

THE YORK POTASH HARBOUR FACILITIES ORDER 201X

Draft Development Consent Order (Including Requirements)



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INFRASTRUCTURE PLANNING

The York Potash Harbour Facilities Order 201X

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CONTENTS

**PART 1
PRELIMINARY**

1. Citation
2. Interpretation

**PART 2
PRINCIPAL POWERS**

3. Development consent etc. granted by the Order
4. Parameters of authorised development
5. Maintenance of authorised development
6. Provision of works
7. Benefit of Order
8. Consent to transfer benefit of Order
9. Application and modification of legislative provisions

**PART 3
STREETS**

10. Street works
11. Temporary stopping up of streets
12. Access to works
13. Agreements with highway authority

**PART 4
SUPPLEMENTAL POWERS**

14. Discharge of water
15. Protective work to buildings

16. Authority to survey and investigate the land
17. Tidal works not to be executed without approval of Secretary of State
18. Abatement of works abandoned or decayed
19. Lights on tidal works etc. during construction
20. Provision against danger to navigation
21. Permanent lights on tidal works
22. Power to charge

PART 5 POWERS OF ACQUISITION

23. Guarantees in respect of payment of compensation
24. Compulsory acquisition of rights
25. Power to override easements and other rights
26. Compulsory acquisition of land – incorporation of the mineral code
27. Time limit for exercise of authority to acquire land and rights compulsorily
28. Application of the Compulsory Purchase (Vesting Declarations) Act 1981
29. Rights under or over streets
30. Temporary use of land for carrying out the authorised development

PART 6 MISCELLANEOUS AND GENERAL

31. Deemed marine licence
32. Operational land for purposes of the 1990 Act
33. Defence to proceedings in respect of statutory nuisance
34. Protection of Interests
35. Saving for Trinity House
36. Crown Rights
37. Approvals pursuant to requirements
38. Certification of plans etc.
39. Service of Notices
40. Arbitration

SCHEDULES

- | | | |
|------------|---|---|
| SCHEDULE 1 | — | AUTHORISED DEVELOPMENT |
| SCHEDULE 2 | — | REQUIREMENTS |
| SCHEDULE 3 | — | MODIFICATION OF COMPENSATION AND
COMPULSORY PURCHASE ENACTMENTS FOR THE
CREATION OF NEW RIGHTS AND RESTRICTIVE
COVENANTS |
| SCHEDULE 4 | — | LAND OF WHICH TEMPORARY POSSESSION MAY
BE TAKEN |
| SCHEDULE 5 | — | DEEMED LICENCE UNDER THE MARINE AND
COASTAL ACCESS ACT 2009 |
| SCHEDULE 6 | — | QUAY LIMITS |

SCHEDULE 7	—	PROTECTIVE PROVISIONS FOR THE PROTECTION OF NETWORK RAIL
SCHEDULE 8	—	PROTECTIVE PROVISIONS FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY
SCHEDULE 9	—	PROTECTIVE PROVISIONS FOR THE PROTECTION OF THE PIPELINE CORRIDOR
SCHEDULE 10	—	PROTECTIVE PROVISIONS FOR THE PROTECTION OF ASSETS BRIDGED/OVERSAILED
SCHEDULE 11	—	PROTECTIVE PROVISIONS FOR THE PROTECTION OF THE TEES PORT AUTHORITY

PREAMBLE

An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009^(a) for and order under sections 37, 114, 115, 120 and 122 of the Planning Act 2008 ^(b) (the 2008 Act’).

The development which is the subject of the application is a nationally significant infrastructure project within the terms of section 24 of the 2008 Act.

[] was appointed by the Secretary of State in accordance with Chapter 2 of Part 6 of the 2008 Act. [] examined the application in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010^(c).

[] has considered the presentations made and not withdrawn and the application, together with accompanying documents, and has submitted a report to the Secretary of State in accordance with section [74/83] of the 2008 Act.

The Secretary of State, having considered the representations made and not withdrawn, and the report of [], has decided to make an Order granting development consent for the development described in the application and consent for ancillary works with modifications which, in the opinion of the Secretary of State, do not make any substantial change to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 122 of, and paragraphs 1 to 3, 10 to 12, 14 to 17, 24, 26, 30A to 32, 32B to 34, 36, and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

PART 1
PRELIMINARY

Citation

1. This Order may be cited as The York Potash Harbour Facilities Order 201X and will come into force on [] 201X.

Interpretation

2.— (1) In this Order—

(a) S.I. 2009/2264, as amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/2654, S.I. 2012/635, S I. 2012/2732, and S.I. 2013/522.
(b) 2008 c29 as amended by Localism Act 2011 (c.20), the Marine and Coastal Access Act 2009 (c.23), the Growth and Infrastructure Act 2013. [and the Infrastructure Act 2015 (c.7)]
(c) S.I.2010/103, as amended by S.I.2012/635

“the 1961 Act” means the Land Compensation Act 1961(d);

“the 1965 Act” means the Compulsory Purchase Act 1965(e);

“the 1966 Act” means the Tees and Hartlepoons Port Authority Act 1966; (f)

“the 1980 Act” means the Highways Act 1980(g);

“the 1990 Act” means the Town and Country Planning Act 1990 (h);

“the 1991 Act” means the New Roads and Street Works Act 1991(i);

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009(j);

“the 2009 EIA Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(k);

“the access and rights of way plans” means the plans certified as the access and rights of way plans by the Secretary of State for the purposes of this Order (Documents 2.3A-C);

“address” includes any number or address used for the purposes of electronic transmission;

“area of seaward construction activity” means the area of the sea within the Order limits;

“authorised development” means the nationally significant infrastructure project and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act and any works carried out pursuant to the requirements;

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- (d) 1961 c.33. Section 2 was repealed by article 5(1), (2) to, and paragraphs 36 and 38 of Schedule 1 to, S.I. 2009/1307. There are other amendments to the 1961 Act which are not relevant to this Order.
- (e) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Section 11(1) and sections 30, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 62(3) and 139 of and paragraphs 27, 28(1), (2) and (3) of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 4 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by article 5 of, and paragraphs 59 and 70 of Schedule 1 to, the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009.. Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 25 was also amended by Section 59(5) of, and paragraphs 4(1) and (3) of Part 2 of Schedule 11 of, the Constitutional Reform Act 2005. Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.
- (f) 1966c.25
- (g) 1980 C.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), (3) and (4) were amended by sections 8 and 102 of, and paragraph (1) of Schedule 4 and Schedule 17to, the Local Government Act 1985 (c.51); section 1 (2A) was inserted by, and section 1(3) was amended by, section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1 (3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47 (a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) and Section 68 and Part 1 of Schedule 4 of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3), of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (i) 1990 c.8. Section 78(1)(c) was amended by section 121 and paragraphs 1 and 11 of Schedule 12 to the Localism Act 2011; Section 78(2) was amended by section 17(2) of the Planning and Compensation Act 1991 and by section 1(2) and paragraphs 1 and 8 of Schedule 1 to the Growth and Infrastructure Act 2013; Section 78(2)(aa) was amended in part by section 43(2) and (5) and by section 123(1) and (3) of the Localism Act 2011; Section 78(4A) – (4D) was inserted by section 197 and paragraphs 1 and 2 of Schedule 11 to the Planning Act 2008; Section 78(5) was amended by section 196(4) and in part by paragraphs 1 and 3 of Schedule 10 and by article 3 and paragraphs 1 and 3 of the Schedule to SI2014/2773; There are other amendments to the 1990 Act which are not relevant to this Order
- (j) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4) and 83(3) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
- (j) 2009 c.23
- (k) S.I. 2009/2263, as amended by S.I. 2011/988, S.I. 2011/1043, S.I. 2012/635 and S.I. 2012/787

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order (Document 5.3);

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“clay” means dredged materials with a diameter of less than 31.25 micrometres;

“dredging” means using any device to move material (whether or not suspended in water) from one part of the sea or sea bed to another part;

“environmental statement” means the document certified by the Secretary of State as the environmental statement for the purposes of this Order (Documents 6.4 and 6.5);

“gravel” means dredged materials with a diameter of at least 2 and less than 64 millimetres;

“the harbour master” means the harbour master appointed by the Tees Port Authority and includes the harbour master’s deputies and assistants;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“highway works plan” means the plan certified by the Secretary of State as the highway works plan for the purposes of this Order (Document 3.14);

“lagoon” means the area identified as Works No.3 on the works plans;

“lagoon enhancement works” means the works for habitat enhancement in the lagoon approved pursuant to the deemed marine licence in Schedule 5;

“the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order (Document 2.1A-N);

“level of high water” means the level of mean high-water springs;

“licensed activity” means any activity described in Part 2 of Schedule 5;

“licensed area” means the area within which any licensed activity takes place;

“limits of deviation” means the limits of deviation shown or referred to on the works plans;

“local planning authority” means Redcar and Cleveland Borough Council;

“maintain” includes to inspect, repair, adjust, alter, remove, clear, refurbish, reconstruct, decommission, demolish, replace or improve unless that activity would result in a significant environmental effect not assessed in the environmental statement and any derivative of “maintain” is to be construed accordingly;

“materials handling facility” means the facility to be located at Wilton International [being the subject of a planning application under the 1990 Act];

“mean high water springs” means the average of high water heights occurring at the time of spring tides;

“mitigation and management strategy” means the mitigation and management strategy certified by the Secretary of State for the purposes of this Order;

“MMO” means the Marine Management Organisation created under the 2009 Act or any successor to its functions;

“Order land” means the land shown on the land plans which is within the boundary of the land required for or affected by the proposed development, and is land in respect of which rights are to be acquired and extinguished as described in the book of reference;

“the Order limits” means the limits shown on the works plans as the limits within which the authorised development and works may be carried out ;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(I);

(I) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

“parameters table” means the parameters table certified as the parameters table by the Secretary of State for the purposes of this Order (Document 6.9);

“PD Teesport ” means PD Teesport Limited, company reference number 02636007, whose registered office is situate at 17 – 27 Queens Square Middlesborough TS2 1AH;

“phase 1” means that part of the authorised development required to be completed in order to facilitate the movement of 6.5 million tonnes per annum of polyhalite;

“phase 2” means that part of the authorised development required to be completed in order to facilitate the movement of 13 million tonnes per annum of polyhalite;

“the quay limits” means the area bounded by co-ordinates listed in Schedule 6 (quay limits);

“requirement” means the requirement set out in the relevant paragraph of Schedule 2;

“sand” means dredged materials with a diameter of at least 62.5 micrometres and less than 2 millimetres;

“sea” means any area submerged at mean high water spring tide and the waters of every estuary, river or channel, so far as the tide flows at mean high water spring tide;

“sea bed” means the ground under the sea;

“silt” means dredged materials with a diameter of at least 31.25 and less than 62.5 micrometres;

“statutory undertaker” means any person falling within the definition of statutory undertaker in section 127(8) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the Tees Port Authority” means PD Teesport in its role as harbour authority for the River Tees;

“tidal work” means so much of any work or operation authorised by this Order as is on, under or over tidal waters or tidal lands below the level of high water;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“TY150” means the area bounded by co-ordinates (54°41.89’N, 00°57.40’W), (54°41.40’N, 00°58.69’W), (54°42.30’N, 00°59.89’W) and (54°42.59’N, 00°58.60’W);

“the undertaker” means Sirius Minerals Plc (Company Registration Number 4948435) and York Potash Limited (Company Registration Number 08270855) ;

“vertical deviation plans” means the plans certified as the vertical deviation plans by the Secretary of State for the purposes of this Order (Documents 3.11A and 3.11B);

“vessel” means every description of vessel or water-borne structure, however propelled, moved or constructed, and includes displacement and non-displacement craft, personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over or placement in water and which is at the time in, on or over water;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or public drain;

“works area” means the area of land shown on the works plans within which a numbered work is to be carried out; and

“the works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order (Documents 2.2A-F).

