

SCHEDULES

SCHEDULE 12

PROTECTIVE PROVISIONS

PART 4

FOR THE PROTECTION OF THE MANCHESTER SHIP CANAL COMPANY LIMITED

25.—(1) For the protection of the Manchester Ship Canal Company Limited the following provisions of this Part of this Schedule, unless otherwise agreed in writing between Network Rail and MSCC, have effect.

(2) In this Part of this Schedule—

“construction”, in relation to any specified work or protective work, includes execution, placing, altering, replacing, relaying and removal, and “construct” and “constructed” are construed accordingly;

“detriment” means any physical damage to the River wholly or partly caused by the specified works which affects the stability, structure and safety of the River and, without limitation on the scope of that meaning, includes—

- (a) the erosion of the bed, banks or walls of the River, or the impairment of the stability of any works or lands forming part of the River;
- (b) the silting of the River or the deposit of materials in the River so as to damage the River;
- (c) the pollution of the River; and
- (d) any alteration in the water level of the River, or interference with the supply of water to the River, or drainage from the River;

“MSCC” means the Manchester Ship Canal Company Limited (company registration number 07438096) whose registered address is at Maritime Centre, Port of Liverpool, Liverpool, Merseyside, L21 1LA, and its statutory successors;

“plans” includes sections, drawings, specifications, calculations, soil reports, descriptions (including descriptions of methods of construction), risk assessments and method statements but does not include the design and appearance of the specified works;

“protective work” means a work which is reasonably necessary to be carried out to minimise or prevent detriment constructed under paragraph 28(3)(a);

“the River” means the River Irwell for which the MSCC is the harbour authority; and

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

26. Network Rail must not under the powers conferred by this Order acquire compulsorily any land of MSCC or any easement or other right over such land, other than such land or easements or other rights over such land, as is reasonably necessary for, or in connection with, the construction, maintenance or operation of the authorised works.

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27. Where so required by MSCC for the purpose of ensuring the safety of the River, Network Rail must, to the reasonable satisfaction of MSCC, fence off any specified work or protective work or take such steps as MSCC may reasonably require to be taken for the purpose of separating a specified work or a protective work from the River, whether on a temporary or permanent basis or both.

28.—(1) Network Rail must, before commencing construction of any specified work, including any temporary works, supply to MSCC proper and sufficient plans of that work and such further particulars available to it as MSCC may within 14 days of the submission of the plans reasonably require for the reasonable approval, subject to sub-paragraphs (2) and (6), of MSCC and must not commence the construction of any specified work except in accordance with such plans as have been approved or deemed to have been approved or settled by arbitration.

(2) The approval of MSCC under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 28 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to MSCC they have not intimated disapproval of those plans and the grounds of disapproval MSCC is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans MSCC may specify—

- (a) any protective work to be carried out before the commencement of a specified work (whether temporary or permanent) that may be reasonably required to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment but not involving alteration to the design of the specified work,

and such protective work must be constructed by Network Rail or (if Network Rail so elects) MSCC without unnecessary delay and Network Rail must not commence the construction of any specified work until MSCC has notified Network Rail that the protective work has been completed to MSCC's reasonable satisfaction.

(4) The approval of MSCC under sub-paragraph (3) is not to be unreasonably withheld or delayed, and if by the end of the period of 7 days beginning with the date on which MSCC is notified of the completion of such protective work MSCC has not intimated disapproval and the grounds of disapproval MSCC is deemed to have approved the protective work.

(5) MSCC must at all times afford reasonable facilities to Network Rail and its agents for access to any protective works carried out by MSCC under this paragraph during their construction and must supply Network Rail with such information as it may reasonably require with regard to such protective works or the method of constructing them.

(6) Where the design of any work is shown on the design drawings, MSCC must not disapprove under sub-paragraph (1) plans for that work which accord with those drawings, although any approval may contain specifications under sub-paragraph (3).

29. Subject to article 20 (temporary interference with river and waterway), Network Rail must not impede, obstruct or interfere with, as far as reasonably practicable, the free, uninterrupted and safe use of the River.

