to cross the Order land to access its infrastructure, the undertaker shall, with the agreement of Centrica, create a new right to keep, inspect, renew and maintain the infrastructure in the same location or a new right of access that is reasonably convenient for Centrica, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 59.

#### *The Pipelines*

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

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



(a) the location and methods of reinforcement of crossing points over the pipelines and restrictions on building and altering the ground level over the pipelines elsewhere;

(b) a mechanism for the enforcement of the undertaker's use of designated crossing points over the pipelines and the agreed reinforcement methods; and

(c) adoption of a prior notification and consent regime which would require the undertaker to:

- (i) notify Centrica of its intention to carry out any development within the vicinity of the pipelines and intake and outfall, such notification to be provided at least 48 hours prior to any such development occurring; and
- (ii) seek Centrica's consent to the carrying out of the proposed development within the vicinity of the pipelines and intake and outfall, such consent not to be unreasonably withheld; and

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

81. Before extinguishing any existing rights for Centrica to pass along parcel 03009 (Station Road), the undertaker shall, with the agreement of Centrica, create a new right of way for Centrica, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 59.

#### *General*

82. Any dispute arising between the undertaker and Centrica under this Schedule shall be determined by arbitration as provided in article 59 (arbitration).

## PART 11

### FOR THE PROTECTION OF ANGLIAN WATER

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

(2) In this part of this schedule –

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage and

(a) any drain or works vested in Anglian Water under The Water Industry Act 1991,

(b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102 (4) of The Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus.

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in not less efficient a manner than previously;

“functions” includes powers and duties

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“plan” includes sections, drawings, specifications and method statements.

**Comment [adw88]:** Replace ment wording agreed with Anglian Water

84. The Company shall not interfere with, build over or near to any Apparatus within the Order Land or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 3000 millimetres (3 metres) of the apparatus, unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the Company. The Company shall not interfere with any assets of Anglian Water within the Order land unless otherwise agreed in writing with Anglian Water, such provision being brought to the attention of any agent or contractor responsible for carrying out the authorised development.

85. The alteration, extension, removal or re-location of any apparatus/assets belonging to Anglian Water shall not be implemented until

- (a) any requirement for any permits under the Environmental Permitting Regulations 2010 for
  - (i) the sludge and brine waste pipelines and
  - (ii) the South Killingholme Sewage Treatment Works

and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water shall not to be unreasonably withheld or delayed; and

- (b) the Company has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.-

86. In the situation, where in exercise of the powers conferred by the Order, the Company acquires any interest in any land in which Apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

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

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87. Regardless of any provision in this Order or anything shown on any plan, the Company must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the Company shall, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 59.

85. (1) If, in the exercise of the powers conferred by the Order, the Company acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Schedule and any rights of Anglian Water to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water.

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(2) If, in the exercise of the powers conferred by the Order, the Company acquires any interest in any land in which apparatus is placed and such apparatus is to be extended or altered in any way, no alteration or extension shall take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to extend or alter the apparatus.

~~(3) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the Company requires the removal of any apparatus placed in that land, it shall give Anglian Water written notice of that requirement, together with a plan and section of the work proposed.~~

~~(4) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed on the land referred to in sub-paragraph (3), Anglian Water shall, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable, use its best endeavours to obtain the necessary facilities and rights in other land in which the alternative apparatus is to be constructed.~~

~~(5) Nothing in sub-paragraph (3) shall authorise the Company to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.~~

~~(6) Not less than 28 days before starting the execution of any works~~

~~(i) of the type referred to in sub-paragraph (2) that are within the standard Anglian Water protected strip distances and may or~~

~~(ii) are likely to affect any apparatus the removal of which has not been required by Anglian Water under paragraph (3);~~

~~the Company shall submit to Anglian Water a plan, section and description of the works to be executed.~~

~~(7) Those works shall be executed only in accordance with the plan, section and description submitted under sub-paragraph (6) and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.~~

88. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the Company shall provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

89. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 84 to 86, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the Company shall

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water

by reason or in consequence of any such damage or interruption.

90. The Company will only exercise its powers of compulsory acquisition over the interests of Anglian Water in the Order land as a last resort and following consultation with Anglian Water and the resolution of any arbitration under article 59.

**Comment [A89]:** Additional paragraph agreed with Anglian Water following s127/s138 hearing.

## PART 12

### FOR THE PROTECTION OF BETHANY JAYNE LTD

91. Before interfering with or extinguishing any existing rights for Bethany Jayne Ltd to

- (a) pass along parcel 03009 (Station Road), or
  - (b) use services and utilities in, on or over the Order land which serve land owned by Bethany Jayne Limited at the date of the coming into force of this Order,
- the undertaker shall, with the agreement of Bethany Jayne Ltd, create substitute rights (including appropriate ancillary rights of entry for the purposes of connection, maintenance, repair and renewal) that are reasonably convenient for Bethany Jayne Ltd, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 59.

## PART 13

### FOR THE PROTECTION OF ROYAL MAIL GROUP LTD

92. For the protection of Royal Mail Group Ltd ('Royal Mail') the following provisions shall, unless otherwise agreed in writing between the undertaker and Royal Mail, have effect.

93. (1) No part of the authorised development shall be occupied until improvements to the A1173 / Pelham Road junction (or alternative mitigation measures to be approved in writing by the relevant local planning authority, following consultation with Royal Mail), have been implemented in accordance with details approved by the local planning authority in consultation with Royal Mail.

(2) Such improvements should mitigate the effects of the proposed development on the operation of this junction and should be designed in accordance with normal standards.

(3) The undertaker must have due regard to any consultation response received from Royal Mail.

94. Any dispute arising between the undertaker and Royal Mail Group under this Schedule shall be determined by arbitration as provided in article 59 (arbitration).

## PART 14

### FOR THE PROTECTION OF A. B. PORTS

95. In this Part of this Schedule—

"AB Ports" means Associated British Ports in its capacity as harbour authority for the Ports of Immingham and Grimsby;

"construction" includes execution and placing and maintenance, extension or enlargement and "construct" and "constructed" shall be construed accordingly.

96. The provisions of this Part shall unless otherwise agreed in writing between the undertaker and ABP Ports have effect for the protection of AB Ports.

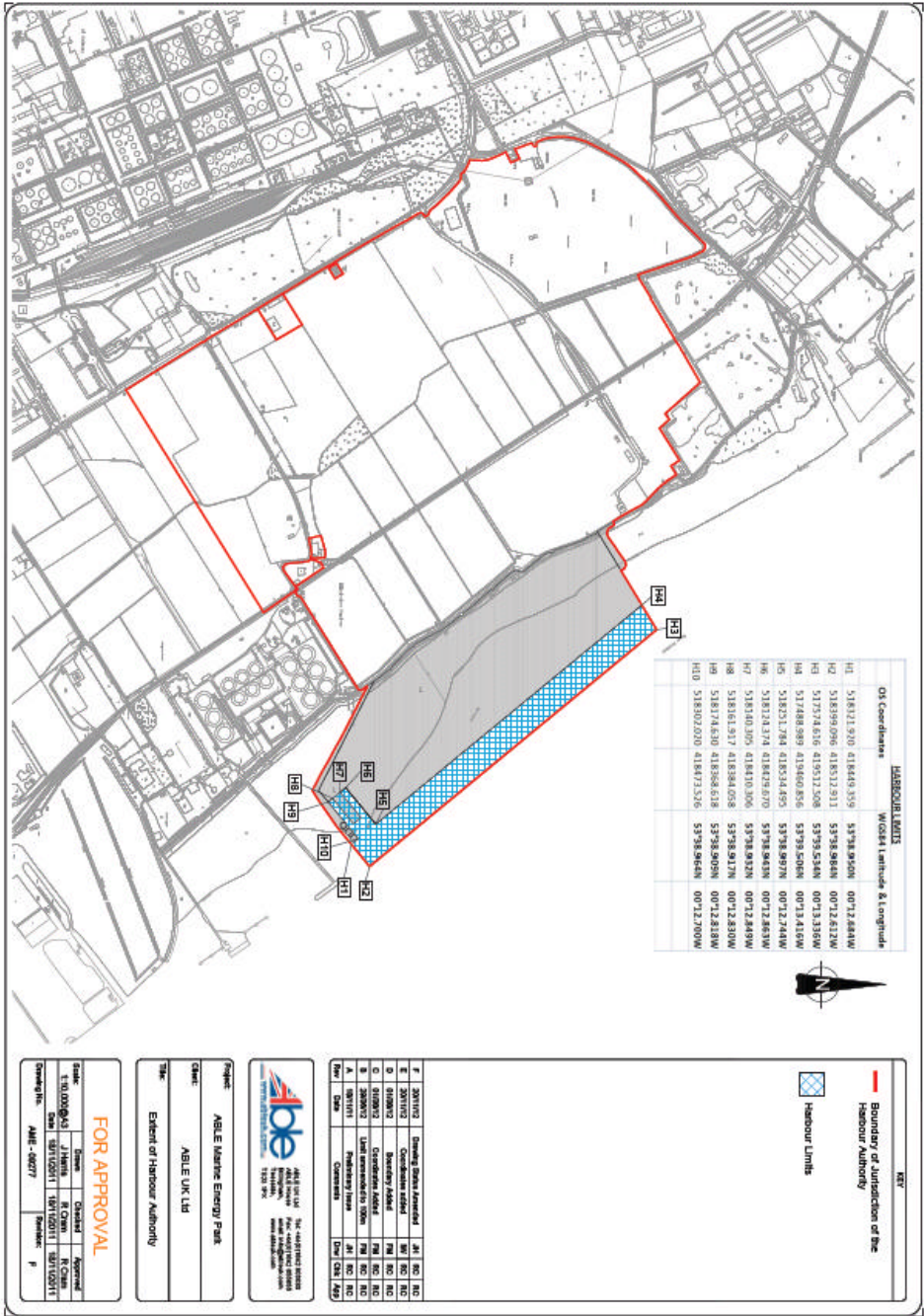
97. If AB Ports secures access between parcels 03009, 03014 and 03016 (Station Road) to the railway for the purposes of construction, operation and maintenance of a siding leased to it and for no other purpose, then before extinguishing or interfering with any existing rights for AB Ports to pass along those parcels, the undertaker shall, with the agreement of AB Ports, create a new right of way for vehicular traffic that is reasonably convenient for AB Ports for that purpose, such agreement not to be unreasonably withheld or delayed.

98. Any difference arising between the undertaker and AB Ports under this Part shall be determined by arbitration as provided in article 59 (arbitration).

**Comment [adw90]:** These provisions added at the request of AB Ports although not all provisions have been added.

**Comment [adw91]:** ABP have requested provisions relating to accumulation and erosion in the river – rejected because the MMO stated that this was not necessary or appropriate (although later reined back from this somewhat); ABP have requested provisions relating to the movement of vessels – rejected because HMH stated that this was not necessary; ABP have requested provisions relating to compensation including indemnities – rejected for the same reasons as given re Network Rail above.

LIMITS OF HARBOUR







# SCHEDULE 11

## REQUIREMENTS

Article 5

1. In this Schedule—

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

“the 2008 Act” means the Planning Act 2008;

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

**Comment [adw92]:** Remove d as already in article 2

“environmental statement” means the statement submitted under regulation 5(2)(a) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a), together with the shadow Habitats Regulations Assessment report, statements of common ground concluded with Natural England, the MMO and the Environment Agency and any supplementary documents contained in Files 17, 18 and 24 submitted by the undertaker statement;

**Comment [adw93]:** At the request of Natural England – note that the environmental statement as described here must be certified under article 57

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

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

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

### *Time limits*

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

### *Stages of the development*

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

### *Cargo restriction*

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

(2) The development described at paragraph 4(b) of Schedule 1 shall be restricted to items associated with components and parts for offshore renewable energy infrastructure.

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

**Comment [A94]:** Following comments by ABP and C.RO

**Comment [A95]:** This paragraph does not allow variation of the DCO but permits additional categories of cargo and manufacturing following the grant of a further free-standing permission, which would be subject to assessment and consultation. This is in contrast to the Associated British Ports (Hull) Harbour Revision Order 2006 where conditions in the HRO were able to be varied by means of planning permission (see paragraph 2 to Schedule 1 of that Order).

### *Detailed design approval*

3B. Except where the authorised development is carried out in accordance with the drawings listed in paragraph 4, no authorised development may commence until details of the layout,

**Comment [adw96]:** This is taken from the Rookery South Development Consent Order (requirement 5) at the suggestion of C.RO/C.GEN and is also to satisfy the panel’s comments about detailed approvals

(a) S.I. 2009/2264

scale and external appearance of the authorised development so far as they do not accord with the drawings listed in paragraph 4 have been submitted to and approved by the relevant planning authorities, and the authorised development must be carried out in accordance with the approved details.

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

**Comment [adw97]:** As suggested by ABP

(a) ~~these~~ of planning application drawings, being those drawings with reference TR030001/APP/234a comprising:

- (i) drawing "AME-02006",
- (ii) drawing "AME-02007",
- (iii) drawing "AME-02008",
- (iv) drawing "AME-02009",
- (v) drawing "AME-02010",
- (vi) drawing "AME-02011",
- (vii) drawing "AME-02012",
- (viii) drawing "AME-02013",
- (ix) drawing "AME-02014",
- (x) drawing "AME-02016",
- (xi) drawing "AME-02017", and
- (xii) drawing "AME-02018".

(b) The design drawings, being those ~~of the design~~ drawings with reference TR030001/APP/234b comprising:

- (i) drawing "AMEP\_PID\_D\_001",
- (ii) drawing "AMEP\_PID\_D\_002",
- ~~(iii) drawing "AMEP\_PID\_D\_003",~~
- ~~(iv) drawing "AMEP\_PID\_D\_004",~~
- (iii) drawing "AMEP\_PID\_D\_005",
- (iv) drawing "AMEP\_PID\_D\_006",
- (v) drawing "AMEP\_PID\_D\_007",
- (vi) drawing "AMEP\_PID\_D\_009",
- (vii) drawing "AMEP\_PID\_D\_101",
- (viii) drawing "AMEP\_PID\_D\_102",
- (ix) drawing "AMEP\_PID\_D\_103",
- (x) drawing "AMEP\_PID\_D\_104",
- (xi) drawing "AMEP\_PID\_D\_105",
- (xii) drawing "AMEP\_PID\_D\_106", and
- (xiii) drawing "AMEP\_PID\_D\_107"

(c) the sections, being those drawings with reference TR030001/APP/23b comprising:

- (i) drawing "AMEP\_PID\_D\_003", and
- (ii) drawing "AMEP\_PID\_D\_004".

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### *Provision of landscaping*

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

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

**Comment [adw98]:** This is now covered by paragraph 3B following comments by Mr Gibbs and C.RO/C.GEN

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### *Implementation and maintenance of landscaping*

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

~~(2)(1)~~ The landscaping works must be carried out in accordance with implementation timetables approved under requirement 5.

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~~(3)(2)~~ Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

### *Trees*

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

### *Highway access*

8.—~~(4)(54)~~ No stage of the authorised development shall commence until for that stage, written details of the siting, design and layout of any new permanent or temporary means of access to a public highway to be used by vehicular traffic, or any alteration to an existing means of access to a public highway used by vehicular traffic, has, after consultation with the relevant highway authority, Royal Mail Group Ltd and Centrica plc, been submitted to and approved by the relevant planning authority.

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~~(2)(1)~~ The undertaker must have regard to any consultation responses received.

~~(3)(2)~~ The public highway accesses must be constructed, or, as the case may be, altered, in accordance with the approved details.

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~~(4)(3)~~ No stage of the authorised development shall commence until for that stage, a written scheme (the “Access Management Scheme”) has, after consultation with the relevant highway authority, been submitted to and approved by the relevant planning authority.

~~(5)(4)~~ The Access Management Scheme must be carried out in accordance with the approved details.

#### *Public rights of way*

9.—~~(1)(55)~~ No stage of the authorised development shall commence that would affect North Lincolnshire Footpath 50 or East Riding of Yorkshire Paull Footpath 6 until a written implementation plan and specification for the making up of an alternative right of way has, after consultation with the relevant highway authority, been submitted to and approved by the relevant planning authority.

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~~(2)(1)~~ The alternative Footpath 50 and Paull Footpath 6 shall be implemented in accordance with the relevant approved plan and specification.

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#### *Fencing and other means of enclosure*

10.—~~(1)(56)~~ No stage of the authorised development shall commence until, for that stage, written details of all proposed permanent and temporary fences, walls or other means of enclosure have been submitted to and approved by the relevant planning authority.

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~~(2)(1)~~ Any temporary fencing must be removed on completion of the authorised development.

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~~(3)(2)~~ Any approved permanent fencing of the authorised development must be completed before the authorised development is brought into use.

#### *Surface water drainage*

11.—~~(1)(57)~~ No stage of the authorised development shall commence until a detailed surface water drainage strategy (based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, and including means of pollution control and funding arrangements) for that stage has been submitted to and approved in writing by the local planning authority, after consultation with the Environment Agency, Anglian Water, E.On and Centrica plc.

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~~(2)(1)~~ The undertaker must have regard to any consultation responses received.

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~~(3)(2)~~ The authorised scheme shall be constructed in accordance with the approved surface water drainage strategy including any timetable embedded within it.