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development will be taken to be measured along that work.

(4) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development) and to numbered requirements are to the numbered requirements as numbered in Schedule 2 (requirements).

(5) All areas described in square metres in the book of reference are approximate.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) The undertaker is granted development consent for the authorised development, to be carried out and used subject to the provisions of this Order within the Order limits and subject to the requirements.

(2) It does not constitute a breach of the terms of this Order, if, following the coming into force of this Order, any development, or any part of a development, is carried out or used within the Order limits under planning permission granted, on application, under the 1990 Act.

Parameters of authorised development

4. The authorised development must be carried out in accordance with the parameters shown on the parameters table and in carrying out the authorised development the undertaker may –

- (a) deviate laterally from the lines or situations of the authorised development to the extent of the limits of deviation;
- (b) in respect of Works No.4 deviate vertically to the extent shown on the vertical deviation plans; and
- (c) in respect of any boundary between the areas of two works numbers deviate laterally by 20 metres either side of the boundary as noted on the works plans.

Maintenance of authorised development

5. Subject to the requirements and in respect of tidal works also to Schedule 11 (protective provisions for the protection of the Tees Port Authority) the undertaker may at any time maintain the authorised development.

Provision of works

6.—(1) The undertaker may from time to time within the Order limits provide and operate the authorised development together with works ancillary to the authorised development, as may be necessary or convenient for the construction and/or operation of the authorised development, and for these purposes the undertaker may construct and maintain roads, railway lines, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances and such other works and conveniences as may be necessary or expedient.

(2) Without limitation on the scope of paragraph (1) the undertaker may within the Order limits carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the authorised development, including—

- (a) works for the accommodation or convenience of vessels (including but not limited to berthing heads, mooring posts, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons);
- (b) works to divert, remove or replace apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines; and
- (c) landscaping and other works to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works.

(3) Nothing in this article authorises any works that would give rise to any significant environmental effects not assessed in the environmental statement.

Benefit of Order

7. Subject to article 8 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

Consent to transfer benefit of Order

8. —(1) The undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related rights as may be so agreed.

(2) The powers of paragraph (1)(a) may only be exercised by the undertaker or a transferee.

(3) A lessee (‘the granting lessee’) may not make a grant under paragraph (1)(b)—

- (a) for a longer period than the period of the grant to the granting lessee; or
- (b) conferring any benefit or rights that is not conferred by the grant to the granting lessee.

(4) Where an agreement has been made in accordance with paragraph (1), references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(5) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Application and modification of legislative provisions

9.—(1) Where an application is made to the local planning authority for any consent, agreement or approval required by a requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

(3) Paragraphs (1) and (2) above shall only apply in so far as those provisions are not inconsistent with the 2009 EIA Regulations and any orders, rules or regulations made under the 2008 Act.

(4) Article 3 of, and Part 17 in Schedule 2 to, the Town and Country Planning (General Permitted Development) Order 1995(m) apply as if this Order were a grant of planning permission and the undertaker were a statutory undertaker in respect of the authorised development.

PART 3 STREETS

Street works

10.—(1) Subject to paragraph (5) the undertaker may, for the purposes of the authorised development, enter on any of the streets within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

(5) No works to streets within the public highway can be carried out pursuant to this article without the prior consent of the highway authority which may attach reasonable conditions to any consent.

(6) If the highway authority which receives an application for consent under paragraph (5) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted approval.

Temporary stopping up of streets

11.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker shall provide reasonable access for pedestrians and, where reasonably practicable, going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) Any person who suffers loss by the suspension of any private right of way under this article may be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) No stopping up alteration or diversion of any streets within the public highway pursuant to this article can be carried out without the prior consent of the highway authority which may attach reasonable conditions to any consent.

(m) S.I. 1995/418 as amended by S11999/293, S.I. 2003/2155 and S.I.2011/1824

(5) If the highway authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted approval.

Access to works

12.—(1) The undertaker may, for the purposes of the authorised development and with the prior consent of the highway authority, form and layout such means of access to a public highway or improve existing means of access to a public highway, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If the highway authority which receives an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted approval.

(3) The consent of the highway authority is not required for the carrying out of the works to improve the works to improve the existing means of access shown on the highway works plan.

Agreements with highway authority

13.—(1) A highway authority and the undertaker may enter into agreements with respect to—

- (a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (b) any stopping up, alteration or diversion of a street as part of or to facilitate the authorised development; or
- (c) the carrying out in the street of any of the works referred to in article 10(1) (street works).

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

- (a) make provision for the highway authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and highway authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

14.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) will be determined as if it were a dispute under section 106 of the Water Industry Act 1991⁽ⁿ⁾ (right to communicate with public sewers).

(3) The undertaker may not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but can not be unreasonably withheld.

(4) The undertaker may not make any opening into any public sewer or drain except—

⁽ⁿ⁾ 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to section 106 which are not relevant to this Order.

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker may not, in carrying out or maintaining works under the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker will take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010^(o) (requirement for an environmental permit).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964^(p), an internal drainage board, a joint planning board, a local authority, or a sewerage undertaker; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991^(q) have the same meaning as in that Act.

Protective work to buildings

15.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land.

^(o) S.I. 2010/675, to which there are amendments not relevant to this Order.

^(p) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1954 Act which are not relevant to this Order.

^(q) 1991 c.57.

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 40 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance).

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development;
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land

16.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits and—

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigations of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner, who is not the undertaker, and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) will, if so required upon entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent can not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Nothing in this article overrides any requirement to obtain permits or consents under the Conservation of Habitats and Species Regulations 2010(r) or the Wildlife and Countryside Act 1981(s).

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

17.—(1) Unless its construction has commenced within 5 years of the coming into force of this Order, no tidal work is to be constructed, altered or relaid 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 that work is begun.

(2) If a tidal work is constructed, altered or relaid in contravention of paragraph (1) or of any condition or restriction imposed under that paragraph—

- (a) the Secretary of State may by notice in writing require the undertaker at its own expense to remove the tidal work or any part of it and restore the site to its former condition; and, if on the expiration of 30 days beginning with the date when the notice is served on the undertaker it has failed to take reasonable steps to comply with the requirements of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; or
- (b) if it appears to the Secretary of State urgently necessary so to do, the Secretary of State may remove the tidal work, or part of it, and restore the site to its former condition,

and any expenditure incurred by the Secretary of State in doing so is recoverable from the undertaker.

Abatement of works abandoned or decayed

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

(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 allowed 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 of it, in any notice under this article.

(3) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; and any expenditure incurred by the Secretary of State in doing so is recoverable from the undertaker.

(r) S.I. 2010/490, as amended by S.I. 2011/625 and S.I. 2012/1927
(s) 1981 c. 69.

Lights on tidal works etc. during construction

19.—(1) The undertaker must, at or near—

- (a) a tidal work, including any temporary work; or
- (b) any plant, equipment or other obstruction placed, in connection with any authorised development or any work authorised by article 6 (provision of works), within the area of seaward construction activity,

during the whole time of the construction, alteration or relaying, 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 and the Tees Port Authority or, failing agreement between them, the Secretary of State may from time to time direct.

Provision against danger to navigation

20.—(1) In case of damage to, or destruction or decay of, a tidal work or any part of it, the undertaker must as soon as reasonably practicable notify the Tees Port Authority and must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as the Tees Port Authority may from time to time direct.

Permanent lights on tidal works

21.—(1) After the completion of a tidal work the undertaker must at the outer extremity of it exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as the Tees Port Authority may from time to time direct.

Power to charge

22.—(1) The undertaker may from time to time demand, take and recover such charges for the use of the authorised development (including the loading and unloading of goods) or the use of any other services or facilities provided in connection with the authorised development as it thinks fit.

PART 5

POWERS OF ACQUISITION

Guarantees in respect of payment of compensation

23.—(1) The undertaker must not begin to exercise the powers in articles 24 to 30 of this Order in relation to any land unless it has first put in place either—

- (a) a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security for that purpose which has been approved by the Secretary of State.

(2) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under the Order is to be treated as enforceable against the guarantor by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(3) The guarantee or alternative form of security is to be in place for a maximum of 20 years from the date on which relevant power is exercised.

Compulsory acquisition of rights

24.—(1) The undertaker may create and acquire compulsorily the new rights and impose the restrictions described in the book of reference.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under the Order are extinguished in so far as their continuance would be inconsistent with the carrying out and use of the authorised development.

- (a) as from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under Section 11(1) of the 1965 Act (t) in pursuance of the right,

whichever is the earliest

(3) Schedule 3 (modification of compensation and compulsory purchase enactments for the creation of new rights and restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article.

(4) Subject to section 8 of the 1965 Act as substituted by paragraph 5 of Schedule 3 to this Order, where the undertaker creates a new right in, on, over or under land under paragraph (1) the undertaker cannot be required to acquire a greater interest in that land.

(5) Any person who suffers loss by the extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Power to override easements and other rights

25.—(1) Any authorised activity undertaken by the undertaker which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title under it) is authorised by this Order if it is done in accordance with the terms of this Order, regardless of whether it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of the land arising by virtue of a contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction or carrying out, or maintenance of any building or works on land;
- (b) the erection, construction or maintenance or anything in, on, over or under land; or
- (c) the use of any land.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(4) Nothing in this article authorises interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is—

- (a) a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or
- (b) a right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.

(5) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article the interest or right is extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences.

(6) In respect of any interference, breach, extinguishment, abrogation or discharge under this article, compensation—

(t) Section 11(1) was amended by Section 34(1) of, and paragraph 12(1) of Schedule 5 to the Church of England (Miscellaneous Provisions) Measure 2006 (No.1)

- (a) is payable under section 7 or 10 of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where—
 - (i) the compensation is to be estimated in connection with a purchase under those acts; or
 - (ii) the injury arises from the execution of works on or use of land acquired under those acts.

(7) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

(8) Nothing in this article is to be construed as restricting the entitlement of any person to compensation.

(9) Where a person deriving title under the undertaker by whom the land in question was acquired or appropriated—

- (a) is liable to pay compensation; and
- (b) fails to discharge that liability.

the liability is enforceable against the undertaker.

Compulsory acquisition of land – incorporation of the mineral code

26. Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981(**u**) (minerals) are incorporated in this Order subject to the modification that for “the acquiring authority” substitute “the undertaker”.

Time limit for exercise of authority to acquire land and rights compulsorily

27.—(1) After the end of the period of 5 years beginning on the day on which the Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 28 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(**v**).

(2) The authority conferred by article 30 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker remaining in possession of the land after the end of that period, if the land was entered and possession taken before the end of that period subject to the limitation in article 30(3) (temporary use of land for carrying out the authorised development).

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

28.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(**w**) applies as if this Order was a compulsory purchase order.

(**u**) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are no other amendments to the 1981 Act which are not relevant to this Order.

(**v**) 1981 c.66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c.17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c.50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c.28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c.51). There are amendments to the 1981 Act which are not relevant to this Order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied by paragraph (1) has effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there will be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) in a notice which is –

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated”

(4) In that section, in subsection (2), for “(1)(b)” there will be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections(5) and (6) there will be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if-

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration) —

- (a) in subsection (1), after “publication” there will be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) will be omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” will be omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are to be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land and rights under this Order.

