

## Sayers S (Scott)

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**From:** HALLATT Alex [AlexHALLATT@bdb-law.co.uk]  
**Sent:** 04 May 2012 19:41  
**To:** Sayers S (Scott)  
**Cc:** 'louise.cockburn@achws.co.uk'; 'Darren.Hemsley@snh.gov.uk'; THOMPSON Paul; 'morag.mcneill@forthports.co.uk'; 'mrs.sue@btinternet.com'; 'suzanne.mcintosh@yahoo.co.uk'; 'msales@biggartbaillie.co.uk'  
**Subject:** RE: 03-05-12: PUBLIC INQUIRY UNDER THE HARBOURS ACT 1964: ROSYTH INTERNATIONAL CONTAINER TERMINAL [BBLAW-BiggartBaillie.FID446465]  
**Attachments:** ProposedHRO\_Boundaries.pdf; RICT Order Amendments Forth Ports Explanatory Document (final).PDF; PHT - The RICT (HR) Order 201[x] with BDB& Babcock amendments.PDF

Scott,

Please find attached, as requested by the Reporters, Forth Ports' explanatory paper concerning their proposed amendments to the Order and the draft CEMP together with a copy of Forth Ports' jurisdiction map which has already been submitted to the inquiry and which forms an appendix to the paper. Also attached is a tracked change Order showing Forth Ports' proposed amendments (and some uncontentious amendments recently made by Babcock).

Regards,

Alex



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**Sayers S (Scott)**

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**From:** HALLATT Alex [AlexHALLATT@bdb-law.co.uk]  
**Sent:** 05 May 2012 10:05  
**To:** Sayers S (Scott)  
**Cc:** 'louise.cockburn@achws.co.uk'; 'Darren.Hemsley@snh.gov.uk'; THOMPSON Paul; 'Morag.McNeill@forthports.co.uk'; 'mrs.sue@btinternet.com'; 'suzanne.mcintosh@yahoo.co.uk'; 'msales@biggartbaillie.co.uk'  
**Subject:** Re: 03-05-12: PUBLIC INQUIRY UNDER THE HARBOURS ACT 1964: ROSYTH INTERNATIONAL CONTAINER TERMINAL [BBLAW-BiggartBaillie.FID446465]

Scott,

Apologies but I would like to correct my earlier e-mail. The Order contains all amendments proposed by Babcock of which we are aware, including those which Forth Ports challenge.

Regards,

Alex

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**From:** HALLATT Alex  
**Sent:** Friday, May 04, 2012 07:41 PM  
**To:** 'Scott.Sayers@scotland.gsi.gov.uk' <Scott.Sayers@scotland.gsi.gov.uk>  
**Cc:** 'louise.cockburn@achws.co.uk' <louise.cockburn@achws.co.uk>; 'Darren.Hemsley@snh.gov.uk' <Darren.Hemsley@snh.gov.uk>; THOMPSON Paul; 'morag.mcneill@forthports.co.uk' <morag.mcneill@forthports.co.uk>; 'mrs.sue@btinternet.com' <mrs.sue@btinternet.com>; 'suzanne.mcintosh@yahoo.co.uk' <suzanne.mcintosh@yahoo.co.uk>; 'msales@biggartbaillie.co.uk' <msales@biggartbaillie.co.uk>  
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08/05/2012



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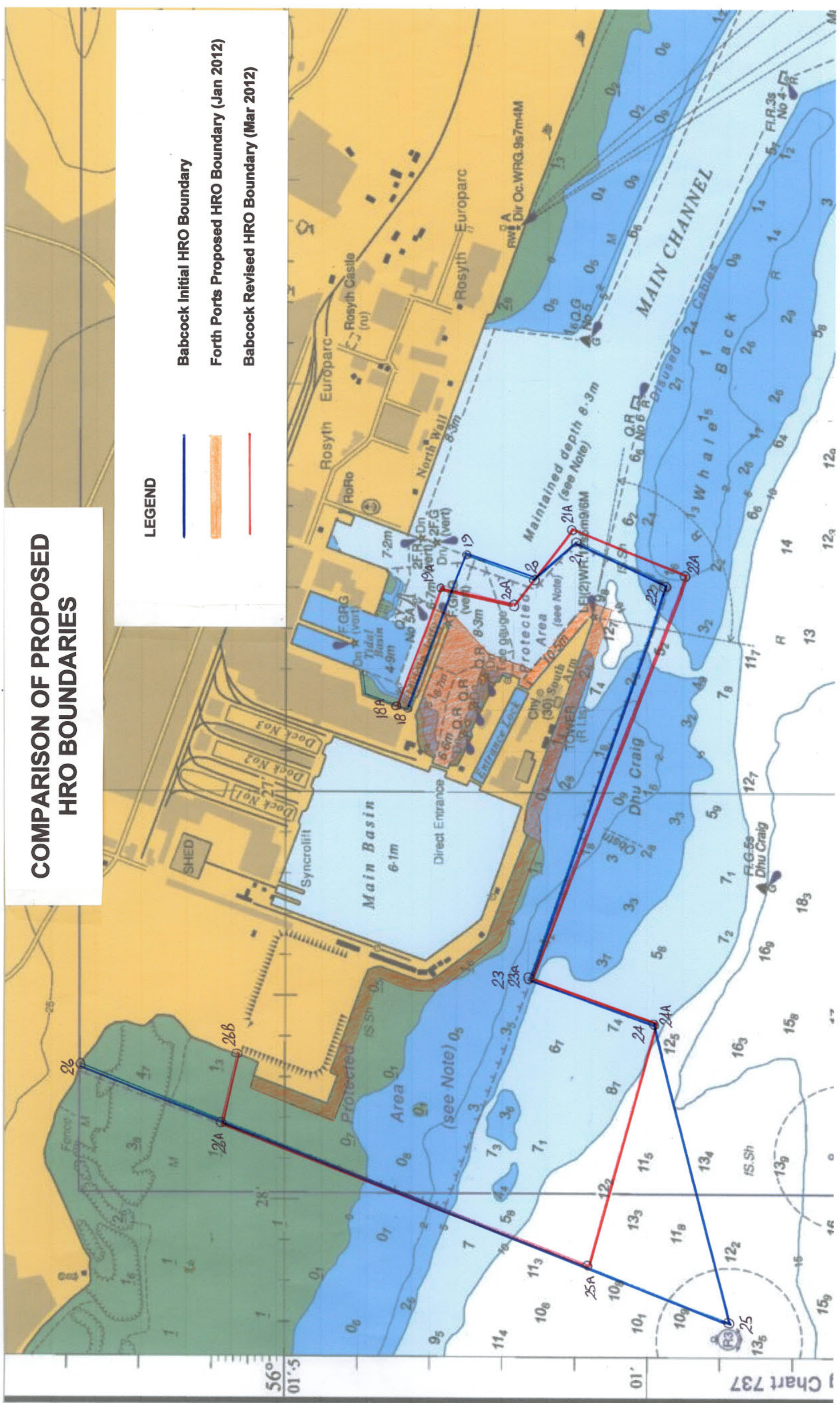
# COMPARISON OF PROPOSED HRO BOUNDARIES

## LEGEND

Babcock Initial HRO Boundary

Forth Ports Proposed HRO Boundary (Jan 2012)

Babcock Revised HRO Boundary (Mar 2012)



**RICT ORDER**  
**FURTHER EXPLANATION OF FORTH PORTS PROPOSED AMENDMENTS**

**1 Introduction**

- 1.1 This paper provides further explanation of Forth Ports' proposed amendments as requested by the Reporters at the hearing sessions on 4-5 April 2012.
- 1.2 It does so by setting out again in a consolidated form all the amendments proposed in Forth Ports' Initial Submission paper (which related to the proposed CEMP and conditions) and in its Appendix 1 (which contained further amendments to the Order in order to protect Forth Ports' position as the statutory harbour authority for the Forth). To aid comprehension, the amendments have been updated to refer to the applicant's submitted revised draft Order.
- 1.3 There also accompanies this paper (in substitution for the earlier Appendix 2 to Forth Ports' Initial Submission) a copy of the applicant's revised draft Order with all of Forth Ports' proposed amendments shown as further tracked changes to it. References below to page numbers are to the pages of this version of the draft Order.
- 1.4 The paper is submitted within the time allowed for this but without Forth Ports and its advisers having had a proper opportunity to consider the further material including revised CEMP and further closing submissions now submitted by Babcock. Forth Ports therefore must reserve its position in relation to points arising from such material.