#### *Foul water drainage*

12.—~~(1)(58)~~ No stage of the authorised development shall commence until a detailed foul water drainage strategy (including means of pollution control and funding arrangements) for that stage has been submitted to and approved by the relevant local planning authority, after consultation with the Environment Agency, Anglian Water, E.On and Centrica plc.

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~~(2)(1)~~ The undertaker must have regard to any consultation responses received.

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~~(3)(2)~~ The authorised scheme shall be constructed in accordance with the approved foul water drainage strategy including any timetable embedded within it.

#### *River basin management*

13.—~~(1)(59)~~ The authorised development shall not commence until a monitoring and management strategy document has been submitted to and approved by the Environment Agency, the purpose of such strategy document being to ensure that the authorised development is carried out in compliance with the water framework directive.

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~~(2)(1)~~ The monitoring and management strategy document shall in particular consider the spatial and temporal extent of the impact of the approved scheme on—

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

~~(3)(2)~~ The authorised scheme shall be constructed and managed in accordance with the approved strategy document and the monitoring detailed in the approved strategy document shall be implemented.

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#### *Contaminated land*

14. ~~(1)(60)~~ No stage of the authorised development shall commence until a written scheme applicable to that stage, to deal with the contamination of any land, including groundwater and ground gas, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the Environment Agency, been submitted to and approved by the relevant planning authority.

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~~(2)(1)~~ The scheme shall include an investigation and assessment report, prepared by a suitably qualified person, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

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~~(3)(2)~~ Remediation must be carried out in accordance with the approved scheme and the management plan.

#### *Archaeology*

15. ~~(1)(61)~~ No stage of the authorised development shall commence until, for that stage, a written project design for the investigation of areas of archaeological interest as identified in chapters 18 and 40 of the environmental statement has been submitted to and approved by the relevant planning authority.

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~~(2)(1)~~ The project design shall accord with the evaluation results and mitigation measures included in the document *Able UK Ltd Marine Energy Park: Framework for archaeological investigation and mitigation strategies* prepared by AC archaeology Ltd (ref: ACW283/3/1 revised June 2012), and the *Written Scheme of Investigation: Coastal and Marine* prepared by Wessex Archaeology (ref 79490.02 revised March 2012) subsequent updates to be agreed in writing by the relevant planning authority.

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~~(3)(2)~~ The project design shall identify

- (a) areas where fieldwork is required,
- (b) measures to be taken to identify, protect, record and recover any archaeological remains that may be found including artefacts and ecofacts;
- (c) methodologies for post-excavation assessment and analysis of artefacts and ecofacts;
- (d) arrangements for dissemination and publication of reports;
- (e) preparation of archive material and its deposition with recognised repositories;
- (f) an implementation timetable;
- (g) monitoring arrangements, including notification and commencement of work;
- (h) details of contractors involved in the implementation of archaeological works; and
- (i) proposals for publicity and community outreach work.

~~(4)(3)~~ Any archaeological works carried out under the scheme must be by a suitably qualified person or body.

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~~(5)(4)~~ Any archaeological works must be carried out in accordance with the approved scheme and timings, subject to any variation approved by the relevant planning authority.

### *Listed building*

16.—~~(1)(62)~~ No stage of the authorised development shall commence until a written management plan for the Killingholme North Low Lighthouse ('the building') has been submitted to and approved by the relevant planning authority, including the following:

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

### *Environmental management and monitoring plans*

17.—~~(1)(63)~~ The authorised development shall not commence until the compensation environmental management and monitoring plan reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement ~~and the undertaker's proposed compensation package~~, has been submitted to and approved by Natural England after consultation with the Environment Agency and the relevant planning authority.

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~~(2)(1)~~ The authorised development shall not commence until the marine environmental management and monitoring plan, reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement, has been submitted to and approved by the Marine Management Organisation in consultation with the Environment Agency, Natural England and the relevant planning ~~authorities~~.

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~~(3)(2)~~ The authorised development shall not commence until the terrestrial environmental management and monitoring plan, reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement, has been submitted to and approved by Natural England in consultation with the Environment Agency and the relevant planning authority.

**Comment [adw99]:** As noted by the panel

~~(4)(3)~~ The compensation environmental management and monitoring plan, marine environmental management and monitoring plan and terrestrial environmental management and monitoring plan shall require to be carried out any further surveys deemed necessary, include an implementation timetable and must be carried out as approved.

(4) The undertaker shall commence construction of the quay (Work No. 1) no less than 7 months after commencing construction of the compensation site (paragraph 5(a) of Schedule 1).

(5) The undertaker shall use reasonable endeavours to create the Cherry Cobb Sands breach no more than 15 months after commencing construction of the quay (Work No. 1).

### *Code of construction practice*

18.—~~(1)(64)~~ No stage of the authorised development shall commence until a code of construction practice for that stage has been submitted to and approved by the relevant planning authority.

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~~(2)(1)~~ All construction works shall be undertaken in accordance with the approved code, unless otherwise agreed by the relevant planning authority.

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### *Design of roads*

19.—~~(1)(65)~~ No stage of the authorised development consisting of the construction or alteration of a street which is a trunk road, including any traffic management and control measures, shall commence until written details of the design of the street have been submitted to and approved by the Highways Agency, after consultation with Centrica plc and Royal Mail Group Ltd.

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~~(2)(1)~~ The undertaker must have regard to any consultation responses received.

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~~(3)(2)~~ The authorised development construction or alteration of the street or the taking of traffic management and control measures shall be carried out in accordance with the approved design.

### *External lighting*

20.—(1) No stage of the authorised development, shall commence until written details of any external lighting to be installed at any of the construction sites within that stage, including measures to prevent light spillage, have, after consultation with the highway authority and Natural England, been submitted to and approved by the relevant planning authority; and any approved means of lighting must subsequently be installed and retained for the duration of the construction period, and removed within six months of the completion of construction.

(2) Sub-paragraph (1) is subject to any direction given to the undertaker by the Humber Harbour Master or Trinity House.

(3) The authorised development shall not be brought into use until written details of any external lighting to be installed for operational purposes, including measures to prevent light spillage, have, after consultation with the highway authority and Natural England, been submitted to and approved by the relevant planning authority; and any approved means of lighting must subsequently be installed and retained while the authorised development is in operation.

### *Construction traffic*

21.—~~(1)(66)~~ No stage of the authorised development shall commence until a written transport statement, including any road condition survey, temporary speed limits, lay-bys and details of the preferred route for that stage to be used by construction traffic on public highways, after consultation with the highway authority, Royal Mail Group Ltd and Centrica plc, is submitted to and approved by the relevant planning authority.

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~~(2)(1)~~ The undertaker must have regard to any consultation responses received.

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~~(3)(2)~~ Notices shall be erected and maintained throughout the period of construction at every construction site exit to a public highway, indicating to drivers the route agreed by the relevant planning authority for traffic entering and leaving the site.

### *Control of noise during construction*

22.—~~(1)(67)~~ No stage of the authorised development shall commence until a written scheme for noise management during construction and maintenance of that stage has been submitted to the relevant planning authority.

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~~(2)(1)~~ The scheme shall set out the particulars of—

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

~~(3)(2)~~ The approved noise management scheme must be implemented before and maintained during construction and maintenance of the relevant stage of the authorised development.

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~~(4)(3)~~ The construction and maintenance works must be undertaken in accordance with the approved noise management scheme.

### *Control of noise during operation*

23.—~~(1)(68)~~ The authorised development shall not be brought into use until a written scheme for noise management during operation has been submitted to the relevant planning authority.

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~~(2)(1)~~ The authorised development must be operated in accordance with the approved operational noise management scheme.

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### *Control of emissions*

24.—~~(1)(69)~~ No stage of the authorised development shall commence until a written scheme for that stage—

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

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

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

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

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

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

### *Travel plan*

25.—~~(1)(70)~~ No stage of the of the authorised development shall commence until, for that stage, after consultation with the highway authority, North East Lincolnshire Council, Royal Mail Group Ltd and Centrica plc, a construction travel plan, which must include details of the expected means of travel to and from the authorised development, road safety measures and any parking to be provided, has been submitted to and approved by the relevant planning authority.

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~~(2)(1)~~ No part of the authorised development shall be brought into use until, after consultation with the highway authority and Royal Mail Group Ltd, a travel plan, which must include details of the expected means of travel to and from the authorised development and any parking to be provided, has been submitted to and approved by the relevant planning authority.

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

~~(4)(3)~~ The undertaker must have regard to any consultation response received.

~~(5)(4)~~ The plans approved under paragraphs (1) and (2) must be reviewed at least once a year or such other period as is agreed in writing by the relevant planning authority.

### *Traffic management plan*

26.—~~(1)(71)~~ No stage of the of the authorised development shall commence until, for that stage, after consultation with the highway authority and North East Lincolnshire Council, a traffic management plan, which must include details of how traffic to and from the authorised development will be managed, has been submitted to and approved by the relevant planning authority.

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

~~(2)(1)~~ The plan approved under paragraph (1) must be implemented during the construction and operation of the authorised development and must be reviewed every six months or such other period as is authorised in writing by the relevant planning authority, following consultation with the highway authority and North East Lincolnshire Council.

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#### *European protected species*

27.—~~(1)(72)~~ No stage of the authorised development shall commence until it has been established by existing or further survey work whether any European protected species or nationally protected species is present.

**Comment [adw100]:** At the request of Natural England

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(1) Where a European protected species is shown to be present, that stage shall only be commenced following appropriate consultation with Natural England and after any necessary licence has been obtained from Natural England pursuant to regulation 53 of the Conservation of Habitats and Species Regulations 2010. No stage of the authorised development shall be begun that is likely to affect a European protected species until, after consultation with Natural England and the Secretary of State for the Environment, Food and Rural Affairs, a scheme of protection and mitigation measures for that species has been submitted to and approved by the relevant planning authority, and the authorised development shall be carried out in accordance with the approved scheme, and any licence has been obtained from Natural England pursuant to regulation 53 of the Conservation of Habitats and Species Regulations 2010.

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

#### *Requirement for written approval*

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

#### *Amendments to approved details*

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

(2) The undertaker must consult with any parties it was required to consult on the original approved details on any amendments to the approved details and take into account any responses received.

#### *Requirement for consent of Civil Aviation Authority and Ministry of Defence*

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

#### *Flood warning and evacuation plan*

31.—(1) No building of the authorised development shall be occupied until, after consultation with the relevant planning authority, written details of a flood warning and evacuation plan, which must include details of expected means of evacuation or safe refuge during a tidal flood event with safe refuge areas at at least 6.84 metres Ordnance Datum Newlyn, has been submitted to and approved by the relevant planning authority.

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

#### *Listed buildings*

32. No stage of the authorised development shall commence until a listed building management plan applicable to that stage, which must include details of protection of any building referred to



from vibration damage and the renovation or re-use of the building, has been submitted to and approved by the relevant planning authority in consultation with English Heritage.

#### *Tall structures*

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

#### *Cooling water intakes and outfalls*

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

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

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

#### *Piling*

35. For any piling to take place above high water mark, the piling conditions at paragraphs 3735 to 4344 of Schedule 8 (deemed marine licence) shall apply as if references to the MMO were to the relevant local planning authority.

#### *Sedimentation*

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

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

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

37. (1) No development shall commence until a scheme for the monitoring of sediment and siltation for Stone Creek has been submitted to and approved in writing by the relevant planning authority, in consultation with the Stone Creek Boat Club and Sunk Island Parish Council, such scheme to include:

- (a) details of monitoring proposals, including location and frequency, and
- (b) details of trigger levels other pre-determined changes and remedial works required if these are exceeded or have taken place ~~and resultant actions required if trigger levels are exceeded.~~

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

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

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

#### *Contaminants and remediation*

**Comment [adw101]:** Provision to this effect recommended by the panel

**Comment [adw102]:** Requested by EA



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

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

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

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

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

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

#### *Mitigation site requirements*

40.—(1) During the construction and operation of the authorised development, no storage, use of plant or other development shall take place

- (a) at a height greater than 3m from ground level within 70m of the North Killingholme Haven Pits Site of Special Scientific Interest, or
- (b) at a height greater than 6m from ground level between 70m and 150m from the North Killingholme Haven Pits Site of Special Scientific Interest, or
- (c) at a height greater than 9m from ground level between 150m and 200m from the North Killingholme Haven Pits Site of Special Scientific Interest, or
- ~~(a) at a height greater than 10m from ground level within 200 metres of the North Killingholme Haven Pits Site of Special Scientific Interest, or~~
- (d) at a height greater than 10m from ground level within the 60m operational buffer strip adjacent to Mitigation Area 'A'

unless otherwise agreed in writing by the relevant planning authority in consultation with Natural England.

**Comment [adw103]:** As agreed with Natural England

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

(3) The construction and operation of the works shall not be permitted to be carried out to the extent that it causes noise levels measured as LAmax to exceed 65 dB (A) unless an alternative level is agreed with Natural England as a result of concurrent bird and noise monitoring, t, at the boundary of anywhere in the North Killingholme Haven Pits Site of Special Scientific Interest, unless otherwise agreed in writing by the relevant planning authority in consultation with Natural England based on the findings of the monitoring programme and taking account of the noise level duration.

(4) The construction and operation of the works shall not be permitted to be carried out to the extent that it causes noise levels to exceed 65 dB (A) unless an alternative level is agreed with NE as a result of concurrent bird and noise monitoring, , anywhere in the Core Area of Mitigation Area 'A' (as specified in the terrestrial environmental monitoring and management plan) separated from the operational boundary of AMEP by a 90m green buffer strip), unless otherwise agreed in writing by the relevant planning authority in consultation with Natural England based on the findings of monitoring programme and taking account of the noise level duration.

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(5) The terrestrial environmental management and monitoring plan will include a monitoring programme to ensure compliance with these noise levels and the container storage locations and heights.

#### *Environment Agency requirements*

41. (1) Following construction of the new flood defence embankment at Cherry Cobb Sands, the Cherry Cobb Sands breach shall not be made in the existing flood defences without the prior written consent of the Environment Agency, in consultation with Natural England and the MMO.

**Comment [adw104]:** The four additional requirements are as modified versions of those proposed by the EA

(2) The Cherry Cobb Sands breach shall not be made until the new embankment has had an adequate period of time (likely, but not limited to, one winter period (November to April inclusive)) in which to stabilise and for vegetation to become established on the embankment to ensure the integrity of the new flood defences.

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

(1) No development shall commence until an outline scheme of remedial action if the impacts on on Stone Creek, Cherry Cobb Sands Creek and Keyingham Drain should be greater than those assessed.

(3) Any remedial action shall be carried out if the corresponding greater impacts occur.

43. (1) No development shall commence until the detailed design of the Regulated Tidal Exchange (RTE) sluices has been submitted to and approved in writing by the relevant planning authority, in consultation with the Environment Agency.

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(2) The detailed design information must include the size and flow capacity of the sluices within the RTE scheme.

44. (1) No development shall commence until the detailed design of the channel leaving the Managed Realignment site and the invert level has been submitted to and approved in writing by the relevant planning authority, in consultation with the Environment Agency, to include detailed design drawings, including dimensions.

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

(3) The invert level of the drainage channel shall be no higher than that currently presented and assessed in EX28.3 Part 3 (1.5 mAOD), unless agreed otherwise in writing with the Environment Agency.