Rights under or over streets

29.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) shall not apply in relation to—

- (a) any existing subway or underground building; or
- (b) any existing cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person’s interest in the land, and

(w) 1981 c.66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c.17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c.50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c.28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c.51). There are amendments to the 1981 Act which are not relevant to this Order.

who suffers loss as a result, may be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation will not be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

30.—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter into and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 4 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
 - (ii) any of the Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act or no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from that land; and
- (c) construct and use temporary works (including the provision of means of access) and buildings on that land.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article in the case of land of which temporary possession may be taken, after the end of the period of 1 year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 4;

(4) Before giving possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.

(5) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(6) Any dispute to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(7) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker shall not be precluded from acquiring new rights over any part of that land under article 24 (compulsory acquisition of rights);

(9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

PART 6
MISCELLANEOUS AND GENERAL

Deemed marine licence

31. The undertaker is deemed to be granted a licence under Part 4 (marine licences) of the 2009 Act to carry out the works described in Schedule 5 deemed licence under the Marine and Coastal Access Act 2009, subject to the provisions set out in that Schedule, which are to be treated as licence conditions.

Operational land for purposes of the 1990 Act

32. Development consent granted by this Order within the Order limits is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

33. —(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(x) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(y); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development; or
 - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of Interests

34. Schedules 7, 8, 9, 10 and 11 to this Order have effect.

(x) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(y) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to the 1974 Act which are not relevant to this Order.

Saving for Trinity House

35. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Crown Rights

36.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee-

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)-
 - (i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners ;
 - (ii) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
 - (iii) 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; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

Approvals pursuant to requirements

37. Where a requirement requires approval from or agreement with the local planning authority or other body then such approval or agreement shall not be valid if the development thereby approved would result in a form of development which would have a materially different environmental effect than those assessed in the environmental statement.

Certification of plans etc

38.—(1) The undertaker, as soon as practicable after the making of this Order, must submit to the Secretary of State copies of—

- (a) the book of reference (Document 5.3);
- (b) the land plans (Documents 2.1A – N);
- (c) the access and rights of way plans (Documents 2.3A – C);
- (d) the environmental statement (Documents 6.4 and 6.5);
- (e) the works plans (Documents 2.2A – F);
- (f) the vertical deviation plans (Documents 3.11A and 3.11B);
- (g) the parameters table (Document 6.9);
- (h) the highway works plan (Document 3.14);
- (i) the mitigation and management strategy; and
- (j) the conveyor route plans (Documents 3.3A – N).

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of Notices

39.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post
- (b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(z) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of that land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice of other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement can be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender will provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation will be final and takes effect on a date specified by the person in the notice but that date may not be less than 7 days after the date on which the notice is given.

(z) 1978 c.30.

(9) This article may not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

40. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT

Works No.1

Within the area described on the works plans as Works No.1

- (1) dredging of approach channel and berth pocket; and
- (2) the demolition of the existing jetty and associated infrastructure.

Works No. 2

Within the area described on the works plans as Works No. 2

- (1) a quay (constructed in two phases) being either—
 - (a) a quay of solid construction comprising a quay wall and reclamation behind it on the south side of the River Tees; or
 - (b) a quay of open construction comprising:-
 - (i) a suspended deck supported by piles and a revetment on a re-graded slope on the south side of the River Tees; and
 - (ii) the erection of three approach bridge structures.
- (2) erection of ship loaders and associated infrastructure including ship loader rails;
- (3) erection of surge bins and transfer towers; and
- (4) extension, modification or replacement of pipe and provision of an additional pipe for flow control between Works No.3 and Works No.1

ASSOCIATED DEVELOPMENT

Works No. 3

Within the area described on the works plans as Works No. 3—

- (1) the lagoon enhancement works; and
- (2) extension, modification or replacement of pipe and provision of an additional pipe for flow control entering Works No.2 from the lagoon.

Works No. 4

Within the area described on the works plans as Works No. 4—

(1) Parallel conveyors (on supports and including transfer stations connected to the same in Works No. 5) to transfer polyhalite from the materials handling facility to the ship loaders and surge bins situate in Works No. 2 running between either:

- (a) the points A-B-C shown on the works plans; or
- (b) the points A-B-D shown on the works plan.

Works No. 5

Within the area described in the works plans as Works No.5 in connection with Works No. 1, 2, 3, 4, 6, 7, 8, 9, 10 and 11

- (1) vehicular and pedestrian access;
- (2) construction space;
- (3) access for construction and maintenance;
- (4) conveyer footings and supports connecting with Works No. 4;
- (5) transfer towers connecting with Works No. 4;
- (6) surface and foul water disposal arrangements;
- (7) signage;
- (8) lighting;
- (9) security fencing and gating;
- (10) temporary acoustic fencing;
- (11) CCTV;
- (12) services: and
- (13) security control (to the north-east of Works No. 10).

Works No. 6A

Within the area described on the works plans as Works No. 6A—

- (1) temporary material storage and preparation and plant area;
- (2) temporary parking;
- (3) temporary offices;
- (4) temporary stores;
- (5) temporary lighting; and
- (6) temporary security fencing and gating.

Works No. 6B

Within the area described in the works plans as Works No. 6B—

- (1) substation; and
- (2) car parking.

Works No. 7

Within the area described on the works plans as Works No. 7—

- (1) temporary material storage and preparation and plant area;
- (2) temporary parking;
- (3) temporary offices;
- (4) temporary stores;
- (5) temporary lighting; and

(6) temporary security fencing and gating.

Works No. 8

Within the area described on the works plans as Works No. 8—

- (1) temporary material storage and preparation and plant area;
- (2) temporary parking;
- (3) temporary offices;
- (4) temporary stores;
- (5) temporary lighting; and
- (6) temporary security fencing and gating.

Works No. 9

Within the area described in the works plans as Works No. 9—

- (1) general services building;
- (2) parking;
- (3) substation;
- (4) below ground waste water storage tank; and
- (5) ancillary infrastructure.

Works No. 10

Within the area described on the works plans as Works No. 10—

- (1) temporary material storage and preparation and plant area;
- (2) temporary parking;
- (3) temporary offices;
- (4) temporary stores;
- (5) temporary lighting; and
- (6) temporary security fencing and gating.

Works No. 11

Within the area described on the works plans as Works No. 11—

- (1) temporary material storage and preparation and plant area;
- (2) temporary parking;
- (3) temporary offices;
- (4) temporary stores;
- (5) temporary lighting; and
- (6) temporary security fencing and gating.

Works No. 12

Within the area described on the works plans as Works No.12—

Works to improve the western most arm of the A1085 roundabout the general arrangement of which is shown on the highway works plan including:

- (1) widening the carriageway;
- (2) construction of a new splitter island; and
- (3) reconstruction and resurfacing works.

Works numbers 1 – 12 to be carried out in accordance with the parameters set out in the parameters table.

And in connection with Works 1 – 12 described above such development within the Order limits but excluding the lagoon as may be necessary or expedient for the purposes of or in connection with the construction or use of the authorised development provided that such works do not give rise to any significant environmental effects not assessed in the environmental statement.

SCHEDULE 2

Article 3

REQUIREMENTS

Time limits

1. The authorised development must be begun within 7 years of the date on which this Order comes into force.

Stages of the development and Design approval

2. No part of the phase 1 works is to commence until a written scheme setting out all the component parts of phase 1 has been submitted to and approved by the local planning authority. The written scheme will include details of the following unless they have been approved by the MMO pursuant to the provisions of Schedule 5 (deemed licence under the Marine and Coastal Access Act 2009):

- (a) Layout;
- (b) details of quay structure and related infrastructure;
- (c) external appearance and scale of all buildings and structures;
- (d) parking and storage areas;
- (e) surface and foul drainage;
- (f) site levels;
- (g) permanent fencing and other means of enclosure; and
- (h) lighting.

The phase 1 works will be carried out in accordance with the approved detail.

3. No part of the phase 2 works is to commence until a written scheme setting out all the component parts of phase 2 has been submitted to and approved by the local planning authority. The written scheme will include details of the following unless they have been approved under the provisions of Schedule 5 (deemed licence under the Marine and Coastal Access Act 2009):

- (a) layout;
- (b) external appearance and scale of all buildings and structures;
- (c) parking and storage areas;
- (d) surface and foul drainage;
- (e) site levels;
- (f) permanent fencing and other means of enclosure; and
- (g) lighting.

The phase 2 works will be carried out in accordance with the approved details.

4. The authorised development must be carried out in accordance with the drawings listed below, unless otherwise approved by the local planning authority in accordance with requirement 2 or the MMO pursuant to provisions of Schedule 5 (deemed licence under the Marine and Coastal Access Act 2009) and the altered development falls within the Order limits and has no significant environmental effects beyond those assessed in the environmental statement—

- (a) the works plans (Documents 2.2 A-F);

- (b) the parameters table (Document 6.9); and
- (c) the vertical deviation plans (Documents 3.11A and 3.11B).

Highway access

5. No phase of the authorised development is to commence until the highway works shown on the highway works plan have been carried out to the satisfaction of the local highway authority.

Construction Environmental Management Plan

6.—(1) No phase of the authorised development is to commence, including any preparatory earthworks or site levelling but excluding archaeological soil movement and ecological mitigation works, until a Construction Environmental Management Plan “(CEMP)” for that phase of development, drafted in accordance with the principles set out in the Construction Management Framework Plan contained in Appendix 6.4 of the environmental statement, has been submitted to and approved in writing by the local planning authority. The plan will include:

- (a) A stakeholder communications plan;
- (b) details of the methods to control noise arising from construction activities;
- (c) details of the methods to be used to control dust and other emissions from the site including a Dust Management Plan;
- (d) details of all temporary fencing, temporary buildings, compound areas and parking areas including arrangements for their removal following completion of construction;
- (e) details of areas to be used for the storage of plant and construction materials and waste;
- (f) details of the facilities to be provided for the storage of fuel, oil and other chemicals, including measures to prevent pollution;
- (g) details of any temporary lighting arrangements;
- (h) measures to ensure that construction vehicles do not deposit mud on the public highway;
- (i) details of mitigation measures to protect biodiversity interests within the site and adjacent to it during the construction phases;
- (j) advisory signage at public access points advising of possible hazards including the potential for sudden noise; and
- (k) asbestos management strategy (if needed).

(2) The CEMP may be subject to alteration by approval in writing of the local planning authority. All construction works must be carried out in accordance with the CEMP as approved from time to time unless otherwise agreed in writing by the local planning authority.

Construction Traffic Management Plan

7.—(1) None of the authorised development is to commence (excluding archaeological soil movement and ecological mitigation or enhancement works) until a Construction Traffic Management Plan (CTMP) drafted in connection with the principles set out in Appendix 12.3 of the environmental statement has been submitted to and approved in writing by the local planning authority. The provisions of the approved CTMP must be observed at all times during the construction of the authorised development.

Flood warning and evacuation plan

8.—(1) No building comprising part of the authorised development is to be occupied until a flood warning and evacuation plan, which must include details of expected means of evacuation or safe refuge during a tidal flood event with safe refuge areas has been submitted to and approved by the local planning authority.

(2) Unless otherwise agreed with the local planning authority, the finished floor level of all buildings must be set a minimum of [300 millimetres] above the level of the external storage areas and the buildings must incorporate flood resistant and resilient design with their construction.

Ecology

9.—(1) No phase of the authorised development is to commence until a written ecological management plan for any ecological mitigation or enhancement measures included in the environmental statement for that phase (but not including the lagoon enhancement works which are licensed under the deemed marine licence in Schedule 5) has been submitted to and approved in writing by Natural England. The management plans may be subject to alteration by prior approval in writing of Natural England. In the case of any habitat creation works below mean high water springs the relevant part of the ecological management plan must also be approved by the MMO.

