

SCHEDULES

SCHEDULE 6

PROTECTION OF CERTAIN PERSONS

PART 1

PROVISIONS FOR THE PROTECTION OF THE PORT AUTHORITY

Interpretation

1.—(1) For the protection of the Port Authority, the provisions in this Part of this Schedule shall, unless otherwise agreed in writing between the Council and the Port Authority, have effect.

(2) In this Part—

“accumulation” means any accumulation of silt or other material which constitutes an impediment to navigation;

“construction” includes execution and placing, maintenance, extension, enlargement and relaying and “constructed” shall be construed accordingly;

“erosion” means any erosion of the bed or banks of the Ouseburn or other structure of whatever nature;

“plans” includes arrangements, sections, descriptions, outline design and construction drawings and such specifications and other appropriate documents (including so far as is reasonably practicable a programme of the times at which it is intended that significant operations will be carried out) as may be reasonably necessary to give the Port Authority an understanding of the Council’s intentions in connection with constructional operations which will or may have a significant effect on navigation in, or the flow or regime of, the Ouseburn and, where applicable such relevant hydraulic information about the Ouseburn, including that obtained from models, as may be available to the Council and is not already in the possession of the Port Authority; and

“protective works” means such works by the Council, at their own expense, as may be specified by the Port Authority for the protection of traffic in, or the flow or regime of, the Ouseburn.

(3) With the exception of any duty owed by the Port Authority to the Council which is expressly provided for in this Part, nothing in this Order shall be construed as imposing upon the Port Authority either directly or indirectly, any duty or liability to which the Port Authority would not otherwise be subject and which is enforceable by proceedings before any court.

(4) Except as otherwise expressly provided in this Order and except so far as may be necessary to enable the objects of this Order to be effected, nothing in this Order shall prejudice or derogate from the estates, rights, interests, privileges, liberties or franchises of the Port Authority or harbour master or alter or diminish any power, authority or jurisdiction vested in the Port Authority on the date that this Order comes into force.

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Works in the upstream Ouseburn

2.—(1) Not later than 28 days before—

- (a) starting to carry out any tidal works; or
- (b) exercising any of the powers of article 9 (power to dredge etc.),

the Council shall submit to the Port Authority plans thereof and such further particulars as may be available to the Council and as the Port Authority may reasonably require and in carrying out such works or in exercising such powers, the Council shall comply with all reasonable modifications and conditions (not involving alteration to the basic design of any tidal works) required by the Port Authority, including protective works.

(2) Any modifications or conditions referred to in sub-paragraph (1) shall be notified by the Port Authority to the Council within 28 days of the receipt by the Port Authority of the plans or particulars to which such modifications or conditions relate.

Removal of temporary works

3. After the purpose of any temporary works has been accomplished, or after a reasonable period of notice in writing from the Port Authority requiring it so to do, the Council shall with all reasonable dispatch, remove any such temporary works or any materials relating thereto which may have been placed below the level of high water by or on behalf of the Council and, in the event of its failing so to do within a reasonable period after receiving such notice, the Port Authority may remove the same and charge the Council with the reasonable expense of so doing, which expense the Council shall repay to the Port Authority.

Facilities for navigation

4.—(1) The Council shall pay to the Port Authority the reasonable costs incurred by the Port Authority of such alterations to the marking and lighting of the navigational channel of the Ouseburn as may be necessary during or in consequence of the construction of a tidal work.

(2) The Council shall afford to the Port Authority such facilities as they may reasonably require for the placing and maintenance on any tidal works of signals, tide-boards, tide-gauges or other apparatus for the safety or benefit of navigation.

Details to be submitted to Port Authority

5. On completion of the construction of the scheduled works the Council shall supply to the Port Authority a plan on a scale of not less than 1 to 2500 and sections and cross-sections on a scale of not less than 1 to 100 showing the situation and levels of those works at that time.

Survey of the bed of the Ouseburn

6.—(1) Before the construction of the scheduled works is commenced, the Port Authority in conjunction with the Council shall carry out a survey of such parts of the Ouseburn as are relevant for the purpose of establishing the condition of the Ouseburn at that time.

(2) The Port Authority will make available to the Council, at reasonable charge, the results of the survey carried out under this paragraph.

