

**2009 No. 872**

**TRANSPORT AND WORKS, ENGLAND**

**TRANSPORT, ENGLAND**

**The Babbacombe Cliff Railway Order 2009**

*Made* - - - - - *25th March 2009*

*Coming into force* - - - *15th April 2009*

An application was made to the Secretary of State, in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(a) for an order under sections 1 and 5 of the Transport and Works Act 1992(b) (“the 1992 Act”).

The Secretary of State, having considered the objection made and not withdrawn has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

Notice of the Secretary of State’s determination was published in the London Gazette on 24th March 2009.

In exercise of the powers conferred by sections 1 and 5 of, and paragraphs 12, 15 and 17 of Schedule 1 to, the 1992 Act, the Secretary of State makes the following Order:—

**Citation and commencement**

1. This Order may be cited as the Babbacombe Cliff Railway Order 2009 and shall come into force on 15th April 2009.

**Interpretation**

- 2.—(1) In this Order—
- “the 1923 Order” means the Babbacombe Cliff Light Railway Order 1923(c);
  - “the company” means Babbacombe Cliff Railway CIC, a community interest company limited by guarantee, whose registered number is 06541829;
  - “the Council” means Torbay Borough Council;
  - “the railway” means the light railway authorised under article 4 of the 1923 Order together with all lands and works related to it, to the extent that those lands and works are vested in the Council at the date on which this Order comes into force, and are held or used by the Council for the purposes of the railway undertaking;
  - “the relevant date” means the date upon which the railway or any part of it is transferred by the Council to the company under article 3 (transfer of railway to company); and
  - “the undertaker” means the Council and—
    - (a) following any lease, sale or vesting under article 3, this expression shall mean the company; and

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(a) S.I. 2006/1466.  
(b) 1992 c. 42. As amended by S.I. 1995/1541, S.I. 1998/2226, S.I. 2000/3199 and S.I. 2006/958.  
(c) S.I. 1923/1624. Re-enacted by section 161 of the Torbay Corporation Act 1971 c.xxxiii.

(b) following any lease, sale or other disposal under article 5 (powers of disposal to others), this expression shall mean the transferee within the meaning of that article.

(2) Any enactment by which the railway was authorised shall have effect subject to the provisions of this Order.

### **Transfer of railway to company**

3.—(1) The Council may lease the railway to the company on such terms and conditions as may be agreed between the Council and the company.

(2) The Council and the company may also enter into, and carry into effect, agreements providing for the sale to, and vesting in, the company of the railway on such terms and conditions as may be agreed between the Council and the company.

### **Transfer of rights and obligations to company, etc.**

4.—(1) Except as may be otherwise provided in this Order, as from the relevant date—

(a) the railway or any part of it shall continue to be subject to all statutory or other provisions applicable to it at that date (in so far as they are still subsisting and capable of taking effect); and

(b) the undertaker shall, to the exclusion of the Council (except as may be provided by the terms of the lease or sale)—

(i) be entitled to the benefit of, and to exercise, all rights, powers and privileges relating to the railway; and

(ii) be subject to all obligations, statutory or otherwise, relating to the railway (in so far as they are still subsisting and capable of taking effect), to the intent that the Council shall be released from all such obligations.

(2) Paragraph (1) shall have effect during the term of any lease granted under article 3(1) (transfer of railway to company) and from the operative date of any sale under article 3(2).

(3) The exercise of the powers under any enactment by the company in pursuance of any lease or sale under article 3 shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Council.

### **Powers of disposal to others**

5.—(1) In this article—

“lease” includes an underlease and “lease”, where used as a verb, shall be construed accordingly;

“the transferee” means any person to whom the railway, or any part of it, is leased, sold or otherwise disposed of under the powers conferred by this article; and

“the transferred undertaking” means so much of the railway as is leased, sold or otherwise disposed of pursuant to this article.

(2) The Council may, with the consent of the Secretary of State, sell, lease, charge or otherwise dispose of, on such terms and conditions as it thinks fit, the whole or any part of the railway.

(3) Except as may be otherwise provided in this Order—

(a) the transferred undertaking shall continue to be subject to all statutory or other provisions applicable to the transferred undertaking at the date of the lease, sale or other disposal (in so far as they are still subsisting and capable of taking effect); and

(b) the transferee shall, to the exclusion of the Council (except as may be provided by the terms of the lease, sale or disposal)—

(i) be entitled to the benefit of, and to exercise, all rights, powers and privileges relating to the transferred undertaking; and

(ii) be subject to all obligations, statutory or otherwise, relating to the transferred undertaking (in so far as they are still subsisting and capable of taking effect) to the intent that the Council shall be released from all such obligations.

(4) Paragraph (3) shall have effect during the term of any lease granted, and from the operative date of any sale or other disposal, under the powers conferred by this article.

(5) The exercise of the powers under any enactment by any person in pursuance of any sale, lease, charge or other disposal under paragraph (2) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Council.

#### **Power to charge fares**

6. The undertaker may demand, take and recover or waive such charges for carrying passengers or goods on the railway, or for any other services or facilities provided in connection with the railway, as it thinks fit.

#### **Amendment and Revocations**

7.—(1) Article 3(1) (incorporation of Acts) of the 1923 Order is amended by the insertion, after “94 to 99”, of the words “, 112 to 121”.

(2) The enactments specified in columns (1) and (2) of the Schedule are revoked to the extent specified in column (3).

Signed by authority of the Secretary of State

*Ellis Harvey*  
Head of the Transport and Works Act Orders Unit  
Department for Transport

25th March 2009

### SCHEDULE

Article 7

<i>Column (1)</i>	<i>Column (2)</i>	<i>Column (3)</i>
<i>Title of Instrument</i>	<i>Number</i>	<i>Extent of revocation</i>
The Babbacombe Cliff Light Railway Order 1923	S.I. 1923/1624	Article 14 Article 15 Article 16(3) to (8) Article 17(1), (3) and (4) Article 19 Article 20 Article 23 Article 24 Article 25
Regulations relating to mechanical power on the Babbacombe Cliff Light Railway	S.I. 1926/1078	The whole of the Regulations
The Babbacombe Cliff Lift Railway (Amendment) Regulations 1955	S.I. 1955/725	The whole of the Regulations

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order relates to the Babbacombe Cliff Railway (“the Railway”) in the Borough of Torbay which at the date of this Order is owned by Torbay Borough Council (“the Council”).

The Corporation of the Borough of Torquay (whom the Council have succeeded) were authorised to construct and maintain the Railway by the Babbacombe Cliff Light Railway Order 1923. The 1923 Order also provided the Corporation with limited powers to lease the Railway and set the rates and charges for the use of the Railway, and also provided a mechanism by which the rates and charges could be varied. The 1923 Order was re-enacted under section 161 of the Torbay Corporation Act 1971. Regulations relating to the operation of the railway were made in 1926 and amended in 1955.

The Order authorises the Council to sell or lease the Railway to or vest the Railway in the Babbacombe Cliff Railway Community Interest Company. It also enables the Council to sell, lease, charge or otherwise dispose of the Railway to any other person, subject to the consent of the Secretary of State. The Order also makes provision about charges for the use of the Railway and alters and revokes existing local legislation relating to the Railway.

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£4.00