

# SCHEDULES

## SCHEDULE 9

### PROTECTIVE PROVISIONS

#### PART 1

#### FOR THE PROTECTION OF THE HUMBER CONSERVANCY

##### Interpretation

1. In this Part of this Schedule—

“authorised works” means any work, operation or activity that the Harbour Authority is authorised by this Order to construct or carry out;

“environmental document” means—

- (a) the environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental statement or other document so prepared by way of clarification or amplification of the environmental statement; and
- (b) any other document containing environmental information provided by the Harbour Authority to the Secretary of State or the Conservancy Authority for the purposes of any tidal works approval under article 23 (tidal works not to be constructed without approval of the Secretary of State) or this Schedule; and

“the river” means the River Humber.

##### *General*

2.—(1) The provisions of this Part of this Schedule, unless otherwise agreed in writing between the Harbour Authority and the Conservancy Authority, have effect for the protection of the Conservancy Authority and the users of the river.

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

- (a) any projection over the river outside the area of jurisdiction by booms, cranes and similar plant or machinery, whether or not situated within the area of jurisdiction; and
- (b) any authorised work which affects the river or any functions of the Conservancy Authority, whether or not that authorised work is within the limits of the Conservancy Authority.

##### *Tidal Works: approval of detailed design*

3.—(1) Before—

- (a) submitting any plans and sections for any tidal work to the Secretary of State for approval under article 23 (tidal works not to be constructed without approval of the Secretary of State);

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- (b) agreeing a vessel movement management plan with the MMO under paragraph 16 of Schedule 8 (deemed marine licence);
- (c) agreeing a dredge and disposal strategy with the MMO under paragraph 45 of Schedule 8;
- (d) seeking approval from the relevant planning authority for any alteration of the drawings under paragraph 6 of Schedule 11 (requirements) that affects the area below mean high water mark;
- (e) seeking approval from the relevant planning authority for any external lighting details under paragraph 24 of Schedule 11 that affect the area below mean high water mark;
- (f) commencing any operation for the construction of a tidal work where approval of the Secretary of State under article 23 is not required; or
- (g) commencing any operation for the maintenance of a tidal work,

the Harbour Authority must submit to the Conservancy Authority plans and sections of the tidal work or operation and such further particulars as the Conservancy Authority may, within 28 days from the day on which plans and sections are submitted under this sub-paragraph, reasonably require.

(2) Before submitting for approval, agreement or otherwise as provided by this Order any document specified in columns (1) and (2) of the following Table, the Harbour Authority must submit a copy to the Conservancy Authority for approval of the matters specified in column (3) of the Table and must consult the Conservancy Authority on the remainder of each such document.

**TABLE**

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Provision of Order</i>	<i>(3)</i> <i>Provision requiring Conservancy Authority approval</i>
Marine environmental management and monitoring plan	Schedule 11, paragraph 19	Provision relating to monitoring equipment fixed to buoys
Works schedule	Schedule 8, paragraph 24	None
Active monitoring scheme	Schedule 8, paragraph 39	Provision relating to the locations of active monitoring buoys
Stages of the development scheme	Schedule 11, paragraph 3	None
Code of construction practice	Schedule 11, paragraph 22	None

(3) No application for the Secretary of State’s approval under article 23 is to be made in respect of a tidal work until plans and sections in respect of that tidal work submitted under sub-paragraph (1) have been approved by the Conservancy Authority.

(4) Any tidal work not requiring the Secretary of State’s approval under article 23 must not be constructed, and no tidal work is to be maintained, except in accordance with such plans as may be approved in writing by the Conservancy Authority or determined under paragraph 25.

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

- (a) traffic in, or the flow or regime of, the river;
- (b) the use of its operational land or the river for the purposes of performing its functions; or
- (c) the performance of any of its functions connected with environmental protection.

- (6) Requirements made under sub-paragraph (5) may include conditions as to—
- (a) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the tidal work; and
  - (b) the expiry of the approval if the Harbour Authority does not commence construction of the tidal work approved within a prescribed period.