**2 Amendments**

**Article 2 (interpretation)**

- 3 Page 6, in paragraph (1), leave out the definitions of "dredging limits"

*Reason: Definition is unnecessary if article 8 (power to dredge) omitted.*

*Further explanation: None thought to be required.*

- 4 Page 6, in paragraph (1) after the definition of "deposited plans" insert the following definition:

"environmental document" means —

- (a) the environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental statement or other document so prepared by way of clarification or amplification of the environmental statement; and
- (b) any other document containing environmental information provided by the Company to Scottish Ministers for the purposes of any tidal

work approved under article 10 of the 2009 Order (tidal works not to be executed without the approval of Scottish Ministers);”

*Reason: New amendment consequential on amendment 21 and new Schedule 2 para 1(10)*

- 5 Page 6, in paragraph (1), after the definition of "maintain" insert-

"the outer harbour limits" means the area outlined in red on the port map referred to in this Order;”;

*Reason (revised): To define an area within which section 33 of the 1847 Act (the open port duty) should continue to apply if the HRO is granted with Babcock’s proposed limits of jurisdiction. A revised Port Map will then need to be deposited delineating the area concerned.*

*Further explanation: Forth Ports has proposed limiting Babcock’s limits of jurisdiction, if the HRO is granted, to a limited berthing area around its Rosyth facility as shown on the map presented by Forth Ports to the inquiry for this purpose (and appended to this paper). That area can be excluded from the application of section 33. A definition supported by an official map (which could be based on the appended map) will be required to achieve this.*

- 6 Page 7, in paragraph (1), in the definition of "port map" leave out the words after "and forming sheet no. 1 Rev A of the deposited plans" and insert "two copies of which have been deposited at the offices of the Scottish Ministers at .... and one copy of which has been deposited at the registered office of the Company".

*Reason: Consequential on reduction in limits as proposed by Forth Ports.*

*Further explanation: It is standard practice to provide for the formal deposit of such maps and plans. This is the approach taken in eg the existing definition of “deposited plans”. Babcock’s proposed addition of ‘Rev A’ has been included in the re-statement of this proposed amendment.*

- 7 Page 7, in paragraph (1), in the definition of “tidal work” leave out “but excluding any operations authorised by article 8 (power to dredge)”.

*Reason: Consequential on Forth Ports’ omission of article 8.*

*Further explanation: None thought to be required.*

- 8 Page 7, in paragraph (1), in the definition of “works site”, leave out “outlined by a broken red line on sheet II Rev A of the deposited plans” and insert "on the works site plan two copies of which have been deposited at the offices of the Scottish Ministers at .... and one copy of which has been deposited at the registered office of the Company".

*Reason: To exclude the proposed dredging limits.*

*Further explanation: It is standard practice to provide for the formal deposit of such maps and plans. This is the approach taken in eg the existing definition of "deposited plans". Babcock's proposed addition of 'Rev A' has been included in the re-statement of this proposed amendment.*

### **Article 3 (incorporation of 2009 Order)**

9 Page 7, in the head note to the article, at the beginning insert "Adaptation and".

*Reason: Consequential on the proposed amendment to this article which follows.*

*Further explanation: None thought to be required.*

10 Page 7, at the beginning of the article, insert the following paragraph-

"(1) The 2009 Order is amended as follows-

(a) in article 2 (interpretation) after "master" there is inserted-

"the outer harbour limits" means the area outlined in red on the port map referred to in the Rosyth International Container Terminal (Harbour Revision) Order 201[...];"

(b) in paragraph (1) of article 3 (incorporation of the 1847 Act), after "32" there is inserted "33";

(c) in paragraph (2) of article 3, after paragraph (d) there is inserted:-

"(dd) section 33 shall apply to the outer harbour limits only;" and

(d) in paragraph (1) of article 17 (power to appropriate parts of port, etc.), after the words "any part of the port" insert "other than any part of the outer harbour limits extending in a southerly direction more than 30 metres seaward of the port premises".

*Reason (revised): To retain the right of navigation arising under the open port duty in relation to that part of Babcock's proposed limits of jurisdiction extending beyond the limited berthing area around its Rosyth facility which Forth Ports has, as its main contention, proposed should be the extent of Babcock's tidal jurisdiction if the HRO is granted. Note: this will not be required if Forth Ports proposal for reducing Babcock's proposed limits to the berthing area is accepted.*

*Further explanation: Section 33 of the 1847 Act (harbour to be open on payment of dues) (FP1) is the statutory basis for the open port duty: see eg Captain Baker's precognition and evidence, the statement of legal functions of harbour authorities and competent harbour authorities (FP80) and para 4.2 of the Port Marine Safety Code (FP18). In the absence of section 33 applying, there will be no statutory right to navigate within the RICT limits and Babcock will be entitled to exclude vessels eg by direction of its harbour/dock master. These directions will affect both commercial and recreational vessels.*



*Babcock conceded in its May 2011 response document that Forth Ports' claim, that the public rights of navigation that exists on the Forth and which is ordinarily preserved by application of s33 of the 1847 Act would be disapplied within the RICT Order limits, "is a correct analysis".*

*The answer is to apply section 33 in keeping with the precedents. There is no justification proposed by Babcock in writing or in evidence for the disapplication of s.33.*

#### Article 4 (limits of port)

11 Page 8, at the beginning of the article, insert-

"(1) The following provisions of this article have effect from such date as may be specified by the Company in writing to Forth Ports Limited and by notice in the Edinburgh Gazette, being a date not earlier than the date upon which Scottish Ministers inform the Company that they are satisfied that the Company has arranged for the execution of the works and is ready to take responsibility as harbour authority for the whole of the port limits."

*Reason: To ensure that Babcock's new limits of jurisdiction only have effect if RICT goes ahead.*

*Further explanation: In the absence of such a qualification, Babcock's proposed new limits will take effect and the area will be excluded from Forth Ports' jurisdiction as soon as the HRO applied for comes into force. This will be the case notwithstanding that Babcock may never proceed with the RICT nor put in place necessary Port Marine Safety Code etc arrangements which they will have no incentive to do unless or until RICT proceeds. No case has been made for the grant of such powers and there is no justification that could be made for it.*

12 Page 8, in old paragraph (2)/ new paragraph (3), leave out the words "the boundaries of which are described in Schedule 1 to this Order and shown outlined in blue on the port map" and insert "extending approximately 30 metres seaward of the port premises and including the area between the tidal jetty known as the Middle Jetty and the Forth face of the north side of the structure of the port basin entrance which is coloured brown on the port map".

*Reason: To reduce Babcock's proposed limits of jurisdiction as proposed by Forth Ports.*

*Further explanation: This would provide Babcock with control over the strip of water adjoining their premises needed for berthing (as shown on the appended map). Such an approach equates with that applicable at London Gateway. The jurisdictional arrangements for the London Gateway Port are an appropriate precedent for the proposed RICT because, like the RICT, London Gateway is to be a commercial container port operating within its own limited harbour jurisdiction on a river estuary where the statutory harbour and pilotage authority for that estuary is a third party unrelated to the port undertaking. Reference to "the tidal jetty known as the Middle Jetty and the Forth face of the north side of the structure of the port basin entrance" is derived from the Schedule (Port limits) to the Rosyth HEO 2009 and has been adopted as a means of linking the description here with the existing Babcock (landward) limits.*

*Babcock's proposed amendment inserting '1' after 'schedule' has been included in this re-statement of Forth Ports' proposed amendment.*

- 13 Page 8, leave out paragraphs (3) and (4)

*Reason: Consequential on reduction of limits of jurisdiction as proposed by Forth Ports.*

*Further explanation: None thought to be required.*

#### **Article 5 (Power to construct works)**

- 14 Page 9, in paragraph (1), in relation to Works No.s 6, 7, 10 and 11, insert in each case after "building" and also after "buildings" in relation to Work No.10 the words "not exceeding [...] metres in height".

*Reason: To include a maximum height restriction to accord with what has been assessed.*

*Further explanation: No evidence was given in relation to such height limits but the inclusion of such a restriction would ensure that a height could not be exceeded which would give rise to impacts which have not been assessed.*

- 15 Page 10, paragraph (2), after "limits of deviation" insert "authorised by article 7(1) of this Order".

*Reason: No definition of "limits of deviation" is currently included – the definition should be the (5 metre) limits of deviation provided for in article 7(1).*

*Further explanation: None thought to be required.*

#### **Article 6 (subsidiary works)**

- 16 Page 10, paragraph (1), leave out "works site" and insert "limits of deviation authorised by article 7(1) of this Order".

*Reason: To limit the subsidiary works to the new terminal area, ie to preclude such works also in the dredging limits.*

*Further explanation: This amendment is only required if, and is consequential upon, Forth Ports' proposal that Babcock should not be granted powers over its proposed dredging limits. The earlier inclusion in the proposed amendment of a qualification in relation to navigation signals and dredging was an error and has been omitted*

- 17 Page 10, paragraph (2), leave out “works site” and insert “limits of deviation authorised by article 7(1) of this Order”.

*Reason: To limit the subsidiary works to the new terminal area ie to preclude such works also in the dredging limits.*

*Further explanation: As above in relation to article 8(1). The earlier inclusion in the proposed amendment of a qualification in relation to navigation signals and dredging was an error and has been omitted.*

#### **Article 7 (power to deviate)**

- 18 Page 11, in paragraph (1), at the beginning insert “So far as is consistent with the requirements of Schedule 2,”.

*Reason: To ensure that powers of lateral and vertical deviation do not override the requirements to be included in the new Schedule 2.*

*Further explanation: None thought to be required.*

- 19 Page 11, leave out paragraph (2).

*Reason: Consequential on omission of article 8 (power to dredge).*

*Further explanation: None thought to be required.*

#### **Article 8 (power to dredge)**

- 20 Page 11, leave out article 8 (power to dredge).