### **EXPLANATORY NOTE**

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

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

**2012 No. XXXX**

**INFRASTRUCTURE PLANNING**

**HARBOURS, DOCKS, PIERS AND FERRIES**

The Able Marine Energy Park  
Development Consent Order 2012

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

Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

Regulation 5(2)(b)

Document reference: TR030001/DCO/6

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

23 November 2012

Revision: 6

Bircham Dyson Bell

**2012 No. XXXX**

**INFRASTRUCTURE PLANNING**

**HARBOURS, DOCKS, PIERS AND FERRIES**

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

<i>Made</i>	- - - -	<i>2013</i>
<i>Coming into force</i>	- -	<i>2013</i>

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

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

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

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(a) 2008 c. 29, as amended

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

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

## PART 1

### PRELIMINARY

#### **Citation and Commencement**

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

#### **Interpretation**

2.—(a) In this Order—

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

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

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

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

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

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

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

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

“AB Ports” means Associated British Ports, company number ZC000195, whose principal office is at 71-91 Aldwych, London WC2B 4HN;

“the approach channel” means the area bounded by co-ordinates (53°39.579’N, 00°13.223’W), (53°39.094’N, 00°12.296’W), (53°38.956’N, 00°12.570’W), (53°38.972’N, 00°12.631’W) and (53°38.956’N, 00°12.570’W) and shown on sheets 8 and 9 of the works plan;

“area of jurisdiction” means the area within the limits of the harbour;

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

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

“the berthing pocket” means the area bounded by co-ordinates (53°39.506’N, 00°13.416’W), (53°39.496’N, 00°13.448’W), (53°39.515’N, 00°13.463’W), (53°39.537’N, 00°13.376’W), (53°38.972’N, 00°12.631’W) and (53°38.946’N, 00°12.678’W) and shown on sheets 4, 8 and 9 of the works plans;

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

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

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

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

“Centrica” means Centrica Plc and all of its subsidiaries, and Group companies, transferees, assignees, etc, including but not limited to Centrica KPS Ltd, Centrica Storage Limited and Centrica Energy;

“Cherry Cobb sands breach” means the area bounded by co-ordinates (53°39.427’N, 00°08.633’W), (53°39.457’N, 00°08.581’W), (53°39.554’N, 00°08.737’W) and (53°39.524’N, 00°08.789’W);

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

“the compensation environmental management and monitoring plan” means the plan for environmental management and monitoring on the north bank of the River Humber referred to in paragraph 17 of Schedule 11;

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

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

“C.RO” means C.RO Ports (Killingholme) Limited;

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

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

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

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

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

“harbour” means the authorised development within the limits of the harbour, and includes any works, land, buildings, ancillary works, plant, property and conveniences connected with it, as from time to time existing within the limits of the harbour;

“the Harbour Authority” means the Company in its capacity as harbour authority established by article 8 (jurisdiction of the Harbour Authority), or to the extent of any transfer under article 13(1)(a), any transferee;

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

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

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

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

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

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

“the marine environmental management and monitoring plan” means the plan for environmental management and monitoring below the high water mark referred to at paragraph 17 of Schedule 11;

“MMO” means the Marine Management Organisation;

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

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

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

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

“the planning application drawings” are as defined in paragraph 4 of Schedule 11;

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

“the pumping station outfall” means the area bounded by co-ordinates (53°38.993N, 00°13.188W), (53°38.956N, 00°13.085W), and (53°38.926N, 00°13.138W) and shown on sheets 3 and 9 of the works plans;

“the quay limits” means the area bounded by co-ordinates (53°39.457’N, 00°13.681’W), (53°39.464’N, 00°13.662’W), (53°39.447’N, 00°13.645’W), (53°39.487’N, 00°13.546’W), (53°39.475’N, 00°13.511’W), (53°39.506’N, 00°13.416’W), (53°38.946’N, 00°12.678’W), (53°38.876’N, 00°12.849’W), (53°38.984’N, 00°13.165’W) and (53°38.985’N, 00°13.178’W) and shown on sheets 8 and 9 of the works plans;

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

“requirement” means the corresponding paragraph of Schedule 11;

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

“the sections” are as defined in paragraph 4 of Schedule 11;

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

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

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

“the terrestrial environmental management and monitoring plan” means the plan for environmental management and monitoring above the high water mark on the south bank of the River Humber referred to at paragraph 17 of Schedule 11;

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

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

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

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

“turning area” means the area bounded by co-ordinates (53°39.406’N, 00°12.893’W), (53°39.414’N, 00°12.524’W), (53°39.112’N, 00°12.261’W) and (53°39.094’N, 00°12.296’W) and shown on sheets 8 and 9 of the works plans.

“the undertaker” means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act and articles 12 and 13;

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

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

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

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

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

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

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

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

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

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

- (a) the expression “the special Act” means this Order;
- (b) the expressions “the Promoters of the undertaking” and “the undertakers” mean the undertaker;
- (c) the expression “the harbour, dock or pier” means the authorised development within the area of jurisdiction;
- (d) the expressions “limits” and “prescribed limits” mean the area of jurisdiction;
- (e) the expression “near the pier” does not extend beyond the area of jurisdiction;
- (f) the expression “the harbour master”, in relation to the authorised development means the harbour master as defined in article 2;
- (g) the definition of “vessel” in article 2(1) shall be substituted for the definition in section 3 of the 1847 Act; and
- (h) any requirement to comply with a notice or direction given by the harbour master shall be construed as including a requirement that, in complying with such notice or direction, a person who is subject to the notice or direction shall also comply with any relevant notice or direction given by AB Ports or the harbour master in the exercise by either or both of them of any function conferred by or under any enactment (including this Order).

### **Modification of enactments**

4. —(b) Sections 25 and 26 of the River Humber Conservancy Act 1852<sup>(a)</sup>, section 9 (licences for execution of works) of the Humber Conservancy Act 1899<sup>(b)</sup> and section 6(2) (no erections in Humber below river lines or without licence above river lines) of the Humber Conservancy Act 1905<sup>(c)</sup> do not apply to the authorised development.

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(a) 1852 c. cxxx. , as amended at the date of the coming into force of this Order.

(b) 1899 c. cci. , as amended at the date of the coming into force of this Order.

(c) 1905 c. clxxix. , as amended at the date of the coming into force of this Order.

(1) The requirement to obtain consent under section 23(1) of the Land Drainage Act 1991(a) does not apply to the authorised development.

## PART 2

### PRINCIPAL POWERS

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

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

(2) Subject to article 6 (limits of deviation) the authorised development shall be constructed or carried out in the lines and situations shown on the works plans and at the levels shown on the sections.

#### **Limits of deviation**

6. In carrying out the authorised development the undertaker may—

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

#### **Period for completion of work**

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

#### **Jurisdiction of the Harbour Authority**

8.—(c) Without prejudice to the functions of AB Ports exercisable within its limits, the Company shall be the harbour authority for the area of jurisdiction.

(1) Without prejudice to any provision of the 1847 Act as incorporated by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847), the area within which the Harbour Authority and the dockmaster may exercise their functions under this Order shall be the area of jurisdiction.

(2) The jurisdiction of the Harbour Authority over vessels within the area of jurisdiction shall not extend to—

- (a) any vessel unless it is at anchor or otherwise moored or is causing an obstruction within the area of jurisdiction; or
- (b) signalling or any other activity connected with the movement of the vessel.

(3) Where any person referred to in paragraph (5)(a) considers that there is an actual or anticipated conflict between—

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(a) 1991 c. 59, as amended at the date of the coming into force of this Order

- (a) the exercise of any function of any person mentioned in paragraph (5)(a); and
  - (b) the exercise of any function of any person mentioned in paragraph (5)(b),
- then that person may give notice to the relevant person in paragraph (5)(b).
- (4) The persons referred to in paragraph (4) are—
    - (a) AB Ports, C.RO and the harbour master; and
    - (b) the Harbour Authority and the dockmaster.
  - (5) The notice referred to in paragraph (4) shall set out any requirements concerning the exercise of the relevant function by the relevant person mentioned in paragraph (5)(b).
  - (6) The requirements referred to in paragraph (6) may—
    - (a) make general provision in relation to the exercise of functions over time; or
    - (b) make specific provision about the exercise of a particular function or functions on a particular occasion.
  - (7) If—
    - (a) a notice sets out requirements falling within paragraph (7)(a) it must be made in writing; and
    - (b) a notice sets out requirements falling within paragraph (7)(b) it may be made in writing or in any other manner considered appropriate by the person giving the notice.
  - (8) On receipt of a notice given under paragraph (4), the recipient of the notice shall comply with the notice.
  - (9) Save where expressly provided elsewhere in this Order, no person mentioned in paragraph (5)(b) is obliged to seek any permission or otherwise notify any person mentioned in paragraph (5)(a) prior to exercising any function.
  - (10) Subject to the requirements of any notice given under paragraph (4), the functions of the Harbour Authority and the dockmaster shall be exercised in accordance with Part 2 of Schedule 9 (for the protection of AB Ports) and Part 6 of Schedule 9 (for the protection of C.RO).

#### **Agreements entered into by Company, etc.**

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

#### **Maintenance of authorised development**

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

#### **Provision of works**

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

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

- (a) works for the accommodation or convenience of vessels (including but not limited to berthing heads, mooring posts, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons);
- (b) works to divert, remove or replace apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines; and
- (c) landscaping and other works to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works.

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

### **Benefit of Order**

12. Subject to article 13 (consent to transfer benefit of Order), the provisions of this Order shall have effect solely for the benefit of the Company.

### **Consent to transfer benefit of Order**

13.—(e) The undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related rights as may be so agreed.

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

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

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

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

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

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

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

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

- (a) the liabilities of the undertaker to pay compensation under this Order; and

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



(b) the liabilities of the undertaker to construct and maintain Work No. 5 (the compensatory environmental habitat) and any additional compensatory habitat identified in the compensation management and monitoring plan;

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

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

## PART 3

### STREETS

#### **Street works**

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

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

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

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

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

#### **Temporary stopping up of streets**

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

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

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

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

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

- (a) any street specified as mentioned in paragraph (3) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

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

### **Access to works**

17.—(h) The undertaker may, for the purposes of the authorised development—

- (a) form and lay out means of access to a public highway, or improve existing means of access to a public highway, in the location specified in columns (1) and (2) of Schedule 4 (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access to a public highway or improve existing means of access to a public highway, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

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

### **Agreements with street authorities**

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

- (a) the strengthening, improvement, repair or reconstruction of any street required as a result of the exercise of the powers conferred by this Order;
- (b) any stopping up, alteration or diversion of a street authorised by this Order; or
- (c) the carrying out in the street of any of the works referred to in article 15(1) (street works).

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

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

### **Public rights of way**

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

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

(2) In this article—

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

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

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

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

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

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

(3) The undertaker shall not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

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

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

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

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964<sup>(c)</sup> (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in those Regulations.

#### **Protective work to buildings**

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

(1) Protective works may be carried out—

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

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

<sup>(b)</sup> S.I. 2010/675, as amended at the date of the coming into force of this Order.

<sup>(c)</sup> 1964 c.40, as amended at the date of the coming into force of this Order.

- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

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

(3) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(4) Before exercising—

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

the undertaker shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(5) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 59 (arbitration).

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

(7) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

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

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

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

(10) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

### **Authority to survey and investigate the land**

**22.—**(a) The undertaker may for the purposes of this Order enter on any land shown within the Order limits and—

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

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

(3) Any person entering land under this article on behalf of the undertaker—

- (a) shall, if so required upon entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article—

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

but such consent shall not be unreasonably withheld.

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

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

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

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

(1) If a tidal work is constructed, altered or relaid in contravention of paragraph (1) or of any condition or restriction imposed under that paragraph—

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

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

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

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

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

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

### **Survey of tidal works**

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

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

**26.** The undertaker shall at or near—

- (a) a tidal work, including any temporary work; or
- (b) any plant, equipment or other obstruction placed, in connection with any authorised development or any work authorised by article 11 (provision of works), within the area of seaward construction activity,

during the whole time of the construction, alteration or relaying, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State and the Conservancy Authority or, failing agreement between them, the Secretary of State may from time to time direct.

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

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

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

**28.** After the completion of a tidal work the undertaker shall at the outer extremity of it exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as the Conservancy Authority may from time to time direct.

### **Power to appropriate**

**29.**—(d) Notwithstanding anything in section 33 (harbour, dock, and pier to be free to the public on payment of rates) of the 1847 Act or any other enactment, the undertaker may from time to time set apart and appropriate any part of the harbour for the exclusive or preferential use and

accommodation of any trade, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such charges and to such terms, conditions and regulations as the undertaker may think fit.

(1) No person or vessel shall make use of any part of the harbour so set apart or appropriated without the consent of the harbour master, and—

- (a) the harbour master may order any person or vessel making use of the harbour without such consent to leave or be removed; and
- (b) the provisions of section 58 of the 1847 Act (powers of harbour master as to mooring of vessels in harbour), as incorporated by this Order, shall extend and apply with the necessary modifications to any such vessel.

## **PART 5**

### **POWERS OF ACQUISITION**

#### **Compulsory acquisition of land**

**30.**—(e) The undertaker may acquire compulsorily so much of the Order land as is shown washed pink on the land plans as is required for the authorised development or to facilitate it.

(1) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.

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

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

(4) This article is subject to article 40 (temporary use of land for carrying out the authorised development).

#### **Power to override easements and other rights**

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

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

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

- (a) the erection, construction or carrying out, or maintenance of any building or work on land;
- (b) the erection, construction, or maintenance or anything in, on, over or under land; or
- (c) the use of any land.

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

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

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

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

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

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

- (a) shall be payable under section 7 or 10 of the 1965 Act; and
- (b) shall be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where—
  - (i) the compensation is to be estimated in connection with a purchase under those acts; or
  - (ii) the injury arises from the execution of works on or use of land acquired under those acts.

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

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

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

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

the liability shall be enforceable against the undertaker.

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

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

### **Time limit for exercise of authority to acquire land compulsorily**

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

- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 36 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)<sup>(b)</sup>.

(2) The authority conferred by article 40 (temporary use of land for carrying out the authorised development) shall cease at the end of the period referred to in paragraph (1), but nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Compulsory acquisition of rights**

34.—(a) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the land plans.

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

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



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

(2) Subject to section 8 of the 1965 Act, as substituted by article 38 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.

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

### **Private rights of way**

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

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

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

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

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

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 42 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) shall have effect subject to—

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land,
  - (ii) the undertaker's appropriation of it,
  - (iii) the undertaker's entry onto it, or
  - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs shall not apply to any right of way specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right of way is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

## **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

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

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

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

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

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

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

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

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

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

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

- (a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

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

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

## **Acquisition of subsoil only**

**37.**—(b) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 30 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(2) Paragraph (2) shall not prevent article 38 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

## **Acquisition of part of certain properties**

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

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

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

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

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

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

loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

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

### **Rights under or over streets**

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

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

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

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

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

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

### **Temporary use of land for carrying out the authorised development**

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

(a) enter on and take temporary possession of—

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

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

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

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

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

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

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

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

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

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

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

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

- (a) acquiring new rights over any part of that land under article 34 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 37 (acquisition of subsoil only).

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

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

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

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

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

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

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

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

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

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

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

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

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

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

### **Statutory undertakers**

42.—(1) The undertaker may only exercise powers to extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers under this Part if such extinguishment, removal or repositioning is necessary for carrying out the authorised development.

### **Recovery of costs of new connections**

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

(1) Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 42, any person who is—

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

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

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

(3) In this article—

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

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

## PART 6

### MISCELLANEOUS AND GENERAL

#### **Deemed marine licence**

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

#### **Felling or lopping of trees**

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

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

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

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

#### **Trees subject to tree preservation orders**

**46.—(i)** The undertaker may fell or lop any tree described in Schedule 7 and identified on the land plans, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

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

- (a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.

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

#### **Railway and navigation undertakings**

**47.—(j)** Subject to the following provisions of this article, the undertaker may not under article 15 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

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

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

- (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.

### **Railway network**

**48.—**(k) The undertaker, or any person permitted by the undertaker, may operate and use the railway crossing the Order land together with any ancillary works as a system, or part of a system, for the carriage of goods.

(1) The Office of Rail Regulation, Network Rail and the undertaker may enter into agreements in connection with the operation and use of the railway crossing the Order land.

### **Arrangements with Her Majesty’s Revenue and Customs**

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

### **Application of landlord and tenant law**

**50.—**(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

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

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

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

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.



### **Operational land for purposes of the 1990 Act**

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

### **Defence to proceedings in respect of statutory nuisance**

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

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development in accordance with a scheme of monitoring and attenuation of noise agreed with the relevant planning authority as described in requirement 22; or
  - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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

### **Protection of interests**

**53.** Schedule 9 to this Order has effect.

### **Saving for Trinity House**

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

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

**55.—**(a) Regulation 73 of the Conservation of Habitats and Species Regulations 2010(c) (general development orders) (“the Habitats Regulations”) shall not apply to any planning permission which relates to the works authorised by article 11 (provision of works) and which is

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(a) 1990 c.43, as amended at the date of the coming into force of this Order.  
(b) 1974 c.40, as amended at the date of the coming into force of this Order.  
(c) S.I. 2010/400 as amended at the date of the coming into force of this Order

granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995<sup>(a)</sup> for the class of development described as permitted development in Part 11 of Schedule 2 to that Order.

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

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

### **Planning, etc. jurisdiction**

**56.**—(b) During the period beginning with the date when this Order comes into force and ending on the accretion date, the area within the limits of deviation for Work No. 1 shall, for the purposes of the Control of Pollution Act 1974<sup>(b)</sup> and the 1990 Act, be annexed to and incorporated with the area of the relevant planning authority.

(1) In this article, “accretion date” means the date when the works authorised by this Order have been completed or, if earlier, the date when the benefits and rights granted by this Order cease to have effect pursuant to article 7 (period for completion of work).

### **Certification of plans etc**

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

- (a) the book of reference;
- (b) the ecology plans;
- (c) the land plans;
- (d) the rights of way plans;
- (e) the environmental statement as defined in paragraph 1 to Schedule 11; and
- (f) the works plans,

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

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

### **Service of notices**

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

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

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

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

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

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

(c) 1978 c. 30.

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
  - (b) in any other case, the last known address of that person at the time of service.
- (4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—
- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
  - (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement shall be taken to be fulfilled only where—
- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
  - (b) the notice or document is capable of being accessed by the recipient;
  - (c) the notice or document is legible in all material respects; and
  - (d) in a form sufficiently permanent to be used for subsequent reference.
- (6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.
- (7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).
- (8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—
- (a) that person shall give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
  - (b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.
- (9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

## **Arbitration**

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

## **Requirements - appeals**

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

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

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

Signed by authority of the Secretary of State

[xxx] 2013

Department for Transport

# SCHEDULES

## SCHEDULE 1

Article 5

### AUTHORISED DEVELOPMENT

#### NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT

**1.**In the district of North Lincolnshire—

- (a) Work No. 1—a quay of solid construction comprising a quay wall and reclamation behind it on the south side of the River Humber, the quay wall being enclosed by the existing flood wall and the quay limits.

