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## SCHEDULE

### PITTENWEEM HARBOUR

Provisional Order to make provision for the improvement of Pittenweem Harbour by the Fife Regional Council; and for connected purposes.

“WHEREAS—

- (1) Pittenweem Harbour (hereinafter referred to as “the harbour”) is, by virtue of section 154 of the Local Government (Scotland) Act 1973, vested in the Fife Regional Council (hereinafter referred to as “the Council”) and is administered by them as a marine work to which Part III of the Harbours, Piers and Ferries (Scotland) Act 1937 applies, under the Pittenweem Harbour Orders 1881 and 1967 and section 154 of the Local Government (Scotland) Act 1973:
- (2) The harbour is the recognised centre of the local fishing industry in the Pittenweem fishery district which comprises a number of ports on the south and east Fife coasts and, in order to improve the safety of sea access to the harbour and the operational efficiency of the harbour and the associated fish market, it is necessary to improve the approach channel to the harbour and improve the facilities for the marketing of fish and the services for fishing boats in the harbour:
- (3) It is accordingly expedient—
  - (a) that the Council should be authorised to carry out the works described in this Order for the improvement of the harbour; and
  - (b) that the limits of jurisdiction of the Council as the harbour authority for the harbour, and of the harbour master, should be redefined and extended as provided in this Order:
- (4) Estimates have been prepared of the cost of the construction of the works and associated operations amounting in total to £1,850,000:
- (5) Plans and sections showing the lines, situations and levels of the works to be constructed under the powers of this Order were, on or before 20th March 1989, deposited with the sheriff clerk of the sheriff court district of Cupar and with the Director of Corporate Services of the Council:
- (6) The purposes of this Order cannot be effected without an Order confirmed by Parliament under the provisions of the Private Legislation Procedure (Scotland) Act 1936:

Now therefore, in pursuance of the powers contained in the said Act of 1936, the Secretary of State orders as follows:—

#### **Short and collective titles**

- 1 (1) This Order may be cited as the Pittenweem Harbour Order 1992.
- (2) The Pittenweem Harbour Orders 1881 and 1967 and this Order may be cited together as the Pittenweem Harbour Orders 1881 to 1992.

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## **Interpretation**

- 2 (1) In this Order, unless the context otherwise requires—
- “authorised works” means works authorised by this Order;
  - “the Council” means the Fife Regional Council;
  - “the deposited plans” and “the deposited sections” mean the plans and sections deposited in connection with this Order;
  - “the harbour” means the area within the limits defined in section 20 of this Order, together with all docks, berths, wharves, landing places, quays, buildings and other premises, water and lands which are for the time being vested in, or occupied or administered by, the Council as harbour authority and which form part of the harbour undertaking;
  - “harbour master” means any person appointed as such and includes his deposes and assistants and any person for the time being authorised by the Council to act, either generally or for any specific purpose, in the capacity of harbour master;
  - “the harbour undertaking” means the Pittenweem Harbour undertaking of the Council as from time to time authorised;
  - “the level of high water” means the level of mean high-water springs;
  - “limits of deviation” means the limits of deviation shown on the signed plan;
  - “the signed plan” means the plan marked “Pittenweem Harbour Order: Limits of deviation of harbour work” of which five copies have been signed by Gavin Douglas Q.C., Senior Counsel to the Secretary of State for the purposes of the Private Legislation Procedure (Scotland) Act 1936, one of which copies has been deposited with the Sheriff Clerk of the Sheriff Court district of Cupar, one in the office of the Clerk of the Parliaments, House of Lords, one in the Private Bill Office of the House of Commons, one in the Scottish Office, London, and one in the Office of the Secretary of State, Edinburgh;
  - “tidal work” means so much of any authorised work as is on, under or over tidal waters or tidal lands below the level of high water.
- (2) Except in section 5 (Power to deviate) of this Order, all distances and lengths stated in any description of works, powers or lands, shall be construed as if the words “or thereby” were inserted after each such distance or length.
- (3) Any reference in this Order to a work identified by its number shall be construed as a reference to the work of that number authorised by this Order.

## **Power to construct works**

- 3 (1) Subject to the provisions of this Order, the Council may, in the lines or situations shown for Work No. 1 on the deposited plans and according to the levels shown for that work on the deposited sections, make and maintain the work hereinafter described, with all necessary works and conveniences connected therewith or incidental thereto, in the Parish of Pittenweem in the North East Fife District and on the adjoining foreshore and bed of the sea:—

An extension of the existing harbour breakwater forming a solid structure, commencing by a junction with the existing breakwater at a point 35 metres landward from its seaward head and terminating at a point 135 metres south-west of the point of commencement.

