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SCHEDULES

SCHEDULE 15

PROTECTIVE PROVISIONS

PART V

PROTECTION OF PORT OF SHEERNESS LIMITED

- 1 (1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the nominated undertaker and the port authority, have effect for the protection of the port authority.
- (2) In this Part of this Schedule—
 - “construction” includes execution, placing, altering, replacing, relaying and removal;
 - “plans” includes sections, drawings, specifications and method statements;
 - “the port authority” means the Port of Sheerness Limited;
 - “the river” means the River Medway;
 - “operations” includes temporary works, dredging works and temporary mooring of vessels authorised by paragraph 11 of Schedule 2 to this Act;
 - “tidal work” means so much of any work authorised by Part I of this Act as is on or over the surface of land below the level of mean high water springs forming part of the river.
- 2 (1) Before beginning any operations for the construction of any tidal work, the nominated undertaker shall submit to the port authority plans of the work and such further particulars available to it as the port authority may within 14 days of the submission of the plans reasonably require.
- (2) Such further particulars may include such relevant hydraulic and geological information as may be available to the nominated undertaker and is not in the possession of the port authority.
- (3) A tidal work shall not be constructed except in accordance with such plans as may be approved by the port authority or determined under paragraph 14 below.
- (4) Any approval of the port authority required under this paragraph shall not be unreasonably withheld and—
 - (a) shall be deemed to have been given if it is neither given nor refused (with an indication of the grounds for that refusal) within 28 days of the submission of the plans for approval; and
 - (b) may be given subject to such reasonable requirements as the port authority may make for the protection of traffic in, or the flow or regime of, the river.

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- 3 The nominated undertaker shall carry out all operations for the construction of any tidal works with all reasonable despatch to the reasonable satisfaction of the port authority (and shall promptly remove all temporary works as soon as the same are no longer required) so that river traffic shall not suffer more interference than is reasonably practicable and the port authority shall be entitled by its officer at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect such operations.
- 4 (1) The nominated undertaker shall not, without the consent of the port authority, deposit in, or allow to fall or be washed into, the river any gravel, soil or other material.
- (2) Any consent of the port authority under this paragraph shall not be unreasonably withheld and—
- (a) shall be deemed to have been given if it is neither given nor refused within 28 days of the submission of the request therefor; and
- (b) may be given subject to such reasonable requirements as the port authority may make for the protection of navigation in, or the flow or regime of, the river.
- (3) In its application to the discharge of water into the river, paragraph 9(5) of Schedule 2 to this Act shall have effect subject to the terms of any conditions attached to a consent given under this paragraph.
- (4) Nothing in this paragraph authorises the doing of anything prohibited by section 85(1), (2) or (3) of the ^{M1}Water Resources Act 1991 (offences of polluting controlled waters).

Marginal Citations

M1 1991 c. 57.

- 5 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 any permanent work), the nominated undertaker shall, as soon as reasonably practicable after the receipt of notice in writing from the port authority requiring such action, remove it from the river or, if it is not reasonably practicable to remove it, cut it off at such level below the bed of the river (not being more than two metres below bed level in the main navigation channel or one metre below bed level elsewhere in the river) as the port authority may reasonably direct and in the absence of such action within a reasonable period of time the port authority may carry out the removal and recover its reasonable expenses in so doing from the nominated undertaker.
- 6 (1) If—
- (a) by reason of the construction of any tidal work, it is necessary for the port authority to incur costs in altering, removing, resiting or reinstating relevant existing moorings, or laying down and removing relevant substituted moorings, or carrying out dredging operations for any such purpose not being costs which it would have incurred for any other reason; and
- (b) the port authority gives to the nominated undertaker not less than 28 days' notice of its intention to incur such costs, and takes into account any representations which the nominated undertaker may make in response to the notice within 14 days of the receipt of the notice;

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the nominated undertaker shall pay the costs reasonably so incurred by the port authority.

- (2) For the purpose of this paragraph “relevant moorings” are moorings which are owned by the port authority, or moorings which are licensed by the port authority and in respect of which it is under an obligation to provide substitute moorings.

7 The nominated undertaker shall, at or near every tidal work, exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the port authority may from time to time reasonably require.

- 8 (1) If any tidal work is abandoned or falls into decay, the port authority may by notice in writing to the nominated undertaker require it, either to repair and restore the work or any part of it, or (if the nominated undertaker no longer requires the work) to remove the work and restore the site to its former condition to such extent as the port authority reasonably requires.

- (2) If—

- (a) a work which consists of a tidal work and non-tidal work is abandoned or falls into decay; and
(b) the non-tidal work is in such a condition as to interfere with the right of navigation in the river,

the port authority may include the non-tidal work, or any part of it, in any notice under this paragraph.

- (3) In sub-paragraph (2) above, references to a non-tidal work are to so much of any work authorised by Part I of this Act as is on or over land above the level of mean high water springs.

- (4) If after such reasonable period as may be specified in a notice under this paragraph the work specified in the notice has not been carried out, the port authority may carry out that work and the nominated undertaker shall pay the amount of any expenditure reasonably incurred by the port authority in so carrying it out.

9 (1) Without prejudice to the provisions of paragraph 7 above, the nominated undertaker shall provide, or afford reasonable facilities for the port authority to provide and maintain, at the viaduct over the river comprised in Work No. 13, such navigational lights or other apparatus for the benefit of navigation as the port authority may reasonably consider necessary by reason of construction of the viaduct or the carrying out of operations for its construction.

- (2) The nominated undertaker shall pay to the port authority the costs reasonably incurred by it in connection with the provision and maintenance of that apparatus.

10 On the completion of the construction of the viaduct over the river comprised in Work No. 13 the nominated undertaker shall supply to the port authority a plan and sections and cross-sections on an appropriate scale showing the situation and level of the viaduct over the river.

11 The nominated undertaker shall not, except for the purpose of constructing a tidal work or any connected works, remove any gravel, soil or other materials from the bed, shores or banks of the river without the previous consent of the port authority signified in writing under the hand of its secretary (such consent not to be unreasonably withheld), but nothing in this paragraph shall prevent the use by the nominated undertaker of any gravel, soil or other material so removed for the purposes of the construction of other tidal works or any connected works.

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- 12 (1) The nominated undertaker shall indemnify the port authority from all claims, demands, proceedings or damages which may be made or given against or recovered from the port authority by reason of any damage to the river or its banks or any works or apparatus of the port authority in the river which is caused by or results from the construction of any tidal work or any act or omission of the nominated undertaker, its contractors, agents or employees whilst engaged upon the work, and from any costs reasonably incurred by the port authority in making good such damage.
- (2) The port authority shall give to the nominated undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the consent of the nominated undertaker which, if it notifies the port authority that it desires to do so, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.
- (3) Nothing in sub-paragraph (1) above shall impose any liability on the nominated undertaker in respect of silting or scouring.
- 13 Nothing in paragraph 12 above shall impose any liability on the nominated undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of the port authority, its officers, servants, contractors or agents, but the fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the port authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not (in the absence of negligence on the part of the port authority, its officers, servants, contractors or agents) relieve the nominated undertaker from any liability under the provisions of this Part of this Schedule.
- 14 Any dispute arising between the nominated undertaker and the port authority under this Part of this Schedule shall, if the parties agree, be determined by arbitration, but shall otherwise be determined by the Secretary of State.

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