*Reason: To omit new dredging powers. Under article 6 of the 2009 HEO (power to dredge) Babcock will still have a general power to dredge within its port and within the approaches and channels leading to the port limits.*

*Further explanation: If the limits of jurisdiction are limited to the area proposed by Forth Ports, there is no basis for this additional power and it should therefore be deleted along with the seaward limits proposed by Babcock. As stated above, Babcock has, in any event, a general dredging power in its 2009 HEO. Forth Ports' contention is that this power is subject to Forth Ports' licensing regime and that, in any event, if the HRO is granted dredging by Babcock in the Forth (outside of the limited berthing area proposed by Forth Ports for Babcock's new limits) should be subject to Forth Ports' licensing powers or to Forth Ports' proposed protective provisions.*

*Babcock propose the Marine Scotland licensing process as the means by which any environmental concerns about dredging may be addressed. It is therefore also critical that any such dredging is subject to that licensing regime. However, articles 3 and 26 of the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 exempt from the marine licensing regime (in certain circumstances) dredging activity authorised by or under an HEO or HRO. To avoid any doubt about the position, if the HRO is to be granted, it should expressly provide that any dredging to be carried out by Babcock in relation to the RICT (whether capital or maintenance) will be subject to that licensing regime, and will not benefit from the exemption.*

#### **Article 9 (Scottish Ministers' approval of tidal works)**

21 Page 11, for paragraph (1), substitute the following paragraph:

"The following definition is substituted for the definition of "tidal work" in article 2 of the 2009 Order:

"tidal work" means so much of any work undertaken by or on behalf of the Company under this Order or the Rosyth International Container Terminal (Harbour Revision) Order 20[...] as is in, on, under or over tidal waters or tidal lands below the level of high-water including such works as are existing at the commencement of this Order but excluding the projection over waters by booms, cranes and similar plant and machinery."

*Reason: In substitution for the existing provision which is defective in seeking to substitute in the 2009 Order the definition in the new Order but without necessary consequential changes to reflect the fact that the new definition is reliant upon other definitions in the new Order.*

*Further explanation: The amendment has been adjusted to correct earlier incorrect internal references.*

22 Page 11, leave out paragraph (2).

*Reason: No reason has been given as to why the standard approval by Scottish Ministers' provision should not apply in this case, as it ordinarily does in relation to works authorised by HROs.*

*Further explanation: It may be noted that the standard approval provision will be found in eg the following HROs and HEOs: Scrabster (Deep Inner Berth) HRO 2011 (APP-T11), Harwich Parkeston Quay HRO 2010 (FP73), Port of Bristol (Deep Sea Container Terminal) HRO 2010 (APP-T4/FP68) in that case in so far as construction does not commence within 5 years and the London Gateway Port HEO 2008 (APP -T8/FP 69) and Port of Cairnryan HEO 2007 CMA (Kennacraig) HRO 2011 (APP-T5) and Loch Ryan Port HEO 2009 (APP-T10) are examples of harbour orders which do not do so.*

**Original article 17(Environmental requirements)**

The initial draft of article 17 of the HRO (compliance with ES commitments) which was based on a similar provision (article 33) of the Loch Ryan Port (Harbour Empowerment) Order 2009 has been removed with the effect that there is no longer any express requirement for compliance with the Environmental Statement. Forth Ports considers it essential that the applicant commits to limit its activities to those that it has environmentally assessed.

Forth Ports would highlight that Babcock has not, so far as it knows, identified the mitigation requirements of the Environmental Statement and supplementary environmental documents and, particularly if the original article 17 is to be omitted, Forth Ports submits that it should do so by providing a full list of those requirements and those now included in the proposed CEMP, with an explanation of any differences arising.

The new article 17 provides for the CEMP to be approved by the Scottish Ministers after consultation with a variety of statutory consultees. This list does not include Forth Ports. It is Forth Ports contention that they should be added to this list as a statutory consultee. This is considered appropriate, and indeed necessary, given Forth Ports' role as the statutory harbour authority for the Forth and the potential impact of the proposals on the Forth.

- 23 Page 13, re-instate original article and in paragraph (1) leave out the words after "the commitments given in" and insert "any environmental document".

*Reason: To re-instate requirement for compliance with ES and to include within the ambit of that requirement the subsequent documents supplementing the ES.*

*Further explanation: Babcock has not demonstrated that the requirements of the CEMP fully reflect the requirements of the ES and additions to it, and it cannot do so, particularly given that the CEMP remains a living document that could be watered down before its initial approval subsequent to the Order being made. It may be noted that Forth Ports had earlier suggested for the purposes of this amendment that specific documents be listed in addition to the Environmental Statement but now proposes the phrase "any environmental document" (with a definition of this in article 2) as the clearer and more appropriate descriptor.*

**New article 17 (CEMP)**

- 24 Page 14, in paragraph (4), after sub-paragraph (e) insert:

"(ee) Forth Ports Limited;"

*Reason: To add Forth Ports to the list of consultees.*

*Further explanation: Forth Ports is the statutory harbour authority for the whole of the Forth and, even if the HRO is made as proposed, it will remain the statutory harbour authority for all the waters surrounding Babcock's proposed limits of jurisdiction. See Captain Baker's precognition and evidence for Forth Ports' harbour and conservancy responsibilities. It is*

*therefore entirely appropriate that they should be consulted on the CEMP. If precedents are sought for consultation with a body such as Forth Ports where works are to be undertaken in its area, they will be found in eg section 29 of the Severn Bridges Act 1992 and section 37 of the Dartford Thurrock Crossing Act (consultation with Gloucester Harbour Trustees and PLA respectively).*

- 25 Page 14, leave out paragraph (10), originally (7) [Note: see proposed paragraph 4 for Schedule on Mitigation Measures below].

*Reason: Consequential on proposal (see below) to require compliance with the CEMP.*

*Further explanation: None thought to be required.*

### **New Article 17 (Mitigation Measures)**

- 26 Page 15, leave out old article 18 (Schedule 2) and insert the following new article-

“Mitigation Measures

Schedule 1 (Mitigation Measures) to this Order has effect”

*Reason: to introduce Schedule 1 (formerly Schedule 2)*

### **New Article [...] (For protection of Forth Ports)**

- 27 Page 15, after article 18 (special exemptions) insert the following new article-

“For protection of Forth Ports

Schedule 2 (For protection of Forth Ports) has effect.

*Reason: to introduce new Schedule (see below).*

*Further explanation: See comments which follow in relation to the individual Schedule paragraphs.*

**Article 19 (special exemptions)**

28 Page 15, leave out “neither”.

*Explanation: This is an additional proposed amendment which is consequential on Forth Ports’ other proposals. Forth Ports’ case is that its licensing powers should apply if its proposed protective provisions are not included. If those provisions are included, then this additional amendment would not be required.*

29 Page 15, leave out “nor article 8 (Power to dredge).”

*Explanation: Also an additional consequential amendment, being consequential on Forth Ports’ proposed deletion of article 8.*

**Schedule (Port Limits)**

30 Page 16, leave out the Schedule to the Order (Port Limits).

*Reason: Consequential on reduction of limits of jurisdiction as proposed by Forth Ports.*

*Further explanation: None thought to be required.*

**Schedule (Mitigation Measures)**

Forth Ports proposed a new Schedule of conditions prior to Babcock producing its own Schedule of Mitigation Measures.

Forth Ports proposals were put forward before the applicant had provided any proposed text for the original Schedule 2 although it was already clearly Babcock’s intent that the Schedule would contain environmental constraints. Now that Babcock has provided some proposed content for such a Schedule (including, as part of its final submission, adoption of Forth Ports’ proposals in relation to Permitted Development Rights), it remains the view of Forth Ports that the mitigation measures Schedule should be used:

- (a) to control the exercise of permitted development rights;
- (b) to control the methods used to construct the development;
- (c) to impose safeguards with regard to contaminated land; and
- (d) to provide for operational restrictions at RICT once it is established.

Forth Ports suggests that the following amendments, which will act to incorporate a number of items into the new Schedule, would be appropriate given the nature of the proposed RICT

development. Whilst originally proposed prior to Babcock producing any proposed text for the original Schedule 2, they are now put forward by Forth Ports as additions to the limited proposals so far submitted by Babcock. In the interests of simplicity Forth Ports original numbering for this Schedule is retained but Forth Ports acknowledges that some re-numbering and adjustment of its proposals to incorporate them in a consolidated Schedule will be required.

### Amendments to Schedule 1 (Mitigation Measures)

31 Page 16, insert the following in the new Schedule:

“1 Application of permitted development rights

(1) In their application to the works, article 3 of, and Class 29 in Part 11 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 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 11 of Schedule 1 to the 1992 Order, have effect as if the 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 Town and Country Planning (Scotland) Act 1997, the restrictions contained in paragraphs [2 to [5] of this Schedule are deemed to be conditions imposed on the grant of planning permission.

*Reason: To ensure that the restrictions of the Schedule qualify the permitted development rights conferred and to provide for these to be treated as planning conditions (eg for purposes of enforcement).*

*Further explanation: Now adopted by Babcock (with references to the 1992 Order abbreviated, as now shown).*



## 2 Restrictions on construction

(1) The Company must identify to the reasonable satisfaction of [Fife Council / Scottish Ministers] prior to the commencement of the works the area of the works site which will be required for the provision of a rail terminal to enable the existing railway in the port to be used for transporting containers and no works may be constructed in that area other than works for that purpose and temporary works.

