

Draft Order laid before the Scottish Parliament under section 54A(1), (2)(a) and (4) of the Harbours Act 1964, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2013 No.

HARBOURS, DOCKS, PIERS AND FERRIES

**The Rosyth International Container Terminal (Harbour
Revision) Order 2013**

Made - - - - 2013
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SCHEDULE 1 — PORT LIMITS

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The Scottish Ministers (“the Ministers”) make the following Order in exercise of the powers conferred by section 14(1) and (3) of the Harbours Act 1964(a) and all other powers enabling them to do so.

In accordance with section 14(1) of that Act, this Order is made in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties, for achieving objects specified in Schedule 2 to that Act.

In accordance with section 14(2) of that Act(b)—

- (a) this Order is made following a written application to the Ministers by Port Babcock Rosyth Limited (“the Company”) being the authority engaged in improving, maintaining or managing the harbour; and
- (b) the Ministers are satisfied that the making of this Order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner and facilitating the efficient and economic transport of goods or passengers by sea.

(a) 1964 c.40; section 14(3) was amended by the Transport Act 1981 (c.56), Schedule 6, paragraphs 3 and 14 and by the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 1(4); *see* sections 14(7) and 57(1) of the Harbours Act 1964 for definitions of “the appropriate Minister” and “the Minister”; the functions of the Minister of the Crown were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (c.46), section 53.

(b) Section 14(2) was amended by the Transport and Works Act 1992, Schedule 3, paragraph 1(2).

In accordance with paragraph 4 of Schedule 3 to that Act^(a), the Ministers have decided that the application relates to a project which falls within Annex II to Council Directive 85/337/EEC^(b) as relevantly amended by Council Directive 97/11/EC^(c) and Council Directive 2003/35/EC^(d) on the assessment of the effects of certain public and private projects on the environment and, taking into account the criteria set out in Annex III to that Directive, that the project is a relevant project.

In accordance with paragraph 6 of that Schedule, the Ministers have—

- (a) informed the Company of that decision, and the reasons for it; and
- (b) given an opinion to the Company about the extent of the information referred to in Annex IV to that Directive which the Company would be required to supply in the environmental statement and—
 - (i) in giving that opinion the Ministers have taken into account the matters in subparagraph (3) of that paragraph; and
 - (ii) before giving that opinion the Ministers have consulted the Company and such bodies with environmental responsibilities as the Ministers thought appropriate.

In accordance with paragraph 8 of that Schedule, the Ministers have directed the Company to supply them with an environmental statement and as required by paragraph 9 of that Schedule the Company has complied with that direction.

Notices have been published by the Company in accordance with the requirements of paragraphs 10 and 10A of that Schedule.

In accordance with paragraph 15 of that Schedule, the Ministers have—

- (a) consulted; and
- (b) sent the environmental statement and any further information falling within paragraph 10A(2) of that Schedule to,

such bodies who were likely to have an interest in the project by reason of their environmental responsibilities as the Ministers thought appropriate.

The provisions of paragraph 17 of that Schedule have been satisfied

The Ministers have caused an inquiry to be held under paragraph 18(1B) of that Schedule.

In accordance with paragraph 19(1) of that Schedule, the Ministers have considered—

- (a) the environmental statement and the further information falling within paragraph 10A(2) of that Schedule;
- (b) the result of the consultations under paragraph 15 of that Schedule;
- (c) any objections made and not withdrawn;
- (d) any representations made under paragraph 10(2)(f) or 10A(4)(d) of that Schedule;
- (e) the report of the person who held the inquiry; and

(a) Schedule 3 was substituted by S.I. 1999/ 3445 and relevantly amended by the Transport (Scotland) Act 2005 (asp 12), section 46(5) and by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5).

(b) O.J. L 175, 5.7.1985, p.40.

(c) O.J. L 73, 14.3.1997, p.5.

(d) O.J. L 156, 25.6.2003, p.17.

- (f) any written representations submitted to them by the Company or any objector in elaboration of the application or, as the case may be, objection.

In accordance with paragraph 19(2) of that Schedule, the Ministers have decided to make this Order with modifications which appeared to them substantially to affect the character of the Order and in accordance with paragraph 21 of that Schedule—

- (a) the Ministers have taken such steps as appeared to them to be sufficient and reasonably practicable for informing the Company and other persons likely to be concerned; and
- (b) the period which the Ministers thought reasonable for consideration of, and comment upon, the proposed modifications by the Company and those other persons has expired.

In accordance with section 54A(1), (2)(a) and (4) of the Harbours Act 1964(a), a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

PART 1

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Rosyth International Container Terminal (Harbour Revision) Order 2013 and comes into force on the day after the day on which it is made.

(2) The Port Babcock Rosyth Harbour Empowerment Order 2009(b) and this Order shall be read together and may be cited together as the Port Babcock Rosyth Orders 2009 to 2013.