(7) Subject to sub-paragraphs (8) and (9), any such approval is deemed to have been refused if it is neither given nor refused within 42 days of the specified day.

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

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

- (10) In this paragraph “the specified day” means, in relation to any tidal work—
- (a) the day on which plans of that work are submitted to the Conservancy Authority under sub-paragraph (1); or
  - (b) the day on which the Harbour Authority provides the Conservancy Authority with all such particulars of the work as have been reasonably requested by the Conservancy Authority under that sub-paragraph;

whichever is later.

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

4. When submitting any document specified in the Table in paragraph 3(2) to the MMO or the relevant planning authority as the case may be, the Harbour Authority must forward any comments received from the harbour master in response to the consultation undertaken with the harbour master in accordance with that paragraph.

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

#### *Discharges, etc.*

- 6.—(1) The Harbour Authority must not without the consent of the Conservancy 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 Conservancy Authority under this paragraph must not be unreasonably withheld but may be given subject to such terms and conditions as the Conservancy Authority may reasonably impose.

(3) Any such approval is deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 35 days of the day on which the request for consent is submitted under sub-paragraph (1).

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(4) In its application to the discharge of water into the river, article 20 (discharge of water) has effect subject to the terms of any conditions attached to a consent given under this paragraph.

7. The Harbour Authority must not, in exercise of the powers conferred by article 20 (discharge of water), damage or interfere with the beds or banks of any watercourse forming part of the river unless such damage or interference is approved as a tidal work under this Order or is otherwise approved in writing by the Conservancy Authority.

*Obstruction in river*

8. 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 Harbour Authority, as soon as reasonably practicable after the receipt of notice in writing from the Conservancy 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 Conservancy Authority may reasonably direct; or
- (b) take such other steps to make the obstruction safe as the Conservancy Authority may reasonably require.

*Removal etc. of the Conservancy Authority moorings and buoys*

9. If—

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

the Harbour Authority must pay the costs reasonably so incurred by the Conservancy Authority.

*Navigational lights, buoys, etc.*

10. In addition to any requirement under articles 26 (lights on tidal works etc. during construction) and 28 (permanent lights on tidal works), the Harbour Authority, at or near every tidal work, and any other work of which the Harbour Authority is in possession in exercise of any of the powers conferred by this Order (being in either case a work which is below mean high water level forming part of the river), must exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the Conservancy Authority may from time to time reasonably require.

*Removal of temporary works*

11. On completion of the construction of any part of a permanent authorised work, the Harbour Authority must as soon as practicable remove—

- (a) any temporary tidal work carried out only for the purposes of that part of the permanent work; and

(b) any materials, plant and equipment used for such construction, and must make good the site to the reasonable satisfaction of the Conservancy Authority.

*Protective action*

12.—(1) If any tidal work—

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

then the Conservancy Authority may by notice in writing require the Harbour Authority at the Harbour Authority'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 specified in the notice for the purpose of giving effect to the requirements of—
  - (i) this Part of this Schedule; or
  - (ii) the condition that has been breached; or
- (b) in any case within sub-paragraph (1)(b), such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the river.

(3) If the Harbour Authority does not comply with a notice under sub-paragraph (1), or is unable to do so, the Conservancy Authority may in writing require the Harbour Authority 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 Conservancy Authority reasonably requires) to its former condition; or
- (b) take such other action as the Conservancy Authority may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.

(4) If a tidal work gives rise to environmental impacts over and above those anticipated by any environmental document, the Harbour Authority, in compliance with its duties under any enactment and, in particular, under section 48A of the Harbours Act 1964(1), must take such action as is necessary to prevent or mitigate those environmental impacts and in doing so must consult and seek to agree the necessary measures with the Conservancy Authority.

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

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

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(1) 1964, c. 40. Section 48A was inserted by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3 para. 6; S.I. 1992/1347, article 2 and Schedule.