(2) The ecological management plan must be carried out as approved from time to time in writing by Natural England.

(3) Prior to the decommissioning phase of the authorised works, terrestrial ecological surveys are to be undertaken to verify whether any protected species could be impacted by the decommissioning phase, and to identify the requirement for mitigation to be implemented in order to avoid any impacts. The scope of terrestrial ecological surveys will be agreed with Natural England and the local planning authority prior to any ecological surveys being undertaken and the scope of mitigation agreed following the survey. The agreed mitigation shall then be carried out in accordance with an agreed timetable.

Archaeology

10.—(1) No part of the authorised development comprising ground intrusive works is to take place in the vicinity of the ‘Deserted settlement – West Coatham’ until a scheme for the monitoring of those works and the recording of any surviving features has been approved by the local planning authority and the authorised development must be carried out in accordance with the approved scheme.

(2) A Level 1 Building Recording Survey (or equivalent) of the ‘Seventh Buoy Light/Dolphin Mooring Bollard’ must be carried out by a suitably qualified archaeologist and submitted to the local planning authority prior to that structure being demolished and removed.

(3) To agree an archaeological finds protocol with the local planning authority prior to the commencement of the authorised development and to comply with that protocol at all times during construction of the authorised development.

Decommissioning

11. Prior to the decommissioning phase of the authorised works the undertaker will submit a decommissioning plan to the local planning authority for approval. The provisions of the approved plan must be followed during the decommissioning phase.

SCHEDULE 3

Article 24

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND RESTRICTIVE COVENANTS

Compensation enactments

1. The enactment for the time being in force with respect of compensation for the compulsory purchase of land shall apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973^(aa) shall have effect subject to the modifications set out in sub-paragraph (2) and (3).

(2) In Section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there shall be substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

(3) In section 58(1) (determination of material detriment where part of house etc, proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there shall be substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there shall be substituted the words “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there shall be substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there shall be substituted the words “right or restrictive covenant is”.

Application of the 1965 Act

3.—(1) The 1965 Act shall have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (accordingly to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For Section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act”.

5. For section 8 of the 1965 Act (provisions as to divided land) there shall be substituted the following section—

“8. —(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

^(aa) 1973 c.26.

- (a) a question of disputed compensation in respect of the purpose of a right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
 - (ii) where that land consist of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs, the York Potash Harbour Facilities Order 201X (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) shall apply with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 4

Article 30

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Area</i>	(2) <i>Plot number shown on land plans</i>	(3) <i>Purpose for which temporary possession may be taken</i>	(4) <i>Relevant part of the authorised development</i>
Borough of Redcar & Cleveland	52, 53, 54a	Highway works	Works No.12
Borough of Redcar & Cleveland	59a	Temporary contractor's compound	Works No.11

SCHEDULE 5

Article 31

DEEMED LICENCE UNDER THE MARINE AND COASTAL ACCESS ACT 2009

PART 1

INTRODUCTORY

Addresses

I.—(1) Unless otherwise advised in writing by the MMO, the address for postal correspondence with the MMO for the purposes of this Schedule is the Marine Management Organisation, Marine Licensing Team, Lancaster House, Newcastle Business Park, Newcastle upon Tyne, NE4 7YH and where contact to the MMO District Office is required, the following contact details should be used: Neville House, Central Riverside, Bell Street, North Shields, NE30 1LJ. Tel: 0191 257 4520 email:northshields@marinemanagement.org.uk.

(2) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this Schedule is infrastructure@marinemanagement.org.uk.

Undertaker

(3) Where in this Schedule reference is made to the undertaker it includes any agent or contractor or acting on the undertaker's behalf.

PART 2

LICENSED ACTIVITIES

2. For the purpose of constructing and maintaining the authorised development the licence holder may carry out the activities set out in this Part as if those activities were licensed under the 2009 Act.

Construction of the quay

3. The undertaker is permitted to construct the quay (Work No.2) within the quay limits according to the following specification:-

- (a) the quay length will be no more than 486m;
- (b) the quay width will be no more than 87m; and
- (c) the deck level of the structure will be no more than +5.6m Ordnance Datum.

Open quay structure

4. The undertaker is permitted to construct the open quay structure according to the following specification:-

- (a) suspended deck structures comprised of a reinforced concrete deck supported by approximately 200 driven steel tubular piles in phase 1, with an additional 200 piles required for phase 2, in the order of 0.9m diameter;
- (b) the area of the deck structure (quay) is to be no more than 28m wide by 280m long in phase 1, increasing up to a total of 486m long in phase 2;
- (c) the quayside will consist of engineering fill to create a trafficable surface adjacent to the quay, for the full length of the quay. The width of the quayside will be 43m – 53m;
- (d) two access bridges would be constructed during phase 1, allowing one to be used for the construction of phase 2 whilst maintaining the other for operational access;
- (e) installation of a revetment on the re-graded slope, either to be placed on the re-graded slope prior to installation of piles, or placed following installation of the piles; and
- (f) replacement of the existing pipe through the embankment between the Tees estuary and the lagoon and construction of an additional flow control structure .

Solid quay structure

5. The undertaker is permitted to construct the solid quay structure according to the following specification:-

- (a) phase 1:
 - (i) the combi-pile wall would consist of 120 king piles (of approximately 2m diameter) with intermediate sheet piles;
 - (ii) the anchor wall would consist of a length of approximately 210m of sheet piles;
 - (iii) 40, 660mm diameter piles would be required for the cope beam to support the landside ship loader rails, installed between the tie rods that connect the king piles to the anchor wall.
- (b) phase 2
 - (i) the combi-pile wall would consist of an additional 90 king piles with intermediate sheet piles;
 - (ii) the anchor wall would consist of an additional plan length of approximately 200m of sheet piles;
 - (iii) a further 35, 660mm diameter piles would be required for the cope beam to support the landside ship loader rails;
- (c) the quayside will consist of engineering fill to create a trafficable surface adjacent to the quay, for the full length of the quay. The width of the quayside will be 65m – 87m;

- (d) the footprint is to be no more than 87m wide by 280m long in Phase 1, increasing up to a total of 486m long in phase 2. Access to the quay would be directly from the reclaimed area behind the quay wall; and
- (e) replacement of the existing pipe through the embankment between the Tees estuary and the lagoon and construction of an additional flow control structure.

Capital dredging and disposal

6. —(1) The undertaker is permitted to carry out capital dredging at the following locations—
- (a) the current approach channel to a depth of 14.1m below Chart Datum (-16.95m Ordnance Datum); and
 - (b) the berth pocket to a depth of -16m below Chart Datum (-18.85m Ordnance Datum).
- (2) The materials must be dredged in the approximate quantities according to the following table—

Dredged material type	Open quay (m³)	Solid quay (m³)
Silts	181,000	66,000
Sands and Gravels	326,000	196,000
Clays	230,000	194,000
Mercia Mudstone	385,000	358,000
TOTAL	1,122,000	814,000

- (3) For phases 1 and 2, the dredging of the silts will be undertaken using enclosed grabs.
- (4) For phase 1 the dredging of the sands and gravels will be undertaken using a Trailing Suction Hopper Dredger (TSHD).
- (5) For phases 1 and 2 the dredging of the clay and Mercia mudstone (marl) will be undertaken using a backhoe dredger, TSHD or Cutter Suction Dredger (CSD). For phase 2, dredging of sands and gravel would also be by either a backhoe dredger, TSHD or CSD.
- (6) The following maximum quantities of dredged material would be disposed at Tees Bay C (TY 150) offshore dredged material disposal sites:
- (i) 615,000m³ of clay and mudstone; and
 - (ii) 326,000m³ of sand and gravel

unless otherwise agreed with the MMO.

Lagoon habitat enhancement

7. —(1) The lagoon enhancement works shall not commence until a written ecological management plan has been submitted to and approved by the MMO.
- (2) The ecological management plan must include:
- (a) details of the enhancement of habitat in the lagoon for water birds and a construction method statement regulating the construction of those works; and
 - (b) a timetable for the implementation of those works;
- (3) The ecological management plan must accord with the mitigation and management strategy.

PART 3

ENFORCEMENT

8. Any breach of this Schedule does not constitute a breach of this Order but is subject to the enforcement regime in Chapter 3 of Part 4 of the 2009 Act as if this Schedule were a licence granted under that Act.

PART 4
CONDITIONS
General conditions

9.—(1) The conditions set out at paragraphs 10 to 50 are licence conditions attached to the deemed marine licence granted by article 31 (deemed marine licence).

(2) For such of the licensed activities that involve the construction, alteration or improvement of works in or over the sea or on or under the sea bed, the conditions apply to any person who for the time being owns, occupies or enjoys any use of the licensed activity.

(3) This licence is for 10 years from the date of coming into force of this Order whereby—

- (a) the minimum construction period for phase 1 and phase 2 works is 17 months each for both forms of quay structure; and
- (b) phase 2 works are to commence within 6 years of completion of phase 1.

10.The MMO must be notified by the undertaker at least 10 working days before the commencement of each phase of the licensed activity of its acceptance of the provisions of this Schedule and that the undertaker and any agents or contractors employed by it to carry out the licensed activities have knowledge of the provisions of this Schedule.

11.The undertaker must ensure that the MMO District Marine Office is notified of the timetable of works and operations at least 10 days prior to the commencement of each phase of the licensed activity.

12.The MMO must be notified by the undertaker in writing of any agents, contractors or sub-contractors that will be carrying out any licensed activity on behalf of the undertaker at least 4 weeks before the commencement of each phase of the licensed activity.

13.The undertaker must ensure that a copy of this Schedule and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or subcontractors that will be carrying out any licensed activity on behalf of the undertaker.

14.The undertaker must ensure that the names of vessels utilised in connection with a licensed activity are provided to the MMO and agreed in writing at least 4 weeks prior to the commencement of the licensed activities such notification setting out—

- (a) the vessel type;
- (b) the vessel International Maritime Organization (IMO) number; and
- (c) the vessel owner or operating company.

15.The undertaker must ensure that a copy of this Schedule and any subsequent revisions or amendments has been provided to, read and understood by the master of any vessel being used to undertake any licensed activity, and that a copy of this Schedule is held on board any such vessel.

16.The undertaker must ensure that a Notice to Mariners is issued at least 10 days prior to the licensed activity commencing warning of the start date for the construction of the licensed activity and updated as appropriate.

Project wide conditions

17.Prior to any works commencing below the level of mean high water springs, the undertaker must submit detailed method statements to the MMO for approval for each stage of the licensed activities at least 4 weeks prior to the commencement of such licensed activity.

18.No part of the authorised development is to be commenced until an active habitat enhancement scheme (i.e. with the use of the chosen alternative use of dredged material proposal(s)) has been submitted to and agreed in writing by the MMO, following consultation with the harbour master, Environment Agency and Natural England.

19.—(1) The undertaker must only work and access the licensed area within a defined and marked out area so as to limit personnel and plant access to the site.

(2) Co-ordinates (in WGS84) and plan diagrams of the licensed area and access routes must be submitted to the MMO at least 4 weeks prior to the commencement of the licensed activity.

(3) The written approval of the co-ordinates and plan diagrams by the MMO is required prior to the licensed activity commencing.

20.All construction phase activities must be carried out in accordance with the following:

- (a) Best practice guidance including the Environment Agency's Pollution Prevention Guidance (PPG) notes and guidance from the Construction Industry Research and Information Association (CIRIA).
- (b) Adherence to Construction Design and Management (CDM) Regulations 2007 where applicable.
- (c) Adherence to the Construction and Environmental Management Plan (CEMP) and an Incident / Emergency Response Plan.
- (d) All licensed activities to be carried out by appropriately trained personnel.
- (e) Appropriate PPE and working practices to be adopted by construction workers, including subcontractors, and health and safety measures would be undertaken to mitigate any short term risk during construction.