Interpretation

2.—(1) In this Order—

“1964 Act” means the Harbours Act 1964;

“1969 Act” means the Forth Ports Authority Confirmation Order Act 1969(c);

“1997 Act” means The Town and Country Planning (Scotland) Act 1997(d);

“1992 Order” means the Town and Country Planning (General Permitted Development) (Scotland) Order 1992(e);

“2009 Order” means the Port Babcock Rosyth Harbour Empowerment Order 2009;

“berthing pocket” means the area shown hatched at sheet no VI rev A of the deposited plans;

“capital dredging” means dredging carried out for the purposes of article 8(1)(a);

“CEMP” means the Construction and Environmental Management Plan approved by the Scottish Ministers pursuant to paragraph (1) of article 17, as (subject to the terms of article 17) may be modified from time to time with the approval of the Scottish Ministers;

“the Company” means Port Babcock Rosyth Limited a company incorporated in Scotland with registered number SC173116;

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

(a) Section 54A was inserted by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(3) and amended by S.S.I. 2011/396.

(b) S.S.I. 2009/27.

(c) 1969 c.xxxiv.

(d) 1997 c.8.

(e) S.I. 1992/223.

“Contractor’s Jetty” means the structure shown coloured green on sheet no. IV of the deposited plans;

“deposited plans” means the plans, sections and elevations which are bound together and signed in duplicate by the Scottish Ministers with reference to this Order and marked “Rosyth International Container Terminal (Harbour Revision) Order 2013 plans, sections and elevations” and which are deposited at the offices of the Scottish Ministers at Victoria Quay, Edinburgh EH6 6QQ, and at the registered office of the Company; and a reference to a numbered sheet is a reference to that numbered sheet bound in the deposited plans, sections and elevations;

“draft CEMP” means the draft version of the CEMP signed by the Scottish Ministers with reference to this Order, copies of which are held at the offices of the Scottish Ministers at Victoria Quay, Edinburgh, EH6 6QQ and at the registered office of the Company;

“dredging limits” means the limits of deviation for the operations authorised by article 8 shown outlined by a short broken blue line on sheet no. VI rev A of the deposited plans;

“enactment” includes an Act of the Scottish Parliament and an instrument made under such an Act;

“existing void” means the area shown hatched on sheet no IV of the deposited plans;

“Forth Ports “ means the statutory harbour authority for the Forth;

“the Forth” shall have the meaning ascribed to that term in the 1969 Act, as amended by article 4(5) of this Order;

“level of high water” means the level of mean high water springs;

“maintain” includes inspect, repair, adjust and replace and “maintaining” and “maintenance” shall be construed accordingly;

“port” means Port Babcock Rosyth as comprised within the port limits;

“port limits” means the limits of the port as defined in article 4;

“port map” means the map referred to in article 4, and forming sheet no.I(1) rev D of the deposited plans;

“port premises” means such works, berthing pockets, land and premises as are situated within the port limits at any time belonging to, vested in or occupied by the Company and used, intended to be used or set aside for the purposes of, or in connection with, the commercial management and operation of the authorised works or of the port undertaking;

“port undertaking” means the port related business activities of the Company;

“tidal work” means so much of any of the works as is on, under or over tidal waters or tidal lands below the level of high water, but excluding any operations authorised by article 8 and excluding the projection over waters by booms, cranes and similar plant and machinery operating within the port;

“works” means the works authorised by this Order, or as the case may require, any part of any of those works; and

“works site” means the part of the port shown outlined by a broken red line on sheet no. II rev A of the deposited plans.

(2) All areas, points, situations and other measurements stated in any plan or description of the works or lands shall be construed as if the words “or thereby” were inserted after each such area, point, situation and other measurement.

(3) Any reference in this Order to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Order.

(4) References in the Port Babcock Rosyth Orders 2009 to 2013 to the port undertaking shall be construed for all purposes as including references to any works carried out and any lands reclaimed by or on behalf of the Company or any of its subsidiaries under or by virtue of this Order.

(5) Any vessel shall be a ship for the purposes of the application of the 1964 Act to the port undertaking.

Incorporation of 2009 Order

3. The provisions of the 2009 Order, so far as applicable to the purposes of and not inconsistent with the provisions of this Order, are hereby incorporated with this Order and apply to the works as authorised by this Order.

PART 2

LIMITS OF JURISDICTION

Limits of port

4.—(1) The definitions of “port limits”, “the port map” and “port premises” in article 2(1) of this Order shall be substituted for the corresponding definitions in the 2009 Order.

(2) The limits of the port within which the Company shall exercise jurisdiction as the harbour authority and within which the powers of the harbour master shall be exercisable shall, in substitution for the same as are described in the Schedule to the 2009 Order, be the area the boundaries of which are described in Schedule 1 to this Order and shown outlined in blue on the port map.

(3) In Schedule 1 to this Order, a reference to—

- (a) a direction shall be construed as if the words “or thereabouts” were inserted after that direction; and
- (b) a point is a reference to that point as shown on the port map and to the eastings and northings of that point which are stated in the table on the port map.

(4) The area described in Schedule 1 to this Order is shown outlined blue on the port map and, in the event that there is any discrepancy between the boundaries of that area as described in Schedule 1 to this Order and the boundaries shown on the port map, the port map shall prevail.

(5) At the end of Schedule 1 to the 1969 Act, insert “or any area forming part of the port limits as defined in the Rosyth International Container Terminal (Harbour Revision) Order 2013”.