*Reason: To safeguard the area which will be required for a rail terminal if rail access is to be provided.*

*Further explanation: If this is not done, the area may not remain available at all or other than at additional cost for a rail terminal. It appears from Babcock's Closing Submissions that the findings to be drawn from the evidence on this issue are highly contentious. Forth Ports' position is that it would be necessary to establish the track within the RICT footprint to the extent that a train could be accommodated within the container handling area.*

- (2) [height and mass of buildings]
- (3) [height of cranes, lighting columns, fencing etc]
- (4) [details of construction and permanent lighting]
- (5) [landscape management plan]
- (6) [working hours]
- (7) [requirements for wheel washing and handling of materials]
- (8) [noise limits and restrictions on percussion piling]
- (9) [construction dust management plan]
- (10) [ambient dust monitoring strategy]
- (11) [lorry routes]
- (12) [materials to be brought by sea and not by road].

*Further explanation: The matters included here in square brackets were those which Forth Ports considered would be typically included by way of planning condition constraints but which, being unrelated to its grounds of objection, do not form part of its own case.*

## 3 Contaminated land strategy

Before the commencement of the construction of works, a contaminated land strategy must be submitted to and agreed with [SEPA and Fife Council] to provide for:

- (a) the identification of any radioactive or other contaminated material and any unexploded ordnance on the works site which may be disturbed by the works;

- (b) procedures to be adopted by workers to minimise risks arising from such material;
- (c) the containment, treatment or removal of such material;
- (d) monitoring of the disturbance or release of such material;
- (e) appropriate emergency measures; and
- (f) any necessary remediation works

and, once approved, the works may only be constructed in compliance with the strategy.

*Reason: To make provision for a contaminated land strategy.*

*Further explanation: None thought to be required.*

#### 4 CEMP

The works may only be constructed in accordance with the CEMP.

*Reason: To require compliance with the CEMP.*

*Further explanation: None thought to be required.*

#### 5 Operational restrictions

(1) The works site (excluding tidal waters and tidal lands below the level of high water) may not be used except as an international container terminal.

*Reason: To limit the permitted development rights to be conferred to the project which has been assessed.*

*Further explanation: See Ms Sullivan's evidence. As proposed by Babcock, the HRO would attract permitted development rights for development which has not been assessed and which could have significant environmental impacts.*

(2) The works site (excluding tidal waters and tidal lands below the level of high water) must not be brought into use for the handling of containers until the Company demonstrate that:

- (a) a railway with a W8 loading gauge capable of transporting 2.74 metres (9'6") containers of at least 5.5 metres width, on wagons registered for UK operation, between the port and the national rail network is operational and available for use;
- (b) daytime paths (0700 - 1900) are available for freight trains to enter and leave the port so that activity is not limited to night time, thereby

ensuring that rail services are attractive to the market and cost effective; and

- (c) there is available a purpose designed intermodal terminal within the port that corresponds with normal custom and practice for such facilities and that allows trains to be handled quickly and efficiently.

*Reason: To include a requirement for intermodal access.*

*Further explanation: If the Reporters conclude, as is Forth Ports' case, that the RICT, if it is to be authorised, should only be permitted if it is truly capable of operating with freight facilities ie in a multi-modal capacity, then a paragraph along these lines is required: see Mr Garratt's evidence.*

- (3) The works site (excluding tidal waters and tidal lands below the level of high water) must not be brought into use for the handling of containers until road improvements [to be specified] have been completed.

*Reason: To include a requirement for improved road access.*

*Further explanation: To ensure that Babcock's proposed terminal accords with the draft Dunfermline and West Fife Local Plan which transposes the requirement of NPF2 for a multi-container terminal and requires road network, junction and access improvements. Whilst the point was put in cross-examination of Ms Sullivan at the inquiry that Fife Council had agreed at a meeting the night before that no such provision was necessary, no evidence has been given to support this or justification as to why it might be so.*

- (4) At least [...] % of containers transported into or out of the port by land must be transported by rail.

*Reason: To include a requirement for a minimum proportion of containers to be transported by rail.*

*Further explanation: None thought to be required.*

- (5) [height of stacks]  
(6) [provision of noise barriers]  
(7) [operational noise limits]  
(8) [noise monitoring scheme]. ”

*Further explanation: As with items 2(2) to 2(12) above, the matters included here in square brackets were those which Forth Ports considered would be typically included by way of planning condition constraints but which, being unrelated to its grounds of objection, do not form part of its own case.*

**New Schedule (For the protection of Forth Ports)**

*Further explanation: As previously stated, while the amendments to the Order and the CEMP proposed in sections 1 to 3 by Forth Ports would provide certain protections for Forth Ports and other parties, it is Forth Ports' contention that further amendments to the Order would be required in order to protect Forth Ports' position as the statutory harbour authority for the Forth.*

*All of the proposed protective provisions have their origins in HROs or HEOs which have already been made. As such they are standard provisions used for the protection of statutory harbour authorities which are appropriate and proportionate to protect against the impacts of the applicant's proposals.*

*As stated in Forth Ports' closing submission at (2.71) "It is common practice for applicants to agree to the inclusion of protective provisions within HROs which protect the legitimate interests of statutory authorities against the impact of proposals. It is Forth Ports' view that, were an HRO to be made, it would be appropriate to include a schedule of protective provisions to the RICT HRO in order to protect its operations as statutory harbour and competent pilotage authority for the Forth. Forth Ports has developed a series of reasoned amendments to the draft RICT Order which would introduce such a suite of protective provisions. The provisions that would be inserted by these amendments have been adapted from provisions that already exist in other HEOs and HROs made under the Harbours Act 1964".*

*The protective provisions recognise, as Babcock has failed to do, that Forth Ports has important statutory responsibilities in relation to the Forth which need to be taken into account. Forth Ports contend that the burden should be on Babcock to demonstrate why, particularly having regard to practice on other HROs, the HRO should be granted without protective provisions for Forth Ports in its position as harbour authority and not vice versa.*

*Except where stated in further explanations given below, Forth Ports considers that all of the protective provisions which it proposes should apply if the HRO is made either on the basis of Babcock's proposed limits or with the reduced limits proposed by Forth Ports. This is because, even with those reduced limits, the construction and operation of the RICT will impact upon the performance by Forth Ports of its statutory functions.*

*In general, the protective provisions as proposed have been derived from the precedent to be found in Schedule 8 (For the protection of the Port of London Authority) of the London Gateway Port HEO 2008 (APP-T8 / FP 69). This is because Babcock has offered no proposals of its own or indicated any willingness to contemplate any form of protection for Forth Ports (had it done so, this might have led to discussion of bespoke proposals or some variant). Forth Ports therefore had to put forward a proposal to the Reporters unilaterally. For this purpose, the London Gateway precedent is particularly suited, being fairly typical and having the virtue too of being recent and for a container port within an existing statutory harbour which contains a number of other terminals and uses (see FP69 for the Inspector's report and the Secretary of State's decision letter).*

*Other protective provisions which may be found within the existing inquiry documents include:*

a) *London Gateway Order 2008: Protective schedules also for Thurrock Borough Council, Network Rail, Trinity House, the Environment Agency, National Grid and other statutory undertakers;*

b) *Harwich Parkeston Quay HRO 2010: Protective schedules for Harwich Haven Authority (Schedule 3, Part 3), Trinity House, Felixstowe Dock and Railway Company and others, and the Environment Agency;*

c) *Port of Bristol (Deep Sea Container Terminal) HRO 2010: Protective schedules for the Environment Agency, Natural Heritage and the Highways Agency.*

If desired, reference could also be made to eg:

a) The Crossrail Act 2008, Protective schedules for PLA, highway authorities, statutory undertakers, the Environment Agency and British Waterways Board;

b) The Channel Tunnel Rail Link Act 1996: Protective schedules for the PLA, Port of Sheerness Ltd, highway authorities, statutory undertakers, the Environment Agency and British Waterways Board.

It should also be noted that protective provisions do not always appear on the face of Acts and Orders, in whole or in part, it often being possible for parties to agree matters contractually without express reference or inclusion in the legislative authorisation. The inclusion or omission of protective provisions on the face of an Act or Order should not therefore be taken as definitive of the full extent of arrangements reached.

Additionally, by virtue of the traditional formulation of protective provisions as being “unless otherwise agreed in writing” it is possible too for the arrangements reached to be altered subsequently by the parties without revision of the order.

It may also be noted that, in contrast to the London Gateway precedent, the word “must” is used rather than “shall” when imposing duties. The *Plain Language and Legislation* guidance issued by the Office of the Scottish Parliamentary Counsel (February 2006) notes that preference for “must” is gaining momentum whilst the more recent *Drafting Guidance* issued by the (UK) Office of Parliamentary Counsel (October 2010) indicates that its policy is to minimise the use of the legislative “shall”. Forth Ports is content to leave this choice to the Scottish Ministers.

Amendments:

32 Page 19, insert the following new Schedule 2-

“For protection of Forth Ports.

The provisions of this Schedule have effect for the protection of Forth Ports Limited, unless otherwise agreed in writing between the Company and Forth Ports Limited.

