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SCHEDULE

WESTERN ISLES COUNCIL (BERNERAY CAUSEWAY)

Provisional Order to authorise the Western Isles Council to construct a causeway for pedestrian and vehicular traffic between the islands of North Uist and Bernera in the Western Isles Area.

WHEREAS—

- (1) Under the Local Government etc. (Scotland) Act 1994 the Western Isles Council (hereinafter referred to as “the Council”) are the local authority vested with the functions of an islands council in respect of the Western Isles Area which includes the islands of North Uist and Bernera;
- (2) The inhabitants of the island of Bernera experience isolation and hardship due to the lack of convenient communication across the Sound of Bernera between that island and the island of North Uist and accordingly experience difficulty in transporting building materials, equipment, livestock and vehicles to and from the island of Bernera;
- (3) It is the Council’s policy to maintain remote communities and to procure that wherever possible they have reasonable access to the more populated and better provided-for localities within the islands;
- (4) It is also the Council’s policy to improve communications across the Sound of Harris to provide a link between the major population groupings of Lewis and Harris in the north of their area and the Uists in the south;
- (5) The Council are the body statutorily responsible for the provision of roads in the Western Isles Area;
- (6) The Council accordingly desire to construct between the islands of North Uist and Bernera a causeway across waters lying below the level of low water which will, in their opinion, help to maintain the present population of Bernera, relieve their hardship and also facilitate the introduction of a shorter and more frequent ferry service across the Sound of Harris;
- (7) A plan and sections showing the lines, situations and levels of the works proposed to be authorised by this Order have been deposited with the sheriff clerk of the sheriff court district of Lochmaddy at Lochmaddy;
- (8) The purposes of this Order cannot be effected without an Order confirmed by Parliament under the provisions of the Private Legislation Procedure (Scotland) Act 1936:

Now therefore, in pursuance of the powers contained in the said Act of 1936, the Secretary of State orders as follows:—

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PART I

PRELIMINARY

Short title

- 1 This Order may be cited as the Western Isles Council (Berneray Causeway) Order 1996.

Interpretation

- 2 (1) In this Order, except where the context otherwise requires—
- “the authorised works” means the works (or any of them) described in, and authorised by, section 3 below and includes such works as renewed, replaced or altered under section 4 below, and any works constructed or executed under section 6 below;
 - “the Council” means the Western Isles Council;
 - “the deposited plan” and “the deposited sections” mean respectively the plan and sections deposited on or before 20th November 1995 in Parliament, with the proper officer of the Council and with the sheriff clerk of the sheriff court district of Lochmaddy in connection with the application for this Order;
 - “the level of high water” means the level of mean high-water springs;
 - “the limits of deviation” means the limits of deviation shown on the deposited plan;
 - “tidal work” means so much of any of the authorised works as are on, under or over tidal waters or tidal lands below the level of high water.
- (2) All directions, distances, lengths and widths stated in any description of works, powers or lands other than in section 5 below shall be construed as if the words “or thereby” were inserted after each such direction, distance, length and width.
- (3) Map reference points specified in this Order shall be construed as references to Ordnance Survey National Grid reference points.

PART II

WORKS

Power to construct works

- 3 Subject to the provisions of this Order, the Council may, in the lines and situations and within the limits of deviation shown on the deposited plan and according to the levels shown on the deposited sections, construct, execute and maintain the work hereinafter described, with all necessary works and conveniences connected therewith in the parishes of North Uist and Harris in the Western Isles Area, that is to say—
- A causeway providing an accessway for pedestrian and vehicular traffic between the islands of North Uist and Berneray commencing at a point at NF9074479389 on the island of North Uist and extending in a generally east-north-easterly direction for a distance of 569 metres and thence through a curve in a generally north-north-easterly direction for a distance of 299 metres and

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there terminating at a point at NF9140379924 on the island of Berneray having a width at the level of the metalled carriageway of 10 metres constructed on a mound of broken rock protected on each seaward face by rock armour.

Power to renew, etc., works

- 4 Subject to the provisions of this Order the Council may, within the limits of deviation, renew, replace, or otherwise alter temporarily or permanently the authorised works.

Power to deviate

- 5 Subject to the provisions of this Order, in the construction or execution of the authorised works the Council may deviate laterally from the lines or situations thereof shown on the deposited plan to the extent of the limits of deviation, and may deviate vertically from the levels shown in the deposited sections to any extent not exceeding 3 metres upwards and to any extent downward.

Subsidiary works

- 6 Subject to the provisions of this Order the Council, for the purposes of or in connection with the authorised works, may within the limits of deviation construct, execute and maintain all such subsidiary works and conveniences as may be necessary or expedient for or in connection with the authorised works.

Works deemed to be within Western Isles Area

- 7 So much of the authorised works constructed or executed pursuant to this Order as are not within the Western Isles Area shall be deemed for all purposes to be within that Area.

PART III

MISCELLANEOUS

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

- 8 (1) A tidal work shall not be constructed, executed, renewed, replaced or altered 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 the work is begun.
- (2) If a tidal work is constructed, executed, renewed, replaced or altered in contravention of this section—
- (a) the Secretary of State may by notice in writing require the Council at their own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if, on the expiration of 30 days from the date when the notice is served upon the Council, they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or
 - (b) if it appears to the Secretary of State urgently necessary so to do, he may himself remove the tidal work or part of it and restore the site to its former condition;

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and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Council.

