

## SCHEDULES

### SCHEDULE 10

#### PROTECTION OF CERTAIN PERSONS

#### PART II

#### PROTECTION OF THE PORT OF LONDON AUTHORITY

**16.** The provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and the Port of London Authority (“the Port Authority”), have effect for the protection of the Port Authority and the users of the river.

**17.—(1)** In this Part of this Schedule—

“construction” shall include execution, placing, altering, replacing, relaying and removal and, in its application to the tidal works which include or comprise any operation, means the carrying out of that operation and “construct” and “constructed” shall be construed accordingly;

“plans” shall include plans, sections, elevations, drawings, specifications and programmes and construction methods including where applicable, such relevant hydraulic information about the river as may be reasonably requested by the Port Authority;

“river” means the River Thames;

“tidal work” means so much of any temporary or permanent work authorised by this Order (which includes the demolition of the existing Hungerford footbridge, any removal of gravel or other material, any dredging or similar work, any geotechnical investigations that may be undertaken and safeguarding works) as is in, on, under or over:—

- (a) the surface of land below the level of high water spring tides forming part of the river; or
- (b) any land owned, occupied or used by the Port Authority for operational purposes and land which will or may, in the reasonable opinion of the Port Authority, have an effect on the access to and the use of Charing Cross Pier or by pedestrians passing between the Victoria Embankment and Charing Cross Pier.

#### *Works in the River and adjacent to Charing Cross Pier*

**18.—(1)** The undertaker shall not commence tidal works until it has supplied to the Port Authority such proper and sufficient plans for the same as the Port Authority shall reasonably require and those plans have been approved in writing by the Port Authority (such approval not to be unreasonably withheld).

(2) A tidal work shall not be placed or constructed on the bed of the river under the provision of this Order unless the tidal work—

- (a) has been previously approved by the Secretary of State; or

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(b) if such approval has not been previously obtained a condition has been imposed in any approval given by the Port Authority to plans under the provisions of sub-paragraph (1) above that that tidal work will be removed if the Secretary of State so requires.

(3) The Port Authority shall notify the undertaker within a period of 28 days starting with the date on which such plans of tidal works have been furnished to the Port Authority, or such longer period as may be agreed in writing by the Port Authority and the undertaker, of its approval or disapproval of those plans.

(4) Any approval of the Port Authority required under this paragraph may be given subject to such reasonable conditions as the Port Authority may make for the protection of—

(a) vessel movement on, or the flow or regime of, the river, or

(b) the use of its land or the river for the purposes of performing its statutory functions, including any relocation, or provision, of works, new works, moorings, apparatus and equipment necessitated by the tidal works, or any other works authorised by the Order, or their construction or maintenance.

(5) If within a period of 28 days starting from the date on which it receives proper and sufficient plans of a tidal work under sub-paragraph (1) above the Port Authority does not notify the undertaker of its approval or disapproval of those plans, it shall be deemed to have disapproved of the said plans or such part of the plans as it has not approved.

(6) Where the undertaker is aggrieved by—

(a) the disapproval of the Port Authority of any plans submitted under sub-paragraph (1) above,

(b) any term or condition upon which the Port Authority propose to approve the plans, or

(c) any modification by the Port Authority of the plans,

it may within 28 days from the date upon which the Port Authority is deemed to have notified its disapproval of the plans or the date upon which the Port Authority notifies the undertaker of its decision, as the case may be, appeal to the Secretary of State.

(7) If an appeal to the Secretary of State is made, the following provisions shall apply—

(a) the appeal shall be made by written notice stating the grounds of the appeal,

(b) the appellant shall send a copy of the notice of appeal to the Port Authority,

(c) the Port Authority may make written representations to the Secretary of State within 14 days from receipt by it of the copy notice of appeal, and if it does so shall forthwith send a copy of its representations to the appellant,

(d) the Secretary of State may confirm, vary or revoke a decision or requirement against which an appeal is made and may make any consequential amendments necessary, and

(e) the Secretary of State may direct the Port Authority or the undertaker to give effect to the decision of the Secretary of State on the appeal and the Port Authority or the undertaker (as the case may be) shall forthwith comply with any direction given.

