

2016 No. 772

INFRASTRUCTURE PLANNING

The York Potash Harbour Facilities Order 2016

Made - - - - - *20th July 2016*

Coming into force - - - - - *10th August 2016*

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an order granting development consent.

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.

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The single appointed person, having considered the representations made and not withdrawn and the application, together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has determined to make an Order granting development consent for the development described in the application,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, 117, 120, 122, 135(2) and 149A(d) 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—

(a) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).
 (b) S.I. 2009/2264, as amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/2381, S.I. 2015/377; modified by S.I. 2012/1659.
 (c) S.I. 2010/103, as amended by S.I. 2012/635.
 (d) Section 149A was inserted by paragraph 4(1) and (2) of the Marine and Coastal Access Act 2009 (c. 23).

PART 1

PRELIMINARY

Citation

1. This Order may be cited as the York Potash Harbour Facilities Order 2016 and comes into force on 10th August 2016.

Interpretation

2.—(1) In this Order—

- “the 1961 Act” means the Land Compensation Act 1961(a);
- “the 1965 Act” means the Compulsory Purchase Act 1965(b);
- “the 1966 Act” means the Tees and Hartlepoons Port Authority Act 1966(c);
- “the 1980 Act” means the Highways Act 1980(d);
- “the 1990 Act” means the Town and Country Planning Act 1990(e);
- “the 1991 Act” means the New Roads and Street Works Act 1991(f);
- “the 2008 Act” means the Planning Act 2008;
- “the 2009 Act” means the Marine and Coastal Access Act 2009(g);
- “the 2009 EIA Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(h);
- “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 (meaning of development) of the 2008 Act and any works carried out under the requirements;
- “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 ;
- “building” includes any structure or erection or any part of a building, structure or erection but, for the purposes of article 30 (temporary use of land) does not include a pipeline or its related apparatus;
- “carriageway” has the same meaning as in the 1980 Act;
- “clay” means dredged materials with a diameter of less than 31.25 micrometres;
- “constructability notes” means the following documents certified as the constructability notes by the Secretary of State for the purposes of this Order—
 - N014 - Constructability Issues Rev 2 – SABIC UK;
 - N015 - Constructability Issues Rev 2 – Huntsman;
 - N016 - Constructability Issues Rev 2 – DEA;
 - N021 - Constructability Issues Rev 2 – NWL;
 - N022 - Constructability Issues Rev 4 – TATA/SSI – Hot Metal Railway;

(a) 1961 c. 33.

(b) 1965 c. 56.

(c) 1966 c. xxv.

(d) 1980 c. 66.

(e) 1990 c. 8.

(f) 1991 c. 22.

(g) 2009 c. 23.

(h) S.I. 2009/2263, as amended by S.I. 2011/988, S.I. 2011/1043, S.I. 2012/635 and S.I. 2012/787.

N023 - Constructability Issues Rev 4 – TATA/SSI – SSI Road;

N024 - Constructability Issues Rev 1 – NWL – Access Road Bridge; and

N029 - Constructability Issues Rev 8 – BP CATS – Northern Route;

“conveyor route (northern)” means the route shown as the northern conveyor route on the conveyor route plans;

“conveyor route plans” means the plans certified as the conveyor route plans by the Secretary of State for the purposes of this Order;

“DML” means the marine licence set out in Schedule 5 (deemed marine licence under the 2009 Act) and deemed by article 31 (deemed marine licence) to have been granted under Part 4 (marine licensing) of the 2009 Act, by virtue of section 149A (deemed consent under a marine licence) of the 2008 Act;

“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;

“ecological mitigation works” means the mitigation measures set out in the outline ecological management plan;

“environmental statement” means the document certified by the Secretary of State as the environmental statement for the purposes of this Order;

“further environmental report” means any report produced in accordance with paragraph 3(3) of Schedule 2 (requirements);

“governance tracker” means the governance tracker certified by the Secretary of State for the purposes of this Order;

“gravel” means dredged materials with a diameter of at least 2 millimetres 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 ;

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

“lagoon habitat enhancement works” means the works for habitat enhancement in the lagoon approved under the DML;

“the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

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

“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, 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 planning permission reference R/2014/0626/FFM dated 19th August 2015;

“materials management plan” means a plan which sets out the measures to be adopted when excavating and handling potentially contaminated soil to minimise the risk of cross contamination;

“mitigation and monitoring strategy” means the mitigation and monitoring 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;

“Notice to Mariners” means any notice to mariners which may be issued by the Admiralty, Trinity House, the Queen’s harbourmasters, government departments or harbour and pilotage authorities advising mariners of important matters affecting navigational safety;

“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;

“outline ecological management plan” means the document certified as the outline ecological management plan by the Secretary of State for the purposes of this Order;

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

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

“PD Teesport” means PD Teesport Limited, company number 02636007, whose registered office is at 17 – 27 Queens Square, Middlesbrough, 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 comprising in summary—~~

~~(a) site compounds;~~

~~(b) construction of a quay 28 metres wide and 280 metres in length including ship loader and ship loader rails;~~

~~(c) dredging of up to 750,000 cubic metres of material from the approach channel and berth pocket;~~

~~(d) lagoon habitat enhancement works;~~

~~(e) installation of a surge bin;~~

~~(f) installation of conveyor system and transfer towers;~~

~~(g) construction of buildings and parking area;~~

~~(h) erection of security fencing; and~~

~~(i) provision of ancillary infrastructure;~~

“phase 1a” means that part of the authorised development required (in addition to phase 1b) to be completed in order to facilitate the movement of 6.5 million tonnes per annum of polyhalite comprising in summary:

(i) site compounds;

(ii) construction of a quay 28 metres wide and 280 metres in length including ship loaders and ship loader rails;

(iii) dredging of up to 750,000 cubic metres of material from the approach channel and berth pocket;

(iv) lagoon enhancement works;

(v) installation of surge bin;

(vi) construction of buildings and parking area;

(a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

(vii) erection of security fences; and

(viii) provision of ancillary information.

“phase 1b” means that part of the authorised development required (in addition to phase 1a) to be completed in order to facilitate the movement of 6.5 million tonnes per annum of polyhalite comprising in summary

(i) the installation of conveyor system and transfer towers; and

(ii) provision of ancillary infrastructure

“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 comprising in summary—

- (a) extension of quay to provide total quay length of 486 metres including ship loader and ship loader rails;
- (b) dredging of up to 372,000 cubic metres of material from the approach channel and berth pocket;
- (c) installation of second surge bin;
- (d) installation of second conveyor within the conveyor housing installed during phase 1; and
- (e) provision of ancillary infrastructure;

“pipeline corridor” means the corridor shown coloured yellow on the pipeline corridor plans;

“pipeline corridor plans” means the plans certified by the Secretary of State as the pipeline corridor plans for the purposes of this Order;

“protective provision” means the provisions contained in Schedules 7 to 11;

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

“requirement” means, unless the contrary intention appears, the requirement set out in the relevant paragraph of Schedule 2 (requirements);

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

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

“sea bed” means the ground under the sea;

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

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8) (statutory undertakers’ land), of the 2008 Act;

“street” means a street within the meaning of section 48 (streets, street works and undertakers) 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” (subject to paragraph 2 of Schedule 11 (for the protection of the Tees Port Authority), for the purposes of that Schedule) 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 number 4948435, and York Potash Limited, company number 07251600, both of whose registered offices are at 3rd Floor, Greener House, 68 Haymarket, London, SW1Y 4RF;

“vertical deviation plans” means the plans certified as the vertical deviation plans by the Secretary of State for the purposes of this Order;

“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;

“WGS84” means World Geodetic System 1984;

“working day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(a);

“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.

(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) Except in the definitions of clay, gravel, sand and silt in paragraph (1), and in Schedule 5, all distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are to 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 and to numbered requirements are to the numbered requirements as numbered in Schedule 2.

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

(6) Where the term approximate precedes a figure of measurement or quantum the flexibility accorded by that word is limited by the parameters in the parameters table and does not authorise any works which would result in significant environmental effects which have not been assessed in the environmental statement.

(7) Where a function of the Secretary of State has been delegated by an agreement under section 14 of the 2009 Act to the MMO, references in this Order to the Secretary of State in relation to the carrying out of that function are to be taken to include the MMO, and any obligation in this Order to consult the MMO does not apply where the MMO is carrying out that delegated function.

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 and protective provisions.

(a) 1971 c. 80.

(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 under the 1990 Act.

(3) Nothing in requirements 2, 3, 5, 6(1)(a) to (c) and (e) to (l) and 7 to 9 prevents the carrying out of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, the erection of any temporary means of enclosure and the temporary display of site notices or advertisements, immediately upon the Order coming into force.

(4) Nothing in paragraphs 7, 10 to 12, 17, 18, 34, 40, 44, 49 and 51 of Schedule 5 (deemed licence under the 2009 Act) prevents the carrying out of pre-construction surveys and monitoring in relation to any licensed activities immediately upon the Order coming into force.

Parameters of authorised development

4.—(1) 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 plan; 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 with the exception of the boundary between Works No. 1 and Works No. 2, any boundary with Works No. 3 and any boundary with Works No. 4.

(2) Schedule 6 (quay limits) has effect for the purposes of defining the quay limits for the purposes of Schedule 1 (authorised development) and Schedule 5 (deemed licence under the 2009 Act).

Maintenance of authorised development

5. Subject to the requirements and the protective provisions the undertaker may 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, 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—
- (a) any works that would give rise to any significant environmental effects not assessed in the environmental statement; and
 - (b) the construction of railway lines, buildings, sheds, offices, workshops, depots, electrical substation, container handling equipment or weighbridges within the pipeline corridor or within the lagoon.

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) Subject to the provisions of this Order the undertaker may, with the written 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 (including the DML) 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 (including the DML) and such related rights as may be so agreed.

(2) The powers conferred by 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 right 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 paragraphs (2) and (5), 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.

(6) Despite anything contained in Part 4 (marine licensing) of the 2009 Act, but subject to paragraph (5), the undertaker may transfer or grant relevant provisions to another person under paragraph (1).

(7) Before seeking the Secretary of State’s consent to a transfer or grant of relevant provisions under paragraph (1), the undertaker must—

- (a) consult the MMO; and
- (b) provide the MMO with—
 - (i) details of the relevant provisions proposed to be transferred or granted; and
 - (ii) the information that the undertaker proposes to provide under paragraph (9).

(8) Before consenting to a transfer or grant of relevant provisions under paragraph (1), the Secretary of State must consult the MMO.

(9) As soon as is reasonably practicable but in any event no later than 7 days after the coming into effect of a transfer or grant of relevant provisions to another person, the transferor or grantor must give written notice to the MMO of—

- (a) the name and contact details of the other person;

- (b) the date on which the transfer or grant took effect;
- (c) the relevant provisions transferred or granted;
- (d) the restrictions, liabilities and obligations that, under paragraph (2), apply in relation to the exercise by the other person of any benefits or rights conferred by the transfer or grant;
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates; and
- (f) in a case where the Secretary of State’s consent is needed for the transfer or grant, a copy of the consent.

(10) Section 72(7) and (8) (variation, suspension, revocation and transfer) of the 2009 Act does not apply to a transfer or grant of relevant provisions under paragraph (1).

(11) In this article “relevant provisions” means any of the provisions set out in the DML.

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 (right of appeal in relation to planning decisions) and 79 (determination of appeals) of the 1990 Act^(a); and
- (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) 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 Class B of Part 8 of Schedule 2 to, the Town and Country Planning (General Permitted Development) (England) Order 2015^(b) 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) Section 78 was amended by section 17(2) of the Planning and Compensation Act 1991 (c. 34); section 43(2) of the Planning and Compulsory Act 2004 (c. 5); paragraphs 1 and 3 of Schedule 10, and paragraphs 1 and 2 of Schedule 11, to the Planning Act 2008 (c. 29); section 123(1) and (3) of, and paragraphs 1 and 11 of Schedule 12 to, the Localism Act 2011 (c. 20); and paragraphs 1 and 8 of Schedule 1 to the Growth and Infrastructure Act 2013 (c. 27). Section 79 was amended by section 18 of, and paragraph 19 of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34); and paragraphs 1 and 4 of Schedule 10 to the Planning Act 2008 (c. 29).

(b) S.I. 2015/596.

- (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 a highway can be carried out under the powers conferred by this article without the prior written 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 within the Order limits 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 must provide reasonable access for pedestrians 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 is 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 a highway under the powers conferred by this article is to be carried out without the prior written consent of the highway authority which may attach reasonable conditions to any consent.

(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 written consent of the highway authority, form and lay out such means of access to a highway or improve existing means of access to a 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 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 required as a result of the exercise of 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 under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).

(3) The undertaker must 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 must not be unreasonably withheld.

- (4) The undertaker must not make any opening into any public sewer or drain except—
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
 - (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must 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 must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by 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) (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2010(b).

(a) 1991 c. 56. Section 106 was amended by section 35(1) and (8) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) (subject to transitional provisions contained in article 6 of, and Schedule 3 to, S.I. 2004/641) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

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

(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^(a), 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^(b) 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,

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 in writing 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 in writing 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

(a) 1964 c.40. The definition of harbour was amended by section 314(2) of, and paragraph 33(a) of Schedule 13 to, the Merchant Shipping Act 1995 (c. 21). There are other amendments to section 57 that are not relevant to this Order.

(b) 1991 c. 57.

- (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(a) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(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; and
- (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 above the level of high water 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 in writing 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) must, 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 are to be made under this article—

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

but such consent must 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.

(a) As amended by S.I. 2009/1307.

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

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 in writing by the Secretary of State (following consultation with the MMO) 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 (and following consultation with the MMO) 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.

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,

(a) S.I. 2010/490, as amended by S.I. 2011/625 and S.I. 2012/1927.

(b) 1981 c. 69.

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.

(2) Subject to article 33 (defences to proceedings) if the undertaker fails to comply in any respect with a direction given under paragraph (1) it is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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.

(2) Subject to article 33 (defence to proceedings) if the undertaker fails to comply in any respect with a direction given under paragraph (1) it is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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.