21. The undertaker must ensure that any coatings and treatments used are approved by the Health and Safety Executive as suitable for use in the marine environment and are used in accordance with Environment Agency Pollution Prevention Control Guidelines.

22. The undertaker must ensure that all materials used in construction of any part of the licensed activities are suitable and approved for use within the marine environment.

23. The undertaker must ensure that during the licensed activity all wastes are stored in designated areas that are isolated from surface water drains, open water and bunded if necessary to contain any spillage.

24. The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement licensed activities are discharged into the marine environment.

25. Concrete and cement mixing and washing areas should be contained and sited at least 10 metres from any watercourse or surface water drain to minimise the risk of run off entering a watercourse.

26. The undertaker must install bunding and storage facilities to contain and prevent the release into the marine environment of fuel, oils and chemicals associated with plant, refuelling and construction equipment, ensuring that secondary containment is used with a capacity of not less than 110% of any container's storage capacity.

27. The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO Marine Pollution Response Team: 0870 785 1050 (office hours), 07770 977 825 (outside office hours) and dispersants@marinemanagement.org.uk or such replacement numbers or email address notified to the licence holder by the MMO in writing.

28. The undertaker must ensure that the maintenance of plant, including regular inspections, is to be carried out routinely and in accordance with the manufacturers' guidance.

29. A spill kit (including booms for potential leaks directly into the marine environment) should be kept on site at all times during the construction phase and any major spills or leakages controlled and reported to the Environment Agency and harbour master.

30. The undertaker must ensure that any equipment, temporary structures, waste and debris associated with the works are removed within 6 weeks of construction of the licensed activities.

Piling conditions

31.The undertaker must ensure adherence to JNCC’s guidelines ‘Statutory nature conservation agency protocol for minimising the risk of injury to marine mammals from piling noise’ (JNCC, 2010) during pile driving. This would include checking for marine mammals during a pre-piling search prior to piling operations commencing, the establishment of a mitigation zone (i.e. an area within which a marine mammal could be exposed to sound levels which could cause damage) and the use of soft start techniques to allow any marine mammals time to leave the area of greatest disturbance.

32.The undertaker must ensure the implementation of a minimum of eight hours continuous break in every 24 hour period where no impact piling is carried out.

33. The undertaker must ensure that acoustic barriers are to be positioned:

- (a) along the embankment between the lagoon and the construction works for the quay;
- (b) on either side of the route of the conveyor should it be constructed in the southern corridor (i.e. between the lagoon and Dabholm Gut and the construction works for the conveyor); and,
- (c) between the lagoon and the construction works for the conveyor should the conveyor be constructed in the northern corridor.

34.The undertaker must ensure that no piling is to be undertaken for three hours following low water, nor during May.

Capital dredging and disposal conditions

35.The undertaker must agree a capital dredge and disposal strategy with the MMO at least 4 weeks before the commencement of any licensed activities.

36.The undertaker must ensure that as a result of the capital dredging activities referred to in paragraph 6:

no more than 941,000m³ is disposed to site Tees Bay C (TY 150)).

37.—(1) The undertaker must ensure that certified returns of quantities of dredged material deposited under this licence are submitted to the MMO by 31 January (for the months August to January inclusive) and 31 July (for the months February to July inclusive) each year.

(2) The returns must specify the full licence number and amounts deposited (in tonnes) each calendar month at each authorised deposit area.

(3) Where no deposit is made in a given period a NIL return is required.

(4) The disposal method used must also be submitted with the returns.

38.The undertaker must ensure that any man-made material must be separated from the dredged material and disposed of to land.

39.The undertaker must ensure that should disposal of material be found to be the cause of any detrimental effects to the disposal site then disposal must cease with immediate effect.

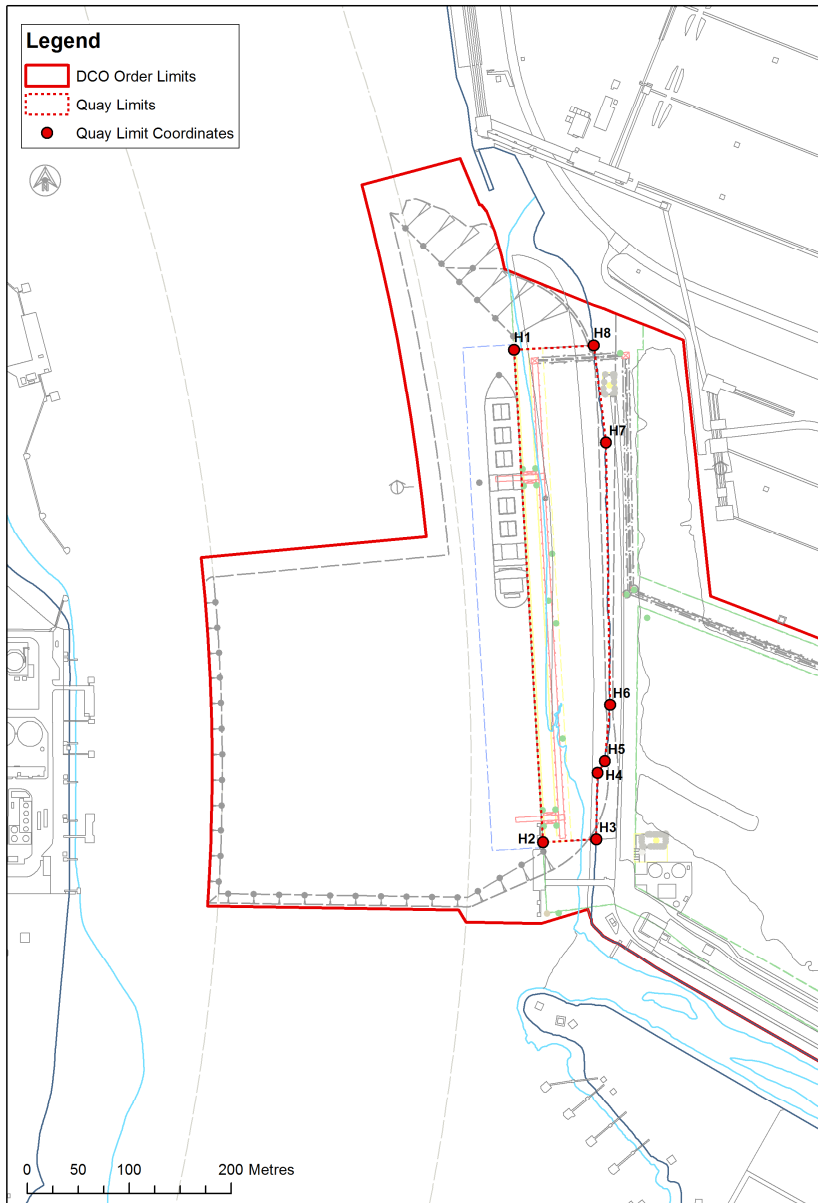
SCHEDULE 6

Article 2

QUAY LIMITS

Name	British National Grid		WGS84 DDM	
	easting	northing	Longitude	Latitude
H1	454860.2626	525337.9453	-1 09.11543	54 37.21298

H2	454888.5753	524853.5247	-1 09.09457	54 36.95162
H3	454940.7694	524856.5634	-1 09.04605	54 36.95292
H4	454942.22	524922.23	-1 09.04395	54 36.98832
H5	454949.27	524933.64	-1 09.03728	54 36.99442
H6	454954.44	524988.22	-1 09.03187	54 37.02382
H7	454950.46	525246.97	-1 09.03265	54 37.16335
H8	454938.4032	525342.4282	-1 09.04278	54 37.21488



SCHEDULE 7

Article 34

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NETWORK RAIL

1. The following provisions of this Schedule shall have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Schedule—

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006 **(bb)**) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail Infrastructure Limited and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3.—(1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail shall—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works pursuant to this Order.

(bb) 2006 c - 46

4.—(1) The undertaker shall not exercise the powers conferred by articles 15 (protective work to buildings), 16 (authority to survey and investigate the land), 20 (provision against danger to navigation), 21 (permanent lights on tidal works), 22 (power to charge), 24 (compulsory acquisition of rights), 25 (power to override easements and other rights), 26 (compulsory acquisition of land – incorporation of the mineral code), 30, (temporary use of land for carrying out the authorised development) or section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker shall not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker shall not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The undertaker shall before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work shall not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated his approval or disapproval, he shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker for an agreed cost.

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works shall be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker shall, notwithstanding any such approval, make good such damage and shall pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule shall impose any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker shall-

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Schedule during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the undertaker shall pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail shall assume construction of that part of the specified work and the undertaker shall, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10.The undertaker shall repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph-

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised works (including the operation of tramcars using the tramway comprised in the works) where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised works) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signaling or other communications.

(2) This paragraph shall apply to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised works giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker shall in the design and construction of the authorised works take all measures necessary to prevent EMI and shall establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)-

- (a) the undertaker shall consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter shall continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail shall make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail shall allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail shall not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the

method of their execution shall be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) shall have effect subject to the sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations on the authorised tramway comprised in the authorised works and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the undertaker shall immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred –

- (a) the undertaker shall afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail shall afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail shall make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6) –

- (a) Network Rail shall allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) shall apply to the costs and expenses reasonably incurred or losses suffered by network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 40 (Arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The undertaker shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it shall have first consulted Network Rail and it shall comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this

Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

15.—(1) The undertaker shall pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker shall indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail shall promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

16. Network Rail shall, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works plans and land plans and described in the book of reference;

- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part I of the Railways Act 1993.

20. The undertaker shall give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 8 (consent to transfer benefit of Order) of this Order and any such notice shall be given no later than 28 days before any such application is made and shall describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

21. The undertaker shall no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 38 (Certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory

SCHEDULE 8

Article 34

PROTECTIVE PROVISIONS

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY

Application

1. For the protection of National Grid referred to in this Schedule the following provisions will, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

Interpretation

2. In this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

- (a) National Grid Electricity Transmission Plc are named as an insured party under the Policy;
- (b) a cross liabilities clause applies; and
- (c) a waiver of subrogation in favour of relevant National Grid entities; and
- (d) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10M (Ten Million Pounds) per event;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the undertaker to enable the undertaker to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any

electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid;

together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of the undertaker or any of its entities for

the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Schedule includes the use and maintenance of the authorised works;

“functions” includes powers and duties;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the undertaker including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission Plc;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

3. Except for [7 (*retained apparatus: protection*), 8 (*expenses*) and 9 (*indemnity*)] of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the undertaker, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the promoter and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of land

4. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not acquire any land interest or apparatus or override any easement and/or other interest of National Grid otherwise than by agreement.

Removal of apparatus

5.—(1) If, in the exercise of the agreement reached in accordance with paragraph [] or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the undertaker in question in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the undertaker 56 days’ advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between the undertaker and National Grid.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the promoter to be removed under the provisions of this Schedule.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to or secures for National Grid; facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between National Grid and the undertaker and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under paragraph 4[](1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 14 (*Arbitration*) of this Schedule and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

7.—(1) Not less than 56 days before the commencement of any authorised works that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 45(2) or otherwise, the undertaker must submit to the undertaker a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations if relevant.