***Tidal Works and dredging: approval of detailed design***

*Further explanation: Paragraphs 3-5 provide for detailed plan approval by Forth Ports, such approval not to be unreasonably withheld. It allows Forth Ports to issue approval subject to certain requirements (see 3(4) and (5)) which, as will be seen, all relate to Forth Ports' responsibilities as harbour authority. This will enable Forth Ports to ensure that the works are constructed without adverse effects upon the safety and convenience of navigation or the environment for which it has responsibilities.*

*The provision includes, in the interests of efficiency and effectiveness, a number of additional administrative features. These include provision for prior submission of plans to Forth Ports before submission to Scottish Ministers (which will help ensure compatibility and the avoidance of conflict), provision for Forth Ports to require additional information within 28 days, provision for approval to be given or refused within 42 days, provision for Forth Ports to take into account any submissions by SEPA and a requirement in paragraph 4(11) for Babcock to copy any additional environmental information provided to Scottish Ministers to it.*

*Plan approval is required under the provisions in relation to the construction of tidal works and capital dredging and in relation to the maintenance of tidal works and in relation to maintenance dredging. This contrasts with the London Gateway precedent which left maintenance dredging to be the subject of PLA's local licensing regime (see paragraph 13 below). It appears to Forth Ports simplest to have a single regime encompassing maintenance dredging but, if so desired, the alternative of applying Forth Ports local licensing regime to maintenance dredging could be provided for.*

*As previously stated, Forth Ports needs to license dredging activities in the Forth in its capacity as the responsible harbour authority because of the impacts that these can have on navigation and other matters for which it is responsible. Notably, its licensing regime is not over-ridden by the national licensing regime operated by Marine Scotland but operates in parallel;. So far as maintenance dredging is concerned, Forth Ports' understanding is that such dredging by Babcock would not be subject to the national licensing regime, the position being explained, for example in the Scottish Government's 'A Guide to Marine Licensing in the following terms:*

***"4.13 Maintenance Dredging***

*In most circumstances, maintenance dredging in connection with a harbour will be exempt from requiring a Marine Licence. However, this exemption is subject to certain conditions. These are:*

- that the dredged material is contained and transported to another location for disposal or plough dredging is involved as part of a wider operation that involves the use of techniques that contain and transport the dredged material;*
- the dredging is carried out under either section 14 or 16 of the Harbours Act 1964 or under any local Act;*
- the activity must be approved by MSLOT before it is carried on.*

*This exemption only applies to the dredging activity, not to the deposit of the dredged material. You will still require a Marine Licence for the sea disposal of dredged material, even if the dredging is exempted under the 2011 order."*

See <http://www.scotland.gov.uk/Resource/0039/00392525.pdf>

*Paragraph 4 expressly disapplies Forth Ports' licensing powers which are replaced by the protective provisions, just as in the London Gateway precedent the licensing powers of the PLA under sections 66 to 75 of the Port of London Act 1968 are disapplied and replaced by protective provisions. Specific consenting regimes of these sorts are commonly replaced by express statutory provision in this way: see by way of another example paragraph 12 of Schedule 10 of the London Gateway Order (For protection of Environment Agency) which disapplies the Agency's consenting regimes under the Land Drainage Act 1991, byelaws and the Water Resources Act 1991 in favour of the specific provision made under that Schedule. The phrase "environmental document" used in paragraph 4(10) is now the subject of a definition proposed by Forth Ports as an amendment to article 2 (as the phrase is also used in Forth Ports' proposed amendment to original article 17.*

*Paragraph 5 contains a general obligation on Babcock to undertake the works with reasonable expedition, to the reasonable satisfaction of Forth Ports and subject to a right of inspection for Forth Ports. This will ensure that navigation is not unduly impeded and enable Forth Ports to make proper provision for the works in its day to day management and control of the Forth. As further explained in relation to proposed paragraph 16 below, the words "Subject to paragraph 16" are only required if paragraph 16 is to be retained which, as explained in relation to that paragraph, is not Forth Ports' preferred position.*

1 (1) Before—

- (a) submitting any plans and sections for any tidal work or capital dredging to Scottish Ministers for approval under article 10 of the 2009 Order (Scottish Ministers' approval of tidal works);
- (b) commencing any operation for the construction of a tidal work or capital dredging where approval of the Secretary of State under article 10 of the 2009 Order (Scottish Ministers' approval of tidal works) is not required; or
- (c) commencing any operation for the maintenance of a tidal work or for maintenance dredging in the Forth,

the Company must submit to Forth Ports Limited plans and sections of the tidal work, dredging or other operation and such further particulars as Forth Ports Limited may, within 28 days from the day on which the plans and sections are submitted under this sub-paragraph, reasonably require.

(2) No application for the approval of Scottish Ministers under article 10 of the 2009 Order (Scottish Ministers' approval of tidal works) must be made in respect of a tidal work or dredging until plans and sections in respect of that tidal work or dredging submitted under sub-paragraph (1) have been approved by Forth Ports Limited.

(3) Any tidal work or dredging not requiring the Secretary of State's approval under article 10 of the 2009 Order (Scottish Ministers' approval of tidal works) must not be constructed, and no tidal work may be maintained, except in accordance with such plans

as may be approved in writing by Forth Ports Limited or determined under paragraph [13].

(4) Any approval of Forth Ports Limited required under this paragraph must not be unreasonably withheld but may be given subject to such reasonable requirements as Forth Ports may make for the protection of—

- (a) traffic in, or the flow or regime of, the river;
- (b) the use of its operational land or the river for the purposes of performing its functions; or
- (c) the performance of any of its functions connected with environmental protection.

(5) Requirements made under sub-paragraph (4) may include conditions as to—

- (a) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the tidal work or dredging; and
- (b) the expiry of the approval if the Company does not commence construction of the tidal work or dredging approved within a prescribed period.

(6) Subject to sub-paragraphs (8) and (9), any such approval is deemed to have been refused if it is neither given nor refused within 42 days of the specified day.

(7) Before making a decision on any such approval, Forth Ports Limited must take into account any opinion on the plans and sections provided to it by the Scottish Environment Protection Agency.

(8) Accordingly, an approval of Forth Ports under this paragraph is not deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (6) has not been given pending the outcome of any consultation on the approval in question that Forth Ports is obliged in the proper exercise of its functions to carry out provided that during the course of such consultation, Forth Ports has acted with all due expedition.

(9) In this paragraph “the specified day” means, in relation to any tidal work—

- (a) the day on which plans of that work are submitted to Forth Ports Limited under sub-paragraph (1); or
- (b) the day on which the Company provides Forth Ports Limited with all such particulars of the work as have been requested by Forth Ports Limited under that sub-paragraph;

whichever is the later.

(10) Whenever the Company provides Scottish Ministers with an environmental document it must at the same time send a copy to Forth Ports Limited.



- 2 Subject to paragraph 21, no tidal work or dredging undertaken by the Company is subject to any of the controls in sections 23 to 26 of the Forth Ports Authority Order 1969.
- 3 (1) Any operations for the construction of any tidal work or dredging must, once commenced, be carried out by the Company Authority with all reasonable dispatch and to the reasonable satisfaction of Forth Ports Limited so that river traffic, the flow or regime of the river and the exercise of Forth Ports Limited's functions suffer no more interference than is reasonably practicable.
- (2) Forth Ports Limited is entitled by its officer at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

**Obstruction in river**

*Further explanation: Dredging may expose hazards to navigation. It is the responsibility of the harbour authority to prevent and/or mitigate such hazards. If, however, harbour authority responsibility for the relevant area is to be transferred from Forth Ports to Babcock, then this provision can be omitted.*

- 4 If any pile, stump or other obstruction to navigation 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 must, as soon as reasonably practicable after the receipt of notice in writing from Forth Ports Limited requiring such action, remove it from the river or, if it is not reasonably practicable to remove it—
- (a) cut the obstruction off at such level below the bed of the river as Forth Ports Limited may reasonably direct; or
  - (b) take such other steps to make the obstruction safe as Forth Ports Limited may reasonably require.

**Removal, etc. of Forth Ports' moorings and buoys**

*Further explanation: This paragraph allows Forth Ports to recover costs incurred by it as harbour or local lighthouse authority in rearranging moorings and navigations aids consequent upon the works. As shown on the charts and maps submitted to the inquiry, mooring and navigation aids are to be found in and in the vicinity of the proposed dredging limits and the location of anchor points and their associated buoys were referred to at various points in the inquiry..*

5 If—

- (a) by reason of the construction of any tidal work or dredging it is reasonably necessary for Forth Ports Limited 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 Limited, or laying down and removing substituted 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 Limited gives to 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 must pay the costs reasonably so incurred by Forth Ports Limited.