#### ASSOCIATED DEVELOPMENT

**2.**In the district of North Lincolnshire—

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

**3.**In the district of North Lincolnshire—

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

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

- (a) dredging the approach channel, the berthing pockets, the turning area, the pumping station outfall and the other areas within which dredging is deemed to be licensed by virtue of the deemed marine licence and land reclamation behind the new quay wall (Work No. 1) that does not form part of the quay in accordance with Schedule 8 (deemed marine licence);
- (b) the provision of onshore facilities for manufacture, assembly and storage;
- (c) improvement works to Rosper Road and the A160;
- (d) surface and foul water disposal arrangements;
- (e) lighting;
- (f) parking;
- (g) ecological mitigation works in accordance with the environmental management and monitoring plans; and
- (h) the re-siting of apparatus.

**5.**In the district of the East Riding of Yorkshire and within the Order limits

- (a) the development of compensatory environmental habitat in accordance with the environmental management and monitoring plans, to include dredging and tidal works licensed in accordance with Schedule 8; and
- (b) dredging the Cherry Cobb Sands breach.

## SCHEDULE 2

Article 15

### STREETS SUBJECT TO STREET WORKS

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

## SCHEDULE 3

Article 16

### STREETS TO BE TEMPORARILY STOPPED UP

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

## SCHEDULE 4

Article 17

### ACCESS TO WORKS

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



## SCHEDULE 5

Article 19

### FOOTPATHS TO BE STOPPED UP

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

# SCHEDULE 6

Article 40

## LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
District of North Lincolnshire	01001, 01002, 01003	Works to A160 / Rosper Road junction	Works to Rosper Road
	02001, 03001, 04001, 05001	Works to Rosper Road	Works to Rosper Road
	02009, 02010, 02011, 02012, 03027	Footpath diversion	Footpath diversion
	03026	Private track diversion	Private track diversion

## SCHEDULE 7

Article 46

### TREES SUBJECT TO TREE PRESERVATION ORDERS

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

## DEEMED MARINE LICENCE

## PART 1

## INTRODUCTORY

*Interpretation*

## 1. (1) In this Schedule:—

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

“the Centrica outfall” means the area bounded by co-ordinates (53°39.670’N, 00°13.696’W), (53°39.713’N, 00°13.570’W), (53°39.666’N, 00°13.523’W) and (53°39.623’N, 00°13.647’W) and shown on sheet 5 of the works plans;

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

“the E.ON outfall” means the area bounded by co-ordinates (53°39.557’N, 00°13.561’W), (53°39.600’N, 00°13.426’W), (53°39.550’N, 00°13.382’W) and (53°39.508’N, 00°13.517’W) and shown on sheet 5 of the works plans;

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

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

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

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

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

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

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

“marine piles” means piles that will be in a free water condition during construction;

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

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

“percussive piles” means driven piles but excludes the handling, placing and vibro-driving of piles;

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

“sea bed” means the ground under the sea; and

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

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

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

#### *Addresses*

2. (1) Unless otherwise advised in writing by the MMO, the address for postal correspondence with the MMO for the purposes of this schedule is the Marine Management Organisation, Marine Licensing Team, Lancaster House, Newcastle Business Park, Newcastle upon Tyne, NE4 7YH and where contact to the MMO District Office is required, the following contact details should be used: Estuary House, Wharncliffe Road, Grimsby, Lincolnshire, DN31 3QL. Tel: 01472 355112 email: grimsby@marinemanagement.org.uk.

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

## PART 2

### LICENSED ACTIVITIES

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

#### *Construction of the quay*

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

- (a) no more than 650 tubular and 1300 sheet steel perimeter piles may be driven into the bed of the estuary to form the external face of the quay, where such piles are to be installed from named vessels moored in the estuary;
- (b) two return walls may be constructed between the ends of the quay and the existing flood defence wall, comprising no more than 500 tubular and 1000 sheet piles driven into the bed of the estuary from named vessels and also earthwork revetments with no more than 100,000 tonnes of rock armour protection, such revetments and rock armour to be constructed using land-based plant;
- (c) no more than 750 flap anchor piles may be fixed to the landward face of the perimeter piles and seated in a trench on the bed of the estuary, to be installed from named vessels moored in the estuary;
- (d) no more than 100 steel anchor piles may be driven into the bed of the estuary and fixed to perimeter piles, to be installed from named vessels moored in the estuary;
- (e) the area of estuary approximately 50 metres landward of the quay perimeter piles may be reclaimed by depositing marine dredged sands and gravels from named vessels using rainbowing techniques;
- (f) the remaining area of estuary enclosed by the quay perimeter piles and the two return walls may be reclaimed using marine dredged sands and gravels by constructing two granular dams that extend from the existing flood defence wall to the area reclaimed under paragraph (e), so that the dams divide the remaining reclaim area into three approximately equal cells, whereupon named vessels shall pump fluidised granular material into each cell in sequence, allowing estuarine water that is retained within each cell to overflow the dams as the fluidised material is deposited and settles within the cell, such activity to continue until all cells attain their design levels; and
- (g) steel plates may be attached to the perimeter piles by welding and bolting, whereupon a fender may be attached to each steel plate by bolts, all such works being undertaken from a man basket suspended from a crane located on land.

(2) Drainage and disposal outfalls and cooling water outfalls may be incorporated into the quay but for the avoidance of doubt the use of these outfalls is not licensed by this Schedule.

(3) Monitoring equipment fixed to buoys shall be deployed at locations in the estuary before, during and after the piling works permitted by sub-paragraph (1) in accordance with the marine environmental management and monitoring plan.

#### *Temporary dolphins*

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

(2) Monitoring equipment fixed to buoys shall be deployed at locations in the estuary during the piling works permitted by sub-paragraph (1) in accordance with the marine environmental management and monitoring plan referred to in paragraph 15.

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

#### *Berthing pocket infill*

6. Following or during the dredging of the berthing pocket, the licence holder is permitted to deposit up to 300,000 tonnes of gravel and rock from named vessels into the berthing pocket up to a maximum level of -11.5 metres chart datum and must not undertake maintenance dredging below the level of -11 metres chart datum.

#### *Pumping station*

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

- (a) a temporary steel cofferdam for the installation of up to six drainage pipes may be installed through the existing flood defence and extend onto the foreshore, whereupon the flood defence wall shall be reinstated to its original seaward profile using inert soil materials and concrete;
- (b) a stone mattress may be placed within the drainage channel created under (b) over a distance of 20 metres seawards of the outfall pipes; and
- (c) a pumping station may be constructed such that its seaward extent is above the stone mattress.

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

#### *Compensation site creation*

8. The licence holder is permitted to remove a 250 metre section of the existing flood wall to create the Cherry Cobb Sands breach under the following conditions:—

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

#### *Capital dredging*

9. The licence holder is permitted to deposit rock armouring to the northern extent of the flood defence breach at Cherry Cobb Sands under the following conditions:

- (a) the quantity of rock to be placed must be agreed with the MMO at least 4 weeks prior to works commencement,

- (b) the exact location must be agreed with the MMO at least 4 weeks prior to works commencement, and
- (c) the placement of rock armouring shall only be carried out in accordance with the agreed location and rock quantity.

**10.** (1) The licence holder is permitted to deposit temporary bog matting upon the foreshore at the Cherry Cob Sands site for the purposes of construction plant movement.

(2) The licence holder must ensure the bog matting is removed as soon as practicable once the activities for which they have been deposited have been completed.

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

- (a) the area within the quay limits to a depth of -6.5 metres Chart Datum;
- (b) the berthing pocket to a depth of -14.5 metres Chart Datum;
- (c) the approach channel to a depth of -9 metres Chart Datum;
- (d) the turning area to a depth of -9 metres Chart Datum;
- (e) the pumping station outfall to a depth of +2.0 metres Chart Datum; and
- (f) the Cherry Cobb Sands breach to a depth of +3.0 metres Chart Datum.

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

<i>Location</i>	<i>Material</i>	<i>Maximum tonnage per year</i>	<i>Deposit location</i>	<i>Total licensed tonnage</i>	
Area within the quay limits	Gravel	50,000	HU080	725,000	
	Sand	110,000			
	Silt	390,000			
	Clay	175,000	HU082		
The berthing pocket	Gravel	5,000	HU080	1,835,000	
	Sand	50,000			
	Silt	145,000			
	Clay	535,000	HU082		
	Clay	1,100,000	The terrestrial area landward of the existing Killingholme Marshes flood defence wall		
The approach channel	Gravel	150,000	Within the quay limits	1,650,000	
	Gravel	150,000	HU080		
	Sand	600,000			
	Silt	500,000			
	Clay	250,000	HU082		
The turning area	Gravel	35,000	HU080	250,000	
	Sand	95,000			
	Silt	80,000			
	Clay	40,000	HU082		
The pumping station outfall	Sand	500	HU080	8,000	
	Silt	7,500			
The Cherry Cobb Sands breach	Sand	2,000	If the dredged material is suitable, the area within the proposed managed realignment site	10,000	
	Silt	8,000			

*Maintenance dredging*

**12.** (1) The licence holder is permitted to carry out maintenance dredging at the following locations within the period specified in paragraph 14(3):—

- (a) the berthing pocket to a depth of -11 metres Chart Datum;
- (b) the approach channel to a depth of -9 metres Chart Datum;
- (c) the turning area to a depth of -9 metres Chart Datum;
- (d) the E.ON outfall to keep it free of siltation by means of plough dredging;
- (e) the Centrica outfall to keep it free of siltation by means of plough dredging;
- (f) the pumping station outfall to a depth of +2.0 metres Chart Datum; and
- (g) the Cherry Cobb Sands breach to a depth of +3.0 metres Chart Datum.

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

- (a) maintaining the authorised development;
- (b) maintaining access to the authorised development;
- (c) maintaining access to neighbouring developments; and
- (d) removing siltation caused by the authorised development.



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

<i>Location</i>	<i>Material</i>	<i>Maximum tonnage per year</i>	<i>Deposit location</i>	<i>Total licensed tonnage</i>
The berthing pocket	Sand	150,000	HU080	3,225,000
	Silt	925,000		
The approach channel	Sand	10,000	HU080	150,000
	Silt	40,000		
The turning area	Sand	10,000	HU080	150,000
	Silt	40,000		
The E.ON outfall	Sand	500	none	7,500
	Silt	2,000		
The Centrica outfall	Sand	500	none	7,500
	Silt	2,000		
The pumping station outfall	Sand	50	HU080	300
	Silt	50		

### PART 3

### ENFORCEMENT

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

### PART 4

### CONDITIONS

#### *General conditions*

**14.** (1) The conditions set out at paragraphs 15 to 69 are licence conditions attached to the deemed marine licence granted by article 44.

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

(3) This licence is for 6 years from the date of coming into force of this Order whereby—

(a) the construction and capital dredge activities are carried out within the first three years; and

(b) maintenance dredging is permitted within the second three years.

**15.** (1) No licensed activities shall be carried out until four weeks after a marine environmental management and mitigation plan has been supplied to the MMO, Natural England and the Environment Agency in accordance with paragraph 17 of Schedule 11.

(2) Before commencing any licensed activities, the licence holder shall consult the harbour master, C.RO, E.ON UK plc and Centrica on the contents of the marine environmental management and monitoring plan in relation to those elements of the maintenance dredging licensed under paragraph 12 that may affect those parties' interests.

(3) The licence holder must have regard to any consultation responses received from C.RO Ports (Killingholme) Ltd, E.ON UK plc and Centrica.

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

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

**18.** The licence holder must ensure that the MMO District Marine Office is notified of the timetable of works and operations at least 10 days prior to the commencement of any licensed activity.

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

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

**21.** The licence holder must ensure that the names of vessels are provided to the MMO and agreed in writing at least four weeks prior to the commencement of works, such notification setting out

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

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

**23.** Should the licence holder become aware that any of the information on which the granting of this deemed marine licence was based has changed or is likely to change, the licence holder must notify the MMO at the earliest opportunity.

#### *Project wide conditions*

**24.** The works shall be carried out in accordance with a works schedule to be agreed in writing between the licence holder and the MMO prior to the commencement of the works, and any changes to the works schedule are also to be agreed in writing with the MMO.

**25. (1)** The following dependencies apply to the licensed activities in paragraphs 4 to 12.

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

- (a) carry out the activity licensed under paragraph 8 (compensation site creation) in the June following the creation of the compensation site, which in turn must be done during the first earthworks season following the commencement of the activity licensed under paragraph 4;
- (b) carry out the activity licensed under paragraph 7 (pumping station);
- (c) carry out the activity licensed under paragraph 12(1)(d) (the E.On outfall maintenance dredging) unless agreed in writing with E.ON; and
- (d) carry out the activity licensed under paragraph 12(1)(e) (the Centrica outfall maintenance dredging) unless agreed in writing with Centrica.

(3) If the licence holder carries out the activity licensed under paragraph 11(1)(b) (berthing pocket capital dredging) then it must carry out the activity licensed under paragraph 6 (berthing

pocket infill) but must not undertake maintenance dredging below the level of -11 metres Chart Datum.

**26.** The licence holder must ensure that any coatings and treatments used are approved by the Health and Safety Executive as suitable for use in the marine environment and are used in accordance with Environment Agency Pollution Prevention Control Guidelines.

**27.** (1)-The licence holder must only work and access the works site within a defined and marked out area thereby limiting personnel and plant access to the site.

(2) Co-ordinates (in WGS84) and plan diagrams of the work area and access routes must be submitted to the MMO at least 4 weeks prior to the commencement of works.

(3) The written approval of the co-ordinates and plan diagrams by the MMO is required prior to works commencing.

**28.** The licence holder must ensure that during the works all wastes are stored in designated areas that are isolated from surface water drains, open water and bunded to contain any spillage.

**29.** The licence holder must ensure that any equipment, temporary structures, waste and debris associated with the works are removed within 6 weeks of completion of the works.

**30.** (1) The licence holder must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment.

(2) Concrete and cement mixing and washing areas should be contained and sited at least 10 metres from any watercourse or surface water drain to minimise the risk of run off entering a watercourse.

**31.** (1) Prior to any works commencing below the level of Mean High Water Springs, the licence holder must submit detailed method statements to the MMO for approval for each stage of works at least 4 weeks prior to the commencement of works.

(2) All works must be undertaken in accordance with agreed and approved method statements.

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

**33.** The licence holder must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO Marine Pollution Response Team: 0870 785 1050 (office hours), 07770 977 825 (outside office hours) and [dispersants@marinemangement.org.uk](mailto:dispersants@marinemangement.org.uk) or such replacement numbers or email address notified to the licence holder by the MMO in writing.

**34.** The licence holder must ensure that a Notice to Mariners is issued at least 10 days prior to works commencing warning of the start date for the construction of the works and updated as appropriate.

**35.** The licence holder must ensure that all materials used in construction of any part of the development (including the compensation site) are suitable and approved for use within the marine environment.

**36.** (1) The licence holder must ensure that a protocol for archaeological discoveries (PAD) is in place before works commence for the reporting of unexpected remains made during construction activities. This protocol must draw upon the format outlined in the BMAPA/English Heritage (2005), COWRIE (2007) and the Crown Estate (2010) guidelines.

(2) This protocol must be submitted to the MMO at least 4 weeks prior to the commencement of works.

*Piling conditions*

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

- (a) the use of pile pads and pile shrouds at all times,
- (b) the maximum pile diameter to be 2.1 metres unless otherwise agreed in writing by the MMO, following consultation with Natural England and the Environment Agency,
- (c) soft start procedures to be followed to include a requirement for a soft start of at least 180 seconds for percussive piling of marine piles,
- (d) marine mammal observation (within 100 metres of the pile being driven) and the cessation of piling while any marine mammals are within this zone,
- (e) implementation of an active monitoring scheme under paragraph 39, and
- (f) details of the anticipated spread of piling activity throughout a working day

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

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

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

(2) Percussive piling shall only be carried out in accordance with the cold weather piling restriction strategy.

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

- (a) the location of active monitoring buoys and the depth and design of sensors,
- (b) the frequency of measurement of temperature and dissolved oxygen,
- (c) 24 hours a day, 7 days a week monitoring of noise,
- (d) when monitoring shall commence and cease, to include a two-week period of pre- and post-construction monitoring to establish baseline conditions and the return to baseline conditions respectively,
- (e) a log of the number and approximate locations of piling rigs that are in operation on any given day, and
- (f) details of how the monitored information will be accessed by or communicated to the site contractor, the MMO the Environment Agency and Natural England as necessary.

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

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

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

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

- (a) from 2 June to 22 July inclusive in any year, the maximum amount of percussive piling permitted within any four-week period shall not exceed:—
  - (i) 101 hours where a single piling rig is in operation, or
  - (ii) a total of 168 hours where two or more rigs are in operation;
- (b) from 23 July to 10 September inclusive in any year, the maximum amount of percussive piling permitted within any week-long period shall not exceed:—
  - (i) 25 hours where a single piling rig is in operation, or
  - (ii) a total of 42 hours where two or more rigs are in operation;
- (c) from 11 September to 31 October inclusive in any year, the maximum amount of percussive piling permitted within any four-week period shall not exceed:—
  - (i) 134 hours where a single piling rig is in operation, or
  - (ii) a total of 224 hours where two or more rigs are in operation.
- (d) from 1 November in any year to 6 April in the following year inclusive, the maximum amount of percussive piling permitted within any eight-week period shall not exceed:—
  - (i) 336 hours where a single piling rig is in operation, or
  - (ii) a total of 560 hours where two or more rigs are in operation.

(2) The measurement of time during each work-block shall begin at the start of each timeframe, roll throughout it, then cease at the end, where measurement will begin again at the start of the next timeframe, such process to be repeated until the end of piling works.