30. Network Rail must provide and maintain at its own expense in the vicinity of any specified work or protective work such temporary lighting from sunset to sunrise or other periods of adverse visibility as MSCC may reasonably require during the construction or failure of the specified work or protective work.

31.—(1) Any specified work must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled by arbitration and with any requirements made under paragraph 28(3) (b);

- (b) under the supervision (if given), and in the case of any specified work which directly and physically affects the River, to the reasonable satisfaction of MSCC;
- (c) in such a manner as to cause as little detriment as is reasonably practicable to the River;
- (d) so far as is reasonably practicable and subject to article 20 (temporary interference with river and waterway), so as not to interfere with, delay or obstruct the safe passage of vessels using the River; and
- (e) in such a manner as to cause as little inconvenience as is reasonably practicable to MSCC, its officers and agents.

(2) Following the completion of the construction of any specified work Network Rail must restore the River to a condition no less satisfactory than its condition immediately prior to the commencement of those works subject to the presence of the works authorised by this Order.

32.—(1) Network Rail must not in the course of constructing any specified work or protective work or otherwise in connection with such works do or permit anything which may result in the deposit of any polluting materials on, in or over the River and must take such steps as MSCC may reasonably require to avoid or make good any breach of its obligations under this paragraph.

(2) Nothing in article 17 (discharge of water) authorises Network Rail to discharge (directly or indirectly) surface drainage water into the River without the written consent of MSCC (such consent not to be unreasonably withheld).

(3) Network Rail must not in the course of constructing any specified work or protective work or otherwise in connection with such works do or permit anything which may result in the deposit of any other materials in the River and must take such steps as MSCC may reasonably require to avoid or make good any breach of its obligations under this paragraph except that with the written consent of MSCC Network Rail may deposit any other materials into the River.

(4) Any consent of MSCC required under this paragraph must not be unreasonably withheld or delayed and may be given subject to such terms and conditions as MSCC may reasonably require including—

- (a) in the case of a discharge of water into the River, concerning the reimbursement by Network Rail of expenses incurred by MSCC in disposing of the water so discharged, being expenses which MSCC would not have incurred but for the discharge; and
- (b) in the case of a deposit of any other materials, so as to ensure that the use of the River is not obstructed or rendered less safe and the reimbursement by Network Rail of additional expenses incurred by MSCC in dredging the River, being expenses which MSCC would not have incurred but for the deposit of other materials.

33.—(1) Network Rail, on being given reasonable notice (except in cases of emergency), must at all reasonable times allow reasonable facilities to MSCC for access to inspect any specified work during its construction.

(2) Network Rail must supply MSCC with all such information as MSCC may reasonably require with regard to any specified work or the method of constructing it.

34.—(1) If any reasonable alterations or additions, either permanent or temporary, to the River are necessary in consequence of the construction of the specified work in order to avoid detriment and MSCC gives to Network Rail reasonable notice (being not less than 28 days) of its intention to carry out such alterations or additions (which must be specified in the notice), and takes into account any reasonable representations Network Rail may make to the notice within 21 days of receipt of the notice, Network Rail must pay to MSCC, provided that 28 days' notice has been given to Network Rail, the cost of those alterations or additions reasonably incurred including, in respect of permanent alterations and additions, a capitalised sum representing the increase of the costs which

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may be expected to be reasonably incurred by MSCC in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the River is reduced as a consequence of any such alterations or additions referred to in sub-paragraph (1) a capitalised sum representing such saving is to be set-off against any sum payable by Network Rail to MSCC under sub-paragraph (1).

35.—(1) Network Rail must, upon completion of any part of a specified work and after the purpose of any temporary works has been accomplished, remove as soon as practicable any temporary works constructed and materials for temporary works placed in, on or over the River in connection with that part of the specified work.

(2) All temporary works must be removed to the reasonable satisfaction of MSCC and in such a way as causes as little detriment or interference as reasonably practicable with, or delay or interruption to, the safe passage of vessels along the River.

(3) In the event of any detriment to the River or interference with, or delay or interruption to, any vessels on the River that is caused by Network Rail's failure to remove any such temporary works, Network Rail must immediately make good such damage and pay to MSCC the costs and expenses to which it may be put and compensation for any loss which it may suffer by reason of such detriment, interference, delay or interruption.