PART 3

WORKS PROVISIONS

Power to construct works

5.—(1) The Company may within the works site construct and maintain the following works—

Work No. 1 – quay walls, sea walls and revetment at the locations which are shown on sheet no. III of the deposited plans;

Work No. 2 – in-filling of the void behind the quay walls formed by Work No. 1;

Work No. 3 – lighting columns with elevations not exceeding 25 metres in height;

Work No. 4 – an electrical substation extending to approximately 70 square metres at the location shown on sheet no. III of the deposited plans;

Work No. 5 – a truck holding area at the location shown on sheet no. III of the deposited plans;

Work No. 6 – a single storey welfare building at the location shown on sheet no. III of the deposited plans;

Work No. 7 – a single storey container freight station building extending to approximately 3,000 square metres, with a floor level suitable to receive containers directly off truck trailers, and comprising facilities for the inspection and search of vehicles and containers, offices, staff accommodation, interview rooms and toilets, together with entry and exit gatehouses equipped with overhead inspection gantries under cover of an overall roof, at the location shown on sheet no. III of the deposited plans;

Work No. 8 – a weighbridge adjacent to Work No. 7;

Work No. 9 – security fencing of a design and specification to satisfy HM Revenue & Customs and ISPS port security code requirements, erected where shown by a blue line on sheet no. III of the deposited plans;

Work No. 10 – a two storey administration building extending to approximately 1,000 square metres and separate single storey services, canteen and office buildings at the respective locations shown on sheet no. III of the deposited plans;

Work No. 11 – a single storey workshop building, a single storey equipment maintenance building and an RTG maintenance area at the respective locations shown on sheet no. III of the deposited plans;

Work No. 12 – two car parking areas, each comprising forty in number spaces of 5.5 metres by 2.8 metres, at the locations shown on sheet no. III of the deposited plans;

Work No. 13 – rail mounted ship to shore cranes, not exceeding two in number with an elevation not exceeding 50 metres in height as shown on sheet nos. III and V of the deposited plans;

Work No. 14 – mobile harbour cranes, not exceeding two in number with an elevation (with boom up) not exceeding 40 metres in height as shown on sheet nos. III and V of the deposited plans;

Work No. 15 – container stack areas in which containers shall not be stacked more than five high or above an elevation of 15 metres in height as shown on sheet nos. III and V of the deposited plans;

Work No. 16 – rubber tyre gantry cranes used for stacking or otherwise handling containers with an elevation not exceeding 30 metres in height as shown on sheet no. V of the deposited plans;

Work No. 17 – preparation for use as a berthing pocket of the proportion of the base of the existing void at the works site as remains exposed after completion of Work No. 1;

Work No. 18 – removal of the section of sea wall embankment behind and revetment in front shown crosshatched on sheet no. IV of the deposited plans, reduction of underlying bed level and stabilisation of the entrance portal so created and flooding of the berthing pocket formed by such and Work No. 1;

Work No. 19 – dolphin structures and associated walkways at the locations shown on sheet no. III of the deposited plans;

Work No. 20 – repair and maintenance of the Contractor's Jetty with associated piling; and

Work No 21 – an acoustic barrier and visual screen wall 3 metres in height along the port limits boundary between the points marked 32 and 33 on Sheet I(1) rev D of the deposited plans.

(2) Notwithstanding anything in any other enactment, the Company may for the purpose of constructing the works authorised by paragraph (1) dismantle, remove, deal with and dispose of the whole or any part or parts of any vegetation and of all structures and equipment lying within the works site (including the Contractor's Jetty) and enclose and reclaim any part of the bed of the Forth and the foreshore; and any public rights over the same are extinguished.

(3) The Company may from time to time, within the works site, alter, enlarge, replace, relay, extend or reconstruct temporarily or permanently the works and may maintain and use the same as altered, enlarged, replaced, relayed, extended or reconstructed.

(4) The Company may authorise any person to carry out the works.

Subsidiary works

6.—(1) The Company may from time to time within the works site (whether temporarily or permanently) provide, construct, maintain and operate such ancillary works as may be necessary or convenient for the purposes of, or in connection with, the construction and maintenance of the works authorised by article 5 or the operation of the port undertaking.

(2) Without prejudice to paragraph (1), the Company may within the works site provide, construct, maintain and use such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance and use of the works, including—

- (a) works for the accommodation or convenience of vessels (including but not limited to navigation signals, marks and lights, berthing heads, mooring posts, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons);
- (b) CCTV cameras and security installations; hydrants and drains; paving and surfacing; container washing and repairing facilities for up to twenty in number 40 foot containers together with waste water treatment facilities; and a refuelling point with double skinned tank or tanks for storage of diesel and other fuel for the purposes of the operation of the port undertaking;
- (c) works to alter the position of apparatus, including mains, sewers, drains, pipes, pipelines, conduits, cables, electrical substations and electrical lines; and
- (d) landscaping, habitat creation 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.

Power to deviate

7.—(1) In constructing and maintaining the landside works authorised by article 5, the Company may deviate laterally from the lines or situations as shown on the deposited plans to any extent not exceeding 5 metres and may deviate vertically from the levels of the works referred to in article 5 or as shown on sheet VIII of the deposited plans to any extent downwards and up to 5 metres upwards.

(2) In constructing and maintaining the works authorised by article 8, the Company may deviate laterally to any extent not exceeding dredging limits and may deviate vertically to any extent upwards.

(3) In paragraph (1), “the landside works” means the works referred to in article 5(1), other than work nos. 18 to 20.