(2) Subject to article 33 (defence to proceedings) if the undertaker fails to comply in any respect with a direction given under paragraph (1) it is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Power to charge

22. 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 exercise a power conferred by this Part unless guarantees or alternative forms of security in respect of the liability of the undertaker to pay compensation under this Part are in place.

(2) The form of guarantee or security referred to in paragraph (1), and the amount guaranteed or secured, must be approved by the local planning authority; but such approval must not be unreasonably withheld.

(3) The undertaker must provide the local planning authority with such information as the local planning authority may reasonably require relating to the interests in the land affected by the exercise of the powers conferred by this Part for the local planning authority to be able to determine the adequacy of the proposed guarantee or security including—

- (a) the interests affected; and
- (b) the undertaker's assessment, and the basis of the assessment, of the level of compensation.

(4) A guarantee or other security given in accordance with this article that guarantees or secures the undertaker's payment of compensation under this Part is enforceable against the guarantor or provider of security by any person to whom such compensation is properly payable.

Compulsory and other acquisition of rights

24.—(1) The undertaker may create and acquire compulsorily the new rights and impose the restrictions described in Part 1 of Schedule 3 (acquisition provisions).

(2) The undertaker may create and acquire the new rights and impose the restrictions described in Part 2 of Schedule 3 with the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(3) Subject to the provisions of this article and to the protective provisions, all private rights over land described in column (1) of Parts 1 and 2 of Schedule 3 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)(a) of the 1965 Act in pursuance of the right,

whichever is the earlier.

(4) Part 3 (modification of compensation and compulsory purchase enactments for the creation of new rights and restrictive covenants) of Schedule 3 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 of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) Subject to section 8 (other provisions as to divided land) of the 1965 Act as substituted by paragraph 5 of Part 2 of Schedule 3, where the undertaker creates a new right in, on, over or under land under paragraph (1) the undertaker is not required to acquire a greater interest in that land.

(6) 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 of 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.

(a) 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).

(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—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provisions as to compensation for injurious affection) 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 that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(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 (minerals) to the Acquisition of Land Act 1981^(a) are incorporated in this Order subject to the following modifications—

- (a) for “the acquiring authority” substitute “the undertaker”;
- (b) for the “undertaking” substitute “authorised development”;
- (c) paragraph 8(3) is not incorporated.

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 this Order is made—

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

(a) 1981 c. 67. Part 3 of Schedule 2 was amended by section 46 of the Criminal Justice Act 1982 (c. 48) and S.I. 2009/1307.

(b) 1981 c. 66.

(2) The authority conferred by article 30 (temporary use of land) ceases at the end of the period referred to in paragraph (1), but nothing in this paragraph prevents 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).

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

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

(3) In section 3 (preliminary notices) for subsection (1) substitute—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must 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)” substitute “(1)” and after “given” insert “and published”.

(5) In that section, for subsections (5) and (6) substitute—

“(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” insert “in a local newspaper circulating in the area in which the land is situated”; and
- (b) omit subsection (2).

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

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) 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 create the new rights and impose the restrictions described in the book of reference over 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) does 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 who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not 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

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 must serve notice in writing 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—

(a) in the case of land specified in paragraph (1)(a)(i), 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; or

(b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of 1 year beginning with the date of completion of the work for which temporary possession of that land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land or has otherwise acquired the land subject to temporary possession.

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

(5) The undertaker must 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, is to be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act 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 is not precluded from acquiring new rights over or imposing restrictions over any part of that land under article 24 (compulsory and other acquisition of rights).

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

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under the powers conferred by paragraph (1) to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) Subject to paragraph (12) and the protective provisions, at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(12) Paragraph (11) does not authorise the undertaker to take temporary possession of any building if it is for the time being occupied.

(13) Not less than 28 days before entering on and taking temporary possession of land under paragraph (11) the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(14) The undertaker may only remain in possession of land under paragraph (11) for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(15) Before giving up possession of land of which temporary possession has been taken under paragraph (11), the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(16) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under paragraph (11) for any loss or damage arising from the exercise in relation to the land of the powers conferred by that paragraph.

(17) Any dispute as to a person's entitlement to compensation under paragraph (16), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(18) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (16).

(19) Where the undertaker takes possession of land under paragraph (11), the undertaker is not required to acquire the land or any interest in it.

(20) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under the powers conferred by paragraph (11) to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(21) In this article “the maintenance period”, in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that phase of the authorised development is brought into use.

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 and are deemed to have been attached to the DML by the Secretary of State under Part 4 of the 2009 Act.

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) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

Defences to proceedings

33.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (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), of the Control of Pollution Act 1974(b); 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 and that it cannot reasonably be avoided; or
 - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) In proceedings for an offence under any of the provisions mentioned in paragraph (3) it is a defence for the undertaker to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(3) The provisions referred to in paragraph (2) are—

- (a) article 19 (lights on tidal works etc during construction);
- (b) article 20 (provision against danger to navigation); and
- (c) article 21 (permanent lights on tidal works).

(a) 1990 c. 43.

(b) 1974 c. 40. Section 65 was amended by section 132(2) of, and Schedule 7 to, the Building Act 1984 (c. 55) and section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to section 65 which are not relevant to this Order.

(4) If in any case the reliance on the defence provided by paragraph (2) involves the allegation that the commission of the offence was due to the act or default of another person, the undertaker is not, without leave of the court, entitled to rely on that defence unless, before the period of 7 clear days preceding the hearing, it has served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in its possession.

(5) 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 does 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 to 11 have effect.

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 etc

37.—(1) Where requirements, provisions of the DML (including the licence conditions) or protective provisions require approval from or agreement with the local planning authority or other person, such approval or agreement must be in writing and must not provide for development outside the parameters of the authorised development or for a form of development which would give rise to materially new or materially worse environmental effects in comparison with those assessed in the environmental statement or any updated environmental information supplied under the 2009 EIA Regulations.

(2) When any details, plans or other matters have been agreed or approved by the local planning authority or other person in accordance with a requirement, the DML (including the licence

conditions) or the protective provisions, those details, plans or other matters may subsequently be amended by agreement with the person concerned provided that no amendments to those details, plans or other matters would provide for development outside the parameters of the authorised development or for a form of development which would give rise to materially new or materially worse environmental effects in comparison with those assessed in the environmental statement or any updated environmental information supplied under the 2009 EIA Regulations.

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 5.3B);
- (b) the land plans (Documents 2.1, 2.1A to 2.1B(i), 2.1C to 2.1J(i) and 2.1K to 2.1N(i));
- (c) the environmental statement (Documents 6.4 and 6.5);
- (d) the works plans (Documents 2.2A to F);
- (e) the vertical deviation plan (Document 3.11B);
- (f) the parameters table (Document 6.9A);
- (g) the highway works plan (Document 3.14);
- (h) the mitigation and monitoring strategy (Document 6.12A);
- (i) the conveyor route plans (Documents 3.3H to O);
- (j) the governance tracker (Document 6.8B);
- (k) the outline construction environmental management plan (Document 6.10A);
- (l) the outline ecological management plan (Document 6.11B);
- (m) the constructability notes;
- (n) the pipeline corridor plans (Documents 3.15A to C);
- (o) drawing number PB1586 – SK123 Revision 2 (Document 3.9B) showing the “river frontage line”;
- (p) drawing number PB1586 – SK1081 Revision D (Document 3.16) showing the access arrangements for the Redcar Bulk Terminal conveyor;
- (q) drawing numbers PB1586-SK1026 Revision E (Document 3.5A) and PB1586-SK1027 Revision G (Documents 3.5B) showing locations of screen fencing; and
- (r) the Wilton Complex Plan (drawing number T-MIS-0065-01),

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

(2) Where the amendment of any plan or document referred to in paragraph (1) is required to reflect the terms of the Secretary of State’s decision to make this Order, that plan or document, in the form amended to the Secretary of State’s satisfaction, is the version of the plan or document to be certified under paragraph (1).

(3) A plan or document so certified is 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; and
- (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 (references to service by post) of the Interpretation Act 1978(a) 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 is 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) the notice or document is 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 must 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 is 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.

(9) This article does not 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,

(a) 1978 c. 30.

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.

Signed by the authority of the Secretary of State for Transport

20th July 2016

Martin Woods
Head of the Transport and Works Act Orders Unit
Department for Transport

SCHEDULES

SCHEDULE 1

Articles 2(1), 3 and 4

AUTHORISED DEVELOPMENT

Within the Borough of Redcar and Cleveland, and the Borough of Stockton-on-Tees.

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 within the quay limits and in 2 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 habitat 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) 2 parallel conveyors in a single housing (on supports and including transfer stations connected to the housing which are comprised in Works No. 5) to transfer polyhalite from the materials handling facility to the ship loaders and surge bins comprised in Works No. 2 running between the points A-B-C shown on the works plans.

Works No. 5 - within the area described in the works plans as Works No. 5 in connection with Works Nos. 1 to 4 and 6 to 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 including the arrangements for maintaining access for owners of structures along the northern boundary of the Order limits shown on Document 3.16;
- (10) temporary acoustic fencing and visual screening;
- (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 and screen fencing.

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 including screen fencing.

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—

(1) works to improve the western most arm of the A1085 roundabout the general arrangement of which is shown on the highway works plan including—

- (a) widening the carriageway;
- (b) construction of a new splitter island; and
- (c) reconstruction and resurfacing works.

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

In connection with Works Nos. 1 to 12 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 nationally significant infrastructure project and associated development described in Works Nos. 1 to 12, provided that such works do not give rise to any materially new or materially worse environmental effects in comparison with those assessed in the environmental statement or any updated environmental information supplied under the 2009 EIA Regulations.

SCHEDULE 2 REQUIREMENTS

Articles 2 and 3

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

- (a) layout;
- (b) details of quay structure and related infrastructure (including whether the open quay or solid quay is to be constructed);
- (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.

(2) The phase 1a works must be carried out in accordance with the approved details, whether approved by the local planning authority under sub-paragraph (1) or the MMO under the provisions of Schedule 5.

~~(3) No part of phase 1 is to commence until the design of the external treatment of that part of the conveyor crossing the A1085 has been approved by the local planning authority and that part of the conveyor crossing the A1085 must be constructed in accordance with the approved details. No part of phase 1b is to commence until a written scheme setting out all the component parts of phase 1b has been submitted to and approved by the local planning authority. The written scheme must include details of the following unless they have been approved by the MMO under the provisions of Schedule 5—~~

- ~~(a) the position of the conveyor system and transfer towers;~~
- ~~(b) external appearance and scale of all buildings and structures including the design of the external treatment of that part of the conveyor system which crosses the A1085;~~
- ~~(c) parking and storage areas;~~
- ~~(d) surface and foul drainage;~~
- ~~(e) site levels;~~
- ~~(f) permanent fencing and other means of enclosure; and~~
- ~~(g) lighting.~~

~~(3)(4) The phase 1b works must be carried out in accordance with the approved details whether approved by the local planning authority under sub-paragraph (3) or the MMO under the provisions of Schedule 5.~~

3.—(1) No part of phase 2 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 must include details of the following unless they have been approved by the MMO under the provisions of Schedule 5 (deemed licence under the 2009 Act)—

- (a) layout;
- (b) details of additional 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.

(2) The phase 2 works must be carried out in accordance with the approved details, whether approved by the local planning authority under sub-paragraph (1) or the MMO under the provisions of Schedule 5.

(3) If the construction of works (a) (extension of quay) and (b) (dredging) comprised in phase 2 does not commence within 6 years of the completion of phase 1, if the local planning authority so requires, the undertaker must reassess the baseline conditions relating to those works and, in the event of there being changes to the baseline conditions which materially affect the assessment of likely impacts arising from those works identified in the environmental statement the undertaker must produce a further environmental report re-assessing such impacts, submit it to the local planning authority and agree with the local planning any additional mitigation measures required.

(4) If a further environmental report is required, the works referred to in sub-paragraph (3) must not be carried out until either additional mitigation measures have been agreed with the local planning authority or it has been agreed with the local planning authority that no additional measures are required. Any additional mitigation measures required must be carried out as agreed.

4. The authorised development must be carried out in accordance with the drawings listed below and in accordance with the details approved under requirements 2 and 3 and the DML—

- (a) the works plans;
- (b) the parameters table; and
- (c) the vertical deviation plan.

Highway access

5. No phase of the authorised development other than phase 1a 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 ecological mitigation works, until a Construction Environmental Management Plan (“CEMP”) for that phase of the development, drafted in accordance with the principles set out in the outline construction environmental management plan and incorporating the mitigation identified in the governance tracker, has been submitted to and approved by the local planning authority in consultation with Natural England. The plan must include details of the following unless they have been approved by the MMO under the provisions of Schedule 5 (deemed licence under the 2009 Act)—

- (a) a stakeholder communications plan;
- (b) details of the methods to control noise arising from construction activities (including temporary acoustic fencing);
- (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 such detail to incorporate measures described in item 31 of the governance tracker;
- (h) measures to ensure that construction vehicles do not deposit mud on any 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;
- (k) asbestos management strategy (if needed); and
- (l) a materials management plan.

(2) The CEMP may be amended in accordance with article 37(2) (approvals pursuant to requirements etc) provided that such amendment does not diminish the mitigation during construction referred to in the environmental statement.

(3) All construction works must be carried out in accordance with the CEMP as approved from time to time.

Construction Traffic Management Plan

7. None of the authorised development is to commence (excluding ecological mitigation or enhancement works referred to in the outline ecological management plan) until a Construction Traffic Management Plan (“CTMP”) drafted in accordance with the principles set out in Appendix

12.3 of the environmental statement has been submitted to and approved 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 ground gas monitoring

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) No phase of the authorised development is to commence until a programme for ground gas monitoring has been agreed with the local planning authority and subsequently implemented. If the monitoring in accordance with the approved scheme gives rise to the need to consider gas protection measures within buildings, these must be agreed with the local planning authority and implemented as agreed.

Ecology

9.—(1) No phase of the authorised development is to commence until written ecological management plans for any ecological mitigation or enhancement measures included in the environmental statement for that phase (including a marine mammal mitigation plan but not including the lagoon habitat enhancement works which are licensed under the DML), drafted in accordance with the principles set out in the outline ecological management plan, and incorporating the mitigation identified in the governance tracker have been submitted to and approved by the local planning authority and the MMO in consultation with Natural England and the Environment Agency.

