

SCHEDULES

SCHEDULE 9

PROTECTIVE PROVISIONS

PART 6

FOR THE PROTECTION OF C.RO

56. For the protection of C.RO the following provisions, unless otherwise agreed in writing between the undertaker and C.RO, have effect.

57. In this Part of this Schedule—

“HST” means the harbour established by the Humber Sea Terminal Orders 1994 to 2006 for which C.RO is the statutory harbour authority;

“HST approach channel” means the approach channel and manoeuvring area for HST; and

“the Humber Sea Terminal Orders 1994 to 2006” has the same meaning as in article 1(2) of the Humber Sea Terminal (Phase III) Harbour Revision Order 2006(1).

58.—(1) Before—

- (a) submitting any plans and sections for any tidal work in or that may affect the HST approach channel to the Secretary of State for approval under article 23 (tidal works not to be executed without approval of Secretary of State);
- (b) commencing any operation for the construction of a tidal work in or that may affect the HST approach channel where approval of the Secretary of State under article 23 is not required;
- (c) submitting any works schedules to the MMO in accordance with Schedule 8 (deemed marine licence) for works in or that may affect the HST approach channel;
- (d) submitting any plans and sections for any tidal work or operation in or that may affect the HST approach channel to the Conservancy Authority in accordance with Part 1 (for the protection of the Humber Conservancy) of this Schedule;
- (e) submitting any written scheme or proposed alteration in the design drawings that may affect the HST approach channel to the relevant planning authority in accordance with Schedule 11 (requirements); or
- (f) commencing any operation for the maintenance of a tidal work in or that may affect the HST approach channel

the Harbour Authority must consult C.RO in accordance with the procedure set out in sub-paragraph (2).

(2) The consultation that the undertaker must carry out with C.RO under sub-paragraph (1) is as follows—

(1) S.I. 2006/2604.

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- (a) not less than 42 days prior to carrying out any activity to which sub-paragraph (1) applies the undertaker must submit to C.RO plans and sections of any tidal works or any written scheme or proposed alteration to the design drawings to which this paragraph 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 must 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.
- (3) The undertaker must have regard to any consultation response received from C.RO under sub-paragraph (2) and must forward a copy of that response as part of the material it submits to the Secretary of State or the MMO 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 this paragraph applies, together with a statement explaining how it has had regard to any consultation response received from C.RO under this paragraph.

59. Any operations for the construction of any tidal work approved in accordance with this Order and to which paragraph 58 applies, once commenced, must be carried out by the undertaker so that C.RO does not suffer more interference than is reasonably practicable, and an officer or other appointed person of C.RO is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

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

61. The undertaker must 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 HST, 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 HST and in its approach channels.

62. The undertaker must 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.

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

64. After the purpose of any temporary tidal work in or that may affect the HST approach channel has been accomplished and after a reasonable period of notice in writing from C.RO requiring it do so, the undertaker, without unnecessary delay, must remove that work or any materials relating to it which may have been placed below the level of high water by or on behalf of the undertaker and, on its failing to do so 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 must repay to C.RO.

65. 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 HST or access to HST 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.

66.—(1) The undertaker must not allow vessels associated with the construction of the authorised development to obstruct or remain in the approach channel when vessels are arriving at and sailing from HST.

(2) C.RO must provide the undertaker with a schedule of movements to which sub-paragraph (1) applies on a weekly basis and must give the undertaker reasonable notice of any changes to scheduled sailings or other vessel movements of which it has informed the undertaker.

Dredging

67.—(1) The undertaker must not dredge in the HST approach channel without prior approval of C.RO and C.RO must 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 to that approval.

(3) C.RO's and the undertaker's approval under sub-paragraph (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.

(4) If by the end of the further period of 5 days the other party has not intimated its approval or disapproval, it is deemed to have approved the request as submitted.

Railway

68. The undertaker must 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 HST.

69. 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 HST.

Rosper Road

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

71. 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

72.—(1) C.RO may recover from the undertaker any reasonable expenses however 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;

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- (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 mentioned in sub-paragraph (i);
 - (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 sub-paragraph (3), the undertaker is not 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 for them; 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 has not intimated approval or disapproval, the undertaker is deemed to have approved the request as submitted;
- (4) Nothing in this paragraph prevents 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 HST and C.RO must 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 must 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 for them must not be unreasonably withheld.
- (6) Any amount of expenditure approved by the undertaker under this paragraph must be paid to C.RO by the undertaker within 28 days of a demand for it.

73.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance, operation or failure of the authorised development any damage is caused to any property of C.RO (including HST) or C.RO suffers any loss (including without limitation as a result of the failure by the undertaker to meet its obligations to C.RO under this Part of this Schedule) the undertaker must—

- (a) bear and pay the cost reasonably incurred by C.RO in making good such damage; and
- (b) indemnify C.RO against all claims, demands, proceedings, costs, damages and expenses which may be made against, or recovered from, or incurred by it,

by reason or in consequence of any such damage or the exercise by the undertaker of the powers conferred by this Order.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of C.RO, its officers, servants, contractors or agents.

(3) C.RO must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand with such assistance from C.RO as may be reasonably necessary.

74. 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 is to 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.

75. Unless otherwise agreed in writing, any dispute arising between the undertaker and C.RO under this Part of this Schedule is to be determined by arbitration as provided in article 57 (arbitration).