Power to dredge

8.—(1) The Company may, in substitution for the power contained in article 7 (power to dredge) of the 2009 Order, deepen, dredge, scour, blast rock, cleanse, alter and improve the bed, shores and channels of the Forth as lie within the port limits and within the approaches and the channels leading to the port limits—

- (a) to form a turning area and channel 150 metres wide dredged to 9.5 metres below chart datum within the dredging limits, to allow vessels access to and egress from the works site;
- (b) as may be required for the purpose of maintaining the works so described, the berthing pocket to be formed by Work No. 18 or any existing berthing pocket, turning area, channel within or approach or channel leading to the port limits, to enable uninterrupted means of access to the port by vessels and enabling the use of the port at all states of the tide.

(2) The power to dredge described in paragraph (1) includes the power to carry out such additional dredging as may be required to provide side slopes or otherwise secure the dredged areas against siltation, scouring or collapse.

(3) Any materials dredged, taken or collected by the Company in the exercise of the powers of this article (other than wreck within the meaning of Part 9 of the Merchant Shipping Act 1995(a)) shall be the property of the Company and may be used, sold, deposited or otherwise disposed of as the Company thinks fit.

(4) No such materials shall be laid down or deposited in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by the Scottish Ministers.

Obstruction of work

9. Any person who—

- (a) intentionally obstructs any person acting under the authority of the Company in setting out the lines of or in constructing the works; or
- (b) without reasonable excuse interferes with, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Scottish Ministers' approval of tidal works

10.—(1) At the end of the definition of "tidal work" in article 2(1) of the 2009 Order, insert "but excluding any operations authorised by article 8 of the Rosyth International Container Terminal (Harbour Revision) Order 2013 and excluding the projection over waters by booms, cranes and similar plant and machinery operating within the port".

(2) Paragraph (1) of article 10 (tidal works not to be executed without the approval of the Scottish Ministers) of the 2009 Order shall not apply to any work authorised by paragraph (1) of article 5 of this Order and any related works authorised by article 6 of this Order.

Period for completion of works

11.—(1) If the works authorised by paragraphs (1) and (2) of article 5 are not completed within five years from the later of—

- (a) the date of the coming into force of this Order; or
- (b) Ministers' first approval of a CEMP,

or such extended time as the Scottish Ministers may on the application of the Company allow by consent given in writing, then on the expiration of that period or such extended time (as the case may be) the powers by this Order granted to the Company for making and maintaining those works shall cease except as to so much of those works as is then substantially commenced.

(2) A consent given under paragraph (1) may be given unconditionally or subject to terms and conditions.

(3) As soon as reasonably practicable after a consent is given under paragraph (1), the Company shall arrange for a notice to be published in the Edinburgh Gazette and in a local newspaper circulating in the area where the port is situated and the notice shall contain a concise summary of that consent.

(4) During the period of one month beginning with the date on which any notice is published in a local newspaper under paragraph (3), a copy of the consent referred to in that notice shall be kept by the Company at the offices of the Company situated at the port and shall at reasonable hours be open to public inspection without payment.

(5) The works shall be deemed to have been substantially commenced for the purposes of paragraph (1) where so much of Work No. 1 has been constructed as will enable other works to be

(a) 1995 c.21.

constructed, maintained and managed together with that part of Work No. 1 as a harbour for the efficient and economic transport of goods or passengers by sea.

(6) Nothing in paragraph (1) shall apply to works carried out under paragraph (3) of article 5 or article 6, or to any maintenance dredging of existing berthing pockets, turning areas or channel within or approach or channel leading to the port limits authorised by paragraph (1)(b) of article 8.

Operational land and land within area of Fife Council

12. The land situated within the port limits shown outlined blue on the port map shall—

- (a) be deemed to be operational land within the meaning and for the purposes of the Town and Country Planning (Scotland) Act 1997; and
- (b) to the extent that it lies outwith the area of Fife Council, be deemed to be part of that area.

PART 4

PORT REGULATION

Charges

13.—(1) The Company may levy charges as the Company may from time to time determine for any services performed or facilities provided by it or on its behalf in relation to the port and that whether or not such performance or provision is in the exercise and performance of its statutory powers and duties at the port.

(2) The Company may demand, take and recover in respect of any dracone or floating dock, crane, rig, drilling rig or floating plant, which is not a ship as defined in section 57 of the 1964 Act^(a), entering, using or leaving the port such charges as the Company thinks fit, and sections 30 and 31 of the 1964 Act shall with any necessary modifications apply to the charges authorised by this paragraph as they apply to ship, passenger and goods dues.

(3) In this article “charges” means any charges other than ship, passenger and goods dues.

PART 5

MISCELLANEOUS AND GENERAL

Saving for Commissioners of Northern Lighthouses

14. Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of the Commissioners of Northern Lighthouses.

Saving for other consents etc.

15. The carrying out of any works or operations pursuant to this Order is subject to the Company obtaining any consent, permission or licence required under any other enactment.

(a) Section 57 was relevantly amended by the Hovercraft Act 1968 (c.59), Schedule, paragraph 5.

Crown right

16.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular and without prejudice to that generality, nothing in this Order authorises the Company or any licensee to take, use, enter upon or in any manner interfere with any land or any rights of whatsoever description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) 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;
- (b) 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
- (c) 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.

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically.

(3) In this article, “government department” includes any part of, or any member of the staff of, the Scottish Administration (which shall have the same meaning as in section 126(6) of the Scotland Act 1998(a)).