(2) The ecological management plans must be implemented as approved but may be subject to amendment in accordance with article 37(2) (approvals pursuant to requirements etc). If amendments to any ecological enhancement or mitigation measures are proposed below the level of high water, the amendments are to be approved by the local planning authority and the MMO in consultation with Natural England and the Environment Agency.

(3) Prior to the decommissioning phase of the authorised development, terrestrial ecological surveys are to be undertaken to verify whether any protected species could be impacted by the decommissioning phase, and to identify any requirement for mitigation to be implemented in order to avoid any adverse impacts. The scope of terrestrial ecological surveys is to be agreed with the local planning authority in consultation with Natural England prior to any ecological surveys being undertaken and, following the surveys, the scope of mitigation including an implementation timetable is to be agreed by the local planning authority in consultation with Natural England. The agreed mitigation must be carried out as agreed.

Archaeology

10.—(1) No development is to take place until a programme of archaeological work including a written scheme of investigation has been submitted to and approved by the local planning authority. The scheme must provide for monitoring in the vicinity of the “Deserted Medieval Village of West Coatham”. The scheme must include an assessment of significance and research questions and—

- (a) the programme and methodology of site investigation and recording;
- (b) the programme for post investigation assessment;
- (c) provision to be made for analysis of the site investigation and recording;
- (d) provision to be made for publication and dissemination of the analysis and records of the site investigation;
- (e) provision to be made for archive deposition of the analysis and records of the site investigation; and

(f) nomination of a competent person or organisation to undertake the works set out within the written scheme of investigation.

(2) No development is to take place other than in accordance with the written scheme of investigation approved under sub-paragraph (1).

(3) The authorised development must not be occupied until the site investigation and post-investigation assessment has been completed in accordance with the programme set out in the written scheme of investigation approved under sub-paragraph (1) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Decommissioning

11. Prior to the decommissioning phase of the authorised development through the removal of the overhead conveyor system, the undertaker must submit a decommissioning plan in respect of those parts of the authorised development to be decommissioned to the local planning authority for approval. The provisions of the approved plan must be implemented during the decommissioning phase.

SCHEDULE 3

Article 24

ACQUISITION PROVISIONS

PART 1

RIGHTS AND RESTRICTIONS REQUIRED FOR THE CONVEYOR ROUTE –
COMPULSORY ACQUISITION (NORTHERN)

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Class or classes of rights sought as described in the book of reference</i>	<i>(3)</i> <i>Purpose for which rights may be acquired or restrictions imposed</i>
7	1 and 9	Dredging and to obtain access for such purposes.
8	1, 2, 3, 4, 5, 6, 7a, 9 and 10	(a) Dredging; (b) construction, operation, use and maintenance of the quay; (c) extension and/or modification the pipe between the lagoon and the Tees estuary and provision of an additional pipe for flow control; (d) installation, maintenance and use of ship loaders, surge bins, transfer towers; (f) construction, operation, use and maintenance of the conveyor system along the conveyor route (northern); (g) installation and maintenance of support foundations for the conveyor along the conveyor route (northern); (h) carrying out and maintenance of the lagoon habitat enhancement works; (i) installation, operation, use and maintenance of services, signage, lighting, acoustic fencing, security fencing and gating, CCTV; (j) creation and use of temporary compounds (Works Nos. 6A and 7); and (k) construction, use and maintenance of a permanent compound (Works No. 6B), and to obtain access for such purposes and to impose restrictions for the protection of the conveyor structure and footings.
8b (as shown on Document 2.1B(i) (Northern Route))	4, 5, 6, 9 and 10	(a) Construction, operation, use and maintenance of the conveyor system along the conveyor route (northern); (b) installation and maintenance of support foundations for the conveyor along the conveyor route (northern); (c) installation, use and maintenance of services, signage, lighting and CCTV; and (d) creation and use of temporary compound (Work No. 8),

(1) <i>Number of land shown on land plans</i>	(2) <i>Class or classes of rights sought as described in the book of reference</i>	(3) <i>Purpose for which rights may be acquired or restrictions imposed</i>
		and to obtain access for such purposes to impose requirements for the protection of the conveyor structure and footings.
8a and 9	4, 5, 9 and 10	(a) Construction, operation, use and maintenance of the conveyor system, installation along the conveyor route (northern); (b) maintenance of support foundations for the conveyor along the conveyor route (northern); and installation, use and maintenance of services, signage, lighting, acoustic fencing, CCTV, and to obtain access for such purposes and to impose restrictions for the protection of the conveyor structure and footings.
8c (as shown on Document 2.1B(i) (Northern Route))	4, 5, 9 and 10	(a) Construction, operation, use and maintenance of the conveyor system along the conveyor route (northern); (b) installation and maintenance of support foundations for the conveyor and a transfer tower along the conveyor route (northern); and (c) installation, use and maintenance of services, signage, lighting, CCTV, and to obtain access for such purposes and to impose restrictions for the protection of the conveyor structure and footings.
11	1, 2, 3, 4, 5, 6, 7b, 9 and 10	(a) Dredging; (b) construction, operation, use and maintenance of the quay; (c) demolition of the existing jetty; (d) installation, maintenance and use of ship loaders, surge bins, transfer towers; (e) construction, operation, use and maintenance of the conveyor system along such part of the conveyor route (northern); (f) installation and maintenance of support foundations for the conveyor along such part of the conveyor route (northern); (g) installation of a below ground waste storage tank; (h) carrying out and maintenance of part of the lagoon habitat enhancement works; (i) installation, use and maintenance of services, signage, lighting, acoustic fencing, security fencing and gating, CCTV; (j) creation and use of temporary compounds (Works No. 7); and (k) construction, use and maintenance of a permanent compound (Works No. 9),

(1) <i>Number of land shown on land plans</i>	(2) <i>Class or classes of rights sought as described in the book of reference</i>	(3) <i>Purpose for which rights may be acquired or restrictions imposed</i>
		and to obtain access for such purposes and to impose restrictions for the protection of the conveyor structure and footings.
12 and 13	1, 4, 5 and 9	(a) Dredging; (b) demolition of the existing jetty; and (c) installation, use and maintenance of services, lighting, acoustic fencing, security fencing and gating, CCTV, and to obtain access for such purposes.
15 and 16	5 and 9	Installation, use and maintenance of services, signage, lighting, acoustic fencing, security fencing and gating, CCTV and to obtain access for such purposes.
17, 18, 19, 20, 21a and 22	4, 5 and 9	Installation, use and maintenance of services, lighting, acoustic fencing, security fencing and gating, CCTV and to obtain access for such purposes.
23, 24, 37a, 38, 39, 40, 41, 42, 43, 44, 49, 57, 58, 59, 60 and 62	4, 5, 9 and 10	(a) Construction, operation, use and maintenance of the conveyor system along the conveyor route (northern); (b) installation and maintenance of support foundations for the conveyor along the conveyor route (northern); and (c) installation, use and maintenance of services, lighting, security fencing and gating, CCTV, and to obtain access for such purposes and to impose restrictions for the protection of the conveyor structure and footings.
25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 54	4, 5 and 9	(a) Construction, operation, use and maintenance of the conveyor system along the conveyor route (northern); (b) installation and maintenance of support foundations for the conveyor along the conveyor route (northern); and (c) installation, use and maintenance of services, CCTV, and to obtain access for such purposes.
47, 48, 55 56 and 61	5 and 9	(a) Installation and maintenance of support foundations for the conveyor along the conveyor route (northern); and (b) installation, use and maintenance of services, CCTV, and to obtain access for such purposes.
50	4, 5, 6, 9 and 10	(a) Construction, operation, use and maintenance of the conveyor system along the conveyor route

(1) <i>Number of land shown on land plans</i>	(2) <i>Class or classes of rights sought as described in the book of reference</i>	(3) <i>Purpose for which rights may be acquired or restrictions imposed</i>
		(northern); (b) installation and maintenance of support foundations for the conveyor along the conveyor route (northern); (c) installation, use and maintenance of services, lighting, security fencing and gating, CCTV; and (d) creation and use of a temporary compound (Works No. 10), and to obtain access for such purposes and to impose restrictions for the protection of the conveyor structure and footings.
51	4, 5, 8, 9 and 10	(a) Construction, operation, use and maintenance of the conveyor system along such part of the conveyor route (northern); (b) installation and maintenance of support foundations for the conveyor along such part of the conveyor route (northern); (c) installation, use and maintenance of services, lighting, security fencing and gating, CCTV (Works No. 12); (d) laying out of the highway works; (e) installation of new signs and markings; (f) removing an existing earth bund; and (g) clearing vegetation, and to obtain access for such purposes and to impose restrictions for the protection of the conveyor structure and footings.
52, 53, 54a	8	(a) Laying out of the highway works (Works No. 12) to include a pedestrian traffic island; (b) resurfacing the existing carriageway; (c) installation of new signs and markings; (d) removing an existing earth bund; and (e) clearing vegetation, including temporary access for such purposes.
59a	6	Creation and use of a temporary compound (Works No. 11) including temporary access for such purposes.

PART 2

RIGHTS AND RESTRICTIONS REQUIRED FOR THE CONVEYOR ROUTE – CROWN LAND (NORTHERN)

<i>(1)</i> Number of land shown on land plans	<i>(2)</i> Class or classes of rights sought as described in the book of reference	<i>(3)</i> Purpose for which rights may be acquired or restrictions imposed
1	1, 2, 4 and 9	(a) Dredging; (b) demolition of the existing jetty; (c) construction, operation, use and maintenance of the quay; (d) installation, maintenance and use of ship loaders; and (e) construction, operation, use and maintenance of the conveyor system, and to obtain access for such purposes.
2, 3	1 and 9	(a) Dredging; and (b) demolition of the existing jetty, and to obtain access for such purposes.
6	1 and 9	Dredging and to obtain access for such purposes.
10	4, 5, 9 and 10	(a) Construction, operation, use and maintenance of the conveyor system along the conveyor route (northern); (b) installation and maintenance of support foundations for the conveyor and a transfer tower along the conveyor route (northern); and (c) installation, use and maintenance of services, signage, lighting, CCTV, and to obtain access for such purposes and to impose restrictions for the protection of the conveyor structure and footings.

PART 3

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

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land 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 limitation on the scope of paragraph 1, the Land Compensation Act 1973^(a) has 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 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 4—

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

(3) For section 58(1)^(b) (determination of material detriment where part of house etc, proposed for compulsory acquisition), as it applies to determinations under section 8 (other provisions as to divided land) of the 1965 Act, substitute—

“(1) In determining under section 8(1) or 34(2) of the Compulsory Purchase Act 1965, or section 166 (2) of the Town and Country Planning Act 1990, whether—

- (a) a right over or restrictive covenant affecting land consisting of a house, building or manufactory can be taken or imposed without material detriment or damage to the house, building or manufactory; or
- (b) a right over or restrictive covenant affecting land consisting of a park or garden belonging to a house can be taken or imposed without seriously affecting the amenity or convenience of the house,

the Upper Tribunal must take into account not only the effect of the acquisition of the right or the imposition of the restrictive covenant but also the use to be made of the right or restrictive covenant proposed to be acquire or imposed, and, in a case where the right or restrictive covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land.”

Application of the 1965 Act

3.—(1) The 1965 Act has 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;
- (b) the land over which the right is or is to be exercisable;
- (c) the restrictive covenant imposed or to be imposed; or
- (d) the land over which the restrictive covenant is or is to be enforceable.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right, or in relation to the imposition of a restrictive covenant, with the modifications specified in the following provisions of this Schedule.

4. For Section 7 of the 1965 Act (measure of compensation) substitute—

“**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which

(a) 1973 c. 26.

(b) Section 58(1) was amended by section 16(3) of, and Schedule 5 to, the Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66), section 4 of, and paragraph 29(1) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

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) substitute—

“**6.**—(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”)—

- (a) a question of disputed compensation in respect of the purchase of the 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 2016^(a) (“the Order”), in relation to that person, ceases 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 is to 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 is to 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, in accordance with section 31 of the 1961 Act 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),

are modified so 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.

(a) S.I. 2016/772.

7. Section 11(a) (powers of entry) of the 1965 Act is modified so 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 is deemed for this purpose to have been created on the date of service of the notice); and sections 12(b) (penalty for unauthorised entry) and 13(c) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20(d) (protection for interests of tenants at will etc) of the 1965 Act applies 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 (interests omitted from purchase) of the 1965 Act is modified so 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, or to enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

SCHEDULE 4

Article 30

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Plot number shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <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

Articles 2, 4 and 31

DEEMED LICENCE UNDER THE 2009 ACT

PART 1

INTRODUCTORY

Addresses and Undertaker

1.—(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

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.
- (b) Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
- (c) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
- (d) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 and S.I. 2009/1307.

and where contact with the MMO District Office is required, the following contact details should be used—

Neville House, Central Riverside, Bell Street, North Shields, NE30 1LJ;

Telephone number: 0191 257 4520;

Email address: 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—

marineconsents@marinemanagement.org.uk; or

northshields@marinemanagement.org.uk.

(3) Where in this Schedule reference is made to the undertaker it includes any agent or contractor or person 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 (as described in Schedule 6 (quay limits)) according to the following specification—

- (a) the quay length must be no more than 486 metres;
- (b) the quay width must be no more than 87 metres; and
- (c) the deck level of the structure must be no more than +5.6 metres 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 0.9 metres diameter;
- (b) the area of the deck structure (quay) is to be no more than 28 metres wide by 280 metres long in phase 1, increasing up to a total of 486 metres long in phase 2;
- (c) the quayside is to 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 is to be between 43 metres and 53 metres;
- (d) 2 access bridges are to 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 with 2 new pipes of larger capacity each incorporating independently operated flow control structures.

