

## SCHEDULE 1

Article 4

### PORT LIMITS

The area outlined in blue on the port map bounded as follows: commencing at point 1 and proceeding in a south-south-westerly direction along the boundary of the subjects registered in the Land Register of Scotland under Title Number FFE15084 to point 2; thence along the outer face of the existing fence line, first in a west-north-westerly direction to point 3, then in a south-south-westerly direction to point 4, then in a west-north-westerly direction to point 5, then in a south-westerly direction to point 6, then in a south-south-westerly direction to point 7, then in a south-westerly direction to point 8, then in a south-south-westerly direction to point 9, then in a south-easterly direction to point 10, then in a south-south-westerly direction to point 11, then in a southerly direction to point 12 and then in an east-south-easterly direction to the end of the existing fence line at point 13; thence proceeding in a south then south-westerly direction along the level of high-water to point 14; thence proceeding along the outer face of a small jetty structure, first in a southerly direction to point 15, then in a westerly direction to point 16 and then in a northerly direction to point 17; thence proceeding in a westerly and then south-south-westerly direction along the level of high-water to point 18; thence proceeding in an east-south-easterly direction 30 metres from and parallel to the northern face of the Middle Jetty north berthing pocket to point 19; thence proceeding in a south-south-westerly direction to point 20; thence in a south westerly direction to 21; thence in a south-south-westerly direction to point 22 and then in a south-easterly direction 30 metres from and parallel to the north eastern face of the south arm to point 23; thence in a south-south-westerly direction to point 24 and then in a west-north-westerly direction 30 metres from and parallel to the southern face of the south arm to point 25; thence proceeding in a westerly direction to point 26; thence in a west-north-westerly, north-westerly and northerly direction following a line 30 metres from and parallel to the level of high water to point 27; thence in a west-north-westerly direction to point 28 and point 29 both 30 metres from the end of the new dolphin structures, thence in a north westerly direction to point 30, thence in a north-north-easterly direction 30 metres from and parallel to the west face of the Contractor's Jetty to point 31; then in an east-south-easterly direction to point 32; thence proceeding generally in a north-easterly direction along the level of high-water to point 33; thence proceeding on the outer face of the existing fence line, first generally in a north-easterly direction to point 34, then in an easterly direction to point 35, then in a northerly direction to point 36, then in an easterly direction to point 37 and then in a north-westerly direction to point 38; thence proceeding in a north-easterly direction over the roadside verge, footway and road along the line of a former barrier to point 39; thence proceeding along the outer face of the existing fence line, first generally in an easterly direction to point 40, then in a northerly direction to point 41, then in a north-easterly direction to point 42, then in a south-easterly then easterly directions to point 43, then in a southerly then easterly directions to point 44 and then in a southerly direction to point 1.

UNDER EXCEPTION of the area enclosed by the existing fence line commencing at point 45 and proceeding in a south-south-westerly direction to point 46, then in a south-westerly direction to point 47, then in a north-westerly direction to point 48, then in a northerly direction to point 49 and then in an east-south-easterly direction back to point 45.

## SCHEDULE 2

Article 18

### MITIGATION MEASURES

#### **Permitted development rights**

1.—(1) In their application to the works, article 3 of, and Class 29 in Part II of Schedule 1 to, the 1992 Order (which permit development authorised by a harbour revision order designating

specifically both the nature of the development authorised and the land on which it may be carried out) have effect as if the planning permission granted by that Order were—

- (a) subject to the restrictions contained in this Schedule; and
- (b) did not apply to any permanent alteration, enlargement, replacement, relaying, extension or reconstruction authorised by article 5(3) that may in the opinion of the planning authority have significant adverse effects on the environment.

(2) In their application to other development carried out on land which falls to be treated as operational land of a dock or harbour undertaker by virtue of this Order, article 3 of, and Class 35 in Part II of Schedule 1 to the 1992 Order, have effect as if planning permission granted by that Order were subject to the restrictions contained in this Schedule.

(3) Except to the extent specified, the restrictions contained in this Schedule do not apply to temporary construction activity.

(4) For the purpose of the 1997 Act, the restrictions contained in paragraphs 2 to 4 of this Schedule are deemed to be conditions imposed on the grant of planning permission.

#### **Work No. 21**

2.—(1) The Scottish Ministers are, after consultation with Fife Council, Scottish Natural Heritage and Charleston, Limekilns and Pattiesmuir Community Council, to determine whether Work No. 21 requires to be built and are to advise the Company of their determination.

(2) If the Scottish Ministers determine that Work No. 21 requires to be built, it shall be completed before any other works are commenced.

#### **Management of land contamination**

3.—(1) No construction works, other than investigative works (which shall inform the Contaminated Land Management Plan) shall be carried out on site prior to the receipt of Fife Council's and Scottish Environment Protection Agency's written approval of that Plan, which is to provide for—

- (a) the identification of unacceptable risks to human health and the wider environment due to the presence of land contamination or unexploded ordnance;
- (b) a remediation strategy to address any such identified unacceptable risks thereby making the site suitable for its intended use;
- (c) procedures to be adopted to mitigate unacceptable risks to human health and the wider environment due to land contamination or unexploded ordnance during construction work (including the implementation of the remediation strategy);
- (d) procedures to deal with previously unsuspected land contamination that becomes evident during construction works (including the implementation of the remediation strategy);
- (e) procedures to be adopted to mitigate release of hazardous substances to land and the water environment during construction works (including the implementation of the remediation strategy); and
- (f) appropriate emergency measures to minimise the impact of any release of a hazardous substance should it occur,

and the works may only be constructed in compliance with the approved Contaminated Land Management Plan.