#### **Removal of temporary works**

*Further explanation: This paragraph requires the Company remove temporary works and make good the site to the reasonable satisfaction of Forth Ports. Temporary works can obstruct and cause hazards to navigation and the environment more generally. If, however, harbour authority responsibility for the relevant area is to be transferred from Forth Ports to Babcock, then this provision can be omitted.*

6 On completion of the construction of any part of a permanent work, the Company must as soon as practicable remove—

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

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

#### **Protective action**

*Further explanation: As explored in evidence, dredging in tidal waters can have a number of impacts, particularly in this case sedimentation, which have not been anticipated in the environmental statement. This paragraph would allow Forth Ports as the harbour authority responsible for navigation on the Forth generally to take remedial action.*

- 7 (1) If any of the works (including dredging) during construction gives rise to sedimentation, scouring, currents or wave action detrimental to traffic in, or the flow or regime of, the river, then Forth Ports Limited 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 sub-paragraph (1) are such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the river.
- (3) If the Company does not comply with a notice under sub-paragraph (1), or is unable to do so then Forth Ports Limited may in writing require the Company to take such action as Forth Ports Limited may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.
- (4) If any of the works (including dredging) give rise to environmental impacts over and above those anticipated by any environmental document, the Company must, in compliance with its duties under any enactment and, in particular, under section 48A of the 1964 Act, take such action as is necessary to prevent or mitigate those environmental impacts and in so doing must consult and seek to agree the necessary measures with Forth Ports Limited.
- (5) If Forth Ports Limited becomes aware that any of the works (including dredging) is causing an environmental impact over and above those anticipated by any environmental document, Forth Ports Limited must notify the Company of that environmental impact, the reasons why Forth Ports Limited believes that the environmental impact is being caused by the works and of measures that Forth Ports Limited reasonably believes are necessary to counter or mitigate that environmental impact. The Company must implement the measures that Forth Ports Limited has notified to the Company or implement such other measures as the Company believes are necessary to counter the environmental impact identified, giving reasons to Forth Ports Limited as to why it has implemented such other measures.

### ***Facilities for navigation***

*Further explanation: Forth Ports will remain responsible for navigation aids generally in the Forth.*

- 8 (1) The Company must 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 Limited, and must ensure that access to such aids remains available during and following construction of any tidal work.
- (2) The Company must provide at any tidal work, or must afford reasonable facilities at such works (including an electricity supply) for Forth Ports Limited 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 as Forth Ports may deem necessary by reason of the construction of any tidal work, and must ensure that access remains available to apparatus during and following construction of such works.

(3) The Company must comply with the directions of the Forth Ports Limited's 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.

### **Survey of riverbed**

*Further explanation: This paragraph would enable Forth Ports to undertake survey work at Babcock's expense to establish the baseline before Babcock's works and any changes occurring during or on completion of those works, but only where Babcock has not itself provided to Forth Ports with adequate survey information for this purpose. In the absence of such information, the impact of such works will remain unclear and open to argument.*

- 9 (1) Before the commencement of construction of the first tidal work (or any dredging for the purposes of the works), Forth Ports may, at the Company's expense, carry out a survey of such parts of the river as might be affected by sedimentation, scouring, currents or wave action that might result from the construction of such works or dredging, for the purposes of establishing the condition of the river at that time.
- (2) Forth Ports Limited may carry out such surveys of the river as are reasonably required during the construction of any tidal work or dredging to ascertain the effect of that tidal work or dredging on the river and Forth Ports Limited must make available to the Company the results of any such survey.
- (3) After completion of, respectively, any tidal work or dredging and all the tidal works and dredging constructed under this Order, Forth Ports Limited may, at the Company's expense, carry out a further survey of the parts of the river which were surveyed prior to the construction of that work or dredging, or as the case may be a survey of the completed tidal works and dredging as so constructed, for the purpose of establishing the condition of the river and the effect that the tidal work or dredging is, or as the case may be the tidal works and dredging are, having on navigation, the flow and the regime of the river and the exercise of Forth Ports' functions.
- (5) Forth Ports Limited must not under this paragraph carry out a survey of any part of the river as respects which the Company has provided to Forth Ports Limited survey material which Forth Ports Limited is satisfied establishes the condition of the river, and in the case of a survey under sub-paragraph (3), the effect of the tidal work or dredging, or as the case may be the tidal works and dredging.

***Sedimentation, etc.: remedial action***

*Further explanation: This paragraph renders Babcock responsible for remedial action consequent on sedimentation, scouring, currents or wave action occasioned by its works. As well as the precedents for protection of harbour authorities cited above, it may be noted that such provision is also commonplace in protection for the Environment Agency where its responsibilities for flood defence and coastal erosion may be impacted: see eg the London Gateway HRO 2008, Schedule 10, para.8 and the Harwich Parkeston Quay HRO, Schedule 3, para. 32.*

10 (1) This paragraph applies if any part of the river becomes subject to sedimentation, scouring, currents or wave action 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 for the protection of works in the river, should in the reasonable opinion of Forth Ports Limited be removed or made good.

(2) The Company must either—

- (a) pay to Forth Ports Limited any additional expense to which Forth Ports Limited may reasonably be put in dredging the river to remove the sedimentation or in making good the scouring, current or wave action so far as (in either case) it is attributable to the tidal work; or
- (b) carry out the necessary dredging at its own expense and subject to the prior approval of Forth Ports Limited, such prior approval not to be unreasonably withheld or delayed;

and the expenses payable by the Company under this paragraph include any additional expenses accrued or incurred by Forth Ports Limited in carrying out surveys or studies in connection with the implementation of this paragraph.

***Indemnity***

*Further explanation: This indemnity provision ensures that Babcock is liable for and Forth Ports can recover from it costs and losses occasioned by it in exercising the powers of the proposed HRO notwithstanding that it is proceeding in reliance on statutory powers. Such an indemnity will be found to be commonplace in protective provisions generally (it is not particular to the London Gateway precedent) but it should be noted that, unlike the London Gateway precedent, paragraph 14(1) includes the qualification “in its capacity as a harbour authority within the meaning given in section 313 of the Merchant Shipping Act 199”<sup>5</sup>. This is*

*included by Forth Ports as there is no intention for the indemnity to extent to Forth Ports separate commercial operations. It should be noted that the reference here to "harbour authority" replaces the reference to "conservancy authority" as earlier proposed upon the basis that the "conservancy authority" definition in the 1995 Act is not quite apposite.*

- 11 (1) The Company is responsible for and must make good to Forth Ports Limited all financial costs or losses not otherwise provided for in this Schedule which may reasonably be incurred or suffered by Forth Ports Limited, in its capacity as a harbour authority within the meaning given in section 313 of the Merchant Shipping Act 1995, 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 Limited 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 Limited 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 Limited, or in a manner approved by Forth Ports Limited, 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 Limited or its duly authorised representative, employee, contractor or agent) excuse the Company from liability under the provisions of this paragraph.

(3) Forth Ports Limited must 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.

### **Statutory functions**

*Further explanation: This paragraph makes provision for the inter-relationship and an order of precedence in relation to Forth Ports' statutory harbour powers and those sought by Babcock under the HRO. As in the London Gateway precedent, it gives precedence to the powers of Forth Ports as the harbour authority for the Forth generally and requires Babcock not to take*

*action under its powers conflicting with Forth Ports exercise of powers whilst requiring Forth Ports to consult as appropriate with Babcock. Provision equivalent to sub-paragraphs (3) (definition of port premises) and (4) (giving of special directions) of paragraph 18 of the London Gateway schedule have not been included on the basis that they are particular to that case. In that respect, it may be noted that Babcock has not applied section 52 of the 1847 Act enabling its dock or harbour master to give directions to vessels.*

12 (1) Any function of the Company or any officer of the Company, whether conferred by or under this Order or any other enactment, is subject to—

- (d) any enactment relating to Forth Ports Limited;
- (e) any byelaw, direction or other requirement made by Forth Ports Limited or its harbour master under any enactment; and
- (f) any other exercise by Forth Ports Limited or its harbour master of any function conferred by or under any enactment.

(2) The Company or its harbour master must not take any action in the river outside the area of jurisdiction under sections 57, 65 and 69 of the 1847 Act as incorporated by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847) except with the consent of Forth Ports Limited's harbour master, which must not be unreasonably withheld.

(3) Forth Ports Limited must consult the Company before making any byelaw under the Forth Ports Authority Order 1969 which directly applies to or which could directly affect the construction, operation or maintenance of the works or the port premises.

(6) Forth Ports Limited or its harbour master (as appropriate) must consult the Company before giving any general direction under the Forth Ports Authority Order 1969 which directly affects the construction, operation or maintenance of the works or the port premises.

### ***Maintenance dredging***

*Further explanation: Paragraph 21 of Schedule 8 to the London Gateway Order contains equivalent provision (referring to section 73 of the Port of London Act 1968). This ties into the definition of "tidal work" in that Schedule for the purposes of plan approval etc which is expressly qualified not to include maintenance dredging. The consequence is that maintenance dredging at London Gateway falls under the PLA's licensing regime rather than under the plan approval arrangements under the Protective Schedule. As indicated above, Forth Ports propose the application of the plan approval arrangements under this schedule to maintenance as well as capital dredging rather than applying its local licensing regime to maintenance dredging. With that approach, this paragraph can be omitted. If, however, the alternative London Gateway approach is adopted, this paragraph is required.*

- 13 [For the avoidance of doubt, section 24 of the 1969 Act (licence to dredge) applies to any maintenance dredging carried out by the Company.]