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 is to consist of 120 king piles (of approximately 2 metres diameter) with intermediate sheet piles;
 - (ii) the anchor wall is to consist of a length of approximately 210 metres of sheet piles; and
 - (iii) 40 piles of 660 millimetre diameter are 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 is to consist of an additional 90 king piles with intermediate sheet piles;
 - (ii) the anchor wall is to consist of an additional plan length of approximately 200 metres of sheet piles; and
 - (iii) a further 35 piles of 660 millimetre diameter are required for the cope beam to support the landside ship loader rails;
- (c) the quayside is to 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 is to be between 65 metres and 87 metres;
- (d) the footprint is to be no more than 87 metres wide by 280 metres long in Phase 1, increasing up to a total of 486 metres long in phase 2 – access to the quay is to 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 with 2 new pipes of larger capacity each incorporating independently operated flow control structures.

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 14.1 metres below Chart Datum (16.95 metres below Ordnance Datum); and
- (b) the berth pocket to a depth of 16 metres below Chart Datum (18.85 metres below Ordnance Datum).

(2) The materials must be dredged in the approximate quantities according to the following table—

<i>Dredged material type</i>	<i>Open quay (cubic metres)</i>	<i>Solid quay (cubic metres)</i>
Silts	181,000	66,000
Sands and Gravels	326,000	196,000
Clays	230,000	194,000
Mercia Mudstone	385,000	358,000
TOTAL (MAXIMUM)	1,122,000	814,000

(3) For phases 1 and 2, the dredging of the contaminated silts is to be undertaken using enclosed grabs.

(4) For phase 1 the dredging of the sands and gravels is to be undertaken using a Trailing Suction Hopper Dredger (“TSHD”).

(5) For phases 1 and 2 the dredging of the clay and Mercia mudstone (marl) must be undertaken using a backhoe dredger, TSHD or Cutter Suction Dredger (“CSD”). For phase 2, dredging of sands and gravel is to be by a backhoe dredger, TSHD or CSD.

(6) The following maximum quantities of dredged material are to be disposed at Tees Bay C (TY 150) offshore dredged material disposal sites—

- (a) 615,000 cubic metres of clay and mudstone; and
- (b) 326,000 cubic metres of sand and gravel,

unless otherwise agreed with the MMO.

Lagoon habitat enhancement

7.—(1) The lagoon habitat enhancement works must not commence until a written lagoon habitat enhancement plan (to include details of pre and post construction monitoring) has been submitted to and approved by the MMO (following consultation with Natural England, the Environment Agency and the local planning authority).

(2) The lagoon habitat enhancement plan must include—

- (a) details of proposals for pre and post construction monitoring;
- (b) details of the enhancement of habitat in the lagoon for water birds and a construction method statement regulating the construction of those works; and
- (c) a timetable for the implementation of those works.

(3) The lagoon habitat enhancement plan (including pre and post construction monitoring information) must accord with the mitigation and monitoring strategy.

(4) The lagoon habitat enhancement plan must be implemented as approved.

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 (enforcement) of Part 4 (licensing) 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 51 are licence conditions attached to the DML 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 20 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 working 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 to be utilised in connection with a licensed activity are provided to the MMO and agreed 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 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 working 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.—(1) Prior to any works commencing below the level of high water, the undertaker must submit detailed method statements to the MMO for approval for each operation of the licensed activities at least 3 months prior to the commencement of such licensed activity and any such approval must not be unreasonably withheld or delayed and is deemed to have been permitted if it is neither given nor refused within 3 months of the specified day.

(2) The undertaker must provide the MMO with such further details as the MMO may reasonably require, any such request to be made within 28 days from the day on which the detailed method statement was submitted under sub-paragraph (1).

(3) In this paragraph the “specified day” means—

- (a) the day on which the MMO have received the detailed method statement referred to in sub-paragraph (1); or
- (b) the day on which the undertaker provides the MMO with such further particulars as have been reasonably requested by the MMO under sub-paragraph (2).

18.—(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 area of Works Nos. 2 and 3.

(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) Licensed activity must not commence before the approval of the co-ordinates and plan diagrams of the licensed area and access routes has been given by the MMO.

19. 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 notes and guidance from the Construction Industry Research and Information Association;

- (b) adherence to the Construction (Design and Management) Regulations 2015 where applicable; and
- (c) adherence to the Construction Environmental Management Plan approved under paragraph 6(1) of Schedule 2 (requirements) and an Incident and Emergency Response Plan.

20. 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.

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

22. 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.

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

24. Concrete and cement mixing and washing areas must 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.

25. 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.

26. The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO Marine Pollution Response Team, telephone number 0300 200 2024 (office hours) or 07770 977 825 (outside office hours); and if no response is received, Defra Duty Room, telephone number 0345 0818 486; MMO, emergency fax (not manned 24 hours) 0191 376 2682 or email address dispersants@marinemanagement.org.uk; or such replacement numbers or email addresses notified to the licence holder by the MMO in writing.

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

28. A spill kit (including booms for potential leaks directly into the marine environment) must 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 the harbour master.

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

Piling conditions

30. 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 is to include checking for marine mammals during a pre-piling search prior to piling operations commencing, the establishment of a mitigation zone (that is, 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.

31. The undertaker must ensure the implementation of a minimum of 8 hours continuous break in every 24 hour period where no impact piling is carried out and must ensure that no more than one vessel is carrying out a piling operation at any one time.

32. The undertaker must ensure that acoustic barriers are positioned—

- (a) along the embankment between the lagoon and the construction works for the quay; and
- (b) between the lagoon and the construction works for the conveyor constructed in the northern corridor.

33. The undertaker must ensure that no piling is undertaken for 3 hours following low water, nor during May and that any percussive piling is implemented using a “soft-start” procedure.

Capital dredging, disposal conditions and debris

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

(2) If any disposal or dredging activities are to take place after 1st October 2017—

- (a) the undertaker must submit a sediment sampling plan to the MMO for approval at least 6 months prior to that dredging or disposal activity being carried out;
- (b) the sediment sampling and analysis of the sediment must be completed by a laboratory validated by the MMO at least 6 weeks prior to the dredging or disposal activity being carried out; and
- (c) the dredging and disposal activity must not be carried out without the consent of the MMO.

35. The undertaker must ensure that as a result of the capital dredging activities referred to in paragraph 6 no more than 941,000 cubic metres is disposed to site Tees Bay C (TY 150).

36.—(1) The undertaker must ensure that certified returns of quantities of dredged material deposited under this licence are submitted to the MMO by 15th February (for the months August to January inclusive) and 15th August (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 be submitted with the returns.

(5) Any contaminated sediment (largely silt) lying deeper than 1 metre below the surface of the seabed (excluding the underlying geological material) must not be disposed of at sea.

(6) The removal of any contaminated silt to a site licensed for the treatment and disposal of such silt must only be by means of a barge unless otherwise agreed by the MMO in consultation with the local planning authority.

37. The undertaker must ensure that any man-made material is separated from the dredged material and disposed of at a registered onshore disposal site.

38. If disposal of material is found to be the cause of any detrimental effects to the disposal site, the undertaker must ensure that such disposal ceases with immediate effect.

39. If due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the dredged material other than in accordance with the capital dredge and disposal strategy agreed under condition 34 because the safety of human life or of the vessel is threatened—

- (a) full details of the circumstances of the deposit must be notified to the MMO within 48 hours; and
- (b) at the reasonable request of the MMO the unauthorised deposits must be removed at the undertaker’s expense.

40. At least 10 working days before commencement of the licensed activities, the undertaker must submit to the MMO an audit sheet covering all aspects of the construction of the licensed activities or any phase of them. The audit sheet must include details of—

- (a) loading facilities;

- (b) vessels;
- (c) equipment;
- (d) shipment routes;
- (e) transport;
- (f) working schedules; and
- (g) all components and materials to be used in the construction of the licensed activities.

41. The audit sheet must be maintained throughout the construction of the licensed activities (or relevant phase) and must be submitted to the MMO for review at fortnightly intervals during periods of active offshore construction.

42. In the event that the MMO becomes aware that any of the materials on the audit sheet cannot be accounted for, it must require the undertaker to carry out a side-scan sonar survey to plot all obstructions across a reasonable area of search agreed by the MMO where construction works and related activities have been carried out. Any obstructions that the MMO considers to be associated with the authorised development must be removed at the undertaker's expense.

43. As an alternative to the completion of an audit sheet, with approval from the MMO, the undertaker may introduce a dropped object procedure. If a dropped object procedure is introduced, any dropped objects must be reported to the MMO using the dropped object procedure form within 6 hours of the undertaker becoming aware of an incident. On receipt of the dropped object procedure form, the MMO may require relevant surveys to be carried out by the undertaker (such as side-scan sonar), and the MMO may require obstructions to be removed from the seabed at the undertaker's expense.

44. The undertaker must agree with the MMO, before commencement of works, whether the dropped object procedure or audit sheet is to be used.

45. The undertaker must, at least 4 months before the completion of the construction of each phase of the authorised development, submit for the approval of the MMO a post construction maintenance schedule setting out details of the maintenance regime for that part of the authorised development below the level of high water.

46. An update to the post construction maintenance schedule must be submitted for approval every 3 years unless the MMO waives such requirement.

47. Maintenance must be carried out in accordance with the approved post construction maintenance schedule.

Lagoon Habitat Enhancement Works

48. The undertaker must implement and comply with the lagoon habitat enhancement plan (including pre and post construction monitoring) approved under paragraph 7 and must monitor and maintain the lagoon habitat enhancement works in accordance with the lagoon habitat enhancement plan and the principles outlined in the mitigation and monitoring strategy and agreed with the MMO in consultation with Natural England, the Environment Agency and the local planning authority.

Progress of licensed activities

49. The undertaker must keep the MMO informed of progress of the licensed activities including—

- (a) notice of commencement of construction of the licensed activities within 24 hours of commencement having occurred;
- (b) notice within 24 hours of any aids to navigation being established by the undertaker; and
- (c) notice within 5 working days of completion of construction of each phase of the licensed activities.

Decommissioning

50. No decommissioning of that part of the authorised development below the level of high water is to take place until a decommissioning plan has been submitted to the MMO not less than 3 months prior to the decommissioning and approved by the MMO, and until the MMO has advised the undertaker whether or not the works comprised in the decommissioning plan require a marine licence under the provisions of the 2009 Act; and for the avoidance of doubt this DML does not obviate the need for such licence to be obtained if it is required for the decommissioning works being undertaken.

Archaeology

51.—(1) No development is to commence until a programme of archaeological work including a written scheme of investigation has been submitted to and approved by the MMO. The programme must be submitted for approval at least 6 weeks prior to the commencement of works. The scheme must include a level 1 Building Recording of the “Seventh Buoy Light/Dolphin Mooring Bollard” prior to demolition; and monitoring of dredging works in the harbour area in the vicinity of borehole BHP6 to identify and analyse peat deposits. The scheme must include an assessment of significance and research questions, and—

- (a) the programme and methodology of site investigation and recording;
- (b) the programme for post investigation assessment;
- (c) provision to be made for analysis of the site investigation and recording;
- (d) provision to be made for publication and dissemination of the analysis and records of the site investigation;
- (e) provision to be made for archive deposition of the analysis and records of the site investigation; and
- (f) nomination of a competent person or organisation to undertake the works set out within the written scheme of investigation.

(2) No development is to take place other than in accordance with the written scheme of investigation approved under sub-paragraph (1).

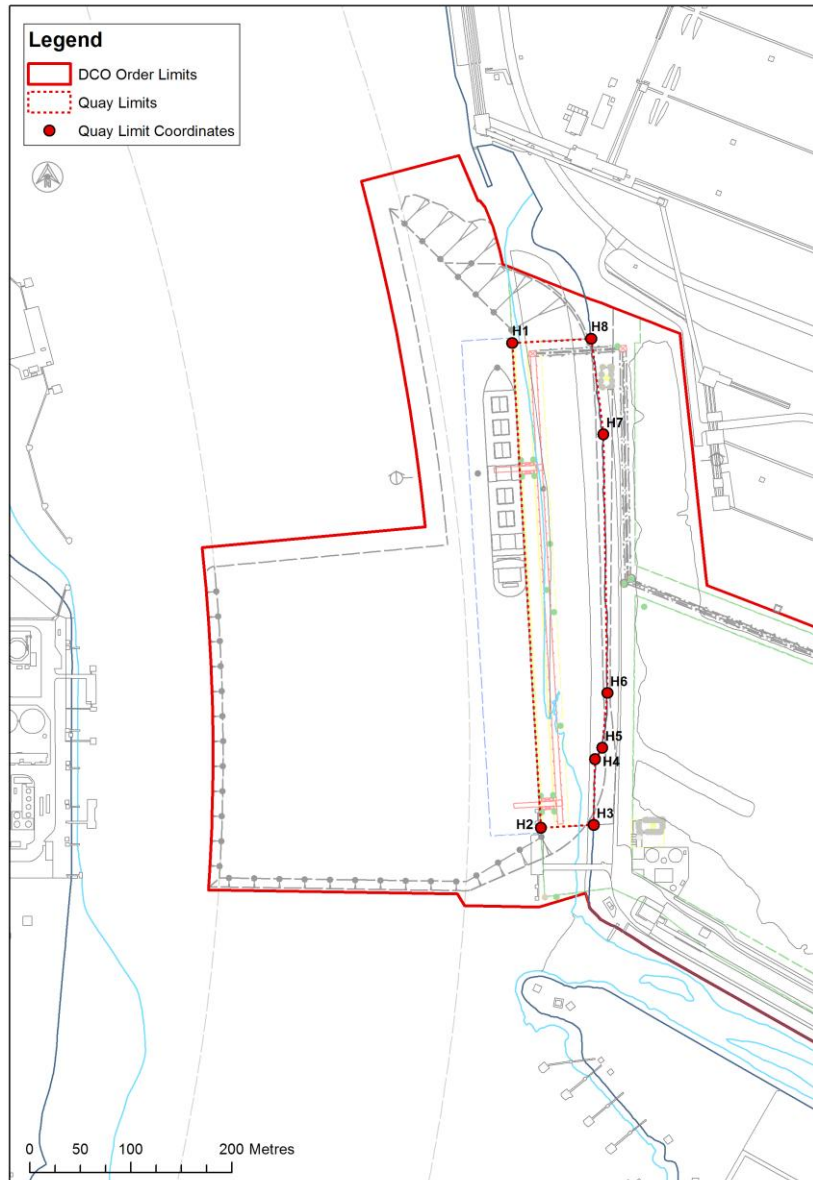
(3) The authorised development must not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the written scheme of investigation approved under sub-paragraph (1) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

SCHEDULE 6

Articles 2 and 4

QUAY LIMITS

Name	<i>British National Grid</i>		<i>WGS84 DDM</i>	
	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

FOR THE PROTECTION OF NETWORK RAIL

1. The following provisions of this Schedule have effect, unless otherwise agreed 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 (licences) of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London, NW1 2DN) 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 (meaning of “subsidiary” etc) of the Companies Act 2006(b)) 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 must—

- (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 under the powers conferred by this Order.