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

**43.** The maximum diameter of marine piles shall be 2.1 metres unless otherwise agreed in writing with the MMO, following consultation with Natural England and the Environment Agency.

#### *General dredging and disposal conditions*

**44.** Conditions 32 to 69 shall apply to licensed activities consisting of dredging and disposal.

**45.** (1) The licence holder must agree a dredge and disposal strategy with the MMO at least four weeks before the commencement of any licensed activities.

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

**46.** The licence holder must ensure that

- (a) as a result of the capital dredging activities in paragraph 11:
  - (i) no inerodible material and no more than 2,218,000 tonnes of erodible material site is disposed to site HU080 and
  - (ii) no erodible material and no more than 1,000,000 tonnes of inerodible material is disposed of to site HU082; and
- (b) as a result of the maintenance dredging activities in paragraph 12 no inerodible material and no more than 1,180,100 tonnes of erodible material per annum is disposed to site HU080.

**47.** (1) The licence holder must ensure that certified returns of quantities of dredged material deposited under this licence are submitted to the MMO by the 31st January (for the months August to January inclusive) and the 31st July (for the months February to July inclusive) each year.

(2) The returns must specify the full licence number and amounts deposited (in tonnes) each calendar month at each authorised deposit area.

(3) Where no deposit is made in a given period a NIL return is required.

(4) The disposal method used must also be submitted with the returns.

**48.** (1) The licence holder must ensure that dredged material is passed through grid screens no larger than 30cm to minimise the amount of man-made materials disposed of at sea.

(2) Any man-made material must be separated from the dredged material and disposed of to land.

**49.** Should disposal of material be found to be the cause of any detrimental effects to the disposal site then disposal must cease with immediate effect.

#### *Capital dredging and disposal conditions*

**50.** The licence holder must ensure that during the course of disposal, non-erodible material is placed in the depressions of HU082, and that the site is filled to a gradient in keeping with the surrounding bathymetry and ensure that no depths within the disposal site are reduced to less than 5.3m below admiralty Chart Datum at its shallowest point.

**51.** The licence holder must undertake regular bathymetric surveys to ensure that the disposal of dredged material at site HU082 has been undertaken in line with the requirements of this licence.

**52.** (1) The licence holder must ensure that no gravel is disposed of to HU080 until sampling of the existing seabed has been undertaken and an assessment made which demonstrates that disposal of gravel to the site is acceptable.

(2) The assessment must be submitted to and agreed by the MMO, prior to disposal activity being undertaken.

(3) If following the assessment gravel is found not to be suitable to disposal to site HU080 the gravel material must be reused or disposed of elsewhere.

**53.** The licence holder must ensure that during the course of disposal, material is distributed evenly over disposal site HU080.

**54.** (1) The licence holder must employ methods to minimise resuspension of sediment during the construction and dredging operations.

(2) The methodology must be submitted to the MMO at least 4 weeks prior to the commencement of the works.

(3) Written approval by the MMO is required prior to works commencing.

#### *Maintenance dredging and disposal conditions*

**55.** (1) The licence holder must undertake sampling and chemical analysis for contaminated sediments within 6 months prior of the commencement of Maintenance dredge and disposal operation to ensure the material is still suitable for sea disposal.

(2) The Licence Holder must consult the MMO on the sampling plan and methodology for chemical analysis prior to sampling and analysis being undertaken.

(3) No disposal at sea can take place without the approval of the MMO.

**56.** The licence holder must ensure that during the course of disposal, material is distributed evenly over disposal site HU080.

**57.** (1) The licence holder must monitor disposal site HU080 to ensure that the material is dispersing as predicted.

(2) A Monitoring Plan must be agreed in writing with the MMO at least 4 weeks prior to the commencement of works.

(3) The monitoring must be carried out in accordance with the Monitoring Plan agreed.

**58.** (1) The licence holder must update the Humber Maintenance Dredging Baseline Document to incorporate the dredging and disposal of dredged material consented.

(2) The updated Humber Maintenance Dredging Baseline Document must be submitted with any subsequent application made to the MMO for maintenance dredging activities associated with the works.

**59.** The berthing pocket must be maintained to no deeper than -11.0m CD to ensure that no gravel infill material migrates from the berthing pocket or is dredged and disposed of to unsuitable disposal grounds.

**60.** (1) The licence holder must employ methods to minimise resuspension of sediment during dredging operations.

(2) The methodology must be submitted to the MMO at least 4 weeks prior to the commencement of the works.

(3) Written approval/agreement by the MMO is required prior to works commencing.

*Placement of rock and gravel materials below mean high water springs*

**61.** (1) Any rock or gravel material to be placed within the marine environment must be from a recognised source agreed by the MMO.

(2) Details of such information should be provided to the MMO at least 4 weeks prior to the commencement of works.

**62.** Any rock armour surplus to that specified in paragraph 4(1)(b) must be returned to land.

**63.** Any rock or gravel surplus to that specified in paragraph 6 must be returned to land.

**64.** (1) The licence holder must ensure that a full method statement and location of the transshipment area and barge approach routes is submitted to the MMO at least 4 weeks prior to the commencement of works.

(2) Written approval by the MMO is required prior to works commencing.

**65.** The licence holder must ensure that pre and post works trawl surveys are conducted within any transshipment area and barge approach routes, or Fisheries Liaison Officers are employed on the transshipping vessel to observe all transshipment operations and record any losses.

**66.** (1) The licence holder must ensure that any vessels used for rock and gravel transshipment or delivery operations are suitably constructed and loaded to prevent rock and gravel falling over the side by accident.

(2) Suitable screening should be used to prevent rock and gravel loss through drainage holes.

**67.** The licence holder must ensure that sea going tug or tugs capable of towing the barge in a loaded condition can be made available within a 12 hour period to tow the barge sheltered waters in adverse weather conditions.

**68.** The licence holder must ensure that any rock misplaced or lost below mean high water springs is reported to the MMO District Marine Office within 48 hours, and located and recovered.

**69.** Any rock that is misplaced or lost below mean high water springs and cannot be recovered must be located and its position notified to the MMO within 48 hours.





## PROTECTIVE PROVISIONS

## PART 1

## FOR THE PROTECTION OF THE HUMBER CONSERVANCY

*Interpretation*

## 1. In this Part—

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

“environmental document” means—

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

(b) any other document containing environmental information provided by the Harbour Authority to the Secretary of State or the Conservancy Authority for the purposes of any tidal works approval under article 23 (tidal works not to be constructed without approval of the Secretary of State) or this Schedule; and

“the river” means the River Humber.

*General*

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

(1) For the purposes of this Schedule, the definition of “tidal work” shall be taken to include—

- (a) any projection over the river outside the area of jurisdiction by booms, cranes and similar plant or machinery, whether or not situated within the area of jurisdiction; and
- (b) any authorised work which affects the river or any functions of the Conservancy Authority, whether or not that authorised work is within the limits of the Conservancy Authority.

*Tidal Works: approval of detailed design*

## 3.—(c) Before—

- (a) submitting any plans and sections for any tidal work to the Secretary of State for his approval under article 23 (tidal works not to be constructed without approval of the Secretary of State);
- (b) agreeing a vessel movement management plan with the MMO under paragraph 16 of Schedule 8;
- (c) agreeing a dredge and disposal strategy with the MMO under paragraph 34 of Schedule 8;
- (d) seeking approval from the relevant planning authority for any alteration of the drawings under paragraph 4 of Schedule 11 that affect the area below mean high water mark;
- (e) seeking approval from the relevant planning authority for any external lighting details under paragraph 20 of Schedule 11 that affect the area below mean high water mark;

- (f) commencing any operation for the construction of a tidal work where approval of the Secretary of State under article 23 is not required; or
- (g) commencing any operation for the maintenance of a tidal work, the Harbour Authority shall submit to the Conservancy Authority plans and sections of the tidal work or operation and such further particulars as the Conservancy Authority may, within 28 days from the day on which plans and sections are submitted under this sub-paragraph, reasonably require.

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

TABLE

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Provision of Order</i>	<i>(3)</i> <i>Provision requiring Conservancy Authority approval</i>
Marine environmental management and monitoring plan	Schedule 11, paragraph 17	Provision relating to monitoring equipment fixed to buoys
Works schedule	Schedule 8, paragraph 24	None
Active monitoring scheme	Schedule 8, paragraph 28	Provision relating to the locations of active monitoring buoys
Stages of the development scheme	Schedule 11, paragraph 3	None
Code of construction practice	Schedule 11, paragraph 18	None

(3) No application for the Secretary of State's approval under article 23 shall be made in respect of a tidal work until plans and sections in respect of that tidal work submitted under sub-paragraph (1) have been approved by the Conservancy Authority.

(4) Any tidal work not requiring the Secretary of State's approval under article 23 shall not be constructed, and no tidal work shall be maintained, except in accordance with such plans as may be approved in writing by the Conservancy Authority or determined under paragraph 24.

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

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

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

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

(7) Subject to sub-paragraphs (7) and (8), any such approval shall be deemed to have been refused if it is neither given nor refused within 42 days of the specified day.

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

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

(10) In this paragraph “the specified day” means, in relation to any tidal work—

- (a) the day on which plans of that work are submitted to the Conservancy Authority under sub-paragraph (1); or
- (b) the day on which the Harbour Authority provides the Conservancy Authority with all such particulars of the work as have been reasonably requested by the Conservancy Authority under that sub-paragraph;

whichever is the later.

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

4. When submitting any document specified in the Table in paragraph 3(2) to the MMO or the relevant planning authority as the case may be, the Harbour Authority shall forward any comments received from the harbour master in response to the consultation undertaken with the harbour master in accordance with that paragraph.

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

#### *Discharges, etc.*

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

- (a) deposit in or allow to fall or be washed into the river any gravel, soil or other material; or
- (b) discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise.

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

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

(4) In its application to the discharge of water into the river, article 20 (discharge of water) shall have effect subject to the terms of any conditions attached to a consent given under this paragraph.

7. The Harbour Authority shall not, in exercise of the powers conferred by article 20, damage or interfere with the beds or banks of any watercourse forming part of the river unless such damage or interference is approved as a tidal work under this Order or is otherwise approved in writing by the Conservancy Authority.

#### *Obstruction in river*

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

- (a) cut the obstruction off at such level below the bed of the river as the Conservancy Authority may reasonably direct; or
- (b) take such other steps to make the obstruction safe as the Conservancy Authority may reasonably require.

*Removal, etc. of the Conservancy Authority moorings and buoys*

**9. If—**

- (a) by reason of the construction of any tidal work it is reasonably necessary for the Conservancy Authority to incur reasonable costs in temporarily or permanently altering, removing, re-siting, repositioning or reinstating existing moorings or aids to navigation (including navigation marks or lights) owned by the Conservancy Authority, or laying down and removing substituted moorings or buoys, or carrying out dredging operations for any such purpose, not being costs which it would have incurred for any other reason; and
- (b) the Conservancy Authority gives to the Harbour Authority not less than 28 days' notice of its intention to incur such costs, and takes into account any representations which the Harbour Authority may make in response to the notice within 14 days of the receipt of the notice,

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

*Navigational lights, buoys, etc.*

**10.** In addition to any requirement under articles 26 (lights on tidal works during construction) and 27 (permanent lights on tidal works), the Harbour Authority shall, at or near every tidal work, and any other work of which the Harbour Authority is in possession in exercise of any of the powers of this Order (being in either case a work which is below mean high water level forming part of the river), exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the Conservancy Authority may from time to time reasonably require.

*Removal of temporary works*

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

- (a) any temporary tidal work carried out only for the purposes of that part of the permanent work; and
  - (b) any materials, plant and equipment used for such construction,
- and shall make good the site to the reasonable satisfaction of the Conservancy Authority.

*Protective action*

**12.—(b) If any tidal work—**

- (a) is constructed otherwise than in accordance with the requirements of this Schedule or with any condition in an approval given pursuant to paragraph 3(4); or
- (b) during construction gives rise to sedimentation, scouring, currents or wave action detrimental to traffic in, or the flow or regime of, the river,

then the Conservancy Authority may by notice in writing require the Harbour Authority at the Harbour Authority's own expense to comply with the remedial requirements specified in the notice.

**(2) The requirements that may be specified in a notice given under sub-paragraph (1) are—**

- (a) in the case of a tidal work to which sub-paragraph (1)(a) applies, such requirements as may be specified in the notice for the purpose of giving effect to the requirements of—
  - (i) this Schedule; or
  - (ii) the condition that has been breached; or

- (b) in any case within sub-paragraph (1)(b), such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the river.
- (3) If the Harbour Authority does not comply with a notice under sub-paragraph (1), or is unable to do so then the Conservancy Authority may in writing require the Harbour Authority to—
- (a) remove, alter or pull down the tidal work, and where the tidal work is removed to restore the site of that work (to such extent as the Conservancy Authority reasonably requires) to its former condition; or
  - (b) take such other action as the Conservancy Authority may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.
- (4) If a tidal work gives rise to environmental impacts over and above those anticipated by any environmental document, the Harbour Authority shall, in compliance with its duties under any enactment and, in particular, under section 48A of the 1964 Act, take such action as is necessary to prevent or mitigate those environmental impacts and in so doing shall consult and seek to agree the necessary measures with the Conservancy Authority.
- (5) If the Conservancy Authority becomes aware that any tidal work is causing an environmental impact over and above those anticipated by any environmental document, the Conservancy Authority shall notify the Harbour Authority of that environmental impact, the reasons why the Conservancy Authority believes that the environmental impact is being caused by the tidal work and of measures that the Conservancy Authority reasonably believes are necessary to counter or mitigate that environmental impact. The Harbour Authority shall implement the measures that the Conservancy Authority has notified to the Harbour Authority or shall implement such other measures as the Harbour Authority believes are necessary to counter the environmental impact identified, giving reasons to the Conservancy Authority as to why it has implemented such other measures.

#### *Abandoned or decayed works*

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

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

- (a) to repair and restore the work or part of it; or
- (b) if the Harbour Authority so elects, to remove the tidal work and (to such extent as the Conservancy Authority reasonably requires) to restore the site to its former condition.

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

#### *Facilities for navigation*

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

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

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

#### *Survey of riverbed*

**15.—**(a) Before the commencement of construction of the first tidal work to be constructed following approval pursuant to article 23 (tidal works not to be constructed without approval of the Secretary of State), the Conservancy Authority may, at the Harbour Authority's reasonable expense, carry out a survey of such parts of the river as might be affected by sedimentation, scouring, currents or wave action that might result from the construction of such of the authorised works as would constitute tidal works if they were to be constructed, for the purposes of establishing the condition of the river at that time.

(1) Before the commencement of construction of any other tidal work approved pursuant to article 23, the Conservancy Authority may, at the Harbour Authority's reasonable expense, carry out a survey of such parts of the river as might be affected by sedimentation, scouring, currents or wave action resulting from that tidal work for the purpose of establishing the condition of the river at that time.

(2) The Conservancy Authority may carry out such surveys of the river as are reasonably required during the construction of any tidal work to ascertain the effect of that tidal work on the river and the Conservancy Authority shall make available to the Harbour Authority the results of any such survey in electronic and paper format.

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

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

#### *Sedimentation, etc.: remedial action*

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

- (a) is, during the period beginning with the commencement of the construction of that tidal work and ending with the expiration of 10 years after the date on which all the tidal works constructed under this Order are completed, wholly or partly caused by a tidal work; and
- (b) for the safety of navigation or for the protection of works in the river, should in the reasonable opinion of the Conservancy Authority be removed or made good.

(2) The Harbour Authority shall either—

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

- (b) carry out the necessary dredging at its own expense and subject to the prior approval of the Conservancy Authority, such prior approval not to be unreasonably withheld or delayed;

and the reasonable expenses payable by the Harbour Authority under this paragraph include any additional expenses accrued or incurred by the Conservancy Authority in carrying out surveys or studies in connection with the implementation of this paragraph.

#### *Indemnity*

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

- (a) the construction or operation of the authorised works or the failure of the authorised works;
- (b) anything done in relation to a mooring or buoy pursuant to paragraph 9; or;
- (c) any act or omission of the Harbour Authority, its employees, contractors or agents or others whilst engaged upon the construction or operation of the authorised works or dealing with any failure of the authorised works;

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

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

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

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

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

#### *Entry for survey, etc.*

**18.—**(1) Before exercising the powers of article 22 to enter any land situated below the level of high water the undertaker shall provide the harbour master with written particulars of –

- (a) the location of the land (including a plan);
- (b) the nature of the things proposed to be done in that land in exercise of that article;
- (c) the duration and frequency of the undertaker's intended presence on the land;
- (d) any vehicles or equipment proposed to be brought on the land;

and such other details as the harbour master may reasonably request.

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

#### *Statutory functions*

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

- (a) any enactment relating to the Conservancy Authority;

- (b) any byelaw, direction or other requirement made by the Conservancy Authority or the harbour master under any enactment; and
- (c) any other exercise by the Conservancy Authority or the harbour master of any function conferred by or under any enactment.

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

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

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

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

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

#### *Operating procedures*

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

#### *Consideration for dredged material*

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

(1) The Harbour Authority shall pay reasonable consideration under sub-paragraph (1) as respects material dredged in the course of the construction of the works authorised by Schedule 8 (deemed marine licence) based on the quantity of such material that—

- (a) is not used for the construction of—
  - (i) the authorised works;
  - (ii) any other works related to the construction of Able Marine Energy Park; or
  - (iii) the related development; and
- (b) is not owned by the undertaker, and
- (c) is sold by the Harbour Authority or by any other person exercising any powers under this Order.