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- (2) The Council may, within the limits of deviation, from time to time alter, reconstruct or renew the authorised works.

### **Subsidiary works**

- 4 Subject to the provisions of this Order, the Council may within the limits of deviation from time to time erect, construct and maintain, whether temporarily or permanently, all such subsidiary or incidental works and conveniences as may be necessary or expedient for the purposes of the harbour undertaking.

### **Power to deviate**

- 5 Subject to the provisions of this Order, in the construction of the authorised works the Council may deviate laterally from the lines or situations thereof shown for Work No. 1 on the deposited plans to the extent of the limits of deviation and may deviate vertically from the levels shown for that work on the deposited sections to any extent not exceeding 2 metres upwards and to such extent downwards as may be found necessary or convenient.

### **Power to dredge**

- 6 (1) The Council may from time to time deepen, dredge, scour, cleanse, alter or improve the bed of the sea and foreshore within the harbour and in the vicinity thereof, including the approach thereto, or blast any rock therein, for the purpose of constructing or maintaining the authorised works, improving the said approach, and obtaining, preserving or improving uninterrupted access to and from or within the harbour or any part of the harbour.
- (2) The Council may use, appropriate or dispose of the materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894) from time to time dredged by them, but no materials so dredged, other than those used for the purposes of constructing or filling works or reclaiming lands within the harbour, shall be deposited below the level of high water except in such places and in accordance with such conditions and restrictions as may be approved by the Secretary of State.
- (3) The foregoing provisions of this section shall have effect subject to section 21 of this Order.

### **Application of provisions of Order of 1967**

- 7 (1) The following provisions of the Pittenweem Harbour Order 1967 shall have effect as if for any reference therein to that Order or to the works authorised by that Order there were substituted reference to this Order or, as the case may be, to the authorised works:

—  
section 3 (Incorporation of Act of 1937);  
section 4 (Application of Act of 1847);  
section 7 (Temporary closure of harbour);  
section 8 (Removal of vessels from harbour);  
section 9 (As to vessels entering harbour after date of closure);  
section 11 (Power to maintain and improve harbour undertaking); and  
section 12 (Penalty for obstructing works).

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- (2) (a) In the application to this Order of the Harbours, Docks, and Piers Clauses Act 1847 by virtue of the said section 4, the expression “the special Act” shall mean this Order and the word “vessel” shall be construed in accordance with the Pittenweem Harbour Order 1967.
- (b) In the said section 12, for the words “five pounds” there shall be substituted the words “level 3 on the standard scale”.

### **Temporary stoppage of roads, etc**

- 8 (1) During and for the purpose of the execution of the authorised works the Council may temporarily stop up and divert and interfere with any road or footpath, and may for any reasonable time divert the traffic therefrom and prevent all persons other than those bona fide going to or from any land, house or building abutting on the road or footpath from passing along and using the same.
- (2) The Council shall provide reasonable access for foot passengers bona fide going to or from any such land, house or building.
- (3) The exercise by the Council of the powers of this section in relation to any road or footpath shall not prejudice or affect the right of any operator of any telecommunications code system (within the meaning of Schedule 4 to the Telecommunications Act 1984) to maintain, inspect, repair, renew or remove telecommunications apparatus (within the meaning of paragraph 1 of Schedule 2 to that Act) or to break open that road or footpath for any of those purposes.

### **Tidal works not to be executed without approval of Secretary of State**

- 9 (1) A tidal work shall not be constructed except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun.
- (2) If a tidal work is constructed in contravention of this section—
  - (a) the Secretary of State may by notice in writing require the Council to remove the work or any part thereof and restore the site to its former condition: and if, on the expiration of 30 days from the date when the notice is served upon the Council, they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or
  - (b) if it appears to the Secretary of State urgently necessary so to do, he may himself remove the tidal work or part of it and restore the site to its former condition; and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Council.

### **Provision against danger to navigation**

- 10 (1) In the case of injury to, or destruction or decay of, a tidal work or any part thereof, the Council shall forthwith notify the Commissioners of Northern Lighthouses and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as the Commissioners shall from time to time direct.
- (2) If the Council fail to notify the Commissioners of Northern Lighthouses as required by this section or to comply in any respect with a direction given under this section, they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

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### **Survey of tidal works**

- 11 The Secretary of State may at any time, if he deems it expedient, order a survey and examination of a tidal work, or of the site upon which it is proposed to construct the work, and any expenditure incurred by him in such survey and examination shall be recoverable from the Council.