4.—(1) The undertaker must 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), 30, (temporary use of land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act in respect of any railway property if such powers prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(2) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of telecommunications code system operators: preliminary notices) of the 1990 Act, in relation to

(a) 1993 c. 43. Section 8 was amended by paragraph 3 of Schedule 20 to the Railways and Transport Safety Act 2003 (c. 20), paragraph 1 of Schedule 13(1) to the Railways Act 2005 (c. 14) and paragraph 4 of Schedule 17 to the Transport Act 2000 (c. 38). There are other amendments not relevant to this Order.

(b) 2006 c. 46.

any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(3) The undertaker must 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.

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

5.—(1) The undertaker must 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 must 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) must 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 disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate 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 approval or disapproval, the engineer is to 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 must construct it without unnecessary delay 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 approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's 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 must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works are to be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

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

- (a) without unnecessary delay 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 on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, regardless of any such approval, make good such damage and must 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 imposes 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 must—

- (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 the engineer may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must 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 must 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 must be specified in the notice), the undertaker must 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 must assume construction of that part of the specified work and the undertaker must, regardless of 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 must, 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 is to be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker must 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, signallers, watchkeepers and other persons whom it is 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 development 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 signalling or other communications.

(2) This paragraph applies 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 must in the design and construction of the authorised works take all measures necessary to prevent EMI and must 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 must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and must 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 must 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 under sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified under 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 must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the completion of the authorised development and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the undertaker must 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) 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 must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must 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 under sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must 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) applies 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 is to 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 is to 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 must, 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 must 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 must have first consulted Network Rail and it must 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 must, 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 must 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 of such a work; 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 must 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 does 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 must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) 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 must 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 is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums are payable to that operator under 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 (licences) of the Railways Act 1993.

16. Network Rail must, 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 under this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Schedule no account is to be taken of 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, prejudices or affects the operation of Part 1 of the Railways Act 1993.

20. The undertaker must 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) and any such notice must be given no later than 28 days before any such application is made and must 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 must 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

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY

Application

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

Interpretation

2. In this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid 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(a), belonging to or maintained by National Grid, together with any replacement apparatus and such other apparatus constructed under the powers conferred by this Order that becomes operational apparatus of National Grid or any of its entities for the purposes of transmission, distribution 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 (interpretation) and for the purposes of this Schedule includes the use and maintenance of the authorised works;

“functions” includes powers and duties;

“in”, in a context referring to apparatus in land, includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” 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 (company number 2366977), registered at 1-3 Strand, London WC2N 5EH) being a licence holder within the meaning of Part 1 of the Electricity Act 1989; and

“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 paragraphs 7 (retained apparatus: protection) and 8 (expenses) which apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Grid, the provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

(a) 1989 c. 29.

Acquisition of land

4.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or within such other timeframe as may be agreed between the undertaker and National Grid) that are subject to the requirements of this Schedule that would cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent, crossing agreements, variations to existing deeds of easements, agreements or such other legal interests in favour of National Grid or grant such new deeds of grant (upon such terms and conditions as may be agreed between the undertaker and National Grid acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid) in order to verify, amend or replace the existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the other terms of this Schedule; and it is the responsibility of the undertaker to procure or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Where there is any inconsistency or duplication between the provisions set out in this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

Removal of apparatus

5.—(1) If, in the exercise of the agreement reached in accordance with paragraph 4 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 National Grid in accordance with sub-paragraphs (2) to (5).

(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 National Grid 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)) 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 except that this obligation does 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 sub-paragraph (1) 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, then the matter must be referred to arbitration in accordance with paragraph 13 (arbitration), and the arbitrator must 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 5(2) or otherwise, the undertaker must submit to National Grid 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—

- (a) 15 metres measured in any direction of any apparatus; or
- (b) involve embankment works within 15 metres of any apparatus,

the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (i) the exact position of the works;
- (ii) the level at which these are proposed to be constructed or renewed;
- (iii) the manner of their construction or renewal including details of excavation, positioning of plant;
- (iv) the position of all apparatus;
- (v) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (vi) any intended maintenance regimes; and
- (vii) 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; and
- (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); and
- (b) must not be unreasonably withheld or delayed.

(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 (6), 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 is 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 under this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised works (or any relevant part of the authorised works) for which protective works are required and National Grid must give 56 days' notice of such works from the date of submission of a plan under this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraph (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, sub-paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(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 apply to and in respect of the new plan.

(11) The undertaker is not 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) in so far 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 anticipated or 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 (with the agreement of the undertaker) 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 any additional costs to be incurred in maintaining and renewing permanent protective works; and
- (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) The value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus must be deducted from any sum payable under sub-paragraph (1), 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) is to be reduced by the amount of that excess except 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 must 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 must 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 is to 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), 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, is to 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 the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker 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 must—

- (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 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 does not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of 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 professional manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes 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 or any other works authorised by this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker and with the benefit of the provisions of this Order under section 156 of the 2008 Act subject to the proviso that once such works become apparatus, any authorised works yet to be executed and not falling within this sub-paragraph are subject to the full terms of this Schedule including this sub-paragraph.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise is to 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.

- (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, would 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 at least 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 must 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 8 (expenses).

(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 under 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. Except 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 Schedule affects 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 the undertaker 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 5(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 7, the undertaker must 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 must use its reasonable endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid’s consent, agreement or approval 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 4(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. Except for differences or disputes arising under paragraphs 5(2), 5(4), 6(1), 7 and 9(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 of Requirements

15. 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 under 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 National Grid 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

FOR THE PROTECTION OF THE PIPELINE CORRIDOR AND PROTECTED CROSSINGS

Benefit of protective provisions

1.—(1) The following provisions of this Schedule have effect for the benefit of any owner of the protected land and any owner or operator of a pipeline within the pipeline corridor, unless otherwise agreed between the undertaker and the said owner or operator.

(2) The provisions contained in paragraph 25 do not apply to the interests of Northumbrian Water Limited unless otherwise agreed between the undertaker and Northumbrian Water Limited.

Interpretation

2. In this Schedule—

“access roads” means the access roads within the Order limits giving access to pipelines or protected crossings;

“affected assets” means—

- (a) underground pipelines where relevant works are to be carried out within the easement widths relating to that apparatus;

- (b) apparatus on or above ground which would be physically affected by the relevant works;
- (c) protected crossings where relevant works are to be carried out within 25 metres of the protected crossing concerned; and
- (d) in relation to the exercise of an identified power, any apparatus in the protected land which would be affected by the exercise of that power.

“apparatus” means pipelines and cables and includes—

- (a) any structure existing at the time when a particular action is to be taken under this Schedule in which apparatus is or is to be lodged or which will give access to apparatus;
- (b) any cathodic protection, coating or special wrapping of the apparatus; and
- (c) all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act 1962(a), as if the pipelines were a “pipe-line” in section 65(1) of that Act;

“cats easement” means the easement width of the cats pipeline;

“cats pipeline” means the pipeline identified as “Gas BP Cats” on the conveyor route plans;

“cats pipeline critical construction activities” means the following authorised works—

- (a) excavation works within the cats easement;
- (b) piling within 10 metres of the cats pipeline;
- (c) backfilling and compaction work within the cats easement;
- (d) erection of crash mats above the cats pipeline; and
- (e) all lifting above the cats pipeline;

“construction access plan” means a plan identifying how access will be maintained to pipelines, the protected crossings and the Wilton Complex during the proposed construction or maintenance work including—

- (a) any restrictions on general access by owners of the protected land and operators of the pipelines, including the timing of restrictions;
- (b) any alternative accesses or routes of access that may be available to the undertaker using the access roads;
- (c) details of how the needs and requirements of owners of the protected land and operators of the pipelines (including their needs and requirements in relation to any major works that they have notified to the other operators of the protected land as at the date when the plan is published) have been taken into account in preparing the plan;
- (d) details of how uninterrupted and unimpeded emergency access with or without vehicles will be provided at all times for owners of the protected land and operators of the pipelines; and
- (e) details of how reasonable access with or without vehicles will be retained or an alternative provided for owners of the protected land and operators of the pipelines to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the pipelines and protected crossings;

“construction or maintenance works” means any works to construct, maintain, or decommission the authorised development;

“damage” includes all damage including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

“easement width” means in respect of each pipeline the easement width shown on the conveyor route plans as adjusted if necessary (in respect of pipelines shown on the conveyor route plans) or added to (in respect of pipelines constructed after the date this Order is made) as a result of the pipeline survey;

(a) 1962 c. 58. Section 65 was amended by section 89(1) of, and paragraphs 1 and 2 of Schedule 2 to, the Energy Act 2011 (c. 16), S.I. 2000/1937 and S.I. 2011/2305.

“engineer” means an engineer appointed by an owner or operator of a pipeline for the purposes of this Order;

“major works” means works by any person requiring the closure, diversion or regulation of any roads serving the Wilton Complex;

“Northumbrian Water Limited” means the company of that name (company number 02366703, whose registered office is at Northumbria House, Pity Me, Durham, DH1 5FJ);

“operator” means any person who is responsible for the construction, operation, use, maintenance or renewal of any pipeline;

“owner” means—

- (a) in relation to the pipeline corridor, any person—
 - (i) with an interest in a pipeline in the pipeline corridor;
 - (ii) with rights in, on, under or over the pipeline corridor in respect of a pipeline; or
 - (iii) with a pipeline or proposed pipeline in, on, under or over the pipeline corridor;
- (b) in relation to the access roads, any person—
 - (i) with an interest in the access roads; or
 - (ii) with private rights of way on or over the access roads;
- (c) in relation to the protected crossings, any person—
 - (i) with an interest in the protected crossings;
 - (ii) with rights in relation to the protected crossings; or
 - (iii) with pipelines in or comprising the protected crossings; and
- (d) in relation to protected land means any person falling within paragraphs (a) to (c) above;

“pipelines” means the apparatus located in the pipeline corridor, or in or comprising a protected crossing at the time the pipeline survey is carried out or as may be added between the date of the pipeline survey and the commencement of works, providing that any such additions are notified to the undertaker as soon as reasonably practicable;

“pipeline survey” means a survey of the pipeline corridor and the protected crossings to establish if not known—

- (a) the precise location of the pipelines and the protected crossings;
- (b) the specification of the pipelines and protected crossings including, where relevant, their composition, diameter, pressure and the products they are used to convey;
- (c) any special requirements or conditions relating to the pipelines which differ from the requirements or conditions applying to standard pipelines of that type; and
- (d) the precise location of any easement widths or rights (where it is possible to establish this);

“protected crossings” means—

- (a) the tunnel under the River Tees which carries pipelines known as Tunnel 2; and
- (b) the apparatus under the River Tees known as the Breagh Pipeline;

“protected land” means such parts of the Order land as fall within—

- (a) the access roads;
- (b) the pipeline corridor; or
- (c) the protected crossings;

“relevant work” means a work which may have an effect on the operation, maintenance, abandonment of or access to any pipeline or a protected crossing;

“specified persons” means—

- (a) the following—

- (i) Company Secretary, SABIC UK Petrochemicals Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF in relation to SABIC UK Petrochemicals Limited;
- (ii) Operations Manager, Huntsman Polyurethanes, PO Box 99, Wilton, Redcar, TS10 4YA in relation to Huntsman Polyurethanes (UK) Limited;
- (iii) Company Secretary, INEOS UK SNS Limited, 4th Floor, 90 High Holborn, London WC1V 6LJ in relation to INEOS UK SNS Limited; and
- (iv) CATS Manager, CATS Terminal, Seal Sands Road, Seal Sands, Middlesbrough, Teesside TS1 1UB and Technical Director, CATS North Sea Limited, Wynyard Park House, Wynyard Avenue, Wynyard, Billingham TS22 STB in relation to CATS North Sea Limited, or

such other person as they may notify to the undertaker in writing; or

- (b) where a person for whose benefit these protective provisions have effect is not mentioned in paragraph (a)—
 - (i) that person where the person is not an incorporated body;
 - (ii) the company secretary in relation to a company;
 - (iii) the designated partner in relation to a limited liability partnership; or
 - (iv) such other person as they may notify to the undertaker in writing;

“unknown rights” means rights which are—

- (a) not known at the date of the Order; or
- (b) identified as unknown in the book of reference,

but not including any rights relating to pipelines (or access to pipelines) where a pipeline is shown on the pipeline survey;

“Wilton Complex” means the land shown outlined in red on the Wilton Complex Plan;

“Wilton Complex Plan” means the plan entitled “Location of Wilton Complex (Plan 1)” (drawing number T-MIS-0065-01); and

“works details” means the following—

- (a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;
- (b) details of any proposed temporary crossing points under paragraph 10;
- (c) details of methods and locations of any piling proposed to be undertaken under paragraph 14;
- (d) details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 15;
- (e) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 16;
- (f) details of the location of any pipelines affected by the oversailing provisions in paragraph 17, including details of the proposed clearance;
- (g) details of the method location and extent of any dredging, a technical assessment of the likely effect of the dredging on the protected crossings and any mitigation measures which are proposed to be put in place to prevent damage to the protected crossings;
- (h) details of the undertaker and their principal contractors’ management of change procedures;
- (i) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;
- (j) details of the electrical design of the authorised works in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to the cats pipeline;

- (k) details (to include a dynamic analysis undertaken by the undertaker and provided to the cats pipeline operator) of the conveyor and conveyor support structure and the measures to be undertaken to ensure vibration does not impact on the cats pipeline;
- (l) details of the lifting study during the construction phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;
- (m) details of the lifting study during the operational phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;
- (n) details of the means by which the entirety of the cats pipeline can be properly inspected and if necessary repaired during the construction and operation of the authorised development which must provide for an excavation to a depth of 0.6 metres below the cats pipeline and 2 metres either side of the centreline of the cats pipeline consistent with the relevant constructability notes;
- (o) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators;
- (p) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to the cats pipeline cathodic protection system and the proposed remedial works; and
- (q) any further particulars provided in accordance with paragraph 4(2).