(2) In relation to works which will or may be situated on, over, under or within (i) 8.1 metres measured in any direction of any apparatus, or (ii) involve embankment works within 10 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing; -

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and on-going maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by the undertaker's engineers.
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraphs (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8);
- (b) must not be unreasonably withheld; and
- (c) is subject to the approval process in paragraph 15 of this Schedule.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between National Grid and the undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and National Grid shall give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3);
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 40 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker .

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the promoter under this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid..

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) except where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised works and/or any other works authorised by this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Schedule including this paragraph 9(3).

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must be made without first consulting the undertaker and considering their representations.

Ground subsidence monitoring scheme in respect of National Grid’s apparatus

10.—(1) Any authorised works within 100 metres of any apparatus or alternative apparatus capable of interfering with or risking damage to National Grid’s apparatus must not commence until a scheme for monitoring ground subsidence (“referred to in this paragraph as the monitoring

scheme”) has been submitted to and approved by National Grid, such approval not to be unreasonably withheld or delayed.(cc)

- (2) The ground subsidence monitoring scheme described in sub-paragraph (1) must set out—
- (a) the apparatus which is to be subject to such monitoring;
 - (b) the extent of land to be monitored;
 - (c) the manner in which ground levels are to be monitored;
 - (d) the timescales of any monitoring activities; and
 - (e) the extent of ground subsidence which, if exceeded, will require the promoter to submit for National Grid’s approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (3).

(3) The monitoring scheme required by sub paragraphs (1) and (2) must be submitted within 56 days prior to the commencement of any works authorised by this Order or comprised within the authorised development to which sub-paragraph (1) applies. Any requirements of National Grid will be notified within 28 days of receipt of the monitoring scheme. Thereafter the monitoring scheme must be implemented as approved, unless otherwise agreed in writing with National Grid.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a “mitigation scheme”) must be submitted to National Grid for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with National Grid save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of their apparatus and can recover any such costs in line with paragraph 10.

(5) If the monitoring scheme or mitigation scheme would conflict with any aspect of any ground subsidence monitoring scheme or ground subsidence mitigation scheme approved by the local planning authority pursuant to Schedule 2 (*requirements*) the undertaker may submit a revised monitoring scheme or mitigation scheme to National Grid for its approval, such approval not to be unreasonably withheld or delayed; and the revised monitoring scheme or mitigation scheme must be implemented as approved, unless otherwise agreed in writing with National Grid.

Enactments and agreements

11. Save to the extent provided for to the contrary elsewhere in this Schedule or by agreement in writing between the undertaker and National Grid, nothing in this Part 3 of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to National Grid on the date on which this Order is made.

Co-operation

12.—(1) Where in consequence of the proposed construction of any of the authorised development, National Grid or the undertaker requires the removal of apparatus under paragraph 7(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 7, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and National Grid shall use its reasonable endeavours to co-operate with the promoter for that purpose.

(2) For the avoidance of doubt whenever National Grid’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

13. If in consequence of the agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

14. Save for differences or disputes arising under paragraph 7(2), 7(4), 8(1), 9 and 11(5) any difference or dispute arising between National Grid and the undertaker under this Schedule must, unless otherwise agreed in writing between National Grid and the undertaker, be determined by arbitration in accordance with article 40 (*arbitration*).

Approval process

15. —(1) Within 42 days (or such longer period as the parties may agree) following receipt of any plans submitted to National Grid pursuant to and in accordance with this Schedule National Grid must respond to the undertaker either:

- (a) confirming that it has no objection to the plans; or
- (b) specifying its objections to the plans and (at National Grid's discretion) suggesting any changes which in its opinion are needed in order to remove the objections and/or specifying further information which it requires in order to assess the plans.

(2) If National Grid fails to respond to the undertaker within 42 days (or such longer period as the parties may have agreed or agree) and provided that there has been compliance with sub paragraph (4) below then National Grid will be deemed to have confirmed that it has no objection to the said plan(s).

(3) Any dispute between the parties in relation to an objection by National Grid must be resolved in accordance with paragraph 14 of this Schedule.

(4) When submitting the plans to National Grid for approval under this Part 3 of this Schedule the undertaker must send the plans to National Grid (in hard copy only) by recorded post to National Grid Plant Protection, Brick Kiln Street, Hinckley, Leicestershire LE10 0NA and the registered office of National Grid (or such other address as National Grid may notify the undertaker in writing from time to time) and clearly bearing the name of the project, contact details for responses and citing the relevant periods for response pursuant to this Part 3 of this Schedule. In the event that the promoter has not received a response from the undertaker in accordance with the requirements of this Part of this Schedule within 21 days of submission of the plan(s), the undertaker must issue a written reminder to National Grid by recorded post to both of the aforementioned addresses and must otherwise use reasonable endeavours to make contact with National Grid to solicit a response to the draft plan(s).

Approval of Requirements

16. The undertaker must:

- (a) not without the prior approval of National Grid (such approval not to be unreasonably withheld or delayed) submit nor permit the submission of any plans, details, schemes, reports, arrangements, measures or programmes to the local planning authority pursuant to any requirement in Schedule 2 (requirements) that relate in whole or in part to any matter that affects or may affect National Grid's apparatus including any alternative apparatus and/or in respect of any protective works required in connection with the undertaker's apparatus under the terms of these protective provisions;

- (b) provide National Grid with copies of such plans, details, schemes, reports, arrangements, measures or programmes prior to submission to the local planning authority and take into account and incorporate any reasonable comments of National Grid; and
- (c) keep the undertaker informed of the details of all material discussions and negotiations with the local planning authority relating to such plans, details, schemes, reports, arrangements, measures or programmes and give National Grid reasonable prior written notice of any meetings with the local planning authority relating to such matters and not object to National Grid and its consultants attending those meetings.

SCHEDULE 9

Article 34

PROTECTIVE PROVISIONS FOR THE PROTECTION OF PIPELINE CORRIDOR

This Schedule shall apply to all pipes within the pipeline corridor

1.The following provisions of this Schedule shall have effect, unless otherwise agreed in writing between the undertaker and the owner of the relevant pipe in the pipeline corridor.

2.In this Schedule—

“the engineer” means an engineer appointed by the owner of the relevant pipe in the pipeline corridor for the purposes of this Order;

“pipeline corridor” means the corridor along which the conveyor is to be erected; and

“pipe(s)” means the pipe or pipes located in the pipeline corridor and all ancillary apparatus including such works and apparatus properly appurtenant to the pipes as are specified by section 65(2) of the Pipelines Act 1962(**dd**)

3.Before commencing any part of the authorised development which would have an effect on the operation and maintenance of the pipes and access to them, the undertaker must submit to the owner of the relevant pipe plans and sections of the proposed works and such further particulars as the owner of the relevant pipe may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

4.No works comprising any part of the authorised development which would have an effect in full or in part on the operation, maintenance, repair, replacement and/or abandonment of the pipelines and access to them are to be commenced until plans and sections in respect of those works submitted pursuant to paragraph 3 of this Schedule have been authorised by the owner of the relevant pipe.

5.Any authorisation by the owner of the relevant pipe required under paragraph 4 of this Part must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as the owner of the relevant pipe may require to be made for—

- (a) the continuing safety and operation or viability of the pipes; and
- (b) the requirement for the owner of the relevant pipe to have uninterrupted and unimpeded access to the pipes at all times.

6.In the event that no response has been received to the submission of plans and sections pursuant to paragraph 3 within fourteen days of the expiry of the 28 day period referred to in paragraph 3 above such approval shall be deemed to have been given.

(dd) c.58

7.The undertaker will provide to the owner of the relevant pipe a minimum of 28 days notice prior to work commencing in the vicinity of the pipes in order that the engineer can be made available to advise on the necessary safety precautions when required.

8.Any excavation work within one metre of the known location of the pipes must be hand dug. The pipes and associated apparatus will be located by hand digging prior to the use of mechanical excavation.

9.Where temporary crossings for construction traffic are required, other than where the pipes are under a carriageway of adequate standard of construction, then the crossing points shall be suitably reinforced with sleepers and/or road plates or a specially constructed reinforced concrete raft or by installing a temporary bridge over the pipe as necessary.

10.During construction an area, at least 1.5 metres either side of the pipes, must be fenced off using some form of visual indication such as netlon fencing or “heras” type fence panels. Suitable signage warning of the danger or live pipelines should be erected at a minimum distance of every 50 metres.

11.No explosives should be used within the vicinity of the pipes without prior consultation with the owner of the relevant pipe in the pipeline corridor.

12.Piling should not be carried out within 1.5 metres of the pipes without prior consultation with the owner of the relevant pipe in the pipeline corridor. All piling are to be undertaken by non-percussive methods.

13.Where excavation of trenches adjacent to the pipes affects their support, the pipes must be supported in a manner approved by the owner of the relevant pipe in the pipeline corridor. All excavations in the direct vicinity of above ground structures such as pipe supports are to have the zone of influence of the excavation calculated.

14.Where a trench is excavated across or parallel to the line of the pipes, the backfill should be adequately compacted to prevent any settlement which could subsequently cause damage to the pipelines. In certain circumstances it may be necessary to provide permanent support to a pipe which has been exposed over the length of the excavation before backfilling and reinstatement is carried out. Compaction testing should be carried out once back filling is completed.

15.A minimum clearance of one metre should be allowed between any plant being installed and the existing pipeline, to facilitate repair operations, whether adjacent plant be parallel to or crossing the pipeline. The owner of the relevant pipe in the pipeline corridor will advise of the actual distance required dependent upon plant to be installed. No manholes or chambers are to be built over or round the pipelines.

16.Where a pipe is coated with special wrapping and any damage to the wrapping occurs, the owner of the relevant pipe must be notified to enable repairs to be carried out. The repairs must be subject to testing and if the asset owner requests they must be shown the results of such testing prior to backfilling.

17.If the damage is of a minor nature, and can be easily repaired by the owner of the relevant pipe, no charge will be made for the repair, provided that the damaged area has not been backfilled and access is readily obtainable.

18.The undertaker shall be responsible for the cost of any necessary remedial work in the case of any damage to the pipes themselves, causing leakage, or weakening of the mechanical strength of the pipes.

19.If any leakage is caused by a contractor or sub-contractor all work in the vicinity shall cease and the asset owner should be notified immediately. Should an escape of gas be evident, the following action should be taken at once:-

- (a) Remove all personnel from the immediate vicinity of the leak.
- (b) Inform the owner of the relevant pipe.

- (c) Prevent any approach by the public, prohibit smoking, extinguish all naked flames and other sources of ignition for at least 50 metres from the leakage.
- (d) Assist police or fire services as may be requested.

SCHEDULE 10

Article 34

PROTECTIVE PROVISIONS

FOR THE PROTECTION OF ASSETS BRIDGED/OVERSAILED

1. The following provisions of this Schedule shall have effect, unless otherwise agreed in writing between the undertaker and the protected asset owner/s.

2. In this Schedule—

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the protected asset;

"protected asset" means the assets identified in the annex to this Schedule;

"protected asset owner" means the owner/s of a protected asset;

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, a protected asset.

3. Where under this Schedule a protected asset owner is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that the protected asset owner complies with any obligations under statute.

4.—(1) The undertaker shall not in the exercise of the powers conferred by this Order prevent access via any existing pedestrian or vehicular access to any protected asset, unless preventing such access is with the consent of the protected asset owner and is subject to exception in the case of emergency.

(2) The undertaker shall not under the powers of this Order acquire or use or acquire new rights over a protected asset except with the consent of that protected asset owner.

(3) Where the protected asset owner is asked to give its consent pursuant to this paragraph, such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The undertaker shall before commencing construction of any specified work supply to the protected asset owner proper and sufficient plans of that work for the reasonable approval of the protected asset owner and the specified work shall not be commenced except in accordance with such plans as have been approved in writing by the protected asset owner or settled by arbitration.