(4) In the event of Network Rail failing to remove the temporary works within a reasonable period after receiving notice from MSCC, MSCC may remove those works and charge Network Rail the costs and expenses reasonably incurred as a result.

36. If at any time after the completion of a specified work, not being a work vested in MSCC, MSCC gives notice to Network Rail informing it that the state of maintenance of the specified work appears to be such that the specified work is causing or is likely to cause detriment, Network Rail must, on receipt of such notice, take such steps as may be reasonably necessary to put the specified work in such state of maintenance as not to cause such detriment.

37. Network Rail must repay to MSCC all costs, charges and expenses reasonably and properly incurred by MSCC—

- (a) in constructing any protective work under the provisions of paragraph 28(3)(a) including, in respect of any permanent protective work, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the employment of any inspectors, watchguards and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any part of the River affected by any specified work or protective work and for preventing as far as may be practicable all interference, obstruction, danger or accident arising from the construction, maintenance, renewal, repair or failure of the specified work or any protective work;
- (c) in respect of the approval by MSCC of plans submitted by Network Rail and the supervision by MSCC of any specified work or any protective work; and
- (d) in bringing the specified work or any protective work to the notice of users of the River.

38.—(1) If any detriment to the River or any interference with, or delay or obstruction to, any vessels on the River is caused by, or arises as a result of, the construction or failure of any specified work or protective work carried out by Network Rail, Network Rail or (if MSCC so elects) MSCC (but at Network Rail's expense), must immediately make good such detriment and Network Rail must on demand pay to MSCC all reasonable expenses to which MSCC may be put, and compensation for any loss which MSCC may sustain, in making good or otherwise by reason of any such detriment, interference, delay or obstruction.

(2) Network Rail is responsible for and must make good to MSCC all claims, demands, proceedings, costs, charges, damages, expenses and losses not otherwise provided for in this Part of

this Schedule or in accordance with paragraph (3) of article 20 (temporary interference with river and waterway) which may be occasioned to or reasonably incurred by MSCC—

- (a) by reason of the construction or failure of any specified work or a protective work;
- (b) by reason of any planned closure of the River, as a result of the construction or failure of any specified work or a protective work, or of any closure which is not in accordance with the provisions of this Part of this Schedule;
- (c) by reason of any planned closure of the River over-running, as a result of the construction or failure of any specified work or a protective work; and
- (d) by reason of any act or omission of Network Rail or of any person in its employ or of its contractors or others whilst engaged upon the construction of any specified work or of a protective work,

and subject to sub-paragraph (4) Network Rail must effectively indemnify and hold harmless MSCC from and against all charges, claims, demands, expenses and liabilities arising out of any of the matters referred to in paragraphs (a), (b), (c) and (d).

(3) Nothing in this paragraph imposes any liability on Network Rail with respect to any losses, costs, charges, damages, expenses, claims or demand referred to in sub-paragraph (2) to the extent that they are attributable to negligence on the part of MSCC or of any person in its employ or its contractors or agents.

(4) The fact that any act or thing may have been done by MSCC on behalf of Network Rail does not (if it was done without negligence on the part of MSCC or any person in its employ or its contractor or agents) excuse Network Rail from any liability under the provisions of this paragraph.

(5) MSCC must give to Network Rail reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand must be made without the prior consent in writing of Network Rail (which must not be unreasonably withheld) which, if it notifies MSCC that it desires to do so, must have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand provided that no settlement or compromise of any such claim or demand is to be made without the consent of MSCC (which must not be unreasonably withheld). If consent is not given by Network Rail, MSCC must diligently defend such claim or demand.

39. Where under any provision of this Part of this Schedule MSCC or Network Rail (as the case may be) is entitled to a capitalised sum, it must provide such details of the formula by which the sum is calculated as may reasonably be requested by the party required to pay the sum.

40. Except as provided by this Order, nothing in this Order prejudices or derogates from the estates, rights, interests, privileges, liberties or franchises of MSCC or alters or diminishes any power, authority or jurisdiction vested in MSCC at the making of this Order.

41. Any differences arising between Network Rail and MSCC under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) must be referred to and settled by arbitration in accordance with article 44 (arbitration).