Pipeline survey

3.—(1) Before commencing any part of the authorised development in the pipeline corridor or which may affect a protected crossing the undertaker must—

- (a) carry out and complete the pipeline survey; and
- (b) comply with sub-paragraph (3) below.

(2) The pipeline survey must be undertaken by a surveyor who is a member of the Royal Institute of Chartered Surveyors with at least 10 years' experience of such surveys.

(3) When the pipeline survey has been completed the undertaker must serve a copy of the pipeline survey on the owners and operators of the pipelines and protected crossings and invite them to advise the undertaker within 28 days of receipt of the survey if they consider that the pipeline survey is incomplete or inaccurate and if so in what respect following which the undertaker must finalise its pipeline survey.

Authorisation of works details affecting pipelines or protected crossings

4.—(1) Before commencing any part of a relevant work the undertaker must submit to the owners and any operators of any affected asset the works details and obtain a written acknowledgement of receipt of those works details from the specified persons in relation to the affected asset concerned.

(2) The undertaker must as soon as reasonably practicable provide such further particulars as the owner or operator of any affected asset may, within 45 days from the receipt of the works details under sub-paragraph (1), reasonably require.

5. No part of a relevant work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that relevant work under paragraph 4 have been authorised by the owner and operator of all the affected assets; or
- (b) the works details supplied in respect of that relevant work under paragraph 4 have been authorised by an expert under paragraph 7(3); or
- (c) authorisation is deemed to have been given in accordance with paragraph 7(1).

6.—(1) Any authorisation by the owner or operator of an affected asset required under paragraph 5(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as the owner or operator of the affected asset may require to be made for—

- (a) the continuing safety and operation or viability of the affected asset; and
- (b) the requirement for the owner and operator of the affected asset to have—
 - (i) uninterrupted and unimpeded emergency access with or without vehicles to the affected asset at all times; and
 - (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected asset.

(2) Where the owner or operator of the cats pipeline can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the cats pipeline the owner or operator is entitled to withhold their authorisation until the undertaker can demonstrate to the reasonable satisfaction of the owner or operator that the authorised development will not significantly adversely affect the safety of the cats pipeline.

(3) The authorised development must be carried out in accordance with the works details authorised under paragraph 5 and any conditions imposed on the authorisation under paragraph 6(1).

(4) Where there has been a reference to an expert in accordance with paragraph 7(2) and the expert gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the expert under paragraph 7(3).

7.—(1) In the event that—

- (a) no response has been received to the submission of the works details under paragraph 4 within 45 days of the undertaker obtaining a written acknowledgment of receipt from a specified person under paragraph 4(1) and no further particulars have been requested under paragraph 4(2); or
- (b) authorisation has not been given within 30 days of the undertaker obtaining a written acknowledgment of receipt from a specified person of the further particulars supplied under paragraph 4(2),

approval of the works details is to be deemed to be given and the relevant works may commence.

(2) In the event that—

- (a) the undertaker considers that the owner or operator has unreasonably withheld its authorisation under paragraph 6(1); or
- (b) the undertaker considers that an owner or operator has given its authorisation under paragraph 6(1) subject to unreasonable conditions,

the undertaker may refer the matter to an expert for determination under paragraph 34 .

(3) Where the matter is referred to an expert under paragraph 7(2) the expert is to determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 6(1).

(4) Where the undertaker considers that the owner or operator of the cats pipeline has unreasonably withheld its authorisation under paragraph 6(2) then the matter may be referred to an expert on the application of either party (after giving notice in writing to each other) appointed by the secretary of the United Kingdom Onshore Pipeline Association for determination under paragraph 34.

Notice of works

8. The undertaker must provide to the owner and operator of an affected asset a minimum of 28 days' notice prior to commencing any relevant work in order that an engineer can be made available to observe the relevant works and, when required, advise on the necessary safety precautions.

Further provisions about works

9.—(1) Before carrying out a relevant work the undertaker must—

- (a) provide the owners and any operators of any affected asset with baseline data for any existing cathodic protection of the asset; and
- (b) carry out a pipeline settlement and stress analysis to demonstrate any potential pipeline movement will not present an integrity risk to the affected asset.

(2) The pipelines must be located by hand digging prior to the use of mechanical excavation provided that any excavation outside of 2 metres of the centreline of a pipeline may be dug by mechanical means.

(3) The undertaker must engage an independent construction Quality Assurance Inspector to oversee cats pipeline critical construction activities during the construction phase.

10.—(1) Where temporary crossings for construction traffic are to be used, other than where the pipelines are under a carriageway of adequate standard of construction, then the crossing points must be suitably reinforced with sleepers or road plates or a specially constructed reinforced concrete raft or by installing a temporary bridge over the pipeline as necessary.

(2) Details of proposed temporary crossing points referred to in sub-paragraph (1) must be notified to the owner and operator of the pipeline in accordance with paragraph 4.

11. During construction, an area equivalent to the easement widths of the pipelines (taken from the actual location of the pipelines shown on the pipeline survey) 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 of live pipelines must be erected at a minimum distance of every 50 metres.

12. No explosives are to be used within the protected land.

13.—(1) There must be no lifting over any exposed sections of the cats pipeline or live or vulnerable plant containing hazardous substances or pressure energy.

(2) Any construction works above the buried sections of the cats pipeline require the protection of the cats pipeline.

(3) All piling within 1.5 metres of the centreline of a pipeline must be non-percussive, except that in the case of the cats pipeline all piling within 10 metres of the centreline of the cats pipeline must be non-percussive.

14.—(1) Where piling is required within 50 metres of the centreline of a pipeline or which could have an effect on the operation or maintenance of a pipeline or access to a pipeline, details of the proposed method for and location of the piling must be provided to the owner and operator of the relevant pipeline for approval in accordance with paragraph 4.

(2) Any proposed piling operations within—

- (a) 10 metres either side of the centreline of the cats pipeline require the crown of the pipeline to be physically exposed, so its location can be confirmed with the asset operator or owner as appropriate and where within 2 metres of the centreline of the cats pipeline it must be exposed by hand digging only; and
- (b) 5 metres either side of the centreline of the cats pipeline and, in addition to the obligations in paragraph 14(2)(a), require excavation to be carried out to a level below the depth of the pipeline, to ensure that no materials are present that could damage the pipeline if disturbed, in the presence of the asset owner or operator as appropriate.

(3) All excavations within 2 metres of the centreline of the cats pipeline must be hand dug.

15.—(1) Where excavation of trenches (including excavation by dredging) adjacent to a pipeline affects its support, the pipeline must be supported in a manner approved by the owner and operator of the relevant pipeline.

(2) Where the undertaker proposes to carry out excavations which might affect above ground structures such as pipeline supports in the pipeline corridor, the undertaker must calculate the zone

of influence of those excavations and provide those calculations to the owner and operator of the pipeline under paragraph 4.

16.—(1) Where a trench is excavated across or parallel to the line of a pipeline, the backfill must be adequately compacted to prevent any settlement which could subsequently cause damage to the pipeline.

(2) Proposed methods and locations of compacting must be notified to the owner and operator of the pipeline in accordance with paragraph 4.

(3) Compaction testing must be carried out once back filling is completed to establish whether the backfill has been adequately compacted as referred to in sub-paragraph (1) and what further works may be necessary, and the results of such testing must be supplied to the owner and operator of the pipeline.

(4) Where it is shown by the testing under sub-paragraph (3) to be necessary, the undertaker must carry out further compaction testing under sub-paragraph (1) and sub-paragraphs (1), (2) and (3) continue to apply until such time as the backfill has been adequately compacted.

(5) In the event that it is necessary to provide permanent support to a pipeline which has been exposed over the length of the excavation before backfilling and reinstatement is carried out, the undertaker must pay to the owner or operator of the relevant pipeline a capitalised sum representing the increase of the costs (if any) which may be expected to be reasonably incurred in maintaining, working and, when necessary, renewing any such alterations or additions.

(6) In the event of a dispute as to—

(a) whether or not backfill has been adequately compacted under sub-paragraphs (1) to (4); or

(b) the amount of any payment under sub-paragraph (5),

the undertaker or the owner or operator of the relevant pipeline may refer the matter to an expert for determination under paragraph 34.

17.—(1) A minimum clearance of 1500 millimetres must be maintained between any part of the authorised development and any affected asset (whether that part of the authorised development is parallel to or crosses the pipeline) unless otherwise agreed with the owner and operator of the affected asset.

(2) No manholes or chambers are to be built over or round the pipelines.

Monitoring for damage to pipelines

18.—(1) When carrying out the relevant work the undertaker must monitor the relevant affected assets to establish whether damage has occurred.

(2) Where any damage occurs to an affected asset as a result of the relevant work, the undertaker must immediately cease all work in the vicinity of the damage and must notify the owner and operator of the affected asset to enable repairs to be carried out to the reasonable satisfaction of the owner and operator of the affected asset.

(3) If damage has occurred to an affected asset as a result of relevant work the undertaker will, at the request and election of the owner or operator of the affected asset—

(a) afford the owner or operator of the affected asset all reasonable facilities to enable it to fully and properly repair and test the affected asset and pay to the owner or operator its costs incurred in doing so including the costs of testing the effectiveness of the repairs and cathodic protection and any further works or testing shown by that testing to be reasonably necessary; or

(b) fully and properly repair the affected asset as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of the owner or operator of the affected asset to have effectively repaired the affected asset before any backfilling takes place.

(4) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where an owner or operator of the affected asset agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(5) Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work, sub-paragraphs (2) to (4) of this paragraph apply to that damage.

(6) In relation to the approved assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to the cats pipeline cathodic protection system, the undertaker must undertake any necessary remedial work.

(7) In the event that the undertaker does not carry out necessary remedial work in a timely manner then the affected owner is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

19.—(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and the owner and operator of the pipeline must be notified immediately.

(2) Where there is leakage or escape of gas, the undertaker must immediately—

- (a) remove all personnel from the immediate vicinity of the leak;
- (b) inform the owner and operator of the relevant pipeline;
- (c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and
- (d) assist emergency services as may be requested.

Compliance with requirements, etc applying to the protected land

20.—(1) Subject to sub-paragraph (2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting owners of the protected land, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the protected land.

(2) The undertaker is not bound by any condition, requirement or regulation that is—

- (a) introduced after the date on which notice of the works was given under paragraph 8 ; or
- (b) determined by the expert following a determination under paragraph 34 to unreasonably—
 - (i) create significant engineering, technical or programming difficulties; or
 - (ii) materially increase the cost of carrying out the works.

(3) Sub-paragraph (2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority (exercising its public functions) or the police.

Access for construction and maintenance

21.—(1) Before carrying out any construction or maintenance works affecting access rights over the access roads, the undertaker must prepare a draft construction access plan and publicise and consult on the draft construction access plan with owners of the protected land operators of the pipelines and any owners and occupiers of any properties within the Wilton Complex whose access to their property is likely to be affected by those works.

(2) The undertaker must take account of the responses to any consultation referred to in sub-paragraph (1) before approving the construction access plan.

22.—(1) In preparing a construction access plan under paragraph 21 the undertaker must—

- (a) establish the programme for major works in the pipeline corridor and the Wilton Complex and plan the construction or maintenance works to prevent or (if such conflict cannot be

reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and

- (b) establish where an owner of the protected land or operator of a pipeline or any owners and occupiers of any properties within the Wilton Complex whose access to their property is likely to be affected by those works has a reasonable expectation to exercise access rights over particular access roads in respect of which rights are proposed to be restricted or extinguished, establish the purpose of that expectation and provide an alternative or replacement means of access whereby that expectation can be met.

(2) Where a reference is made to expert determination under paragraph 34 in relation to any disagreement about a construction access plan, in addition to the criteria set out in paragraph 34(6) the appointed expert must have regard to—

- (a) whether major works were, at the date of the consultation already programmed to take place;
- (b) the extent to which the authorised development can be accommodated simultaneously with the programmed major works;
- (c) the usual practice in respect of conditions or requirements subject to which authorisation to close or divert the access roads is given by the owner of the access roads;
- (d) the undertaker's programme in respect of the authorised development and the extent to which it is reasonable for it to carry out the authorised development at a different time;
- (e) the availability (or non-availability) of other times during which the authorised development could be carried out;
- (f) the programme in respect of the major works and the extent to which it is reasonable for the owner or operator to carry out the major works at a different time; and
- (g) the financial consequences of the decision on the undertaker and on any owner and operator.

(3) In this paragraph, “programmed”, in relation to works, means works in respect of which the owner of the access roads has been notified of the specific dates between which the works are programmed to be carried out provided that the period covered by such dates must be length of time the works are programmed to be carried out and not a period within part of which the works are to be carried out.

23.—(1) No works affecting access rights over the access roads are to commence until 30 days after a copy of the approved construction access plan is served on the owners of the protected land and operators of pipelines.

(2) Where an owner of the protected land or an operator of a pipeline refers the construction access plan to an expert for determination under paragraph 34, no works affecting access rights over the access roads may commence until that determination has been provided.

(3) In carrying out construction or maintenance works the undertaker must at all times comply with the construction access plan.

Restriction on exercising powers

24.—(1) The undertaker must not in the exercise of the powers conferred by this Order acquire, appropriate, extinguish, suspend or override any rights in the protected land if the authorised development can reasonably and practicably be carried out without such acquisition, appropriation, extinguishment, suspension or override.