(2) The approval of the protected asset owner under sub-paragraph (1) shall not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to the protected asset owner, the protected asset owner has not intimated its disapproval of those plans and the grounds of its disapproval the undertaker may serve upon the protected asset owner written notice requiring the protected asset owner to intimate its approval or disapproval within a further period of 28 days beginning with the date upon which the protected asset owner receives written notice from the undertaker. If by the expiry of the further 28 days the protected asset owner has not intimated its approval or disapproval, it shall be deemed to have approved the plans as submitted.

6.—(1) Any specified work shall, when commenced, so far as reasonably practicable be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the protected asset owner;
- (c) in such manner as to avoid damage to the protected asset; and
- (d) so as not to interfere with or obstruct the free, uninterrupted and safe use of any protected asset or any traffic thereon.

(2) If any damage to a protected asset or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker shall, notwithstanding any such approval, make good such damage and shall pay to the protected asset owner all reasonable expenses incurred by the protected asset owner and compensate for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule shall impose any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of the protected asset owner or its servants, contractors or agents or any liability on the protected asset owner with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker shall-

- (a) at all times afford reasonable facilities to the protected asset owner for access to a specified work during its construction; and
- (b) supply the protected asset owner with all such information as it may reasonably require with regard to a specified work or the method of constructing it.

8.—(1) If any permanent or temporary alterations or additions to a protected asset, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of the protected asset or the continued safe operation of the protected asset of the protected asset owner, such alterations and additions may be carried out by the protected asset owner and if the protected asset owner gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the undertaker shall pay to the protected asset owner the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the protected asset owner in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) The protected asset owner shall, in respect of the capitalised sums referred to in this paragraph provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(3) If the cost of maintaining, working or renewing a protected asset is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to the protected asset owner under this paragraph.

9. The undertaker shall repay to the protected asset owner all reasonable fees, costs, charges and expenses reasonably incurred by the protected asset owner

- (a) in respect of the approval by the protected asset owner of plans submitted by the undertaker and the supervision by it of the construction of a specified work;
- (b) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting the protected asset and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

- (c) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the protected asset owner, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution of diversion of services which may be reasonably necessary for the same reason; and

10. If at any time after the completion of a specified work, not being a work vested in a protected asset owner, the protected asset owner gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of a protected asset, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect the protected asset.

11. The undertaker shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any protected asset belonging to a protected asset owner unless it shall have first consulted the protected asset owner and it shall comply with the protected asset owner's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any signal or other light used for controlling, directing or securing the safety of traffic on the protected asset.

12. Any additional expenses which a protected asset owner may reasonably incur in altering, reconstructing or maintaining a protected asset under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to the protected asset owner.

13. The protected asset owner shall, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule.

14. In the assessment of any sums payable to the protected asset owner under this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by the protected asset owner if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

15. The undertaker and the protected asset owner may (at their absolute discretion), enter into, and carry into effect, agreements for the transfer to the undertaker of —

- (a) any protected asset shown on the works plans and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such protected asset; and
- (c) any rights and obligations (whether or not statutory) of the protected asset owner relating to any protected asset or any lands, works or other property referred to in this paragraph.

16. The undertaker shall give written notice to the protected asset owner if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 8 (consent to transfer benefit of Order) of this Order and any such notice shall be given no later than 28 days before any such application is made and shall describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

17. The undertaker shall no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 38 (Certification of plans etc) are certified by the Secretary of State, provide a set of those plans to the protected asset owner in the form of a computer disc with read only memory.

ANNEX

<i>(1)</i> <i>Asset</i>	<i>(2)</i> <i>Asset Owner</i>	<i>(3)</i> <i>Crossing Number/Location</i>
Land subject to lease in favour of M&G Fuels	M & G Solid Fuels LLP	Plot 60 on the land plans
A1085	Redcar and Cleveland Borough Council	MC1 on the conveyer route plans (Documents 3.3A-N)
Hot Metal Rail	Tata Steel UK Limited and Sahaviriya Steel Industries UK Limited	MC3 on the conveyer route plans (Documents 3.3A-N)
SSI Road Bridge	Sahaviriya Steel Industries UK Limited	MC6 on the conveyer route plans (Documents 3.3A-N)
Land owned by Tata Steel UK Limited	Tata Steel UK Limited	Plot 37a on the land plans

SCHEDULE 11

Article 34

PROTECTIVE PROVISIONS
FOR THE PROTECTION OF THE TEES PORT AUTHORITY

Interpretation

1. In this Schedule—

“environmental document” means—

- (a) the environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental statement or other document so prepared by way of clarification or amplification of the environmental statement; and
- (b) any other document containing environmental information provided by the undertaker to the Secretary of State or the Tees Port Authority for the purposes of any tidal works approval under article 17 (tidal works not to be executed without approval of the Secretary of State) or this Schedule;

“the quay” means the quay comprised in the authorised development;

“the river” means the River Tees; and

“tidal areas” means areas on under or over tidal waters and tidal land below the level of high water in the river.

General

2.—(1) The provisions of this Schedule, unless otherwise agreed in writing between the undertaker and the Tees Port Authority, have effect for the protection of the Tees Port Authority.

(2) For the purposes of this Schedule, the definition of “tidal work” is taken to include—

- (a) any projection over the river by booms, cranes and similar plant or machinery, and
- (b) any authorised development which affects the river or any functions of the Tees Port Authority as harbour authority, whether or not that authorised work is within the limits of the jurisdiction of the Tees Port Authority under the Teesport Acts and Orders 1966 to 2008.

Tidal Works: approval of detailed design

3.—(1) Before—

- (a) submitting any plans and sections for any tidal work to the Secretary of State for approval under article 17 (tidal works not to be executed without approval of the Secretary of State);
- (b) agreeing a dredge and disposal strategy with the MMO under paragraph 35 of Schedule 5 (deemed marine licence under the Marine and Coastal Access Act 2009);
- (c) seeking approval from the local planning authority for any alteration of the drawings under paragraph 4 of Schedule 2 (requirements) that affects the area below mean high water mark;
- (d) commencing any operation for the construction of a tidal work where approval of the Secretary of State under article 17 is not required;
- (e) commencing any operation for the maintenance of a tidal work, or
- (f) [any other relevant matters which require approval under the requirements or other provisions of the Order – *to be reviewed when the Order is settled.*]

the undertaker must submit to the Tees Port Authority plans and sections of the tidal work or operation and such further particulars, including programmes and method statements, as the Tees Port Authority may, within 28 days from the day on which plans and sections are submitted under this sub-paragraph, reasonably require and provide Tees Port Authority with a reasonable opportunity to comment on them.

(2) Before submitting for approval, agreement or otherwise as provided by this Order any document specified in columns (1) and (2) of the following Table, the undertaker must submit each such document to Tees Port Authority and provide it with a reasonable opportunity to comment on them.

TABLE

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Provision of Order</i>	<i>(3)</i> <i>Provision requiring consultation with Tees Port Authority</i>
<i>[To be reviewed when the Order is settled]</i>		

(3) When submitting any application for approval or document the Secretary of State the MMO or the local planning authority as the case may be, the undertaker must forward any comments

received from the Tees Port Authority in response to the consultation undertaken with the Tees Port Authority in accordance with paragraphs (1) and (2).

(4) Any tidal work not requiring the Secretary of State's approval under article 17 must not be constructed, and no tidal work is to be maintained, except in accordance with such plans and sections as may be approved in writing by the Tees Port Authority or determined under paragraph [31] unless such tidal work has been the subject of a consent granted by the MMO in which case the approval of the Tees Port Authority will not be required.

(5) Any approval of the Tees Port Authority required under this paragraph must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as the Tees Port Authority may make for the protection of—

- (a) traffic in, or the flow or regime of, the river;
- (b) the use of the river by itself, licenced users under licences granted by PD Teesport under the 1966 Act or other river users.
- (c) the performance of any of its functions connected with environmental protection.

(6) Requirements made under sub-paragraph (5) may include conditions as to—

- (a) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the tidal work; and
- (b) the expiry of the approval if the undertaker does not commence construction of the tidal work approved within a prescribed period.

(7) Subject to sub-paragraphs (8) and (9), any such approval is deemed to have been permitted if it is neither given nor refused within 56 days of the specified day.

(8) Before making a decision on any such approval, the Tees Port Authority must take into account any opinion on plans and sections provided to it by the Environment Agency.

(9) Accordingly, an approval of the Tees Port Authority under this paragraph is not deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (7) has not been given pending the outcome of any consultation on the approval in question that the Tees Port Authority is obliged in the proper exercise of its functions to carry out provided that during the course of such consultation, the Tees Port Authority has acted with all due expedition.

(10) In this paragraph "the specified day" means, in relation to any tidal work—

- (a) the day on which plans of that work are submitted to the Tees Port Authority under sub-paragraph (1); or
- (b) the day on which the undertaker provides the Tees Port Authority with all such particulars of the work as have been reasonably requested by the Tees Port Authority under that sub-paragraph; whichever is later.

(11) Whenever the undertaker provides the Secretary of State with an environmental document it must at the same time send a copy to the Tees Port Authority.

4. If the Secretary of State, the MMO or the relevant planning authority requires the alteration of any plans or document upon which the Tees Port Authority have been consulted by the undertaker, the undertaker must inform the Tees Port Authority.

5. On receipt of any approval or agreement by the Secretary of State, the MMO or the local planning authority (as the case may be) of any of the plans or documents specified in paragraph 3 or any conditions or restrictions imposed by that body, the undertaker shall send a copy to the Tees Port Authority.

Construction of tidal works

6.—(1) The undertaker must give to the harbour master not less than 7 days prior written notice of its intention to enter upon a tidal area for any purpose relating to the construction or maintenance of the authorised development and must provide such details as the harbour master may reasonably require recording how access to the authorised development will be gained and what exclusion areas will be required for the authorised development.

(2) Where emergency or unanticipated access is required for maintenance, repair or safety operations to the authorised development and the undertaker is unable to give 7 days prior written notice to the Tees Port Authority, the undertaker may gain access to the tidal areas on giving such prior notice (if any) to the Authority as is reasonable in the circumstances.

(3) The undertaker shall, not more than 14 days after completion of any tidal work, give written notice and the harbour master of the completion of the works.

7. The undertaker shall at all reasonable times during construction of the authorised development and thereafter upon reasonable notice allow the Tees Port Authority, its employees and agents access and all reasonable facilities for inspection of any tidal work.

8. Any construction of any tidal work approved in accordance with this Order, once commenced, must be carried out by the undertaker without unnecessary delay so that river traffic, the flow or regime of the river and the exercise of the Tees Port Authority's functions do not suffer more interference than is reasonably practicable, and an officer of the Tees Port Authority is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such construction operations.

Discharges, etc.

9.—(1) The undertaker must not without the consent of the Tees Port Authority—

- (a) deposit in or allow to fall or be washed into the river any gravel, soil or other material; or
- (b) discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise.

(2) Any consent of the Tees Port Authority under this paragraph must not be unreasonably withheld but may be given subject to such terms and conditions as the Tees Port Authority may reasonably impose.

(3) Any such approval is deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 56 days of the day on which the request for consent is submitted under sub-paragraph (1).

(4) In its application to the discharge of water into the river, article 14 (discharge of water) has effect subject to the terms of any conditions attached to a consent given under this paragraph.

10. The undertaker must not, in exercise of the powers conferred by article 14 (discharge of water), damage or interfere with the beds or banks of any watercourse forming part of the river unless such damage or interference is approved as a tidal work under this Order or is otherwise approved in writing by the Tees Port Authority.