Environmental requirements

17.—(1) The works shall not be commenced until the Scottish Ministers have, following consultation in accordance with paragraphs (2) to (5), approved in writing the CEMP for the works subject to any amendments or further conditions or restrictions which Ministers may require.

(2) The Scottish Ministers shall consult the following bodies, in so far as each has an interest in the subject matter and the terms of the proposed form of the CEMP or the proposed amendment to the CEMP, before approving the CEMP or any amendment thereto—

- (a) Fife Council;
- (b) the Scottish Environment Protection Agency;
- (c) Scottish Natural Heritage;
- (d) Rosyth Community Council;
- (e) Charleston, Limekilns and Pattiesmuir Community Council.

(3) The consultation responses of those bodies shall be without prejudice to the respective rights and powers of the consultees under general legislation.

(4) The period for responses to consultation for the purposes of paragraph (2) of this article shall be determined by the Scottish Ministers taking into account the extent to which they consider that they require advice on appropriate and necessary mitigation for construction or operational procedures, and the Scottish Ministers shall not approve the CEMP until such period has elapsed as they shall consider reasonable for consideration of, and comment upon, the terms of or amendment to the proposed CEMP.

(5) The Scottish Ministers shall, prior to determining whether or not to approve (and if so on what terms) a proposed CEMP or proposed amendment to the CEMP, afford the Company an opportunity to comment on any response received from a body consulted by the Scottish Ministers pursuant to paragraph (2).

(6) For the purpose of ensuring compliance with the obligations set out in Schedule 2 and the terms of the CEMP, the following statutory bodies will have the power to approve on behalf of the

(a) 1998 c.46.

Scottish Ministers those matters delegated to each of them and upon which an application is submitted by or on behalf of the Company to them for approval under Schedule 2 or the CEMP—

- (a) Fife Council; and
- (b) the Scottish Environment Protection Agency.

(7) The Company shall, after receipt of intimation to the Company of the approval by the Scottish Ministers of the CEMP or any amendment of the same, send each of the bodies referred to in paragraph (2) a copy of the CEMP (or as the case may be, the amended CEMP) as so approved.

- (8) The Company shall ensure that—
- (a) the works are carried out; and
 - (b) the port operated,

in accordance with the approved CEMP (or any amendment to it).

(9) Nothing in this article shall exempt the Company from fulfilling the requirements imposed on the Company by any rule of law or which arises from any commitment which is binding on the Company.

(10) No works authorised by this Order are to commence prior to the granting to the Company of a marine licence under Part 4 of the Marine (Scotland) Act 2010^(a) in respect of the works authorised by article 8(1)(a).

Mitigation measures

18. Schedule 2 to this Order shall have effect.

Special exemptions

19. Without prejudice to the generality of article 4(5), section 26 (restriction on construction of works and dredging) of the 1969 Act shall apply neither to the exercise by the Company of the powers of article 5 nor article 8 of this Order.

For the protection of Forth Ports

20. Schedule 3 to this Order shall have effect in respect of any works undertaken by the Company in the Forth.

Survey of the river bed

21.—(1) The Scottish Ministers may at any time they deem it expedient in consequence of the construction of any tidal work or the carrying out of any dredging authorised by this Order, order a survey or examination of such areas of the bed of the Forth as they deem expedient, and any expenditure incurred by them in such survey or examination shall be recoverable from the Company as a debt.

(2) Prior to the commencement of the works authorised by article 5, or capital dredging authorised by article 8, the Ministers may require pre-construction survey or examination of such areas of the bed of the Forth as they deem expedient, and any expenditure incurred by them in such survey or examination shall be recoverable from the Company as a debt.

Sedimentation – protective action

22.—(1) If in the opinion of the Scottish Ministers any of the works (including dredging) during construction gives rise to sedimentation or scouring, detrimental to traffic in, or the flow or regime

(a) 2010 asp 5.

of the Forth, then the Scottish Minister may by notice in writing require the Company at the Company'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 paragraph (1) are such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation or scouring, so far as required by the needs of traffic in, or the flow or regime of, the Forth.

(3) If the Company does not comply with the notice under paragraph (1) or is unable to do so, then the Scottish Ministers may in writing require the Company to take such action as the Scottish Ministers may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.

Sedimentation – remedial action

23.—(1) This paragraph applies to the extent that in the opinion of the Scottish Ministers any part of the Forth becomes subject to sedimentation, or scouring, which—

- (a) is during the period beginning with the commencement of the construction of any tidal work or capital dredging undertaken for the purposes of this Order and ending with the expiration of 10 years after the date on which all the tidal works and capital dredging constructed under or for the purposes of this Order are completed, wholly or partly caused by a tidal work or such dredging; and
- (b) for the safety of navigation or the protection of works in the Forth, should be removed or made good.

(2) The Company must either—

- (a) carry out the necessary dredging at its own expense and subject to the prior approval of the Scottish Ministers (such prior approval not to be unreasonably withheld or delayed) within such period as Ministers may specify; or
- (b) defray any additional expense reasonably incurred by Forth Ports in dredging the river to remove the sedimentation or in making good the scouring, so far as (in either case) it is caused by the tidal work.

(3) The Company shall defray any additional expenses incurred by the Scottish Ministers in carrying out surveys or studies in connection with the implementation of this article.