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

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



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

*Transfer of benefit of Order*

**23.** Within 14 days after the date of any transfer or grant under article 13 (consent to transfer benefit of Order), the undertaker who made the transfer or grant shall serve notice on the harbour master containing the name and address of the transferee or lessee, the territorial extent of the transfer or grant and, in the case of a grant, the period for which it is granted and the extent of benefits and rights granted.

*Disputes*

**24.** Any dispute arising between the Harbour Authority and the Conservancy Authority under this Schedule shall be determined by arbitration as provided in article 59 (arbitration).

## PART 2

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

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

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

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

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

**29.** The Company must bring the conditions contained in paragraphs 26 to 28 to the attention of any agent or contractor responsible for carrying out the authorised development.

## PART 3

### FOR THE PROTECTION OF THE HIGHWAYS AGENCY

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

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

## PART 4

### FOR THE PROTECTION OF NETWORK RAIL

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

**32.** In this part of this Schedule,

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

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held by or used for the benefit of Network Rail for the purposes of such railway or works, apparatus or equipment; and

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

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

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

(a) co-operate with the Company with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised project pursuant to this Order.

**34.—**(1) The Company shall not exercise the powers conferred by article 22 (authority to survey and investigate the land) or the powers conferred by section 11(3) of the 1965 Act as applied to this Order by the 2008 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

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

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

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

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

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

(a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 35;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the Company shall, notwithstanding any approval described in paragraph 36(1)(a), make good such damage and shall pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule shall impose—

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

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

**37.** The Company shall—

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

**38.** Network Rail shall at all times afford reasonable facilities to the Company and its agents for access to any works carried out by Network Rail under this Schedule during their construction and

shall supply the Company with such information as it may reasonably require with regard to such works or the method of constructing them.

**39.**—(1) If any permanent or temporary alterations or additions to railway property, or any protective works under paragraph 35(4), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening for public use of any part of the authorised project that includes a specified work, in consequence of the construction of that specified work, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Company reasonable notice of its intention to carry out such alterations or additions, the Company shall pay to Network Rail all costs reasonably and properly incurred in constructing those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the Company, Network Rail gives notice to the Company that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Company desires that part of the specified work to be constructed, Network Rail shall assume construction of that part of the specified work and the Company shall, notwithstanding any such approval of a specified work under paragraph 35(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

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

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

(a) in constructing any part of a specified work on behalf of the Company as provided by paragraph 34(3) or in constructing any protective works under the provisions of paragraph 34(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the Company and the supervision by him of the construction of a specified work and otherwise in connection with the implementation of the provisions of this Part;

(c) in respect of the employment or procurement of the services of any inspectors and other persons whom it shall be reasonably necessary to appoint for inspecting, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of a specified work; and

(e) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution of diversion of services which may be reasonably necessary for the same reason.

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

necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

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

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

(a) by reason of the construction, working or maintenance of a specified work, or the failure thereof; or

(b) by reason of any act or omission of the Company or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

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

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

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

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

**46.** The Company shall no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 57 are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

## **PART 5**

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

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

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

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

*Rosper Road*

**49A.** The undertaker shall not in the exercise of the powers conferred by this Order unreasonably prevent C.GEN's access to and use of Rosper Road.

**49B.** The construction and operation of the authorised development must not unreasonably interfere with or obstruct the free, uninterrupted and safe use of Rosper Road or any traffic on Rosper Road, unless an alternative access that is suitable and commodious is provided prior to and for the duration of any such interference.

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

**51.** Unless otherwise agreed in writing, any dispute arising between the undertaker and C.GEN under this Schedule shall be determined by arbitration as provided in article 59 (arbitration).

## PART 6

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

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

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

"CPK approach channel" means the approach channel and manoeuvring area for CPK.

**54. (1)-Before:**

- (a) submitting any plans and sections for any tidal work in or that may affect the CPK approach channel to the Secretary of State for approval under article 23 of this Order (tidal works not to be constructed without approval of the Secretary of State);
- (b) commencing any operation for the construction of a tidal work in or that may affect the CPK approach channel where approval of the Secretary of State under article 23 is not required;
- (c) submitting any works schedules to the Marine Management Organisation in accordance with Schedule 8 for works in or that may affect the CPK approach channel;
- (d) submitting any plans and sections for any tidal work or operation in or that may affect the CPK approach channel to the Conservancy Authority in accordance with Part 1 of Schedule 9;
- (e) submitting any written scheme or proposed alteration in the design drawings that may affect the CPK approach channel to the relevant planning authority in accordance with Schedule 11; or
- (f) commencing any operation for the maintenance of a tidal work in or that may affect the CPK approach channel
- (g) the Harbour Authority shall consult C.RO in accordance with the procedure set out in paragraph 54(2).

(2) The consultation that the undertaker shall carry out with CPK under paragraph 54(1) is as follows:

- (a) not less than 42 days prior to carrying out any activity to which paragraph 54(1) applies the undertaker shall submit to C.RO plans and sections of any tidal works or any written scheme or proposed alteration to the design drawings to which paragraph 54 applies and such further particulars as C.RO may, within 14 days from the day on which plans and sections are submitted under this paragraph, reasonably require; and

(b) the undertaker shall allow C.R.O a period of 28 days beginning with the date on which the information required under sub-paragraph (2)(a) has been submitted to C.R.O for C.R.O to respond for the purposes of consultation, or if later a further period of 28 days from when such further particulars as required by C.R.O are submitted by the undertaker to C.R.O.

(3) The undertaker shall have regard to any consultation response received from C.R.O under paragraph 54(2) and shall forward a copy of that response as part of the material it submits to the Secretary of State or the Marine Management Organisation or the Conservancy Authority or any written scheme or proposed alteration to the design drawings that it submits to the relevant planning authority, to which paragraph 54 applies, together with a statement explaining how it has had regard to any consultation response received from C.R.O under this paragraph.

**54A.** Any operations for the construction of any tidal work approved in accordance with this Order and to which paragraph 54 of this Part applies, shall, once commenced, be carried out by the undertaker so that C.R.O shall not suffer more interference than is reasonably practicable, and C.R.O shall be entitled by its officer or other appointed person at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

**55.** The Harbour Authority shall not in the exercise of the powers granted by this Order interfere with any marks, lights or other navigational aids in the river relating to CPK without the agreement of C.R.O, and shall ensure that access to such aids remains available during and following construction of any tidal works.

**56.** The undertaker shall pay to C.R.O the reasonable costs incurred by C.R.O 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 or the use of the authorised development, including but without limitation, paying the reasonable costs of C.R.O incurred in raising the height of the IsoGWR.4 s sector light positioned in the entrance of North Killingholme Haven at CPK, in the event that activities related to the construction or operation of the authorised development obscure or obstruct the visibility of this sector light to vessels approaching CPK and in its approach channels..

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

**57A.** The undertaker shall provide and maintain on any tidal works such fog signalling apparatus as may be reasonably required by C.R.O and shall properly operate such apparatus during periods of restricted visibility for the purpose of warning vessels of the existence of the relevant works.

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

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

### *Dredging*

**59C.** (1) The undertaker shall not dredge in the approach channel to CPK without prior approval of C.RO and C.RO shall not dredge in the turning area without prior approval of the undertaker.

(2) Any dredging that is carried out with C.RO's or the undertaker's approval must be carried out in accordance with any conditions attached thereto.

(3) C.RO's and the undertaker's approval under paragraph 59C(1) must not be unreasonably withheld or delayed and if by the end of the period of 5 days beginning with the date on which the dredging request has been supplied to C.RO or the undertaker, C.RO or the undertaker, as the case may be, has not intimated its disapproval of the request and the grounds of its disapproval each party may serve upon the other written notice requiring the other to intimate its approval or disapproval within a further period of 5 days beginning with the date upon which it receives written notice from the undertaker. If by the expiry of the further period of 5 days the other party has not intimated its approval or disapproval, it shall be deemed to have approved the request as submitted.

### *Railway*

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

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

### *Rosper Road*

**61A.** The undertaker shall not in the exercise of the powers conferred by this Order unreasonably prevent C.RO's access to and use of Rosper Road.

**61B.** The construction and operation of the authorised development must not unreasonably interfere with or obstruct the free, uninterrupted and safe use of Rosper Road or any traffic on Rosper Road, unless an alternative access that is suitable and commodious is provided prior to and for the duration of any such interference.

### *Recovery of expenses*

**61C.** (1) C.RO may recover from the undertaker any reasonable expenses howsoever caused which C.RO incur—

- (a) arising from the approval of plans and the inspection of the construction or carrying out of any tidal work;
- (b) by reason of any act or omission of the undertaker, or of any person in their employ, or of their contractors or workmen whilst engaged upon any tidal work or the construction and operation of the authorised development;
- (c) in dredging away any accumulation consequent upon the execution or maintenance of a tidal work;
- (d) in obtaining and depositing in the river such material as is necessary in the reasonable opinion of C.RO to protect C.RO's operations from the effects of scouring of the river bed consequent upon the execution or maintenance of a tidal work;
- (e) in altering any mooring in any way which in the reasonable opinion of C.RO may be rendered necessary by reason of the execution or maintenance of a tidal work;
- (f) in carrying out reasonable surveys, inspections, tests and sampling within and of the river (including the bed and banks of the river) —
  - (i) to establish the marine conditions prevailing prior to the construction of a tidal work in such area of the river as C.RO have reasonable cause to believe may subsequently



be affected by any siltation, scouring or other alteration which the undertaker is liable to remedy under this paragraph; and

(ii) where C.RO have reasonable cause to believe that the construction of a tidal work is causing or has caused any siltation, scouring or other alteration as aforesaid;

(g) arising from the carrying out of construction of a tidal work or the failure of a tidal work or the undertaking by C.RO of works or measures to prevent or remedy danger or impediment to navigation or damage to any property arising from such carrying out of construction, exercise or failure.

(2) Subject to paragraph 3, the undertaker shall not be required to pay any expense unless—

(a) C.RO has given the undertaker reasonable notice that it intends to incur the expense including details of the works proposed and an estimate therefor; and

(b) The undertaker has given its consent to C.RO incurring that expense, which may include the undertaker offering to carry out any works to which this paragraph applies with the consent of C.RO.

(3) The undertaker's approval under sub-paragraph (2)(b) must not be unreasonably withheld or delayed, and if by the end of the period of 14 days beginning with the date on which the notice has been supplied to the undertaker, the undertaker shall be deemed to have approved the request as submitted;

(4) Nothing in this paragraph 61C shall be deemed to prevent C.RO from -

(a) carrying out works to which this paragraph applies without the prior consent of the undertaker; or

(b) recovering expenses from the undertaker for any such work it has carried out;

where such works are in the reasonable opinion of C.RO urgently necessary to ensure the safe and efficient operation of CPK and C.RO shall give notice of its intention to carry out such works to the undertaker

(5) Where C.RO has carried out works under sub-paragraph (4) it shall without undue delay submit the expenses for those works including any details of the works to the undertaker for approval and the undertaker's approval therefor shall not be unreasonably withheld.

(6) Any amount of expenditure approved by the undertaker under this paragraph shall be paid to C.RO by the undertaker within 28 days of a demand therefor.

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

**63.** Unless otherwise agreed in writing, any dispute arising between the undertaker and C.RO under this Schedule shall be determined by arbitration as provided in article 59 (arbitration).

## PART 7

### FOR THE PROTECTION OF PHILLIPS 66 LIMITED

**64.** In this Part

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

“ the pipelines” means the 4 pipelines crossing the Order land owned and operated by P66 used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary

apparatus including such works and apparatus properly appurtenant to the Pipelines as are specified by Section 65(2) of the Pipelines Act 1962

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

**66.** No works comprising any part of the authorised development or the operation of the authorised undertaking which would have an effect in full or in part on the operation, maintenance, repair, replacement and abandonment of the pipelines and access thereto shall be commenced until plans and sections in respect of those works submitted under paragraph 65 have been approved by P66.

**67.** Any approval of P66 required under paragraph 66 shall not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as P66 may require to be made for-

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

## PART 8

### FOR THE PROTECTION OF NATIONAL GRID

**68.** In this Part of this Schedule—

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by National Grid;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon land;

“National Grid” means National Grid Plc and shall include any reference to National Grid Gas Plc.; The “Electric Line” shall mean line 2AJ Killingholme Substation to Humber Refinery Substation and the term electric line shall have the same meaning as contained in section 64(1) of the Electricity Act 1989

“plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“promoter” means the undertaker as defined in article 2 of this Order.

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

**70.**—(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to or in the vicinity of (as defined by reference to the relevant distances contained in the policies applied by National Grid’s ENA43-8 (Electric Lines) and T/SP/SSW/22 (Gas Pipelines) or such other standards as may supersede them from time to time), or will or may affect, any apparatus the removal of which has not been required by the promoter under the Order, the promoter shall submit to National Grid a plan.

(1) In relation to works which will or may be situated within the tolerances set out in ENA 43-8 (Electricity Lines) and T/SP/SSW/22 (Gas Pipelines) respectively from any apparatus measured in any direction the plan to be submitted to National Grid under sub-paragraph (1) shall be detailed describing—

- (a) the exact position of the works;
- (b) the level at which these works are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all apparatus; and
- (e) by way of detailed drawings all proposed works

(2) The promoter shall not commence the construction or renewal of any works to which sub-paragraph (2) applies until National Grid has given written approval of the plan so submitted.

(3) Any approval of National Grid required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) shall not be unreasonably withheld; and
- (c) shall be deemed to have been given if it is neither given nor refused within 56 days of the submission of plans for approval.

(4) In relation to a work to which sub-paragraph (2) applies, the specified undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any Apparatus.

(5) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(6) Where National Grid requires any protective works to be carried out either themselves or by the promoter (whether of a temporary or permanent nature) such protective works shall be carried out to National Grid’s satisfaction prior to the carrying out of works authorised by the Order and National Grid shall give 28 days notice of such works from the date of submission of a plan in line with sub paragraph (1) (except in an Emergency).

(7) Nothing in this paragraph shall preclude the promoter from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(8) The promoter shall not be required to comply with sub-paragraph (1) where it needs to carry out Emergency Works as defined in the New Roads and Street Works Act 1991 but in that case it shall give to National Grid notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable thereafter and shall: (1) comply with sub-paragraph (6) insofar as is reasonably practicable in the circumstances and (2) comply with sub paragraph 10 at all times.

(9) At all times when carrying out any works authorised under paragraph 10 to comply with National Grid’s policies for safe working in proximity to electrical or gas Apparatus ENA43-8 and T/SP/SSW/22 respectively.

**70A.**—Subject to the following provisions of this paragraph, the promoter shall repay to National Grid on demand all charges, costs and expenses reasonably incurred by National Grid in

connection with, the inspection and protection of any apparatus which may be required in consequence of the execution of any such works as are required under this Schedule including—

- (a) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works if applicable;
- (b) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

**70B.** Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the promoter and National Grid in respect of any apparatus laid or erected in land belonging to the promoter on or after the date on which this Order is made.

**70C.** If in consequence of the exercise of any powers under this Order the access to any apparatus is materially obstructed, the promoter shall provide such alternative means of access to such apparatus as will enable the undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

#### *General*

**71.** Any dispute arising between the undertaker and National Grid under this Schedule shall be determined by arbitration as provided in article 59 (arbitration).

## **PART 9**

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

**72.** In this Part:

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

“the outfall and intake” means that part of the pipelines which are located in the river at grid references (517455.3871, 419565.3965) and (517396.2407, 419527.8371) respectively

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

“the river” means the River Humber.

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

**74.** Before extinguishing any existing rights for E.ON to keep, inspect, renew and maintain its infrastructure on or in the Order land, the undertaker shall, with the agreement of E.ON, create a new right to keep, inspect, renew and maintain the infrastructure in the same location that is reasonably convenient for E.ON, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 59.

#### *The Pipelines*

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

- (2). The construction method statement shall include provisions in respect of: (a) the location and methods of reinforcement of crossing points over the pipelines;

(b) a mechanism for the enforcement of the undertaker's use of designated crossing points over the pipelines and the agreed reinforcement methods; and

(c) adoption of a prior notification and consent regime which would require the undertaker to:

- (i) seek E.ON's consent to the carrying out of the proposed development within the vicinity of the pipelines and intake and outfall, such consent not to be unreasonably withheld; and
- (ii) notify E.ON of its intention to carry out any development within the vicinity of the pipelines and intake and outfall, such notification to be provided at least 48 hours prior to any such development occurring; and

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

#### *General*

**76.** Any dispute arising between the undertaker and E.ON under this Schedule shall be determined by arbitration as provided in article 59 (arbitration).

## **PART 10**

### **FOR THE PROTECTION OF CENTRICA PLC**

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

**78.** In this Part

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

**79.** Before extinguishing any existing rights for Centrica to keep, inspect, renew and maintain its infrastructure on, over or in the Order land or to cross the Order land to access its infrastructure, the undertaker shall, with the agreement of Centrica, create a new right to keep, inspect, renew and maintain the infrastructure in the same location or a new right of access that is reasonably convenient for Centrica, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 59.