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#### *Abandoned or decayed works*

**13.—**(1) If any tidal work or any other work of which the Harbour Authority is in possession in exercise of any of the powers conferred by this Order (being in either case a work which is below mean high water level) is abandoned or falls into decay, the Conservancy Authority may by notice in writing require the Harbour Authority 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 Conservancy 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 Conservancy Authority may by notice in writing require the Harbour Authority 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 Harbour Authority so elects, to remove the tidal work and (to such extent as the Conservancy 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 Harbour Authority 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 Conservancy Authority may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing is recoverable from the Harbour Authority.

#### *Facilities for navigation*

**14.—**(1) The Harbour Authority 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 Conservancy Authority, and must ensure that access to such aids remains available during and following construction of any tidal works.

(2) The Harbour Authority must provide at any tidal works, or must afford reasonable facilities at such works (including an electricity supply) for the Conservancy Authority to provide at the Harbour Authority'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 Conservancy 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 Harbour Authority 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*

**15.—**(1) Before the commencement of construction of the first tidal work to be constructed following approval under article 23 (tidal works not to be executed without approval of the Secretary of State), the Conservancy Authority may, at the Harbour Authority's reasonable expense, carry out a survey of such parts of the river as might be affected by sedimentation, scouring, currents or wave action that might result from the construction of such of the authorised works as would constitute tidal works if they were to be constructed, for the purposes of establishing the condition of the river at that time.

(2) Before the commencement of construction of any other tidal work approved under article 23, the Conservancy Authority may, at the Harbour Authority's reasonable expense, carry out a survey of such parts of the river as might be affected by sedimentation, scouring, currents or wave action resulting from that tidal work for the purpose of establishing the condition of the river at that time.

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

(4) After completion of, respectively, any tidal work and all the tidal works constructed under this Order, the Conservancy Authority may, at the Harbour Authority's reasonable expense, carry out a further survey of the parts of the river which were surveyed prior to the construction of that work, or as the case may be a survey of the completed tidal works as so constructed, for the purpose of establishing the condition of the river and the effect that the tidal work is, or as the case may be the tidal works are, having on navigation, the flow and the regime of the river and the exercise of the Conservancy Authority's functions.

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

#### *Sedimentation, etc.: remedial action*

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

- (a) is, 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, wholly or partly caused by a tidal work; and
- (b) for the safety of navigation or for the protection of works in the river, should in the reasonable opinion of the Conservancy Authority be removed or made good.

(2) The Harbour Authority must either—

- (a) pay to the Conservancy Authority any additional expense to which the Conservancy 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 Conservancy Authority, such prior approval not to be unreasonably withheld or delayed;

and the reasonable expenses payable by the Harbour Authority under this paragraph include any additional expenses accrued or incurred by the Conservancy Authority in carrying out surveys or studies in connection with the implementation of this paragraph.

#### *Indemnity*

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

- (a) the construction or operation of the authorised works or the failure of the authorised works;
- (b) anything done in relation to a mooring or buoy under paragraph 9; or;
- (c) any act or omission of the Harbour Authority, its employees, contractors or agents or others whilst engaged upon the construction or operation of the authorised works or dealing with any failure of the authorised works,

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and the Harbour Authority must indemnify the Conservancy Authority from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission.

- (2) The fact that any act or thing may have been done—
- (a) by the Conservancy Authority on behalf of the Harbour Authority; or
  - (b) by the Harbour Authority, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Conservancy Authority, or in a manner approved by the Conservancy Authority, or under its supervision or the supervision of its duly authorised representative,

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

(3) The Conservancy Authority must give the Harbour Authority 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 Harbour Authority.