Obstruction in river

11. If any pile, stump or other obstruction to navigation becomes exposed in the course of constructing any tidal work (other than a pile, stump or other obstruction on the site of a structure comprised in any permanent work), the undertaker, as soon as reasonably practicable after the receipt of notice in writing from the Tees Port Authority requiring such action, must remove it from the river or, if it is not reasonably practicable to remove it—

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

Removal etc. of the Tees Port Authority moorings and buoys

12. If—

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

the undertaker must pay the costs reasonably so incurred by the Tees Port Authority.

Navigational lights, buoys, etc.

13. In addition to any requirement under articles 19 (lights on tidal works etc. during construction) and 21 (permanent lights on tidal works), the undertaker, at or near every tidal work, and any other work of which the undertaker is in possession in exercise of any of the powers conferred by this Order (being in either case a work which is below mean high water level forming part of the river), must exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the Tees Port Authority may from time to time reasonably require.

Removal of temporary works

14. On completion of the construction of any part of the authorised development, the undertaker must as soon as practicable remove—

- (a) any temporary tidal work carried out only for the purposes of that part of the authorised development; and
- (b) any materials, plant and equipment used for such construction, and must make good the site to the reasonable satisfaction of the Tees Port Authority.

Protective action

15.—(1) If any tidal work—

- (a) is constructed otherwise than in accordance with the requirements of this Schedule or with any condition in an approval given pursuant to paragraph 3(4); or
- (b) during construction gives rise to sedimentation, scouring, currents or wave action which is a hazard to safe navigation or is otherwise detrimental to traffic in, or the flow or regime of, the river,

then the Tees Port Authority may by notice in writing require the undertaker at the undertaker's own expense to comply with the remedial requirements specified in the notice.

(2) The requirements that may be specified in a notice given under sub-paragraph (1) are—

- (a) in the case of a tidal work to which sub-paragraph (1)(a) applies, such requirements as may be reasonably required and specified in the notice for the purpose of giving effect to the requirements of—
 - (i) this Schedule; or
 - (ii) the condition that has been breached; or
- (b) in any case within sub-paragraph (1)(b), such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required for safe navigation or by the needs of traffic in, or the flow or regime of, the river.

(3) If the undertaker does not comply with a notice under sub-paragraph (1), or is unable to do so, the Tees Port Authority may in writing require the undertaker to—

- (a) remove, alter or pull down the tidal work, and where the tidal work is removed to restore the site of that work (to such extent as the Tees Port Authority reasonably requires) to its former condition; or

(b) take such other action as the Tees Port Authority may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.

(4) If a tidal work gives rise to environmental impacts over and above those anticipated by any environmental document, the undertaker must take such action as is necessary to prevent or mitigate those environmental impacts and in doing so must consult and seek to agree the necessary measures with the Tees Port Authority.

(5) If the Tees Port Authority becomes aware that any tidal work is causing an environmental impact over and above those anticipated by any environmental document, the Tees Port Authority must notify the undertaker of that environmental impact, the reasons why the Tees Port Authority believes that the environmental impact is being caused by the tidal work and of measures that the Tees Port Authority reasonably believes are necessary to counter or mitigate that environmental impact.

(6) The undertaker must implement the measures that the Tees Port Authority has notified to the undertaker or must implement such other measures as the undertaker believes are necessary to counter the environmental impact identified, giving reasons to the Tees Port Authority as to why it has implemented such other measures.

Abandoned or decayed works

16.—(1) If any tidal work or any other work of which the undertaker is in possession in exercise of any of the powers conferred by this Order (being in either case a work which is below mean high water level) is abandoned or falls into decay, the Tees Port Authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as the Tees Port Authority reasonably requires) to restore the site to its former condition.

(2) If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation in the river, the Tees Port Authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice—

(a) to repair and restore the work or part of it; or

(b) if the undertaker so elects, to remove the tidal work and (to such extent as the Tees Port Authority reasonably requires) to restore the site to its former condition.

(3) If after such reasonable period as may be specified in a notice under this paragraph the undertaker has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, the Tees Port Authority may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker.

Facilities for navigation

17.—(1) The undertaker must not in the exercise of the powers conferred by this Order interfere with any marks, lights or other navigational aids in the river without the agreement of the Tees Port Authority, and must ensure that access to such aids remains available during and following construction of any tidal works.

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

(3) The undertaker must comply with the directions of the harbour master from time to time with regard to the lighting on the tidal works or within the harbour, or the screening of such lighting, so as to ensure safe navigation on the river.

Survey of riverbed

18.—(1) Before the commencement of construction of any tidal work to be constructed following approval under article 17 (tidal works not to be executed without approval of the Secretary of State), the undertaker must provide to the Tees Port Authority all survey information it has available to it relating to that part of the river.

(2) The Tees Port Authority may carry out such surveys of the river as are reasonably required during the construction of any tidal work to ascertain the effect of that tidal work on the river and the Tees Port Authority must make available to the undertaker the results of any such survey in electronic and paper format.

(3) After completion of—

- (a) any tidal work; or
- (b) all the tidal works constructed under this Order,

the Tees Port Authority may, at the undertaker's reasonable expense, carry out a further survey of the parts of the river which were surveyed prior to the construction of that work, or as the case may be a survey of the completed tidal works as so constructed, for the purpose of establishing the condition of the river and the effect that the tidal work is, or as the case may be the tidal works are, having on navigation, the flow and the regime of the river and the exercise of the Tees Port Authority's functions.

(4) The Tees Port Authority must not under this paragraph carry out a survey of any part of the river as respects which the undertaker has provided to the Tees Port Authority survey material which the Tees Port Authority is reasonably satisfied establishes the condition of the river and, in the case of a survey under sub-paragraph (3), the effect of the tidal work or as the case may be the tidal works.

Sedimentation, etc.: remedial action

19.—(1) This paragraph applies if any part of the river becomes subject to sedimentation, scouring, currents or wave action which—

- (a) is wholly or partly caused by a tidal work during the period beginning with the commencement of the construction of that tidal work and ending with the expiration of 10 years after the date on which all the tidal works constructed under this Order are completed; and
- (b) for the safety of navigation or for the protection of works in the river, should in the reasonable opinion of the Tees Port Authority be removed or made good.

(2) The undertaker must either—

- (a) pay to the Tees Port Authority any additional expense to which the Tees Port Authority may reasonably be put in dredging the river to remove the sedimentation or in making good the scouring so far as (in either case) it is attributable to the tidal work; or
- (b) carry out the necessary dredging at its own expense and subject to the prior approval of the Tees Port Authority, such prior approval not to be unreasonably withheld or delayed; and the reasonable expenses payable by the undertaker under this paragraph include any additional expenses accrued or incurred by the Tees Port Authority in carrying out surveys or studies in connection with the implementation of this paragraph.

Entry for survey, etc.

20.—(1) Before exercising the powers conferred by article 16 (authority to survey and enter the land) to enter any land situated below the level of high water the undertaker must provide the harbour master with written particulars of—

- (a) the location of the land (including a plan);
- (b) the nature of the things proposed to be done in that land in exercise of those powers;

- (c) the duration and frequency of the undertaker's intended presence on the land; and
 - (d) any vehicles or equipment proposed to be brought on the land,
- and such other details as the harbour master may reasonably request.

(2) The undertaker may not enter any land which is the subject of written particulars provided under sub-paragraph (1) except in accordance with such conditions as the harbour master may reasonably impose, including conditions as to the time of entry and the way in which activities are to be carried out.

Operating procedures

21.(1) Before commencing operations at the quay the undertaker must submit to the harbour master for approval a written statement of proposed safe operating procedures for access to and egress from the marine side of the quay and the mooring of vessels at the quay and must operate the quay only in accordance with such procedure as approved, including any alteration to the procedure as the harbour master may approve from time to time.

(2) Any approval required under sub paragraph (1) is deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 56 days of the day on which the request for consent is submitted under sub-paragraph (1).

Indemnity

22.—(1) The undertaker is responsible for and must make good to the Tees Port Authority all reasonable financial costs or losses not otherwise provided for in this Schedule which may reasonably be incurred or suffered by the Tees Port Authority by reason of—

- (a) the construction or operation of the authorised development or the failure of the authorised development including in particular any expenses reasonably incurred in considering plans, inspecting tidal works, carrying out surveys or doing anything for the purposes of this Schedule;
- (b) anything done in relation to a mooring or buoy under paragraph 13; or;
- (c) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction or operation of the authorised development or dealing with any failure of the authorised development,

and the undertaker must indemnify the Tees Port Authority from and against all claims and demands arising out of or in connection with the authorised development or any such failure, act or omission.

(2) The fact that any act or thing may have been done—

- (a) by the Tees Port Authority on behalf of the undertaker; or
- (b) by the undertaker, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Tees Port Authority, or in a manner approved by the Tees Port Authority, or under its supervision or the supervision of its duly authorised representative,

does not (if it was done or required to be done without negligence on behalf of the Tees Port Authority or its duly authorised representative, employee, contractor or agent) excuse the undertaker from liability under the provisions of this paragraph.

(3) The Tees Port Authority must give the undertaker 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 is to be made without the prior consent of the undertaker.

Statutory functions

23.—(1) Any function of the undertaker or any officer of the undertaker, whether conferred by or under this Order or any other enactment, is subject to—

- (a) any enactment in the Teesport Acts and Orders 1966 to 2008 or any other enactment relating to the Tees Port Authority;
- (b) any byelaw, direction or other requirement made by the Tees Port Authority or the harbour master under any enactment; and

(c) any other exercise by the Tees Port Authority or the harbour master of any function conferred by or under any enactment.

(2) The Tees Port Authority must consult the undertaker before giving any direction which directly affects the construction, operation or maintenance of the authorised development.

Savings

24.—(1) With the exception of any duty owed by the Tees Port Authority to the undertaker provided for in this Schedule, nothing in this Order is to be taken as imposing on the Tees Port Authority, either directly or indirectly, any form of duty or liability to which the Tees Port Authority would not otherwise be subject.

(2) Without affecting the generality of sub-paragraph (1), the Tees Port Authority shall not be under any duty to dredge the access channel to, or the berthing pocket at, the quay to a depth greater than the depth of those waters immediately after the completion of the authorised development.

(3) Any approval or consent given by the Tees Port Authority pursuant to this Schedule does not affect any requirement to obtain an approval or consent under or by virtue of any other statutory provision.

(4) The requirements of sections 22 (licensing of works) and 23 (licence to dredge) of the 1966 Act do not apply as respects the initial construction of the authorised development but otherwise are not affected by this Order.

(5) Subject to paragraph 25(2) and sub-paragraph (4), nothing in this Order prejudices or derogates from the provisions of the Teesport Acts and Orders 1966 to 2008 or any other statutory or other rights, powers or privileges, vested in or enjoyed by the Tees Port Authority or the harbour master.

Transfer of benefit of Order

25. Within 14 days after the date of any transfer or grant under article 8 (consent to transfer benefit of Order), the undertaker who made the transfer or grant must serve notice on the harbour master containing the name and address of the transferee or lessee, the territorial extent of the transfer or grant and, in the case of a grant, the period for which it is granted and the extent of benefits and rights granted.

Disputes

26. Any dispute arising between the undertaker and the Tees Port Authority under this Part of this Schedule is to be determined by arbitration as provided in article 40 (arbitration).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the construction and operation of a quay, associated onshore facilities and other development to be situated on the River Tees.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 38 of this Order (Certification of plans, etc.) may be inspected free of charge during working hours at the offices of Redcar & Cleveland Borough Council, Kirkleatham Street, Redcar, TS10 1RT.