#### *The Pipelines*

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

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

(a) the location and methods of reinforcement of crossing points over the pipelines and restrictions on building and altering the ground level over the pipelines elsewhere;

(b) a mechanism for the enforcement of the undertaker's use of designated crossing points over the pipelines and the agreed reinforcement methods; and

(c) adoption of a prior notification and consent regime which would require the undertaker to:

- (i) notify Centrica of its intention to carry out any development within the vicinity of the pipelines and intake and outfall, such notification to be provided at least 48 hours prior to any such development occurring; and

- (ii) seek Centrica's consent to the carrying out of the proposed development within the vicinity of the pipelines and intake and outfall, such consent not to be unreasonably withheld; and

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

**81.** Before extinguishing any existing rights for Centrica to pass along parcel 03009 (Station Road), the undertaker shall, with the agreement of Centrica, create a new right of way for Centrica, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 59.

#### *General*

**82.** Any dispute arising between the undertaker and Centrica under this Schedule shall be determined by arbitration as provided in article 59 (arbitration).

## PART 11

### FOR THE PROTECTION OF ANGLIAN WATER

**83.** (1) For the protection of Anglian Water, the following provisions shall, unless otherwise agreed in writing between the undertaker and Anglian Water, have effect.

(2) In this part of this schedule –

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage and

(a) any drain or works vested in Anglian Water under The Water Industry Act 1991,

(b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102 (4) of The Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus.

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in not less efficient a manner than previously;

“functions” includes powers and duties

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“plan” includes sections, drawings, specifications and method statements.

**84.** The Company shall not interfere with, build over or near to any Apparatus within the Order Land or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 3000 millimetres (3 metres) of the apparatus, unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the Company.

**85.** The alteration, extension, removal or re-location of any apparatus shall not be implemented until

(a) any requirement for any permits under the Environmental Permitting Regulations 2010 for

(i) the sludge and brine waste pipelines and

(ii) the South Killingholme Sewage Treatment Works

and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and

(b) the Company has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

**86.** In the situation, where in exercise of the powers conferred by the Order, the Company acquires any interest in any land in which Apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

**87.** Regardless of any provision in this Order or anything shown on any plan, the Company must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the Company shall, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 59.

**88.** If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the Company shall provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

**89.** If for any reason or in consequence of the construction of any of the works referred to in paragraphs 84 to 86, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the Company shall,

(a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and

(b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water

by reason or in consequence of any such damage or interruption.

**90.** The Company will only exercise its powers of compulsory acquisition over the interests of Anglian Water in the Order land as a last resort and following consultation with Anglian Water and the resolution of any arbitration under article 59.

## PART 12

### FOR THE PROTECTION OF BETHANY JAYNE LTD

**91.** Before interfering with or extinguishing any existing rights for Bethany Jayne Ltd to

- (a) pass along parcel 03009 (Station Road), or
  - (b) use services and utilities in, on or over the Order land which serve land owned by Bethany Jayne Limited at the date of the coming into force of this Order,
- the undertaker shall, with the agreement of Bethany Jayne Ltd, create substitute rights (including appropriate ancillary rights of entry for the purposes of connection, maintenance, repair and renewal) that are reasonably convenient for Bethany Jayne Ltd, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 59.

## PART 13

### FOR THE PROTECTION OF ROYAL MAIL GROUP LTD

**92.** For the protection of Royal Mail Group Ltd ('Royal Mail') the following provisions shall, unless otherwise agreed in writing between the undertaker and Royal Mail, have effect.

**93.** (1) No part of the authorised development shall be occupied until improvements to the A1173 / Pelham Road junction (or alternative mitigation measures to be approved in writing by the relevant local planning authority, following consultation with Royal Mail), have been implemented in accordance with details approved by the local planning authority in consultation with Royal Mail.

(2) Such improvements should mitigate the effects of the proposed development on the operation of this junction and should be designed in accordance with normal standards.

(3) The undertaker must have due regard to any consultation response received from Royal Mail.

**94.** Any dispute arising between the undertaker and Royal Mail Group under this Schedule shall be determined by arbitration as provided in article 59 (arbitration).

## PART 14

### FOR THE PROTECTION OF A. B. PORTS

**95.** In this Part of this Schedule—

"AB Ports" means Associated British Ports in its capacity as harbour authority for the Ports of Immingham and Grimsby;

"construction" includes execution and placing and maintenance, extension or enlargement and "construct" and "constructed" shall be construed accordingly.

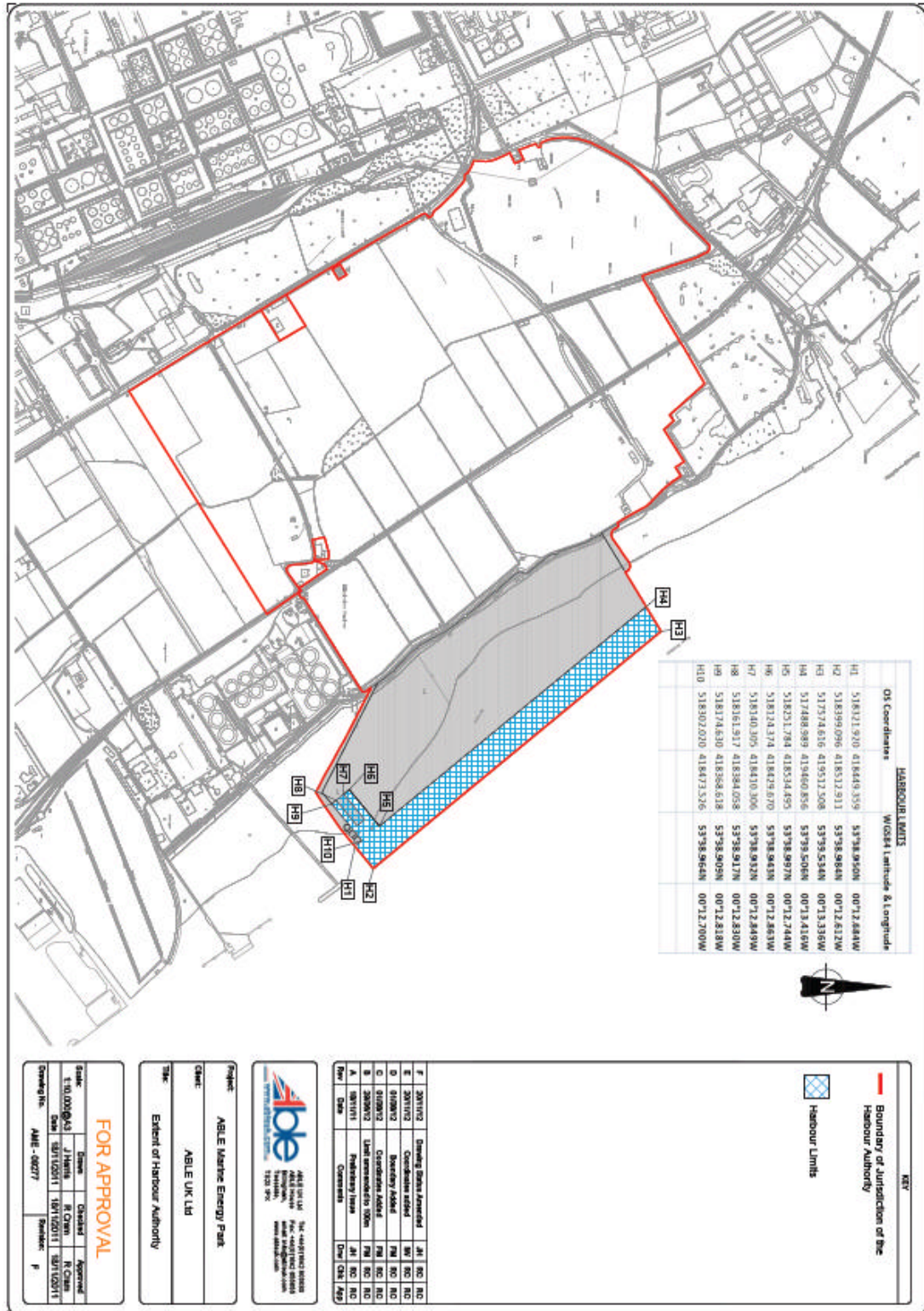
**96.** The provisions of this Part shall unless otherwise agreed in writing between the undertaker and ABP Ports have effect for the protection of AB Ports.

**97.** If AB Ports secures access between parcels 03009, 03014 and 03016 (Station Road) to the railway for the purposes of construction, operation and maintenance of a siding leased to it and for no other purpose, then before extinguishing or interfering with any existing rights for AB Ports to pass along those parcels, the undertaker shall, with the agreement of AB Ports, create a new right of way for vehicular traffic that is reasonably convenient for AB Ports for that purpose, such agreement not to be unreasonably withheld or delayed.

**98.** Any difference arising between the undertaker and AB Ports under this Part shall be determined by arbitration as provided in article 59 (arbitration).



LIMITS OF HARBOUR





## SCHEDULE 11

Article 5

### REQUIREMENTS

1. In this Schedule—

“environmental statement” means the statement submitted under regulation 5(2)(a) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>(a)</sup>, together with the shadow Habitats Regulations Assessment report, statements of common ground concluded with Natural England, the MMO and the Environment Agency and supplementary documents contained in Files 17, 18 and 24 submitted by the undertaker;

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

#### *Time limits*

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

#### *Stages of the development*

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

#### *Cargo restriction*

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

(2) The development described at paragraph 4(b) of Schedule 1 shall be restricted to items associated with components and parts for offshore renewable energy infrastructure.

(3) If further categories of cargo and use of onshore land are authorised by means of planning permission or an order under section 14 of the Harbours Act 1964 or section 1 of the Transport and Works Act 1992, then the implementation of such authorisations shall not constitute a breach of this order.

#### *Detailed design approval*

3B. Except where the authorised development is carried out in accordance with the drawings listed in paragraph 4, no authorised development may commence until details of the layout, scale and external appearance of the authorised development so far as they do not accord with the drawings listed in paragraph 4 have been submitted to and approved by the relevant planning authorities, and the authorised development must be carried out in accordance with the approved details.

4. The authorised development shall be carried out in accordance with the drawings listed below, unless otherwise approved in writing by the relevant planning authority and the altered development falls within the Order limits and has no significant environmental effects beyond those assessed in the Environmental Statement accompanying the application:

(a) the planning application drawings, being those drawings with reference TR030001/APP/23a comprising:

(i) drawing "AME-02006",

(ii) drawing "AME-02007",

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(a) S.I. 2009/2264

- (iii) drawing "AME-02008",
  - (iv) drawing "AME-02009",
  - (v) drawing "AME-02010",
  - (vi) drawing "AME-02011",
  - (vii) drawing "AME-02012",
  - (viii) drawing "AME-02013",
  - (ix) drawing "AME-02014",
  - (x) drawing "AME-02016",
  - (xi) drawing "AME-02017", and
  - (xii) drawing "AME-02018".
- (b) The design drawings, being those drawings with reference TR030001/APP/23b comprising:
- (i) drawing "AMEP\_P1D\_D\_001",
  - (ii) drawing "AMEP\_P1D\_D\_002",
  - (iii) drawing "AMEP\_P1D\_D\_005",
  - (iv) drawing "AMEP\_P1D\_D\_006",
  - (v) drawing "AMEP\_P1D\_D\_007",
  - (vi) drawing "AMEP\_P1D\_D\_009",
  - (vii) drawing "AMEP\_P1D\_D\_101",
  - (viii) drawing "AMEP\_P1D\_D\_102",
  - (ix) drawing "AMEP\_P1D\_D\_103",
  - (x) drawing "AMEP\_P1D\_D\_104",
  - (xi) drawing "AMEP\_P1D\_D\_105",
  - (xii) drawing "AMEP\_P1D\_D\_106", and
  - (xiii) drawing "AMEP\_P1D\_D\_107"
- (c) the sections, being those drawings with reference TR030001/APP/23b comprising:
- (i) drawing "AMEP\_P1D\_D\_003", and
  - (ii) drawing "AMEP\_P1D\_D\_004",.

#### *Provision of landscaping*

5. No stage of the authorised development, other than tidal works, shall commence until a written landscaping scheme has been submitted to and approved by the relevant planning authority after consultation with National Grid. The landscaping scheme must include details of all proposed hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) vehicular and pedestrian access, parking and circulation areas;
- (f) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (g) proposed and existing functional services above ground, including drainage, power and communications cables and pipelines and supports;
- (h) details of existing trees to be retained, with measures for their protection during the construction period;

- (i) retained historic landscape features and proposals for restoration, where relevant; and
- (j) implementation timetables for all landscaping works.

#### *Implementation and maintenance of landscaping*

6.—(a) All landscaping works must be carried out in accordance with the landscaping scheme approved under requirement 5 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(1) The landscaping works must be carried out in accordance with implementation timetables approved under requirement 5.

(2) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

#### *Trees*

7. No stage of the authorised development, other than tidal works, shall commence until written details of any proposed tree planting and the proposed times of planting have been approved in writing by the relevant planning authority after consultation with National Grid; and all tree planting shall be carried out in accordance with those details and at those times.

#### *Highway access*

8.—(b) No stage of the authorised development shall commence until for that stage, written details of the siting, design and layout of any new permanent or temporary means of access to a public highway to be used by vehicular traffic, or any alteration to an existing means of access to a public highway used by vehicular traffic, has, after consultation with the relevant highway authority, Royal Mail Group Ltd and Centrica plc, been submitted to and approved by the relevant planning authority.

(1) The undertaker must have regard to any consultation responses received.

(2) The public highway accesses must be constructed, or, as the case may be, altered, in accordance with the approved details.

(3) No stage of the authorised development shall commence until for that stage, a written scheme (the “Access Management Scheme”) has, after consultation with the relevant highway authority, been submitted to and approved by the relevant planning authority.

(4) The Access Management Scheme must be carried out in accordance with the approved details.

#### *Public rights of way*

9.—(c) No stage of the authorised development shall commence that would affect North Lincolnshire Footpath 50 or East Riding of Yorkshire Paull Footpath 6 until a written implementation plan and specification for the making up of an alternative right of way has, after consultation with the relevant highway authority, been submitted to and approved by the relevant planning authority.

(1) The alternative Footpath 50 and Paull Footpath 6 shall be implemented in accordance with the relevant approved plan and specification.

#### *Fencing and other means of enclosure*

10.—(d) No stage of the authorised development shall commence until, for that stage, written details of all proposed permanent and temporary fences, walls or other means of enclosure have been submitted to and approved by the relevant planning authority.

(1) Any temporary fencing must be removed on completion of the authorised development.

(2) Any approved permanent fencing of the authorised development must be completed before the authorised development is brought into use.

#### *Surface water drainage*

11.—(e) No stage of the authorised development shall commence until a detailed surface water drainage strategy (based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, and including means of pollution control and funding arrangements) for that stage has been submitted to and approved in writing by the local planning authority, after consultation with the Environment Agency, Anglian Water, E.On and Centrica plc.

(1) The undertaker must have regard to any consultation responses received.

(2) The authorised scheme shall be constructed in accordance with the approved surface water drainage strategy including any timetable embedded within it.

#### *Foul water drainage*

12.—(f) No stage of the authorised development shall commence until a detailed foul water drainage strategy (including means of pollution control and funding arrangements) for that stage has been submitted to and approved by the relevant local planning authority, after consultation with the Environment Agency, Anglian Water, E.On and Centrica plc.

(1) The undertaker must have regard to any consultation responses received.

(2) The authorised scheme shall be constructed in accordance with the approved foul water drainage strategy including any timetable embedded within it.

#### *River basin management*

13.—(g) The authorised development shall not commence until a monitoring and management strategy document has been submitted to and approved by the Environment Agency, the purpose of such strategy document being to ensure that the authorised development is carried out in compliance with the water framework directive.

(1) The monitoring and management strategy document shall in particular consider the spatial and temporal extent of the impact of the approved scheme on—

(a) those “biological elements” and “ecological potential elements” as defined in the Humber River Basin Management Plan for the Humber Middle and Humber Lower Water Bodies (GB53040269201 and GB30402609202), to include, but not limited to: macro algae, angiosperms, macrophytes, benthic/macro invertebrates, fish, and

(b) those biological and ecological elements defined as “water-dependent habitats or species for which the Protected Area was designated” as defined in Annex D of the Humber River Basin Management Plan.

(2) The authorised scheme shall be constructed and managed in accordance with the approved strategy document and the monitoring detailed in the approved strategy document shall be implemented.

#### *Contaminated land*

14.—(h) No stage of the authorised development shall commence until a written scheme applicable to that stage, to deal with the contamination of any land, including groundwater and ground gas, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the Environment Agency, been submitted to and approved by the relevant planning authority.

(1) The scheme shall include an investigation and assessment report, prepared by a suitably qualified person, to identify the extent of any contamination and the remedial measures to be taken

to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(2) Remediation must be carried out in accordance with the approved scheme and the management plan.

#### *Archaeology*

**15.—**(i) No stage of the authorised development shall commence until, for that stage, a written project design for the investigation of areas of archaeological interest as identified in chapters 18 and 40 of the environmental statement has been submitted to and approved by the relevant planning authority.