(2) Following completion of construction works, operation of the site may not commence prior to receipt of Fife Council's and Scottish Environment Protection Agency's written approval of a

remediation verification report prepared in accordance with the Contaminated Land Management Plan.

### **Restrictions on construction**

4.—(1) The works specified in article 5 are to be carried out in accordance with the descriptions given in that article and as shown on the deposited plans, subject to the limits of deviation specified in article 7.

(2) For the avoidance of doubt, the limits of deviation shall not apply to the height of the lighting columns, mobile harbour cranes, rubber tyre gantry cranes or rail mounted ship to shore cranes, or the 15 metre height restriction that applies to stacks of containers.

(3) The construction and operational phase lighting must be designed, deployed, constructed and maintained in accordance with the lighting strategy approved by Fife Council.

(4) The normal hours of working for the construction works, other than dredging, shall be between 8:00 am and 7:00 pm on Mondays to Fridays and 8:00 am and 1:00 pm on Saturdays.

(5) No construction activities other than dredging operations are to be undertaken on Sundays, Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971<sup>(1)</sup> is a bank holiday in Scotland. Where additional or alternative working hours are required, these shall be agreed in advance with Fife Council.

(6) In constructing and operating the works, the Company shall implement the measures on its part set out in and from time to time agreed pursuant to the Traffic Management Plan contained within the CEMP.

(7) Prior to the commencement of any work on site, a Noise Management Plan shall be submitted to and agreed in writing by Fife Council. This Plan shall cover both construction and operational noise matters and the works authorised by articles 5 and 6 shall not commence until Fife Council has approved the Noise Management Plan.

(8) Operational noise emitted from the site shall be monitored in accordance with section 13 of the draft CEMP and, to the extent that such noise is under the control of the Company, it shall be controlled so as not to exceed the limits specified in paragraph 13.1 of the draft CEMP. Monitoring shall be in accordance with paragraph 13.4 of the draft CEMP and should noise levels exceed those limits as provided for in paragraph 13.1 of that document, appropriate remedial action shall be taken by the Company.

(9) The Company shall implement the complaints procedure set out in paragraph 13.6 of the draft CEMP.

(10) All onshore construction activities shall be undertaken in accordance with BS5228: 2009 - Code of Practice for Noise and Vibration Control on Construction and Open Sites, Parts 1 and 2.

(11) All day-time noise conditions in association with construction are related to 1 hour free field noise levels at the boundaries of noise sensitive premises in Limekilns. For the 8 to 10 weeks of driven piling activities, noise levels attributable to site activities shall not exceed 60dB(A) Leq at the boundaries of noise sensitive premises in Limekilns as specified in the Noise Management Plan in consultation with Fife Council and the Charlestown, Limekilns and Pattiesmuir Community Council. For all other phases of the construction, noise levels attributable to site activities shall not exceed 55dB(A) Leq at the boundaries of noise sensitive premises in Limekilns.

(12) Unless otherwise stated, all measurements shall refer to free field conditions measured at a height of 1.2 metres above ground level and wind speeds of 3m/s or below. The sound level meter response shall be set to fast.

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(1) 1971 c.80.

(13) Notwithstanding the terms of sub-paragraphs (4) and (5), there shall be no driven piling operations after 6:00 pm on Mondays to Fridays, or at any time on Saturdays, Sundays, Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in Scotland.

### SCHEDULE 3

Article 20

## FOR THE PROTECTION OF FORTH PORTS

### **Obstruction in the river**

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

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

### **Removal, etc. of Forth Ports' moorings and buoys**

2. If—

- (a) by reason of the construction of any tidal work or dredging it is reasonably necessary for Forth Ports to incur 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 Forth Ports, or laying down and removing replacement 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) Forth Ports gives the Company not less than 28 days' notice of its intention to incur such costs, and takes into account any representations which the Company may make in response to the notice within 14 days of the receipt of the notice,

the Company shall pay the costs reasonably so incurred by Forth Ports.

### **Removal of temporary works**

3. On completion of the construction of any part of a permanent work in the river, the Company shall as soon as practicable remove—

- (a) any temporary tidal work carried out only for the purposes of 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 Forth Ports.

### **Facilities for navigation**

4.—(1) The Company 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 Forth Ports,

and shall ensure that access to such aids remains available during and following construction of any tidal work.

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

(3) The Company shall comply with the directions of the Forth Ports' harbour master from time to time with regard to the lighting on the tidal works or within the port, or the screening of such lighting, so as to ensure that it is not a hazard to navigation on the river.

### **Indemnity**

**5.—**(1) The Company is responsible for and must make good to Forth Ports all financial costs or losses not otherwise provided for in this Schedule which may reasonably be incurred or suffered by Forth Ports, by reason of—

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

and the Company must indemnify Forth Ports 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 Forth Ports on behalf of the Company; or
- (b) by the Company, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by Forth Ports, or in a manner approved by Forth Ports, or under its supervision or the supervision of its duly authorised representative,

does not (if it was done or required without negligence on the part of Forth Ports or its duly authorised representative, employee, contractor or agent) excuse the Company from liability under the provisions of this paragraph.

(3) Forth Ports shall give the Company 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 may be made without the prior consent of the Company.

### **Dispute resolution**

**6.—**(1) Any disputes between the Company and Forth Ports about matters in this Schedule should be referred to and settled by an arbiter.

- (2) The arbiter shall be appointed by the Chairman of the Chartered Institute of Arbitrators.
- (3) The Arbitration (Scotland) Act 2010(2) shall govern any such arbitration.

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(2) 2010 asp 1.