### **Abatement of works abandoned or decayed**

- 12 (1) Where a tidal work is abandoned or suffered to fall into decay the Secretary of State may by notice in writing require the Council either to repair and restore the work or any part thereof, or to remove the work and restore the site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.
- (2) Where an authorised work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere, or to cause reasonable apprehension that it may interfere, with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of that work, or any portion thereof, in any notice under this section.
- (3) If, on the expiration of 30 days from the date when a notice under this section is served upon the Council, they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Council.

### **Lights on tidal works during construction**

- 13 (1) The Council shall, at or near a tidal work during the whole time of the construction, alteration, renewal or removal of the work, exhibit every night from sunset to sunrise such lights and take such other steps for the prevention of danger to navigation as the Secretary of State shall from time to time direct.
- (2) If the Council fail to comply in any respect with a direction given under this section, they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

### **Permanent lights on tidal works**

- 14 (1) After the completion of a tidal work the Council shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights and take such other steps for preventing danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.
- (2) If the Council fail to comply in any respect with a direction given under this section they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

### **Defence of due diligence**

- 15 (1) In proceedings for an offence under any provision of this Order mentioned in subsection (2) below it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

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- (2) The provisions referred to in subsection (1) above are the following:—  
section 10 (Provision against danger to navigation);  
section 13 (Lights on tidal works during construction);  
section 14 (Permanent lights on tidal works).
- (3) If in any case the defence provided under subsection (1) above involves the allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, not less than seven clear days before the hearing, he has served on the prosecutor a notice in writing giving such information as was then in his possession identifying, or assisting in the identification of, that other person.

### **Fish market**

- 16 (1) The Council may, in connection with the harbour undertaking, provide, operate and maintain a market for the sale of fish with all such appliances and fittings as in their opinion are necessary and suitable for the landing, handling and storage of fish.
- (2) Without prejudice to the foregoing generality, the Council may—
- (a) divide or allocate for particular purposes, parts of any premises provided for or in connection with the fish market;
  - (b) provide and operate such services and facilities as they think fit in connection with the market;
  - (c) fix and regulate the hours during which the market or any part thereof shall be open; and
  - (d) recover such reasonable charges as they think fit for the use of the market and for such services and facilities.
- (3) The Council may, for such consideration and upon such terms and conditions, subject to such restrictions and for such periods as they think fit, sell, feu, lease, excamb or otherwise dispose of the whole or any part of the lands forming a fish market or part thereof, and may enter into and carry into effect agreements with respect to any offices, stalls and ancillary buildings in connection therewith.

### **Viewing facilities and parking places**

- 17 (1) The Council may provide facilities (including shelters) within or in the vicinity of the harbour—
- (a) for public viewing of the operations of the harbour and the associated fish market; and
  - (b) for the parking of vehicles and vessels;
- and for any such purpose may erect barricades or fencing and related offices, waiting rooms and other facilities.
- (2) The Council may make such reasonable charges as they think fit for the use of such facilities.

### **General byelaws**

- 18 (1) The Council may from time to time make byelaws for the efficient management and regulation of the harbour and the facilities provided by the Council therein.

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- (2) Without prejudice to the generality of subsection (1) above, byelaws made under this section may provide for—
- (a) regulating the use, operation and superintendence of the harbour and the docks, berths, wharves, landing places, quays, buildings, equipment, works and conveniences in the harbour;
  - (b) regulating the admission, departure and movement of vessels to, from and within the harbour or the removal of vessels, and for the good order and government of vessels whilst within the harbour;
  - (c) regulating the shipping and unshipping, landing, stowing, depositing and removing of goods, including marine creatures of any type, within the harbour;
  - (d) regulating the navigation, berthing and mooring of vessels and their speed and manner of navigation and the use of tugs within the harbour;
  - (e) preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or persons within the harbour;
  - (f) regulating the conduct of all persons within the harbour not being members of a police force, or officers or servants of the Crown, whilst in the exercise of their duties;
  - (g) regulating the placing and maintenance of moorings within the harbour;
  - (h) preventing and removing obstructions or impediments within the harbour;
  - (i) prohibiting or regulating the discharge or deposit of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) in the harbour;
  - (j) regulating the use within the harbour of yachts, sailing boats, sailboards, rowing boats, pleasure craft and other small craft, and prescribing parts of the harbour where any such vessels may not moor or anchor or be otherwise secured, or which any such vessels may not enter;
  - (k) regulating or prohibiting the activities within the harbour of divers, surfers, water skiers and other persons engaged in similar recreational pursuits, but any such regulation shall not prohibit the use for navigation of the vessels referred to in paragraph (j) above;
  - (l) regulating the launching of vessels within the harbour;
  - (m) prohibiting persons working or employed in or entering the harbour, or any part thereof, from smoking therein;
  - (n) regulating or preventing the use of fires and lights within the harbour, and within any vessel within the harbour;
  - (o) regulating the movement, speed and parking of vehicles within the harbour;
  - (p) regulating the use of any fish market within the harbour and the conduct of persons working therein or resorting thereto, and for preventing nuisance or annoyance thereat;
  - (q) regulating the exercise of the powers vested in the harbour master;
  - (r) making the carrying out of specified harbour operations, or the conduct of persons within the harbour, subject to the approval (with or without conditions), control or direction of the harbour master, and for authorising him to take such action as may be reasonably required in default of compliance with any such condition, control or direction.
- (3) Byelaws made under this section may—
- (a) provide for imposing upon persons offending against them, or against any condition, requirement or direction imposed, made or given thereunder, fines not exceeding level 3 on the standard scale;