(8) Without prejudice to the requirements which may be imposed by the Port Authority on the approval of plans for tidal works—

(a) no more than two spans of Charing Cross Railway Bridge and the approaches to those spans shall be blocked partially or wholly to navigation at any one time,

(b) the two main navigation spans of Charing Cross Railway Bridge, being the second and third spans over the river from the Westminster shore, and the approaches to those spans, must not be blocked wholly, or partially, to navigation at the same time, and

(c) save for the span nearest to the Lambeth shore, the tidal works must not affect the width and headroom of the present spans of Charing Cross Railway Bridge as extended by the

tidal works nor the depth of water beneath the spans without the prior agreement of the Port Authority.

(9) The undertaker shall carry out all operations for the construction or maintenance of any tidal works with all reasonable despatch and to the reasonable satisfaction of the Port Authority so that vessel movement on, or the flow, or regime of the river and the exercise of the Port Authority's statutory functions shall not suffer more interference than is reasonably practicable and the Port Authority shall be entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

(10) If any tidal work is constructed otherwise than in accordance with the requirements of this part of this Schedule or with any condition in an approval pursuant to sub-paragraph (4) above, the Port Authority may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this part of this Schedule or that condition and if the undertaker does not do so or is unable to do so then the Port Authority may in writing require the undertaker to remove, alter or pull down the tidal work and where the tidal work is removed to restore the site of that work to its condition prior to the construction of the tidal work to such an extent and within such limits as the Port Authority think proper.

(11) The undertaker shall, upon completion of the construction or maintenance of any part of an authorised work, remove as soon as is practicable any temporary tidal works and materials for such temporary tidal works carried out or placed only for the purposes of that part of the authorised work and any materials which formed part of the existing Hungerford footbridge which have been dismantled and have not been removed, and shall make good the site to the reasonable satisfaction of the Port Authority.

(12) The undertaker shall not—

- (a) deposit in or allow to fall or be washed into the river any gravel, soil or other material except to the extent permitted by any approval of a tidal work;
- (b) discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise; or
- (c) discharge into the river any water by any watercourse, public sewer or drain without the consent of the Port Authority and such consent may be given subject to such terms and conditions as the Port Authority may reasonably impose but shall not be unreasonably withheld.

(13) The undertaker shall (subject to sub-paragraph (14) below) remove from the river any pile, stump or other obstruction which becomes exposed in consequence of a tidal work.

(14) If it is not reasonably practicable to remove a pile, stump or other obstruction it shall be cut off at such level below the bed of the river as the Port Authority may direct.

(15) If the undertaker fails to remove or cut off (as the case may be) any pile, stump or other obstruction pursuant to sub-paragraphs (13) and (14) above within a period of 28 days beginning with the date of receipt of a written notice from the Port Authority requiring its removal or cutting off, the Port Authority may carry out the removal or cutting off and recover the cost of doing so from the undertaker.

(16) If a tidal work is abandoned or falls into decay, the Port Authority may by notice in writing require the undertaker either to repair or restore the tidal work, or any part of it, or to remove the tidal work and restore the site of that work to its condition prior to the construction of the tidal work, to such an extent and to such limits as the Port Authority think proper.

(17) If a work consisting partly of a tidal work and partly of works on or over land above the level of high water spring tides is abandoned or falls into decay and that part of the works on or over land above the level of high water springs is in such condition as to interfere or cause reasonable apprehension that it may interfere with the right of navigation on the river or other public rights over

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the foreshore, the Port Authority may include that part of the works or any portion thereof in any notice under sub-paragraph (16).

(18) If on the expiration of such reasonable period as may be specified in a notice under sub-paragraph (16) above the work specified therein has not been completed to the satisfaction of the Port Authority, the Port Authority may undertake that work and any expenditure reasonably incurred by them in so doing shall be recoverable from the undertaker.

(19) On completion of the construction of the tidal works, the undertaker shall supply to the Port Authority a plan on a scale of not less than 1 in 2500 and sections and elevations on the scale of not less than 1 in 100 showing to the Port Authority's reasonable satisfaction the situation and levels of the permanent tidal works at that time.

#### *Facilities for Navigation*

**19.**—(1) The undertaker shall mark and light the tidal works in accordance with such directions as the Port Authority shall give from time to time.

(2) The undertaker shall not in the exercise of the powers granted by this Order interfere with the marks, lights and other navigational systems on Charing Cross Railway Bridge without the agreement of the Port Authority and shall ensure access remains available to them during and following construction or maintenance of the tidal works.

(3) The undertaker shall provide at the tidal works, or shall afford reasonable facilities at such works (including an electricity supply), for the Port Authority to provide at the undertaker's cost, from time to time, such navigational lights, signals or other apparatus for the benefit, control and direction of navigation as the Port Authority may deem necessary by reason of the construction, or maintenance of the tidal works and shall ensure access remains available to them during and following construction or maintenance of the tidal works.