(1) The project design shall accord with the evaluation results and mitigation measures included in the document *Able UK Ltd Marine Energy Park: Framework for archaeological investigation and mitigation strategies* prepared by AC archaeology Ltd (ref: ACW283/3/1 revised June 2012), and the *Written Scheme of Investigation: Coastal and Marine* prepared by Wessex Archaeology (ref 79490.02 revised March 2012) subsequent updates to be agreed in writing by the relevant planning authority.

(2) The project design shall identify

- (a) areas where fieldwork is required,
- (b) measures to be taken to identify, protect, record and recover any archaeological remains that may be found including artefacts and ecofacts;
- (c) methodologies for post-excavation assessment and analysis of artefacts and ecofacts;
- (d) arrangements for dissemination and publication of reports;
- (e) preparation of archive material and its deposition with recognised repositories;
- (f) an implementation timetable;
- (g) monitoring arrangements, including notification and commencement of work;
- (h) details of contractors involved in the implementation of archaeological works; and
- (i) proposals for publicity and community outreach work.

(3) Any archaeological works carried out under the scheme must be by a suitably qualified person or body.

(4) Any archaeological works must be carried out in accordance with the approved scheme and timings, subject to any variation approved by the relevant planning authority.

#### *Listed building*

**16.—**(j) No stage of the authorised development shall commence until a written management plan for the Killingholme North Low Lighthouse ('the building') has been submitted to and approved by the relevant planning authority, including the following:

- (a) a structural survey to be submitted to and approved in writing by the relevant planning authority;
- (b) implementation of mitigation measures;
- (c) a schedule of repair works that ensure the long-term survival of the building;
- (d) an implementation timetable for all stages of work including timings to ensure that the mitigation measures and repair work is undertaken and completed in accordance with the plan;
- (e) monitoring arrangements with the relevant planning authority, including notification of the commencement of work;
- (f) details of all contractors to be involved in implementation of works to the building; and
- (g) details of the use of the building including proposals for community access and interpretation.

### *Environmental management and monitoring plans*

**17.—(k)** The authorised development shall not commence until the compensation environmental management and monitoring plan reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement, has been submitted to and approved by Natural England after consultation with the Environment Agency and the relevant planning authority.

(1) The authorised development shall not commence until the marine environmental management and monitoring plan, reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement, has been submitted to and approved by the Marine Management Organisation in consultation with the Environment Agency, Natural England and the relevant planning authorities.

(2) The authorised development shall not commence until the terrestrial environmental management and monitoring plan, reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement, has been submitted to and approved by Natural England in consultation with the Environment Agency and the relevant planning authority.

(3) The compensation environmental management and monitoring plan, marine environmental management and monitoring plan and terrestrial environmental management and monitoring plan shall require to be carried out any further surveys deemed necessary, include an implementation timetable and must be carried out as approved.

(4) The undertaker shall commence construction of the quay (Work No. 1) no less than 7 months after commencing construction of the compensation site (paragraph 5(a) of Schedule 1).

(5) The undertaker shall use reasonable endeavours to create the Cherry Cobb Sands breach no more than 15 months after commencing construction of the quay (Work No. 1).

### *Code of construction practice*

**18.—(l)** No stage of the authorised development shall commence until a code of construction practice for that stage has been submitted to and approved by the relevant planning authority.

(1) All construction works shall be undertaken in accordance with the approved code, unless otherwise agreed by the relevant planning authority.

### *Design of roads*

**19.—(m)** No stage of the authorised development consisting of the construction or alteration of a street which is a trunk road, including any traffic management and control measures, shall commence until written details of the design of the street have been submitted to and approved by the Highways Agency, after consultation with Centrica plc and Royal Mail Group Ltd.

(1) The undertaker must have regard to any consultation responses received.

(2) The authorised development construction or alteration of the street or the taking of traffic management and control measures shall be carried out in accordance with the approved design.

### *External lighting*

**20.—(1)** No stage of the authorised development, shall commence until written details of any external lighting to be installed at any of the construction sites within that stage, including measures to prevent light spillage, have, after consultation with the highway authority and Natural England, been submitted to and approved by the relevant planning authority; and any approved means of lighting must subsequently be installed and retained for the duration of the construction period, and removed within six months of the completion of construction.

(2) Sub-paragraph (1) is subject to any direction given to the undertaker by the Humber Harbour Master or Trinity House.

(3) The authorised development shall not be brought into use until written details of any external lighting to be installed for operational purposes, including measures to prevent light spillage, have,



after consultation with the highway authority and Natural England, been submitted to and approved by the relevant planning authority; and any approved means of lighting must subsequently be installed and retained while the authorised development is in operation.

*Construction traffic*

**21.—(n)** No stage of the authorised development shall commence until a written transport statement, including any road condition survey, temporary speed limits, lay-bys and details of the preferred route for that stage to be used by construction traffic on public highways, after consultation with the highway authority, Royal Mail Group Ltd and Centrica plc, is submitted to and approved by the relevant planning authority.

(1) The undertaker must have regard to any consultation responses received.

(2) Notices shall be erected and maintained throughout the period of construction at every construction site exit to a public highway, indicating to drivers the route agreed by the relevant planning authority for traffic entering and leaving the site.

*Control of noise during construction*

**22.—(o)** No stage of the authorised development shall commence until a written scheme for noise management during construction and maintenance of that stage has been submitted to the relevant planning authority.

(1) The scheme shall set out the particulars of—

- (a) the works, and the method by which they are to be carried out;
- (b) the noise attenuation measures to be taken to minimise noise resulting from the works, including any noise limits; and
- (c) a scheme for monitoring the noise during the works to ensure compliance with the noise limits and the effectiveness of the attenuation measures.

(2) The approved noise management scheme must be implemented before and maintained during construction and maintenance of the relevant stage of the authorised development.

(3) The construction and maintenance works must be undertaken in accordance with the approved noise management scheme.

*Control of noise during operation*

**23.—(p)** The authorised development shall not be brought into use until a written scheme for noise management during operation has been submitted to the relevant planning authority.

(1) The authorised development must be operated in accordance with the approved operational noise management scheme.

*Control of emissions*

**24.—(q)** No stage of the authorised development shall commence until a written scheme for that stage—

(a) for the management and mitigation of emissions of—

- (i) odour,
- (ii) artificial light,
- (iii) dust,
- (iv) smoke, and
- (v) steam; and

(b) to ensure the prevention of infestation or emanation of insects

from the authorised development has been submitted to and approved by the relevant planning authority.

(2) The approved scheme must be implemented before and maintained during the construction, operation and decommissioning of the relevant stage of the authorised development.

(3) For the purposes of this requirement, “insects” excludes insects that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981<sup>(a)</sup> (animals which are protected), unless they are included in respect of section 9(5) of that Act only.

#### *Travel plan*

**25.—(r)** No stage of the of the authorised development shall commence until, for that stage, after consultation with the highway authority, North East Lincolnshire Council, Royal Mail Group Ltd and Centrica plc, a construction travel plan, which must include details of the expected means of travel to and from the authorised development, road safety measures and any parking to be provided, has been submitted to and approved by the relevant planning authority.

(1) No part of the authorised development shall be brought into use until, after consultation with the highway authority and Royal Mail Group Ltd, a travel plan, which must include details of the expected means of travel to and from the authorised development and any parking to be provided, has been submitted to and approved by the relevant planning authority.

(2) The plan approved under paragraph (1) must be implemented during the construction of the authorised development and the plan approved under paragraph (2) must be implemented within one month of the authorised development being brought into use and shall continue to be implemented for as long as the authorised development is used.

(3) The undertaker must have regard to any consultation response received.

(4) The plans approved under paragraphs (1) and (2) must be reviewed at least once a year or such other period as is agreed in writing by the relevant planning authority.

#### *Traffic management plan*

**26.—(s)** No stage of the of the authorised development shall commence until, for that stage, after consultation with the highway authority and North East Lincolnshire Council, a traffic management plan, which must include details of how traffic to and from the authorised development will be managed, has been submitted to and approved by the relevant planning authority.

(1) The plan approved under paragraph (1) must be implemented during the construction and operation of the authorised development and must be reviewed every six months or such other period as is authorised in writing by the relevant planning authority, following consultation with the highway authority and North East Lincolnshire Council.

#### *European protected species*

**27.—(t)** No stage of the authorised development shall commence until it has been established by existing or further survey work whether any European protected species or nationally protected species is present.

(1) Where a European protected species is shown to be present, that stage shall only be commenced following appropriate consultation with Natural England and after any necessary licence has been obtained from Natural England pursuant to regulation 53 of the Conservation of Habitats and Species Regulations 2010.

(2) “European protected species” has the same meaning as in regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010.

#### *Requirement for written approval*

**28.** Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be given in writing.

#### *Amendments to approved details*

**29. (1)** With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved

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(a) 1981 c. 69, as amended at the date that this Order comes into force

details shall be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.

(2) The undertaker must consult with any parties it was required to consult on the original approved details on any amendments to the approved details and take into account any responses received.

*Requirement for consent of Civil Aviation Authority and Ministry of Defence*

**30.** No stage of the authorised development shall commence until for that stage, after consultation with the Civil Aviation Authority and the Ministry of Defence, written details for the operation of the authorised development and its effect on radar have been submitted to and agreed by the relevant planning authority.

*Flood warning and evacuation plan*

**31.—**(1) No building of the authorised development shall be occupied until, after consultation with the relevant planning authority, written details of a flood warning and evacuation plan, which must include details of expected means of evacuation or safe refuge during a tidal flood event with safe refuge areas at at least 6.84 metres Ordnance Datum Newlyn, has been submitted to and approved by the relevant planning authority.

(2) Unless otherwise agreed in writing with the relevant planning authority, the finished floor level of all buildings shall be set a minimum of 300mm above the level of the external storage areas and the buildings shall incorporate flood resistant and resilient design with their construction.

*Listed buildings*

**32.** No stage of the authorised development shall commence until a listed building management plan applicable to that stage, which must include details of protection of any building referred to from vibration damage and the renovation or re-use of the building, has been submitted to and approved by the relevant planning authority in consultation with English Heritage.

*Tall structures*

**33.** No structure shall be erected over 45 metres in height above finished ground level until written details of a lighting scheme applicable to that structure has been submitted to and approved in writing by the relevant planning authority following consultation with the Civil Aviation Authority.

*Cooling water intakes and outfalls*

**34.—**(1) No development shall commence until a scheme for the monitoring of sedimentation along the lines of and in front of the Centrica and E.ON cooling intakes and outfalls has been submitted to and approved in writing by the Marine Management Organisation, in consultation with the Environment Agency, Centrica plc and E.ON UK plc. The scheme shall include:

- (a) details of monitoring proposals, including location and frequency; and
- (b) details of trigger levels and resultant actions/mitigation required if trigger levels are exceeded.

(2) Development shall proceed fully in accordance with the approved scheme and timetable contained therein.

*Piling*

**35.** For any piling to take place above high water mark, the piling conditions at paragraphs 37 to 43 of Schedule 8 (deemed marine licence) shall apply as if references to the MMO were to the relevant local planning authority.

*Sedimentation*

**36.—**(1) No development shall commence until a scheme for the monitoring of the foreshore and sediment levels around the quay have been submitted to and agreed in writing by the Marine

Management Organisation, in consultation with the Environment Agency, C.RO and E.ON UK plc.

(2) Annual monitoring reports shall be submitted to the MMO within 6 weeks of the anniversary of implementation up to 2033.

(4) The approved monitoring scheme shall be implemented and complied with at all times.

**37.** (1) No development shall commence until a scheme for the monitoring of sediment and siltation for Stone Creek has been submitted to and approved in writing by the relevant planning authority, in consultation with the Stone Creek Boat Club and Sunk Island Parish Council, such scheme to include:

- (a) details of monitoring proposals, including location and frequency, and
- (b) details of trigger levels other pre-determined changes and remedial works required if these are exceeded or have taken place.

(2) The Environment Agency shall be consulted when any remedial works are required as set out in clause (b) above.

(3) The methodology for any remedial works shall be agreed in writing with the Environment Agency in advance of any remedial works being undertaken where its operational activities or outfall structures at either Stone Creek or Keyingham Drain are shown by the monitoring results to have been affected.

(4) Development shall proceed fully in accordance with the approved scheme and timetable contained therein, unless agreed otherwise in writing by the relevant planning authority.

#### *Contaminants and remediation*

**38.—**(1) Prior to the commencement of the relevant stage of the authorised development, the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the relevant planning authority:

- (a) a preliminary risk assessment which has identified:
  - (i) all previous uses,
  - (ii) potential contaminants associated with those uses,
  - (iii) a conceptual model of the site indicating sources, pathways and receptors, and
  - (iv) potentially unacceptable risks arising from contamination at the site;
- (b) a site investigation scheme, based on sub-paragraph (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site;
- (c) the results of the site investigation and detailed risk assessment referred to in sub-paragraph (b) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken;
- (d) a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in sub-paragraph (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

(2) The scheme shall be implemented as approved, and any changes to these components require the express consent of the relevant planning authority.

**39.—**(1) Prior to carrying out paragraph 8 of Schedule 8 (deemed marine licence – compensation site creation), a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the relevant planning authority.

(2) The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met, and shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term

monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the relevant planning authority.

(3) The long-term monitoring and maintenance plan shall be implemented as approved unless otherwise confirmed in writing by the relevant planning authority.

#### *Mitigation site requirements*

**40.**—(1) During the construction and operation of the authorised development, no storage, use of plant or other development shall take place

- (a) at a height greater than 3m from ground level within 70m of the North Killingholme Haven Pits Site of Special Scientific Interest, or
- (b) at a height greater than 6m from ground level between 70m and 150m from the North Killingholme Haven Pits Site of Special Scientific Interest, or
- (c) at a height greater than 9m from ground level between 150m and 200m from the North Killingholme Haven Pits Site of Special Scientific Interest, or
- (d) at a height greater than 10m from ground level within the 60m operational buffer strip adjacent to Mitigation Area ‘A’

unless otherwise agreed in writing by the relevant planning authority in consultation with Natural England.

(2) Before any activity referred to in sub-paragraph (1) takes place on the Order land, the buffer areas referred to in sub-paragraph (1) shall be clearly marked on-site (by pegs or otherwise) to the written satisfaction of the relevant planning authority.

(3) The construction and operation of the works shall not exceed 65 dB (A) at the boundary of the North Killingholme Haven Pits Site of Special Scientific Interest, unless otherwise agreed in writing Natural England based on the findings of the monitoring programme and taking account of the noise level duration.

(4) The construction and operation of the works shall not exceed 65 dB (A) anywhere in the core area of Mitigation Area ‘A’ (as specified in the terrestrial environmental monitoring and management plan), unless otherwise agreed in writing by Natural England based on the findings of monitoring programme and taking account of the noise level duration.

(5) The terrestrial environmental management and monitoring plan will include a monitoring programme to ensure compliance with these noise levels and the container storage locations and heights.

#### *Environment Agency requirements*

**41.** (1) Following construction of the new flood defence embankment at Cherry Cobb Sands, the Cherry Cobb Sands breach shall not be made in the existing flood defences without the prior written consent of the Environment Agency, in consultation with Natural England and the MMO.

(2) The Cherry Cobb Sands breach shall not be made until the new embankment has had an adequate period of time (likely, but not limited to, one winter period (November to April inclusive)) in which to stabilise and for vegetation to become established on the embankment to ensure the integrity of the new flood defences.

**42.** No development shall commence until a scheme to compensate for the impacts of piling noise on migratory salmon from the construction of the authorised development has been agreed with the Environment Agency. This shall include, but not be limited to, a monitoring scheme to ensure the intended benefits of the scheme are realised and necessary actions are taken.

(1) No development shall commence until an outline scheme of remedial action if the impacts on on Stone Creek, Cherry Cobb Sands Creek and Keyingham Drain should be greater than those assessed.(3) Any remedial action shall be carried out if the corresponding greater impacts occur.

**43.** (1) No development shall commence until the detailed design of the Regulated Tidal Exchange (RTE) sluices has been submitted to and approved in writing by the relevant planning authority, in consultation with the Environment Agency.

(2) The detailed design information must include the size and flow capacity of the sluices within the RTE scheme.

**44.** (1) No development shall commence until the detailed design of the channel leaving the Managed Realignment site and the invert level has been submitted to and approved in writing by the relevant planning authority, in consultation with the Environment Agency, to include detailed design drawings, including dimensions.

(2) The discharge channel exiting the realignment site shall be no larger than that currently presented and assessed in EX 28.3 Part 3 (11.6m bed width (invert level 1.5 mAOD) with 1V:3H side slopes rising to an edge weir level of 2.0 mAOD), unless otherwise agreed with the Environment Agency.

(3) The invert level of the drainage channel shall be no higher than that currently presented and assessed in EX28.3 Part 3 (1.5 mAOD), unless agreed otherwise in writing with the Environment Agency.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This order authorises the construction and operation of a quay, associated onshore facilities and other development, to be situated on the south bank of the River Humber to the north east of Immingham, together with the creation of a compensatory environmental habitat on the north bank of the River Humber to the north east of the quay.

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STATUTORY INSTRUMENTS

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**2012 No. XXXX**

**INFRASTRUCTURE PLANNING**

**HARBOURS, DOCKS, PIERS AND FERRIES**

The Able Marine Energy Park  
Development Consent Order 2012

**BIRCHAM DYSON BELL LLP**  
50 Broadway  
London SW1H 0BL  
Solicitors and Parliamentary Agents  
8222187.1 — 30.11.11