

## SCHEDULES

### SCHEDULE 9

#### PROTECTIVE PROVISIONS

#### PART 14

#### FOR THE PROTECTION OF ASSOCIATED BRITISH PORTS

**111.** 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; and

“construction” includes execution and placing and maintenance, extension or enlargement and “construct” and “constructed” are to be construed accordingly.

**112.** The provisions of this Part of this Schedule, unless otherwise agreed in writing between the undertaker and AB Ports, have effect for the protection of AB Ports.

**113.—(1)** If—

- (a) during the construction of a tidal work or within 10 years after the completion of that work and wholly or partly in consequence of its construction; or
- (b) during the exercise of the powers to dredge conferred by this Order or within 10 years of the exercise of those powers and wholly or partly in consequence of the exercise of those powers,

there is caused or created an accumulation or erosion, the undertaker, if so requested by AB Ports acting reasonably, must remedy such accumulation or erosion to the extent attributable to such construction or exercise of such powers in the manner specified in sub-paragraph (3) and, if the undertaker refuses or fails so to do, AB Ports may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

(2) If any accumulation or erosion in consequence of such construction or exercise of the powers to dredge arises within such period of 10 years and is remedied in accordance with sub-paragraph (3), any recurrence of such accumulation or erosion must from time to time be so remedied by the undertaker during that period of 10 years and at any time afterwards.

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

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

(4) In the event that surveys, inspections, tests and sampling carried out under paragraph 15 of Part 1 of this Schedule establish that such accumulation or erosion would have been caused in any event by factors other than the construction of a tidal work or the exercise of the powers to dredge, the undertaker is liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction or exercise.

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

**114.** In exercising the powers conferred by this Order to construct the authorised development the undertaker must use all reasonable endeavours to ensure that the movement of construction vessels does not obstruct or interfere with the operation of the Ports of Immingham and Grimsby.

**115.** 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, with the agreement of AB Ports, must 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.

**116.** The undertaker, before carrying out any works or exercising the powers conferred by article 15 (street works) in relation to the Rosper Road, the Humber Road, the A160 or the A180, must consult AB Ports and in carrying out the works or exercising such power must ensure that access to the Port of Immingham is not materially impeded.

**117.—(1)** The undertaker must pay to ABP Ports all costs, charges, damages and expenses which may be occasioned to or reasonably and properly incurred by ABP Ports by reason of or arising from—

- (a) any accumulation or erosion in consequence of the construction of a tidal work or the exercise of the powers to dredge conferred by this Order;
- (b) any surveys, inspections, tests or sampling reasonably carried out to establish whether such accumulation or erosion is occurring or has occurred; or
- (c) any obstruction or interference referred to in paragraphs 114 or 115.

(2) The undertaker must indemnify ABP Ports from and against all claims and demands arising out of, or in connection with such accumulation, erosion, obstruction or interference mentioned in sub-paragraph (1).

(3) ABP Ports must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(4) Nothing in this paragraph imposes any liability on the undertaker to the extent that any costs, charges, damages or expenses referred to in sub-paragraph (1) or (2) are attributable to negligence on the part of ABP Ports or any person in its employ or its contractors or agents.

**118.** Any difference arising between the undertaker and AB Ports under this Part must be determined by arbitration as provided in article 57 (arbitration).