### **Disputes**

*Further explanation: See article 66 of the London Gateway Order for the arbitration provision in that case which this paragraph is modelled on. A number of provisions in the Protective Schedule require consent to be given and not to be unreasonably withheld, thus giving rise to potential for disputes. An adjudication mechanism is therefore required. It is commonplace to provide for such disputes to be referred to arbitration. Many precedents refer to the President of the Institution of Civil Engineers rather than the LCIA and Forth Ports has no strong feelings about the choice of person or body for appointment of arbitrators.*

- 14 Any dispute arising between the Company and Forth Ports Limited under this Schedule is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed by the London Court of International Arbitration on the application of either party after giving notice in writing to the other.

### **3 The draft CEMP**

- 3.1 Forth Ports earlier expressed the view that the original CEMP is nothing more than an employer's document listing various best practices. It did not provide for monitoring, enforcement or remediation of the impacts of the RICT scheme. Without the amendment suggested by Forth Ports for paragraph 4 of the original Schedule 2 to the Order, there was no requirement for RICT to be constructed in accordance with the CEMP.
- 3.2 The revised draft CEMP presented by Babcock addresses some of these issues although not, in Forth Ports' view, in a fully satisfactory manner e.g. particularly as respects enforcement.
- 3.3 In addition to the general limitations of the CEMP and the proposals for its implementation, there are a number of specific shortfalls which Forth Ports considers require amendment. Forth Ports' proposals, and the reasons for those proposals, are as follows:

In paragraph 1.18, for "the site" substitute "the project".

*Reason: This requirement should not apply to the open tidal area.*

In paragraph 1.19, after "Visitors" insert "other than persons on ships".

*Reason: This requirement should not apply to the open tidal area.*



In paragraph 1.20 (public access), after “no public access to the site” insert “other than the tidal area”.

*Reason: This requirement should not apply to the open tidal area.*

In paragraph 3.1 to 3.3, after “Marine Scotland” insert “Forth Ports”

*Reason: To recognise that licences are also required from Forth Ports.*

In paragraph 8.3 after “The remediation strategy shall be submitted” insert “and approved”

*Reason: To require that the remediation strategy is approved by the relevant authorities rather than simply being submitted to them.*

In paragraph 8.14, after “shall be submitted” insert “and approved”

*Reason: To require that the Remediation Implementation and Verification Plan is approved by the relevant authorities rather than simply being submitted to them.*

At end insert:

“Part D Monitoring and remediation

15 Monitoring

15.1 Prior to commencement of the works, a Monitoring and Remediation Strategy shall be submitted and approved by Scottish Ministers, in consultation with Fife Council, Forth Ports, SEPA and Scottish Natural Heritage, to ensure that:

- (a) accidents, discharges or emissions arising from the construction of the works are identified as they occur and, so far as relevant to their functions, promptly notified to these bodies; and
- (b) appropriate mitigation and remediation measures are implemented in response to any incidents arising,

and, once approved, the works may only be constructed in compliance with the Strategy.

*Reason: To require monitoring and with provision for appropriate mitigation and remediation if incidents occur.*

*Further explanation: In the absence of such a provision, to ensure that all material events and incidents are identified and expeditiously reported to the relevant authorities and that appropriate action is then taken to mitigate them, with appropriate sanctions for non-compliance, impacts may well not be apparent even to Babcock, when they are apparent they may not be reported, when they are reported they may not be reported sufficiently clearly or to*

*the right people for the significance to be appreciated and acted upon, and when so reported, no appropriate action may be taken, particularly where there is no incentive or sanction on Babcock or its contractors to do so.*

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

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SCOTTISH STATUTORY INSTRUMENTS

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201[X] No. [ I

**HARBOURS, DOCKS, PIERS AND FERRIES**

The Rosyth International Container Terminal (Harbour Revision) Order 201

[X]

<i>Made</i>	201[X]
<i>Laid before the Scottish Parliament</i>	201[X]
<i>Coming into force</i>	201[X]

ARRANGEMENT OF ARTICLES

PART 1  
PRELIMINARY

1. Citation and commencement
2. Interpretation
3. [Adaptation and](#) incorporation of the 2009 Order

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PART 2  
LIMITS OF PORT AND JURISDICTION

4. Limits of port

PART 3  
WORKS PROVISIONS

5. Power to construct works
6. Subsidiary works
7. Power to deviate
8. Obstruction of work
9. Scottish Ministers' approval of tidal works
10. Period for completion of works

Deleted: Power to dredge

11. Operational land and land within area of Fife Council

Deleted: ~~\_\_\_\_\_~~

Deleted: Draft/ 21.12.2010

PART 4  
PORT REGULATION

13. Charges

PART 5  
MISCELLANEOUS AND GENERAL

14. Saving for Commissioners of Northern Lighthouses

15. Saving for other consents etc.

[16. Crown rights](#)

17. Environmental requirements

18. Special exemption

19. [For Protection of Forth Ports](#)

The Scottish Ministers (the "Ministers") make the following Order in exercise of the powers conferred by sections 14(1), (2A) and (3) of the Harbours Act 1964<sup>a</sup> 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<sup>b</sup>.

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

- (a) this Order is made following a written application to Ministers by Port Babcock Rosyth Limited ("the Company") being the authority engaged in improving, maintaining or managing the harbour; and
- (b) (except in so far as this Order is made for achieving objects mentioned in section 14(2A) of that Act), 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.

In accordance with section 14(2A) of that Act, the objects for achieving which this Order is made include repealing superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour.

In accordance with paragraph 4 of Schedule 3 to that Act, the Ministers have decided that the application relates to a project which falls within Annex II to Council Directive 85/337/EEC<sup>d</sup> as relevantly amended by Council Directive 97/11/EC<sup>e</sup> and Council Directive 2003/35/EC<sup>f</sup> 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.

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<sup>1</sup> 1964 c.40; section 14 was amended by the Transport Act 1981 (c.56), Schedule 6, paragraphs 2, 3, 4(1) and 14 and Schedule 12 and the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 2. See sections 14(7) and 57(1) of the Harbours Act 1964 for the 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 section 53 of the Scotland Act 1998 (c.46).

<sup>2</sup> Schedule 2 was relevantly amended by the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 9.

<sup>3</sup> Paragraph 4 of Schedule 3 was substituted by S.I. 1999/3445.

<sup>4</sup> O.J. L 175, 5.7.1985, p.40.

L 73, 14.3.1997, p.5.

L 156, 25.6.2003, p.17

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In accordance with paragraph 6 of that Schedule', 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 Ministers have taken into account the matters in sub-paragraph (3) of that paragraph; and
  - (ii) before giving that opinion Ministers have consulted the Company and such bodies with environmental responsibilities as Ministers thought appropriate.

In accordance with paragraph 8 of that Schedule", 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.

[Notice has] [Notices have] been published by the Company in accordance with the requirements of paragraph[s] 1(4, and 10A,) of that Schedule<sup>d</sup>.

In accordance with paragraph 15 of that Schedule, 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 Ministers thought appropriate.

The provisions of paragraph 17 of that Schedule<sup>e</sup> have been satisfied. [No objections to the application have been made.] [All objections to the application have been withdrawn or paragraph 18(1A) of that Schedule applied in respect of those objections.] [No representations under paragraph 10(2)(N, or 10A(4)(d),] of that Schedule have been made.]

[[In accordance with paragraph 18(1C) of that Schedule",] Ministers have caused an inquiry to be held under paragraph 18(1B) of that Schedule.]

[[In accordance with paragraph 18(1C) of that Schedule,] Ministers have given to a person who made an objection an opportunity of appearing before and being heard by a person appointed by Ministers under paragraph 18(1B) of that Schedule<sup>k</sup>.] In accordance with paragraph 19(1) of that Schedule', 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)(N, or 10A(4)(d)] of that Schedule;

- (e) [the report of the person who held the inquiry] [the report of the person appointed for the purpose of hearing an objector under paragraph 18 of that Schedule]; and
- (f) [any written representations submitted to Ministers 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<sup>b</sup>, Ministers have decided [to make this Order in the form of the draft submitted to them] [to make this Order with modifications [which do not appear to Ministers substantially to affect the character of the Order] [which appear to Ministers substantially to affect the character of the Order and in accordance with paragraph 21 of that Schedule' —

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

## PART 1

### PRELIMINARY

#### Citation and commencement

1. (1) This Order may be cited as the Rosyth International Container Terminal (Harbour Revision) Order 201[X] and comes into force on the [fourteenth] day after the day on which it is approved by resolution of the Scottish Parliament.
- (2) The Port Babcock Rosyth Harbour Empowerment Order 2009<sup>d</sup> and this Order shall be read together and may be cited together as the Port Babcock Rosyth Orders 2009 to 201[X].