Lights on tidal works during construction

- 9 (1) The Council shall at or near a tidal work during the whole time of the construction, execution, renewal, replacement or alteration thereof 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 shall from time to time direct.
- (2) If the Council fail to comply in any respect with a direction given under this section they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Permanent lights on tidal works

- 10 (1) After the completion of a tidal work the Council shall exhibit every night from sunset to sunrise such lights, if any, and take such other steps for preventing danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.
- (2) If the Council fail to comply in any respect with a direction given under this section they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Survey of tidal works

- 11 The Secretary of State may at any time if he deems it expedient order a survey and examination of a tidal work or of the site upon which it is proposed to construct and execute the work and any expenditure incurred by him in such survey and examination shall be recoverable from the Council.

Provision against danger to navigation

- 12 (1) In the case of injury to or destruction or decay of a tidal work or any part thereof the Council shall forthwith notify the Commissioners of Northern Lighthouses and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.
- (2) If the Council fail to notify the Commissioners of Northern Lighthouses as required by this section or to comply in any respect with a direction given under this section they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Abatement of works abandoned or decayed

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

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- (2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such 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 thereof, in any notice under this section.
- (3) If on the expiration of 30 days from the date when a notice under this section is served upon the Council, they have failed to comply with the requirements of the notice the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Council.

Saving for certain enactments, etc

- 14 (1) Nothing in this Order affects the operation of—
 - (a) the Control of Pollution Act 1974;
 - (b) any of the relevant statutory provisions as defined in section 53 of the Health and Safety at Work etc. Act 1974;
 - (c) Part II of the Food and Environment Protection Act 1985;
 - (d) the Environmental Protection Act 1990;
 - (e) the Environment Act 1995.
- (2) Nothing in this Order affects prejudicially the jurisdiction or authority of the Commissioners of Northern Lighthouses.

Saving for Coast Protection Act 1949

- 15 Nothing in this Order shall exempt the Council from the provisions of Part I of the Coast Protection Act 1949.

For protection of Scottish Hydro-Electric plc

- 16 For the protection of Scottish Hydro-Electric plc the following provisions shall, save to the extent that the company may release the Council therefrom, apply and have effect:—
 - (1) In this section unless the subject or context otherwise requires—
 - “apparatus” means—
 - (a) any electrical plant or electric line as respectively defined in section 64 of the Electricity Act 1989; and
 - (b) any meter used for ascertaining the quantity of electricity supplied to any premises, not being a meter which is under the control of a consumer;
 - “the company” means Scottish Hydro-Electric plc;
 - “in” in a context referring to apparatus includes under, over, across, along or upon;
 - “plan” includes a section and description;
 - “position” includes depth.
 - (2) (a) Nothing in this Order shall relieve the Council from liability for damage caused by them to any apparatus in the exercise of the powers conferred on

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- them by this Order and the Council shall indemnify the company against all claims, demands, costs, damages and expenses made or taken against or recovered from or incurred by the company by reason or in consequence of any damage done by the Council to any apparatus or of any interruption in the supply by the company of electricity which may without the written authority of the company be in any way occasioned either by reason of the exercise of any of the powers of this Order or by the acts or defaults (in, or in connection with, such exercise) of the Council.
- (b) If in consequence of the exercise by the Council of the powers of this Order the access to any apparatus is materially obstructed, the Council shall provide an alternative means of access to such apparatus.
- (3) If the Council in exercise of the powers of sections 3, 4 or 6 above require to cross over or under, remove, alter or otherwise interfere with any apparatus, or if the exercise of such powers is likely to affect any apparatus, the Council shall—
- (a) give to the company not less than 28 days' prior notice in writing of such requirement or (as the case may be) of their intention to exercise such powers, together with a plan of the work proposed, and shall execute the work only in accordance with such plans and in accordance with such reasonable requirements as may within 21 days of the receipt of the plan be made by the company, and the company may under such requirements alter or otherwise protect the apparatus or provide alternative apparatus adequate to enable them to fulfil their statutory functions not less efficiently than before (hereinafter referred to as “alternative apparatus”);
- (b) afford to the company, where possible, any necessary facilities and rights for the construction, use, maintenance, repair, renewal and inspection of any alternative apparatus;
- (c) pay to the company the expense reasonably incurred by them in and in connection with removing, re-laying, replacing, altering or protecting the apparatus or providing alternative apparatus less (in a case where alternative apparatus is provided) the value of any apparatus removed pursuant to this section.
- (4) Alternative apparatus, if provided under this section shall be constructed in such manner and in such line or position as may be agreed between the Council and the company, and no apparatus shall be removed, altered or interfered with until any protective works required have been carried out or until alternative apparatus required has been provided and is operating to the reasonable satisfaction of the company.
- (5) (a) Any difference arising between the Council and the company under this section shall be referred to and determined by an arbiter to be mutually agreed upon, or failing such agreement to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Electrical Engineers.
- (b) In settling any difference under this section the arbiter shall have regard to any duties or obligations which the company may be under in respect of any apparatus and may if he thinks fit require the Council to execute within the limits of deviation any temporary or other works so as to avoid so far as may be reasonably possible interference with any purpose for which the apparatus is used.

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Crown rights

- 17 (1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular and without prejudice to the generality of the foregoing, nothing in this Order authorises the Council to take, use, enter upon or in any manner interfere with, any land or hereditaments (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary) or any rights of whatsoever description—
- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those commissioners; or
 - (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.
- (2) A consent under subsection (1) above may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.