(4) Without prejudice to section 133 of the Port of London Act 1968 the undertaker shall comply with the directions of the Port Authority's harbourmaster from time to time with regard to the lighting on the pedestrian footways on the tidal works or the screening of such lighting to ensure that it is not a hazard to navigation on the river.

#### *Survey of Riverbed*

**20.**—(1) Before the construction of the tidal works is commenced the Port Authority in conjunction with the undertaker and at the undertaker's cost shall carry out a survey of such parts of the river as are in the vicinity of Charing Cross Railway Bridge and which might be affected by any siltation or scouring deriving from the tidal works for the purpose of establishing the condition of the river at that time.

(2) The Port Authority shall carry out such surveys of the river as are reasonably required during the construction of the tidal works to ascertain the effect of the tidal works, on the river and the Port Authority shall make available to the undertaker, at a reasonable charge, the results of any such survey.

(3) After completion of the tidal works, the Port Authority in conjunction with the undertaker and at the undertaker's cost shall carry out a further survey of the parts of the river which were surveyed prior to the construction of the tidal works and a survey of the completed tidal works for the purpose of establishing the condition of the river and the effect that the tidal works are having on navigation, the flow and the regime of the river and the exercise of the Port Authority's statutory functions.

(4) If any part of the river becomes subject to siltation or scouring and—

(a) such siltation or scouring is siltation or scouring which is wholly or partly caused by a tidal work during the period beginning with the commencement of the construction of that

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tidal work and ending with the expiration of 10 years after the date on which the tidal work is completed, and

- (b) for the safety of navigation or in the interests of persons using the river or for the protection of works in the river, such siltation or scouring should in the reasonable opinion of the Port Authority be removed or made good,

the undertaker shall either arrange for the work to be undertaken itself or pay to the Port Authority any additional expense to which the Port Authority may reasonably be put in dredging the river to remove the siltation or in making good the scouring so far as (in either case) it is attributable to the tidal work.

#### *General Protection*

**21.**—(1) Save to the extent permitted by any approval of a tidal work the undertaker shall not under the powers of this Order without the consent of the Port Authority (not to be unreasonably withheld) acquire or use any part of the river bed or foreshore of the river or any other land of the Port Authority.

(2) If any or all of the footbridges and ancillary works constructed under, in or over the river under the powers of this Order cease to be highway and are permanently removed, there shall revert to the Port Authority, at no cost, any interest of the undertaker in the airspace and riverbed in or over the river previously occupied by such structures.

(3) Subject to paragraph 2 of Schedule 13 to this Order the exercise in, under or over the river by the undertaker of any of its functions under this Order shall be subject to any enactment relating to or made by the Port Authority including byelaws or directions of the Port Authority and the exercise by the Port Authority or its harbourmaster of any powers and functions conferred on it or him by or under any enactment.

(4) At all times during construction or maintenance of the authorised works the undertaker shall ensure the maintenance of reasonable access to Charing Cross Pier (which includes access from both existing access points from the Victoria Embankment) and the maintenance of such other reasonable access to the river as the Port Authority may require for the exercise of its statutory functions.

**22.**—(1) The undertaker shall be responsible for and make good to the Port Authority all costs, charges, damages and expenses which may reasonably be incurred by the Port Authority—

- (a) by reason of the construction or maintenance of the authorised works or failure thereof, or
- (b) by reason of any act or omission of the undertaker or of any persons in its employ or of its contractors or agents or others whilst engaged upon the construction or maintenance of the authorised works or dealing with any failure of such works,

and the undertaker shall indemnify the Port 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 and the fact that any act or thing may have been done by the Port Authority on behalf of the undertaker or done by the undertaker, any person in its employ or its contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Port Authority, or in a manner approved by the Port Authority, or under its supervision or the supervision of its duly authorised representative shall not (if it was done or required without negligence on the part of the Port Authority or its duly authorised representative, or any person in its employ or its contractors or agents) excuse the undertaker from liability under the provisions of this indemnity.

(2) The Port Authority shall give the undertaker reasonable notice of any such claim or demand as is referred in sub-paragraph (1) above and no settlement or compromise thereof shall be made without the prior consent of the undertaker.

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**23.** Any difference arising between the undertaker and the Port Authority under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) shall be referred to and settled by arbitration in accordance with article 36 above.