Exercise of jurisdiction

24.—(1) The Company or its harbour master shall not take any action in the Forth under sections 57, 65 and 69 of the Harbours, Docks and Piers Clauses Act 1847(a) as incorporated by article 3 (incorporation of the 1847 Act) of the 2009 Order except with the consent of Forth Ports' harbour master, which consent shall not be unreasonably withheld.

(2) Forth Ports shall consult the Company before making any byelaw under the 1969 Act which directly applies to or which could affect the construction, operation or maintenance of the works or the port premises.

(3) Forth Ports or its harbour master (as appropriate) shall consult the Company before giving any general direction under the 1969 Act which could affect the construction, operation or maintenance of the works or the port premises.

(4) The Company shall consult Forth Ports, in its capacity as statutory harbour authority for the Forth, before making any byelaw under the Port Babcock Rosyth Orders 2009 to 2013.

(5) The Company shall not make any byelaws—

- (a) for the control or regulation of vessels not going to, moored at or departing from the works; or

(a) 1847 c.27.

(b) that in the reasonable opinion of Forth Ports' harbour master would conflict with any byelaws or directions made by Forth Ports or any powers exercisable by Forth Ports or its harbour master for the regulation of navigation in the Forth.

(6) The Company or its harbour master (as appropriate) shall consult Forth Ports before giving any general direction under the Port Babcock Rosyth Orders 2009 to 2013 which directly affects navigation in the Forth.

Name

A member of the staff of the Scottish Ministers

St Andrew's House,
Edinburgh
Date

SCHEDULE 1

Article 4

PORT LIMITS

The area outlined in blue on the port map bounded as follows: commencing at point 1 and proceeding in a south-south-westerly direction along the boundary of the subjects registered in the Land Register of Scotland under Title Number FFE15084 to point 2; thence along the outer face of the existing fence line, first in a west-north-westerly direction to point 3, then in a south-south-westerly direction to point 4, then in a west-north-westerly direction to point 5, then in a south-westerly direction to point 6, then in a south-south-westerly direction to point 7, then in a south-westerly direction to point 8, then in a south-south-westerly direction to point 9, then in a south-easterly direction to point 10, then in a south-south-westerly direction to point 11, then in a southerly direction to point 12 and then in an east-south-easterly direction to the end of the existing fence line at point 13; thence proceeding in a south then south-westerly direction along the level of high-water to point 14; thence proceeding along the outer face of a small jetty structure, first in a southerly direction to point 15, then in a westerly direction to point 16 and then in a northerly direction to point 17; thence proceeding in a westerly and then south-south-westerly direction along the level of high-water to point 18; thence proceeding in an east-south-easterly direction 30 metres from and parallel to the northern face of the Middle Jetty north berthing pocket to point 19; thence proceeding in a south-south-westerly direction to point 20; thence in a south westerly direction to 21; thence in a south-south-westerly direction to point 22 and then in a south-easterly direction 30 metres from and parallel to the north eastern face of the south arm to point 23; thence in a south-south-westerly direction to point 24 and then in a west-north-westerly direction 30 metres from and parallel to the southern face of the south arm to point 25; thence proceeding in a westerly direction to point 26; thence in a west-north-westerly, north-westerly and northerly direction following a line 30 metres from and parallel to the level of high water to point 27; thence in a west-north-westerly direction to point 28 and point 29 both 30 metres from the end of the new dolphin structures, thence in a north westerly direction to point 30, thence in a north-north-easterly direction 30 metres from and parallel to the west face of the Contractor's Jetty to point 31; then in an east-south-easterly direction to point 32; thence proceeding generally in a north-easterly direction along the level of high-water to point 33; thence proceeding on the outer face of the existing fence line, first generally in a north-easterly direction to point 34, then in an easterly direction to point 35, then in a northerly direction to point 36, then in an easterly direction to point 37 and then in a north-westerly direction to point 38; thence proceeding in a north-easterly direction over the roadside verge, footway and road along the line of a former barrier to point 39; thence proceeding along the outer face of the existing fence line, first generally in an easterly direction to point 40, then in a northerly direction to point 41, then in a north-easterly direction to point 42, then in a south-easterly then easterly directions to point 43, then in a southerly then easterly directions to point 44 and then in a southerly direction to point 1.

UNDER EXCEPTION of the area enclosed by the existing fence line commencing at point 45 and proceeding in a south-south-westerly direction to point 46, then in a south-westerly direction to point 47, then in a north-westerly direction to point 48, then in a northerly direction to point 49 and then in an east-south-easterly direction back to point 45.

MITIGATION MEASURES

Permitted development rights

1.—(1) In their application to the works, article 3 of, and Class 29 in Part II of Schedule 1 to, the 1992 Order (which permit development authorised by a harbour revision order designating specifically both the nature of the development authorised and the land on which it may be carried out) have effect as if the planning permission granted by that Order were—

- (a) subject to the restrictions contained in this Schedule; and
- (b) did not apply to any permanent alteration, enlargement, replacement, relaying, extension or reconstruction authorised by article 5(3) that may in the opinion of the planning authority have significant adverse effects on the environment.

(2) In their application to other development carried out on land which falls to be treated as operational land of a dock or harbour undertaker by virtue of this Order, article 3 of, and Class 35 in Part II of Schedule 1 to the 1992 Order, have effect as if planning permission granted by that Order were subject to the restrictions contained in this Schedule.