(2) The undertaker must in the exercise of the powers conferred by this Order at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on owners of the protected land and operators of the pipelines, including any disruption to access and supplies of utilities and other services that are required by them in order to carry out their operations.

25.—(1) The undertaker must not exercise the powers conferred by articles 24 (compulsory and other acquisition of rights) and 25 (power to override easements and other rights) to acquire,

appropriate, extinguish, suspend or override any rights in the protected land relating to the pipelines or access to pipelines except in relation to unknown rights.

(2) Regardless of sub-paragraph (1) the undertaker must not exercise the identified powers unless one of the following consents has been given—

- (a) written consent by the owner of the protected land and the operator of any affected pipeline;
- (b) consent by an expert appointed under paragraph 34; or
- (c) deemed consent in accordance with sub-paragraph (7).

(3) Where an identified power provides for the undertaker to automatically extinguish or override a right or interest of an owner of the protected land, the restriction in sub-paragraph (2) is to operate so that the extinguishment or override of the right or interest does not apply unless the owner of the right or interest has given its consent or consent has been given by an expert appointed under paragraph 34 or is deemed to be given under sub-paragraph (7).

(4) Where a person's consent is required under sub-paragraph (2), that consent must not be unreasonably withheld.

(5) If the undertaker considers that consent has been unreasonably withheld, the undertaker may refer the request for consent to an expert appointed under paragraph 34 for determination.

(6) If an owner of the protected land or operator of a pipeline fails to respond to a request for consent within 30 days of the undertaker obtaining a written acknowledgement of receipt of the request for consent from the specified person the undertaker may serve a further notice on that owner or operator (a "deeming notice").

(7) In the event that an owner of the protected land or operator of a pipeline fails to respond to a deeming notice within 10 working days from the date when a written acknowledgement of receipt of the deeming notice is obtained by the undertaker from the specified person, the consent of the owner of the protected land or operator of a pipeline as the case may be is deemed to be given.

(8) In this paragraph, "identified powers" means the powers conferred by the following—

- (a) article 10 (street works);
- (b) article 11 (temporary stopping up of streets);
- (c) article 12 (access to works);
- (d) article 14 (discharge of water);
- (e) article 16 (authority to survey and investigate the land);
- (f) article 24 (compulsory and other acquisition of rights) in so far as the exercise of such powers is not excluded by paragraph 24 (1) and sub-paragraph (1);
- (g) article 25 (power to override easements and other rights) in so far as the exercise of such powers is not excluded by paragraph 24 (1) and sub-paragraph (1);
- (h) article 29 (rights under or over streets); and
- (i) article 30 (temporary use of land for carrying out the authorised development).

Insurance

26.—(1) Before carrying out any part of the authorised development on the protected land, the undertaker must put in place a policy of insurance with a reputable insurer against its liabilities under paragraph 28 in accordance with the terms and level of cover notified under sub-paragraph (2) or, in the case of dispute, in accordance with the terms and level of cover determined by an expert under paragraph 34, and evidence of that insurance must be provided on request to owners of the protected land and operators of pipelines.

(2) Not less than 30 days before carrying out any part of the authorised development on the protected land or before proposing to change the terms of the insurance policy, the undertaker must notify the owners of the protected land and operators of pipelines of details of the terms of the insurance policy that it proposes to put in place, including the proposed level of the cover to be provided.

(3) The undertaker must maintain insurance in relation to the authorised development affecting owners of the protected land and operators of pipelines during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover specified in sub-paragraph (2) or at such level as may otherwise be determined by an expert under paragraph 34.

27.—(1) If an owner of the protected land or operator of a pipeline has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 26—

- (a) the owner of the protected land or operator of a pipeline may refer the matter to an expert for determination under paragraph 34; and
- (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under paragraph 34 is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

Costs

28.—(1) The undertaker must repay to owners of the protected land and operators of the pipelines all reasonable fees, costs, charges and expenses reasonably incurred by them in relation to these protective provisions in respect of—

- (a) authorisation of survey details submitted by the undertaker under paragraph 3(3), authorisation of works details submitted by the undertaker under paragraph 4 and the imposition of conditions under paragraph 6;
- (b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 8;
- (c) responding to the consultation on piling under paragraph 14;
- (d) considering the effectiveness of any compacting which has taken place under paragraph 16, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;
- (e) the repair and testing of a pipeline or protected crossing under paragraph 18;
- (f) considering and responding to consultation in relation to the construction access plan under paragraph 21 and providing details of their programme for major works to the undertaker under paragraph 22;
- (g) dealing with any request for consent or agreement by the undertaker under paragraph 25; and
- (h) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 26,

including the reasonable costs incurred by owners and operators in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to allow the owner or operator to carry out its functions under these protective provisions.

(2) The undertaker must indemnify and keep the owners of the protected land and operators of the pipelines indemnified against all reasonable costs, charges, damages and expenses, and against consequential loss and damage, which may be occasioned or reasonably incurred by the owners and operators—

- (a) by reason of the construction, operation, maintenance, repair and decommissioning of the authorised development or the failure of it; 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 the construction, operation, maintenance, repair and decommissioning of the authorised development,

and the fact that any act or thing may have been done by the owner of protected land or operator of a pipeline on behalf of the undertaker or in accordance with plans approved by or on behalf of the owner or operator or in accordance with any requirement of the engineer appointed by the owner or operator or under his supervision does not (if it was done without negligence on the part

of the owner or operator or of any person in their employ or of its contactors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(3) An owner or operator must give the undertaker reasonable notice of any claim or demand under sub-paragraph (2) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(4) An owner or operator must, 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 under this Schedule.

(5) In the assessment of any sums payable to an owner or operator under this Schedule there must 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 owner or operator 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.

Further protection in relation to the exercise of powers under the Order

29. The undertaker must give written notice to the owners of the protected land and the operators of pipelines of the terms and level of cover of any guarantee or alternative form of security put in place under article 23 (guarantees in respect of payment of compensation) and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security comes into force.

30. The undertaker must give written notice to the owners of the protected land and the operators of pipelines 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), and any such notice must be given no later than 28 days before any such application is made and must 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.

31. The undertaker must, when requested to do so by an owner of the protected land or an operator of a pipeline, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 38 (certification of plans etc) in the form of a computer disc with read only memory.

32. The authorised development must be carried out in accordance with the methods and measures set out in the relevant constructability notes.

33. Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to the owners of the protected land and the operators of the pipelines.

Expert determination

34.—(1) Except as provided in sub-paragraph (7), article 40 (arbitration) does not apply to this Schedule.

(2) Any difference under this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;
- (e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner, while giving consideration to any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations;
- (f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;
- (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;
- (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (i) the constructability notes; and
- (j) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 40.

SCHEDULE 10

Article 34

FOR THE PROTECTION OF ASSET OWNERS AND OTHERS

PART 1

FOR THE PROTECTION OF ASSETS BRIDGED OR OVERSAILED

1. The following provisions of this Part of this Schedule have effect, unless otherwise agreed between the undertaker and the protected asset owner.

2. In this Part of this Schedule—

“construction” includes execution, placing, alteration, reconstruction and decommissioning and “construct” and “constructed” have corresponding meanings;

“Deeds of Grant” means the deeds dated 23rd September 1949 and 23rd February 1954 made between Imperial Chemical Industries Limited and Dorman Long & Co 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 the protected asset;

“protected asset” means the assets and land identified in the annex to this Part of this Schedule; 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, a protected asset.

3. Where under this Part of 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 must not in the exercise of the powers conferred by this Order—

- (a) create, acquire, appropriate, extinguish or suspend any rights or covenants in respect of any protected asset if the authorised development can reasonably and practicably be carried out in accordance with the protective provisions without such creation, acquisition, appropriation, extinguishment or suspension; or
- (b) regardless of sub-paragraph (a) restrict the rights contained in the Deeds of Grant in so far as such rights are consistent with the construction, operation and maintenance of the authorised development in accordance with the protective provisions.

(2) The undertaker must in the exercise of the powers conferred by this Order at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on protected assets.

(3) The undertaker must 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 in any event subject to exception in the case of emergency.

(4) The undertaker must not under the powers of this Order acquire or create new rights over a protected asset other than such rights as are necessary for the construction, operation and maintenance of Works No. 4 and Works No. 5 in accordance with the protective provisions without the consent of the protected asset owner.

(5) Where the protected asset owner is asked to give its consent under this paragraph such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) Before carrying out any works on any part of the authorised development affecting a protected asset the undertaker must put in place a policy of insurance with a reputable insurer against consequential loss and damage suffered by protected asset owners, and evidence of that insurance must be provided on request to protected asset owners.

(2) Not less than 30 days before carrying out any works on any part of the authorised development affecting a protected asset or before proposing to change the terms of the insurance policy, the undertaker must notify the affected owners of details of the terms of the insurance policy that it proposes to put in place including the proposed level of the cover to be provided.

(3) The undertaker must maintain insurance in relation to works or the use of the authorised development affecting the protected asset during the operation of the authorised development at the level specified in the notice of proposed insurance.

6. If a protected asset owner notifies the undertaker that it considers that any proposed exercise by the undertaker of a power under this Order breaches these protective provisions or if there is a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 5 before such a power may be exercised—

- (a) the protected asset owner may refer the matter to arbitration for determination under article 40 (arbitration) and paragraph 21;
- (b) in respect of an alleged breach of these protective provisions in relation to any proposed exercise by the undertaker of a power under this Order that has been referred to arbitration the undertaker must not exercise the power until that determination has been concluded; and
- (c) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under article 40(1) is completed, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

7.—(1) The undertaker must before commencing construction of any specified work supply to the protected asset owner proper and sufficient plans of and construction methodology for that work for the reasonable approval of the protected asset owner and the undertaker must as soon as reasonably practicable provide such further particulars as the protected asset owner may within 45 days from the receipt of the plans and construction methodology reasonably require.

(2) The specified work must not be commenced except in accordance with such plans and construction methodology as have been approved in writing by the protected asset owner or have been deemed to be approved under sub-paragraph (3) or settled by arbitration under the provisions of article 40(1) and paragraph 21.

(3) The approval of the protected asset owner under sub-paragraph (1) must not be unreasonably withheld, and in the event that—

- (a) no response has been received to the submission of the plans and construction methodology within 45 days of the submission of the plans by the undertaker to the protected asset owner and no further particulars have been requested under sub-paragraph (1); or
- (b) no refusal of approval has been received within 30 days of the undertaker providing to the protected asset owner the further particulars supplied under sub-paragraph (1),

approval of the plans and construction methodology is to be deemed to be given and the relevant works may commence.

(4) No refusal of the approval sought under sub-paragraph (1) is reasonable for the purposes of sub-paragraph (3) or determination under article 40(1) unless the protected asset owner can reasonably demonstrate that the construction of the specified work will materially affect the safe operation or structural integrity of the protected asset concerned.

(5) In the event that the undertaker considers that the protected asset owner has unreasonably withheld its authorisation under sub-paragraph (1), the undertaker may refer the matter to arbitration for determination under article 40 and paragraph 21.

8.—(1) Any specified work, when commenced, must so far as reasonably practicable be constructed in accordance with these protective provisions and—

- (a) without unnecessary delay in accordance with the plans and construction methodology approved or deemed to have been approved or settled under paragraph 7;
- (b) under the supervision (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 on that asset.

(2) If any damage to a protected asset or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must make good such damage without unreasonable delay and must 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 Part of this Schedule imposes 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.

9. The undertaker must—

- (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.

10.—(1) If any permanent or temporary alterations or additions to a protected asset are reasonably necessary in consequence of the construction or operation of a specified work, in order to ensure the safety of the protected asset or the continued safe operation of the protected asset, such alterations and additions may be carried out by the protected asset owner and the undertaker must pay to the protected asset owner the 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, in respect of the capitalised sums referred to in this paragraph, must 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 is to be set off against any sum payable by the undertaker to the protected asset owner under this paragraph.

11. The undertaker must 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, signallers, watchkeepers and other persons whom it is 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.

12. 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, on receipt of such notice and without unreasonable delay, must take such steps as may be reasonably necessary (and in accordance with the protective provisions) to put that specified work in such state of maintenance as not adversely to affect the protected asset.

13. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any protected asset unless it has first consulted the protected asset owner and it must comply with the protected asset owner's reasonable requirements for preventing conflict or 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.

14. 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, provided that (other than in the case of emergency or an operational imperative requiring urgent action) 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, are to be repaid by the undertaker to the protected asset owner.

15. The protected asset owner must, 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 Part of 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 under this Part of this Schedule.

16. In the assessment of any sums payable to the protected asset owner under this Part of this Schedule, any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by the protected asset owner must not be taken into account 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 Part of this Schedule or increasing the sums so payable.

17. 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;
- (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.

18. The undertaker must 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) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made (including the identity of the parties to which it relates);
- (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.

19. The undertaker, 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, must provide a set of those plans to the protected asset owner in the form of a computer disc with read only memory or such other electronic data format as the protected asset owner may reasonably request.

20.—(1) The plans and construction methodology submitted for approval under paragraph 7 of this Part of this Schedule must have regard to the principles set out in the relevant constructability notes but a refusal of plans or construction methodology from a protected asset owner from whom approval is sought under paragraph 7 is not to be deemed to be unreasonable solely on the basis that the plans and construction methodology comply with the relevant constructability note.

(2) The minimum headroom clearance between the upper surface of the hot metal rail and bridge shown as MC3 on the conveyor route plans and the underside of the conveyor must be 7.850 metres.

(3) The minimum headroom clearance between the upper surface of the road and bridge shown as MC6 on the conveyor route plans and the underside of the conveyor must be 8.240 metres.

21.—(1) Any dispute under this Schedule is to be determined by arbitration as provided for in article 40 (arbitration), provided that—

- (a) all parties involved in settling any difference have first used best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the arbitrator is to be appointed in accordance with article 40; and
- (b) any dispute to which this paragraph relates must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an arbitrator, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(2) Any dispute under this Schedule that is referred to arbitration in accordance with article 40 must, subject to the requirements of the appointed arbitrator, follow the procedure set out in sub-paragraphs (3) to (7).