Remedy in case of accumulation or erosion

7.—(1) If, during the construction of a tidal work or within 10 years after the relevant date it is agreed between the Council and the Port Authority after taking into account any relevant data or circumstances, or in default of agreement it is determined in pursuance of a reference to arbitration by the Council or the Port Authority under article 54 (arbitration), that—

- (a) any part of the Ouseburn has been subjected to accumulation or erosion;
- (b) such accumulation or erosion is as a consequence (whether in whole or in part) of the construction of the tidal works; and
- (c) for the safety of navigation or in the interests of persons using the Ouseburn or for the protection of works in the Ouseburn, such accumulation or erosion should be removed or, as the case may be, made good,

the Council, if so requested by the Port Authority before, or within the period of 10 years after, the relevant date, shall remedy such accumulation or erosion in the manner specified in sub-paragraph (3) and, if it refuses or fails so to do, the Port Authority may themselves cause the work to be done and may recover the reasonable cost thereof from the Council.

(2) Should any accumulation or erosion in consequence of such construction arise within the period of 10 years mentioned in sub-paragraph (1) and be remedied in accordance with sub-paragraph (3), any recurrence of such accumulation or erosion shall from time to time be so remedied by the Council during that period of 10 years and at any time thereafter, save that the Council's obligation under this paragraph shall cease in the event that following the remedying of any accumulation or erosion a period of 10 years elapses from the completion of that remedying, without any further accumulation or erosion being caused or created in consequence of such construction.

(3) For the purpose of sub-paragraph (1)—

- (a) in the case of an accumulation, the remedy shall be its removal; and
- (b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be necessary.

(4) In the event that surveys, inspections, tests and sampling carried out pursuant to sub-paragraph 8(1)(a) or (b) establish that any accumulation or erosion mentioned in sub-paragraph (1) or (2) would have been caused in any event by factors other than the construction of the tidal work, the Council shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction as aforesaid.

(5) For the purposes of sub-paragraph (1), “the relevant date” means, in relation to the scheduled works and any other tidal work executed in connection therewith or incidental thereto, the date on which it is certified by the Engineer of the Council that the scheduled works are substantially complete and the lock gates are capable of being closed.

(6) The Council and the Port Authority shall consult the Environment Agency in relation to any action taken under this paragraph with a view to co-ordinating or reconciling any such action with any action taken under paragraph 13.

Further protection for the Port Authority

8.—(1) Without prejudice to the other provisions of this Part, the Council shall be responsible for, and make good to the Port Authority, all losses, costs, charges, damages and expenses however caused (including a proper proportion of the overhead charges of the Port Authority) which may reasonably be incurred by or occasioned to the Port Authority by reason of—

- (a) the inspection of any of the tidal works by the Port Authority or their duly authorised representative;

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- (b) the survey, inspection, testing and sampling of the Ouseburn by the Port Authority—
 - (i) to establish the marine conditions prevailing prior to the construction of any of the tidal works in such area of the river as the Port Authority have reasonable cause to believe may subsequently be affected by any siltation, scouring or other alteration which the Council is liable to remedy under this Part; and
 - (ii) where the Port Authority have reasonable cause to believe that the construction of any of the tidal works is causing or has caused any siltation, scouring or other alteration as aforesaid;
- (c) the construction of any of the tidal works or the failure of any of the tidal works or the undertaking by the Port Authority of works or measures to prevent or remedy danger or impediment to navigation or damage to any property arising from such construction or failure; and
- (d) any act or omission of the Council or its servants or agents whilst engaged in the construction or operation of any of the tidal works.

(2) Without prejudice to the generality of sub-paragraph (1), the Council shall indemnify the Port Authority from and against all claims and demands arising out of, or in connection with, such construction, failure or act or omission as is mentioned in that sub-paragraph.

(3) Nothing in this paragraph shall impose any liability on the Council to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraphs (1) and (2) are attributable to negligence on the part of the Port Authority or of any person in their employ or of their contractors or agents.

(4) The Port Authority shall give to the Council notice of any claim or demand in relation to which the Council may be liable under this Part and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the Council.

Liability of the Council

9. The fact that any work or thing has been executed or done with the consent of the Port Authority and in accordance with any conditions or restrictions prescribed by the Port Authority or in accordance with plans submitted to the Port Authority or to their satisfaction or in accordance with any directions or award of an arbitrator or in accordance with any plans approved by the Secretary of State and any conditions or restrictions imposed by him shall not relieve the Council from any liability under the provisions of this Part.