*Entry for survey, etc.*

**18.**—(1) Before exercising the powers conferred by article 22 (authority to survey and enter the land) to enter any land situated below the level of high water the undertaker must provide the harbour master with written particulars of—

- (a) the location of the land (including a plan);
- (b) the nature of the things proposed to be done in that land in exercise of those powers;
- (c) the duration and frequency of the undertaker's intended presence on the land; and
- (d) any vehicles or equipment proposed to be brought on the land,

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

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

*Statutory functions*

**19.**—(1) Subject to article 4(1) (modification of enactments) and this paragraph, any function of the Harbour Authority or any officer of the Harbour Authority, whether conferred by or under this Order or any other enactment, is subject to—

- (a) any enactment relating to the Conservancy Authority;
- (b) any byelaw, direction or other requirement made by the Conservancy Authority or the harbour master under any enactment; and
- (c) any other exercise by the Conservancy Authority or the harbour master of any function conferred by or under any enactment.

(2) The Harbour Authority or dockmaster must not take any action in the river outside the area of jurisdiction under sections 57 and 65 of the 1847 Act as incorporated by article 3 (incorporation of the 1847 Act) except with the consent of the harbour master, which must not be unreasonably withheld.



(3) The dockmaster must not give or enforce any special direction to any vessel under section 52 of the 1847 Act, as incorporated by article 3, if to do so would conflict with a special direction given to the same vessel by the harbour master.

(4) The Conservancy Authority must consult the Harbour Authority before making any byelaw which directly applies to or which could directly affect the construction, operation or maintenance of the Able Marine Energy Park.

(5) The Conservancy Authority or the harbour master (as appropriate) must consult the Harbour Authority before giving any general direction which directly affects the construction, operation or maintenance of the Able Marine Energy Park.

(6) The dockmaster must consult the harbour master in relation to the initiation, operation and any change in the Port Marine Safety Code as having effect in relation to the harbour, and the Harbour Authority must comply with any requirement of the harbour master for the adjustment of the Port Marine Safety Code as affecting the river and the functions of the Conservancy Authority or the harbour master.

#### *Operating procedures*

**20.** Before commencing harbour operations the Harbour Authority must submit to the harbour master for approval a written statement of proposed safe operating procedures for access to and egress from the harbour and must operate the harbour only in accordance with such procedure as approved, including any approved alteration made from time to time.

#### *Consideration for dredged material*

**21.**—(1) Subject to any agreement concluded between the Harbour Authority, the Conservancy Authority and any other party benefiting from material dredged by the Conservancy Authority, the Harbour Authority must pay the Conservancy Authority for material dredged by the Conservancy Authority under this Order from so much of the river as is vested in the Conservancy Authority, consideration calculated at a rate agreed between them and otherwise in accordance with this paragraph.

(2) The Harbour Authority must pay reasonable consideration under sub-paragraph (1) as respects material dredged in the course of the construction of the works authorised by Schedule 8 (deemed marine licence) based on the quantity of such material that—

- (a) is not used for the construction of—
  - (i) the authorised works;
  - (ii) any other works related to the construction of Able Marine Energy Park; or
  - (iii) the related development; and
- (b) is not owned by the undertaker; and
- (c) is sold by the Harbour Authority or by any other person exercising any powers under this Order.

#### *Removal of wrecks and obstructions, etc.*

**22.**—(1) Before exercising any power under section 252 of the Merchant Shipping Act 1995(2) or under section 56 of the 1847 Act, the dockmaster must notify the harbour master.

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(2) 1995 c. 21.

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(2) The dockmaster must comply with any reasonable instructions that the harbour master may give in relation to the exercise of the powers referred to in sub-paragraph (1).

#### *Transfer of benefit of Order*

**23.** Within 14 days after the date of any transfer or grant under article 13 (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.

#### *Oil Spillage Plan*

**24.** The Harbour Authority must consult the harbour master before submitting any oil pollution emergency plan to the Maritime and Coastguard Agency and must ensure that any such plan is compatible with the Conservancy Authority's existing plan known as "Humber Clean" or such other plan as supersedes "Humber Clean".

#### *Disputes*

**25.** Any dispute arising between the Harbour Authority and the Conservancy Authority under this Part of this Schedule is to be determined by arbitration as provided in article 57 (arbitration).