(3) The fees of the arbitrator are payable by the parties in such proportions as the arbitrator may determine or, in the absence of such determination, equally.

(4) The arbitrator must—

- (a) invite the parties to make submission to the arbitrator in writing and copied to the other party to be received by the arbitrator within 28 days of his or her appointment (or such other timescale as the arbitrator determines);
- (b) permit a party to comment on the submissions made by the other party within 28 days of receipt of the submission (or such other timescale as the arbitrator determines);
- (c) issue a decision within 42 days of receipt of the submissions under (ii); and
- (d) give reasons for his or her decision.

(5) The arbitrator must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;
- (e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner;
- (f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;
- (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;
- (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
- (i) any other important and relevant consideration.

(6) The seat of the arbitration is to be England and Wales.

(7) The arbitration is to be governed by both the Arbitration Act 1996^(a) and the requirements set out in sub-paragraphs (3) to (5) or as agreed between the parties. Should the parties be unable to agree on the rules for arbitration, any party may, upon giving written notice to other parties, apply to the President of the Institution of Civil Engineers for any decision on rules that may be necessary.

(a) 1996 c. 23.

ANNEX

(1) <i>Asset</i>	(2) <i>Asset Owner</i>	(3) <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 conveyor route plans
Hot Metal Rail and Bridge	Tata Steel UK Limited and Sahaviriya Steel Industries UK Limited	MC3 on the conveyor route plans
SSI Road and Bridge	Tata Steel UK Limited and Sahaviriya Steel Industries UK Limited	MC6 on the conveyor route plans
Land and assets owned/occupied by Tata Steel UK Limited	Tata Steel UK Limited	Plot 37a on the land plans

PART 2

FOR THE PROTECTION OF REDCAR BULK TERMINAL

22. The following provisions of this Part of this Schedule have effect for the benefit of any owner of the Redcar Bulk Terminal.

23.—(1) The undertaker must not commence the construction of any part of Works No. 4 within the conveyor route (northern) or any part of Works No. 5 which are to be situated within or above plots 9 or 10 identified on the land plans without first agreeing with the owners of the Redcar Bulk Terminal (and afterwards implementing) protocols to—

- (a) govern access for the undertaker and the owners of the Redcar Bulk Terminal to the area shown on Document 3.16 which protocol must have due regard to proper security and operational requirements of the Redcar Bulk Terminal and the undertaker;
- (b) ensure that the construction and use of the authorised development within plots 9 and 10 incorporates the appropriate health, safety and security requirements of the owner or occupier of Redcar Bulk Terminal and the undertaker; and
- (c) locate, protect and (to the extent required to ensure continuation of supply) replace, relocate and reconnect any services or service media within plots 9 and 10.

(2) In the event that the undertaker considers that the owner of the Redcar Bulk Terminal has unreasonably withheld its agreement under sub-paragraph (1), the undertaker may refer the matter to arbitration for determination under article 40 (arbitration) and paragraph 21.

SCHEDULE 11

Article 34

FOR THE PROTECTION OF THE TEES PORT AUTHORITY

Interpretation

1. In this Schedule—

“document” includes plans, sections and drawings;

“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 submitted

under the provisions of this Order and 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 Secretary of State) or this Schedule;

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

“relevant TPA limits of jurisdiction” means the limits of the jurisdiction of the Tees Port Authority under the Teesport Acts and Orders 1966 to 2008(a) but excluding any land above the level of high water which is owned or occupied by the undertaker;

“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 or operation or activity authorised by this Order which affects the river or any functions of the Tees Port Authority as harbour authority or which is carried out within the relevant TPA limits of jurisdiction.

Location of tidal works

3. Regardless of article 4 (parameters of authorised development), no part of Works No. 2 or any other permanent tidal work authorised by this Order may be constructed in tidal waters which lie outside the line marked “river frontage line” shown on drawing number PB1586-SK123 revision 2 (Document 3.9B).

Tidal works: consultation and approval

4.—(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 Secretary of State);
- (b) 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 the level of high water;
- (c) commencing any construction of a tidal work where approval of the Secretary of State under article 17 is not required;
- (d) commencing any maintenance of a tidal work which may affect the river or any functions of the Tees Port Authority as harbour authority or which is carried out within the relevant TPA limits of jurisdiction; or
- (e) commencing any dredging operation,

the undertaker must submit to the Tees Port Authority plans and sections of the tidal work, programmes and method statements relating to the construction or maintenance of the tidal work or dredging operation or altered drawings.

(a) See article 1(2) of S.I. 2008/1238.

(2) The undertaker must provide the Tees Port Authority with such further information relating to the plans, sections, programmes and method statements or drawings submitted under sub-paragraph (1) as the Tees Port Authority may reasonably require provided that any request for such information must be received by the undertaker within 14 days from the day on which the information is submitted under sub-paragraph (1).

(3) The undertaker must consult the Tees Port Authority, and provide the Tees Port Authority with a reasonable opportunity to comment, on the plans and sections of a tidal work submitted under sub-paragraph (1)(a) or drawings submitted under sub-paragraph (1)(b).

(4) No construction of a tidal work referred to in sub-paragraph (1)(c) may be carried out except in accordance with such plans and sections as are approved in writing by the Tees Port Authority or determined under paragraph 28.

(5) No construction or maintenance of a tidal work or dredging operation referred to in sub-paragraph (1) (a), (c), (d) or (e) may be carried out except in accordance with such programmes and method statements as are approved in writing by the Tees Port Authority or determined under paragraph 28 unless in the case of the dredging operation that operation is being carried out by the Tees Port Authority.

(6) Before submitting for approval, agreement or otherwise as provided by this Order any document specified in columns (1) and (2) of Table 1, the undertaker must submit a copy to the Tees Port Authority for approval of the matters specified in column (3) of the Table and must consult the Tees Port Authority on such parts of the remainder of each such document which may affect the river or any functions of the Tees Port Authority as harbour authority or is within the relevant TPA limits of jurisdiction .

Table 1

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Provision of Order</i>	<i>(3)</i> <i>Provision requiring Tees Port Authority approval</i>
Written scheme so far as it relates to details of quay structure, conveyors and related infrastructure within Works Nos 1, 2 and 4	Schedule 2, paragraph 2	None
Construction Environmental Management Plan	Schedule 2, paragraph 6	None
Timetable of works and operations dealing with matters referred to in sub-paragraph (5)	Schedule 5, paragraph 11	The whole document
Detailed method statements dealing with matters referred to in sub-paragraph (5)	Schedule 5, paragraph 17	The whole statements
Details of work area and access routes within the relevant TPA limits of jurisdiction	Schedule 5, paragraph 18	The work area and access routes so far as they are in an area below the level of water
Capital dredge and disposal strategy	Schedule 5, paragraph 34	The whole strategy

(7) No application for a document specified in the Table, under the provision of the Order specified in relation to the document for which approval of the Tees Port Authority is required, may be made until the Tees Port Authority has approved the document in writing or approval is given by a determination under paragraph 28.

(8) When submitting to the Secretary of State, the MMO or the local planning authority, as the case may be, any application for approval of a document specified in sub-paragraph (1) or (6) on which the Tees Port Authority has been consulted under this paragraph, the undertaker must also

forward to that person or body any comments received from the Tees Port Authority in response to the consultation.

(9) 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 as harbour authority, licenced users under licences granted by PD Teesport under the 1966 Act or other river users; or
- (c) the performance of any of its functions as harbour authority connected with environmental protection.

(10) Requirements made under sub-paragraph (9) 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.

(11) Subject to sub-paragraph (13), any approval required under this paragraph is deemed to have been given if it is neither given nor refused within—

- (a) 28 days of the specified day; or
- (b) where an opinion has been provided by the Environment Agency under sub-paragraph (12) within 42 days of the specified day, 7 days from the day that an opinion has been provided; or
- (c) where no opinion has been provided by the Environment Agency under sub-paragraph (12) within 42 days of the specified day, 7 days from the expiry of that 42 day period,

whichever is the later.

(12) Before making a decision on any approval required under this paragraph, the Tees Port Authority must take into account any opinion on plans and sections that has been provided to it by the Environment Agency within 42 days of the specified day.

(13) An approval of the Tees Port Authority under this paragraph is not deemed to have been unreasonably withheld if approval within the period identified in sub-paragraph (11) has not been given pending the outcome of any consultation on the approval in question that the Tees Port Authority is obliged to carry out in the proper exercise of its functions as a harbour authority provided that in commencing or during the course of such consultation, the Tees Port Authority has acted with all due expedition.

(14) In this paragraph “the specified day” means, in relation to any matter for which approval is required—

- (a) the day on which particulars of that matter are submitted to the Tees Port Authority under sub-paragraph (1) or (6); or
- (b) the day on which the undertaker provides the Tees Port Authority with all such particulars of the matter as have been reasonably requested by the Tees Port Authority under sub-paragraph (2),

whichever is later.

(15) Whenever the undertaker provides the Secretary of State with an environmental document which relates to works which may affect the area below the level of high water it must at the same time send a copy to the Tees Port Authority.

5. If the Secretary of State, the MMO or the local planning authority requires the alteration of any document which has previously been approved by the Tees Port Authority or upon which the Tees Port Authority have been consulted by the undertaker, the undertaker must inform the Authority.

6. 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 documents specified in paragraph 4(1) or (6)

or any conditions or restrictions imposed by that body, the undertaker must send a copy to the Tees Port Authority.

Construction of tidal works

7.—(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 is to be gained and what exclusion areas are 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 must give written notice to the harbour master of the completion of the relevant phase within 14 days of completion of the tidal works carried out as part of phase 1 and phase 2.

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

9. The construction, and any operations for the construction, of any tidal work approved in accordance with this Order, once commenced, must be carried out by the undertaker without unnecessary delay and to the reasonable satisfaction of the Tees Port Authority 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

10.—(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 consent is deemed to have been given if it is neither given nor refused within 28 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.

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

Obstruction in river

12. 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

13. 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

14. 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 the level of high water 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

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

- (a) remove any temporary tidal work carried out only for the purposes of that part of the authorised development; and
- (b) remove from the river any materials, plant and equipment used for, and any debris caused by, such construction.

Protective action

16.—(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 under paragraph 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 reasonably required and 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 the Tees Port Authority believes 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 is an unacceptable impact and of measures that the Tees Port Authority reasonably believes are necessary to counter or mitigate that environmental impact.
- (5) The undertaker must implement the measures that the Tees Port Authority has notified to the undertaker unless within 28 days of the notification the undertaker gives the Tees Port Authority a written counter-notice—
- (a) specifying such other measures as the undertaker believes are necessary to counter or mitigate the environmental impact identified, giving reasons why the undertaker believes the measures are sufficient and preferable to the measures notified under sub-paragraph (4); or
 - (b) that it does not believe that any unacceptable environmental impact has been caused by tidal works it has carried out so that no measures are necessary.
- (6) Subject to sub-paragraph (7), the undertaker must implement any measures specified under sub-paragraph (5)(a).
- (7) Where the undertaker gives the Tees Port Authority a counter-notice under sub-paragraph (5)(a) or (b) the Tees Port Authority may within 28 days (or such longer period as may be agreed between the parties) refer the questions whether there is an unacceptable environmental impact and whether any, and if so what, measures are necessary to be carried out by the undertaker to counter or mitigate the impact to be determined under paragraph 28; and any measures so determined must be implemented by the undertaker.

Abandoned or decayed works

17.—(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 the level of high water) 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

18.—(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

19.—(1) Before the commencement of construction of the first tidal work, and any subsequent tidal work, to be constructed following approval under article 17 (tidal works not to be executed without approval of Secretary of State), the Tees Port Authority may, at the undertaker's reasonable expense, carry out a survey of such parts of the river within the Order limits as might be affected by sedimentation, scouring, currents or wave action that might result from the construction of such of the authorised development as would constitute tidal works if it were to be constructed, for the purposes of establishing the condition of the river at that time.

(2) The Tees Port Authority may carry out such surveys of the river within the Order limits 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) the tidal work comprised in phase 1; 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 within the Order limits 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.

Sedimentation, etc: remedial action

20.—(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

21.—(1) Before exercising the powers conferred by article 16 (authority to survey and investigate 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 onto the land,

and such other details as the harbour master may reasonably request.

(2) The undertaker must 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

22.—(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 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 within 28 days of the day on which the request for consent is submitted under sub-paragraph (1).

Indemnity

23.—(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, operation or maintenance of the authorised development carried out within or affecting the area within the relevant TPA limits of jurisdiction or any 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) any other activity or operation authorised by this Order which affects the river or any functions of the Tees Port Authority as harbour authority or which is carried out within the relevant TPA limits of jurisdiction and, in particular, anything done in relation to a mooring or buoy under paragraph 14; or
- (c) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development carried out within or affecting the area within the relevant TPA limits of jurisdiction or dealing with any failure of such 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 carried out within or affecting the area within the relevant TPA limits of jurisdiction and any activity or operation authorised by this Order carried out within or affecting the area within the relevant TPA limits of jurisdiction 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

24.—(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 general direction which directly affects the construction, operation or maintenance of the authorised development.

Savings

25.—(1) With the exception of any duty owed by the Tees Port Authority to the undertaker expressly 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 is not under any duty to dredge the approaches from the river channel to the quay, or the berthing pocket at the quay, to a depth greater than the depth of those waters immediately before the commencement of the authorised development.

(3) Any approval or consent given by the Tees Port Authority under 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 or carrying out of the authorised development but otherwise are not affected by this Order; and accordingly sections 22 and 23 apply as regards the maintenance of the authorised works.

(5) Subject to paragraph 24(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.

(6) Nothing in this Schedule requires the undertaker to do anything or desist from anything if to do so would be in breach of any statutory obligations to which the undertaker is subject including but not limited to the provisions of the DML.

Transfer of benefit of Order

26. 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.

Notices

27. Regardless of article 39 (service of notices) a notice required to be served on the Tees Port Authority under this Schedule must be served both on the company secretary and the harbour master for the time being of the Tees Port Authority in the manner provided by article 39 (service of notices).

Disputes

28. Any dispute arising between the undertaker and the Tees Port Authority under this Schedule is to be determined by arbitration under 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.