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- (b) relate to the whole of the harbour or any part thereof;
  - (c) make different provisions for different parts of the harbour, or in relation to different classes of vessels.
- (4) Where the Secretary of State proposes to exercise the power conferred on him under subsection (10) of section 202 of the Local Government (Scotland) Act 1973 to confirm with modifications any byelaws submitted by the Council for confirmation and it appears to the Secretary of State that any modification which he proposes to make is substantial, he shall inform the Council and require them to take any steps he considers necessary for informing persons likely to be concerned with the modification, and shall not confirm the byelaws until such period has elapsed as he thinks reasonable for consideration of, and comment upon, the proposed modification by the Council and by other persons who have been informed of it.

### **Tidal works to be in Parish of Pittenweem**

- 19 The tidal works shall be deemed for all purposes to be within the Parish of Pittenweem and the District of North East Fife.

### **Harbour limits**

- 20 (1) The limits of jurisdiction of the Council as harbour authority for the harbour and of the harbour master shall be the limits described in the Schedule to this Order and shown on sheet 1 of the deposited plans (hereinafter referred to as “the plan”).
- (2) In the event of any discrepancy between the limits described in the said Schedule and the limits shown on the plan, the limits as described in the said Schedule, omitting the references therein to the plan, shall be deemed to be correct and shall prevail.

### **Crown rights**

- 21 (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 the generality of the foregoing, nothing in this Order authorises the Council to take, use, enter upon or in any manner interfere with any land or interests in land or any rights of whatsoever description (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary):—
- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those commissioners; or
  - (b) 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 subsection (1) above may be given unconditionally or subject to terms and conditions.

### **Saving for general enactments, etc**

- 22 (1) Nothing in this Order shall affect the operation of—
- (a) Part II of the Food and Environment Protection Act 1985 (which relates to deposits in the sea); or
  - (b) the Control of Pollution Act 1974.



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- (2) Subsection (1) of section 80 (repeal or modification of certain provisions by regulations) of the Health and Safety at Work etc. Act 1974 shall apply to any provision of this Order and to any byelaw made under it as it applies to any provision to which it relates.

### **Saving for Commissioners of Northern Lighthouses**

- 23 Nothing in this Order shall prejudice or derogate from the jurisdiction or authority of the Commissioners of Northern Lighthouses.

### **Town and Country Planning (Scotland) Act 1972**

- 24 (1) Except as provided in this section, the Town and Country Planning (Scotland) Act 1972, and any orders, regulations, rules, schemes and directions made or given thereunder, and any restrictions or powers thereby imposed or conferred, in relation to land shall apply and may be exercised in relation to any land notwithstanding that the development thereof is authorised by this Order.
- (2) In their application to development authorised by this Order Article 3 of, and Class X in Schedule 1 to, the Town and Country Planning (General Development) (Scotland) Order 1981 shall have effect as if the authority to develop given by this Order were limited to development begun within 10 years after the passing of the Act confirming this Order.

## THE SCHEDULE

Section 20.

### THE HARBOUR LIMITS

The area of water in the Firth of Forth below the level of high water commencing at a point at NO 54476 02278 on the level of high water off West Braes, Pittenweem (Point 1 on the plan), thence in a straight line in a south-south-easterly direction for a distance of 180 metres to a point at NO 54500 02100 (Point 2 on the plan), thence in a straight line in an easterly direction for a distance of 600 metres to a point at NO 55100 02100 (Point 3 on the plan) and thence in a straight line in a north-north-easterly direction for a distance of 380 metres to a point on the level of high water at NO 55133 02479 off Abbey Wall Road, Pittenweem (Point 4 on the plan).”