(3) Except to the extent specified, the restrictions contained in this Schedule do not apply to temporary construction activity.

(4) For the purpose of the 1997 Act, the restrictions contained in paragraphs 2 to 4 of this Schedule are deemed to be conditions imposed on the grant of planning permission.

Work No. 21

2.—(1) The Scottish Ministers are, after consultation with Fife Council, Scottish Natural Heritage and Charleston, Limekilns and Pattiesmuir Community Council, to determine whether Work No. 21 requires to be built and are to advise the Company of their determination.

(2) If the Scottish Ministers determine that Work No. 21 requires to be built, it shall be completed before any other works are commenced.

Management of land contamination

3.—(1) No construction works, other than investigative works (which shall inform the Contaminated Land Management Plan) shall be carried out on site prior to the receipt of Fife Council's and Scottish Environment Protection Agency's written approval of that Plan, which is to provide for—

- (a) the identification of unacceptable risks to human health and the wider environment due to the presence of land contamination or unexploded ordnance;
- (b) a remediation strategy to address any such identified unacceptable risks thereby making the site suitable for its intended use;
- (c) procedures to be adopted to mitigate unacceptable risks to human health and the wider environment due to land contamination or unexploded ordnance during construction work (including the implementation of the remediation strategy);
- (d) procedures to deal with previously unsuspected land contamination that becomes evident during construction works (including the implementation of the remediation strategy);
- (e) procedures to be adopted to mitigate release of hazardous substances to land and the water environment during construction works (including the implementation of the remediation strategy); and
- (f) appropriate emergency measures to minimise the impact of any release of a hazardous substance should it occur,

and the works may only be constructed in compliance with the approved Contaminated Land Management Plan.

(2) Following completion of construction works, operation of the site may not commence prior to receipt of Fife Council's and Scottish Environment Protection Agency's written approval of a remediation verification report prepared in accordance with the Contaminated Land Management Plan.

Restrictions on construction

4.—(1) The works specified in article 5 are to be carried out in accordance with the descriptions given in that article and as shown on the deposited plans, subject to the limits of deviation specified in article 7.

(2) For the avoidance of doubt, the limits of deviation shall not apply to the height of the lighting columns, mobile harbour cranes, rubber tyre gantry cranes or rail mounted ship to shore cranes, or the 15 metre height restriction that applies to stacks of containers.

(3) The construction and operational phase lighting must be designed, deployed, constructed and maintained in accordance with the lighting strategy approved by Fife Council.

(4) The normal hours of working for the construction works, other than dredging, shall be between 8:00 am and 7:00 pm on Mondays to Fridays and 8:00 am and 1:00 pm on Saturdays.

(5) No construction activities other than dredging operations are to be undertaken on Sundays, Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971(a) is a bank holiday in Scotland. Where additional or alternative working hours are required, these shall be agreed in advance with Fife Council.

(6) In constructing and operating the works, the Company shall implement the measures on its part set out in and from time to time agreed pursuant to the Traffic Management Plan contained within the CEMP.

(7) Prior to the commencement of any work on site, a Noise Management Plan shall be submitted to and agreed in writing by Fife Council. This Plan shall cover both construction and operational noise matters and the works authorised by articles 5 and 6 shall not commence until Fife Council has approved the Noise Management Plan.

(8) Operational noise emitted from the site shall be monitored in accordance with section 13 of the draft CEMP and, to the extent that such noise is under the control of the Company, it shall be controlled so as not to exceed the limits specified in paragraph 13.1 of the draft CEMP. Monitoring shall be in accordance with paragraph 13.4 of the draft CEMP and should noise levels exceed those limits as provided for in paragraph 13.1 of that document, appropriate remedial action shall be taken by the Company.

(9) The Company shall implement the complaints procedure set out in paragraph 13.6 of the draft CEMP.

(10) All onshore construction activities shall be undertaken in accordance with BS5228: 2009 - Code of Practice for Noise and Vibration Control on Construction and Open Sites, Parts 1 and 2.

(11) All day-time noise conditions in association with construction are related to 1 hour free field noise levels at the boundaries of noise sensitive premises in Limekilns. For the 8 to 10 weeks of driven piling activities, noise levels attributable to site activities shall not exceed 60dBL Aeq at the boundaries of noise sensitive premises in Limekilns as specified in the Noise Management Plan in consultation with Fife Council and the Charlestown, Limekilns and Pattiesmuir Community Council. For all other phases of the construction, noise levels attributable to site activities shall not exceed 55dBL Aeq at the boundaries of noise sensitive premises in Limekilns.

(12) Unless otherwise stated, all measurements shall refer to free field conditions measured at a height of 1.2 metres above ground level and wind speeds of 3m/s or below. The sound level meter response shall be set to fast.

(a) 1971 c.80.

(13) Notwithstanding the terms of sub-paragraphs (4) and (5), there shall be no driven piling operations after 6:00 pm on Mondays to Fridays, or at any time on Saturdays, Sundays, Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in Scotland.

FOR THE PROTECTION OF FORTH PORTS

Obstruction in the river

1. If any pile, stump or other obstruction to navigation in the river becomes exposed in the course of constructing any works or dredging (other than a pile, stump or other obstruction on the site of a structure comprised in any permanent work), the Company shall, as soon as reasonably practicable after receipt of notice in writing from Forth Ports requiring such action, remove it from the river or, if it is not reasonably practicable to remove it—

- (a) cut off the obstruction at such level below the bed of the river as Forth Ports may reasonably direct; or
- (b) take such other steps to make the obstruction safe as Forth Ports may reasonably require.

Removal, etc. of Forth Ports' moorings and buoys

2. If—

- (a) by reason of the construction of any tidal work or dredging it is reasonably necessary for Forth Ports to incur 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 Forth Ports, or laying down and removing replacement 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) Forth Ports gives the Company not less than 28 days' notice of its intention to incur such costs, and takes into account any representations which the Company may make in response to the notice within 14 days of the receipt of the notice,

the Company shall pay the costs reasonably so incurred by Forth Ports.

Removal of temporary works

3. On completion of the construction of any part of a permanent work in the river, the Company shall as soon as practicable remove—

- (a) any temporary tidal work carried out only for the purposes of part of the permanent work; and
- (b) any materials, plant and equipment used for such construction,

and shall make good the site to the reasonable satisfaction of Forth Ports.

Facilities for navigation

4.—(1) The Company shall not in the exercise of the powers granted by this Order interfere with any marks, lights or other navigational aids in the river without the agreement of Forth Ports, and shall ensure that access to such aids remains available during and following construction of any tidal work.

(2) The Company shall provide at any tidal work, or must afford reasonably facilities at such works (including an electricity supply) for Forth Ports to provide at the Company's cost, from time to time, such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation in the river as Forth Ports may reasonably deem necessary by reason of the construction of any such tidal work, and must ensure that access remains available to apparatus during and following construction of such works.

(3) The Company shall comply with the directions of the Forth Ports' harbour master from time to time with regard to the lighting on the tidal works or within the port, or the screening of such lighting, so as to ensure that it is not a hazard to navigation on the river.

Indemnity

5.—(1) The Company is responsible for and must make good to Forth Ports all financial costs or losses not otherwise provided for in this Schedule which may reasonably be incurred or suffered by Forth Ports, by reason of—

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

and the Company must indemnify Forth Ports 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 Forth Ports on behalf of the Company; or
- (b) by the Company, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by Forth Ports, or in a manner approved by Forth Ports, 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 Forth Ports or its duly authorised representative, employee, contractor or agent) excuse the Company from liability under the provisions of this paragraph.

(3) Forth Ports shall give the Company 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 may be made without the prior consent of the Company.

Dispute resolution

6.—(1) Any disputes between the Company and Forth Ports about matters in this Schedule should be referred to and settled by an arbiter.

(2) The arbiter shall be appointed by the Chairman of the Chartered Institute of Arbitrators.

(3) The Arbitration (Scotland) Act 2010(a) shall govern any such arbitration.

(a) 2010 asp 1.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made following an application by Port Babcock Rosyth Limited (“the Company”), empowers the Company to construct, maintain and operate in the Forth and on land at Rosyth in Fife, a container terminal at the port and port related facilities known as Port Babcock Rosyth.

Part 1 makes preliminary provision including provision as to interpretation (article 2) and incorporation of the 2009 Order (article 3).

Part 2 makes provision for the new limits of the port (article 4).

Part 3 makes provisions as to works.

Article 5 authorises the Company to construct works. The main works to be carried out to construct the port are at paragraphs (1) and (2). Paragraph (3) makes provision for future works.

Article 6 authorises subsidiary works required in connection with the works under article 5.

Article 7 provides for the limits of deviation for the works.

Article 8 authorises the Company to dredge to form a turning circle and access channel to the container terminal and to carry out maintenance dredging at the port.

Article 9 creates an offence of obstructing the works.

Article 10 provides for approval of tidal works.

Article 11 makes provision as to the time limit for completion of the works authorised under article 5(1) and (2).

Article 12 provides for land within the port limits to be deemed to be operational land for the purposes of the Town and Country Planning (Scotland) Act 1997 and to lie within the area of Fife Council if it otherwise would not do so.

Part 4 makes provision as to port regulation.

Article 13 authorises the Company to levy charges.

Part 5 makes miscellaneous and general provision.

Articles 14 and 15 make saving provision, including making clear that in carrying out any works or operations pursuant to this Order the Company must obtain any other consent required for those works or operations under the terms of any other enactment.

Article 16 provides as to Crown right.

Article 17 makes provision as to compliance by the Company with the Construction and Environmental Management Plan to be approved by the Scottish Ministers.

Article 18 and Schedule 2 make provision as to mitigation measures.

Article 19 makes provision for special exemptions for the works authorised by this Order from restrictions on works and dredging in the Forth.

Article 20 and Schedule 3 make provision for the protection of certain interests of Forth Ports.

Article 21 makes provision for survey of the river bed.

Article 22 makes provision for prevention of sedimentation.

Article 23 makes provision for remediation of sedimentation.

Article 24 makes provision for the exercise of jurisdiction.

Copies of the Environmental Statement for the project, the additional environmental information, the draft Construction and Environmental Management Plan and the deposited plans may be inspected, free of charge, at the offices of the Scottish Ministers at Victoria Quay, Edinburgh, EH6 6QQ between 09.00 and 16.30 (Monday to Friday, excluding public holidays).

The deposited plans and the draft Construction and Environmental Management Plan may also be inspected, free of charge, at the offices of the Company at the port between 09.00 and 16.00 (Monday to Friday, excluding public holidays).

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