#### Interpretation

2. (1) In this Order —

"1964 Act" means the Harbours Act 1964<sup>e</sup>;

"1969 Act" means the Forth Ports Authority Confirmation Order Act 1969<sup>f</sup>

["the 1992 Order" means the Town and Country Planning \(General Permitted Development\) \(Scotland\) Order 1992;](#)

"2009 Order" means The Port Babcock Rosyth Harbour Empowerment Order 2009<sup>g</sup>;

"berthing pocket" means the area shown hatched at sheet no VI [Rev A](#) of the deposited plans;

["CEMP" means the Construction and Environmental Management Plan \(including the Schedule of Supplementary Documents referred to therein\) submitted to and approved by the Ministers pursuant to paragraph \(3\) of article 16, and such plan as \(subject to the terms of article 16\) may be modified from time to time with the approval of Ministers;](#)

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

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"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;

"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 with reference to this Order and marked "Rosyth International Container Terminal (Harbour Revision) Order 201[X] 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;

"environmental document" means –

- (a) the environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental statement or other document so prepared by way of clarification or amplification of the environmental statement; and
- (b) any other document containing environmental information provided by the Company to Scottish Ministers for the purposes of any tidal work approved under article 10 of the 2009 Order (tidal works not to be executed without the approval of Scottish Ministers);

▼ "existing void" means the area shown hatched on sheet no IV of the deposited plans;

"land" includes land covered by water, any interest in land and any servitude or right in, to or over land;

"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;

"the outer harbour limits" means the area outlined in red on the port map referred to in this Order;

"port" means Port Babcock Rosyth as comprised within the port limits;

"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;

"port limits" means the limits of the port as defined in article 4 (limits of port) of ;

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"dredging limits" means the limits of deviation for the operations authorised by article 8 (power to dredge) shown outlined by a short broken blue line on sheet no. VI Rev A of the deposited plans;¶



"port map" means the map referred to in article 4 of this Order, two copies of which have been deposited at the offices of Scottish Ministers at ... and one copy of which has been deposited at the registered office of the Company;

**Deleted:** and forming sheet no. I Rev A of the deposited plans

"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 and excluding the projection over waters by booms, cranes and similar plant and machinery operating within the port;

**Deleted:** but excluding any operations authorised by article 8 (power to dredge)

"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 on the works site plans two copies of which have been deposited at the offices of Scottish Ministers at ... and one copy of which has been deposited at the registered office of the Company.

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- (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 201[X] 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.

#### Adaptation and Incorporation of 2009 Order

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#### 3 (1) The 2009 Order is amended as follows—

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(a) in article 2 (interpretation) after "master" there is inserted—

"the outer harbour limits" means the area outlined in blue on the port map referred to in the Rosyth International Container Terminal Harbour Revision Order 201[...];

(b) in paragraph (1) of article 3 (incorporation of 1847 Act), after "32", there is inserted "33,";

(c) in paragraph (2) of article 3, after sub-paragraph (d) there is inserted—

"(dd) section 33 shall apply to the outer harbour limits only"; and

(d) in paragraph (1) of article 17 (power to appropriate parts of port, etc.), after the words "any part of the port" insert "other than any part of the outer harbour limits extending in a southerly direction more than 30 metres seaward of the port premises".

(2) 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 following provisions of this article have effect from such date as may be specified by the Company in writing to Forth Ports Limited and by notice in the London Gazette, being a date not earlier than the date upon which Scottish Ministers inform the Company that they are satisfied that the Company has arranged for the execution of the works and is ready to take responsibility as harbour authority for the whole of the port limits.

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

(3) 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 extending approximately 30 metres seaward of the port premises and including the area between the tidal jetty known as the Middle Jetty and the Forth face of the north side of the structure of the port basin entrance which is shown [coloured brown] on the port map.

(4) The following shall be inserted at the end of Schedule 1 to the 1969 Act:

"or any area forming part of the port limits as defined in the Rosyth International Container Terminal (Harbour Revision) Order 201[X]".

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Deleted: the boundaries of which are described in the Schedule 1 to this Order

Deleted: and

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Deleted: (3). In the Schedule 1 to this Order, a reference to —¶  
<#>a direction shall be construed as if the words "or thereabouts" were inserted after that direction; and¶  
<#>a point is a reference to that point as shown on the port map and to the castings and northings of that point which are stated in the table on the port map.¶  
(4) The area described in the Schedule 1 to this Order is shown edged blue on the port map and, in the event that there is any discrepancy between the boundaries of that area as described in the Schedule to this Order and the boundaries shown on the port map, the port map shall prevail.¶

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## 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 not exceeding [...] metres in height at the location shown on sheet no. HI of the deposited plans;

Work No. 7 — a single storey container freight station building not exceeding [...] in height 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 not exceeding [...] metres in height extending to approximately 1,000 square metres and separate single storey services, canteen and office buildings not exceeding [...] in height at the respective locations shown on sheet no. III of the deposited plans;

Work No. 11 — a single storey workshop building not exceeding [...] in height, a single storey equipment maintenance building not exceeding [...] in height 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;

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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; and

Work No. 20 — repair and maintenance of the Contractors Jetty with associated piling.

Work No. 21 – an acoustic barrier and visual screen wall 3 metres in height along the port limits boundary between the points marked 26B and 27 on Sheet 1 Rev A 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 Contractors Jetty) and enclose and reclaim so much of the bed of the Forth and of the foreshore as lies within the limits of deviation authorised by article 7(1) of this Order; 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 limits of deviation authorised by article 7(1) of this Order (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 (power to construct works) or the operation of the port undertaking.

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(2) Without prejudice to paragraph (1), the Company may within the limits of deviation authorised by article 7(1) of this Order 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—

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- (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) So far as is consistent with the requirements of Schedule 2, in constructing and maintaining the works authorised by article 5 (power to construct works), 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 the deposited plans to any extent downwards and up to 5 metres upwards.

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

**Deleted:** and up to one metre downwards

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## Obstruction of work

### 8. 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.

**Deleted: 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 —¶ <#> to form a turning area and channel 150 metres wide dredged to 8.5 metres below chart datum

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**Deleted:** <#>, within the dredging limits to allow vessels access to and egress from the works site; or¶ <#> 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.¶ <#> 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.¶ <#> 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) shall be the property of the Company (... [1])

## **Scottish Ministers' approval of tidal works**

### 9. The following definition is substituted for the definition of "tidal work" in article 2 of the 2009 Order:

"tidal work" means so much of any work undertaken by or on behalf of the Company under this Order or the Rosyth International Container Terminal (Harbour Revision) 20[...] as is in, on, under or over tidal waters or tidal lands below the level of high-water including such works as are existing at the commencement of this Order but excluding the projection over waters by booms, cranes and similar plant and machinery."

## Period for completion of works

- 10.(1) If the works authorised by paragraphs (1) and (2) of article 5 (power to construct works) are not completed within five years from the later of (i) the date of the coming into force of this Order and (ii) 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

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**Deleted:** 10.(1) The definition of "tidal works" in article 2 of this Order shall be substituted for the definition of that term in the 2009 Order.¶ (2) Paragraph (1) of article 10 (tidal works not to be ex (... [2])

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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 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.

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(6) Nothing in paragraph (1) shall apply to works carried out under paragraph (3) of article 5 (power to construct works) or article 6 (subsidiary works), 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 (power to dredge).

#### **Operational land and land within area of Fife Council**

11. The land situated within the port limits shown edged red on the port map shall —

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- (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 the Fife Council, be deemed to be part of that area

### **PART 4**

#### **PORT REGULATION**

##### **Charges**

12.(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.

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(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, 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 4**

#### **MISCELLANEOUS AND GENERAL**

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

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

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##### **Saving for other consents etc.**

14. 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.

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#### Crown rights

15.(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) —

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- (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'.

#### Environmental requirements

16.(1) Subject to paragraph (2), in constructing the works, the Company shall act in accordance with the commitments given in any environmental document.

(2) Nothing in paragraph (1) shall exempt the Company from fulfilling any requirement imposed on the Company by any rule of law or which arises from any commitment.

(3) The works shall not be commenced until Ministers have, following consultation in accordance with paragraphs (4), (5) and (6), approved in writing the CEMP for the works subject to any amendments or further conditions or restrictions which Minister may require.

(4) 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 CEMP or the proposed amendment to the CEMP, before approving the CEMP or any amendment thereto:

- (a) Fife Council;
- (b) Scottish Environment Protection Agency;
- (c) Scottish Natural Heritage;
- (d) Historic Scotland;
- (e) Marine Scotland;

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Deleted: Environmental Statement being the Environmental Statement dated January 2011 together with the Non-technical Summary and the single volume of Appendices to the Environmental Statement, a copy of which was submitted with the application made for this Order to the Scottish Ministers and a further copy of which has been deposited at the offices of the Company situated at the port

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~~(ee) Forth Ports Limited;~~

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~~(f) Rosyth Community Council; and~~

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~~(g) Charleston, Limekilns and Pattiesmuir Community Council.~~

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~~The consultation response of those bodies shall be without prejudice to the respective rights and powers of the consultees under general legislation.~~

~~(5) The period for response to consultation for the purposes of paragraph (2) of this article shall be determined by Ministers taking into account the extent to which Ministers consider they require advice on appropriate and necessary mitigation for construction or operation procedures, and, Ministers shall not approve the CEMP until such period has elapsed as Ministers shall consider reasonable for consideration of, and comment upon, the terms of or amendment to the proposed CEMP.~~

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~~(6) Ministers shall, prior to Ministers determining whether or not to approve (and if so on what terms) a proposed CEMP or any proposed amendment to the CEMP, afford the Company an opportunity to comment on any response received from a body consulted by Ministers pursuant to paragraph (2).~~

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~~(7) For the purpose of ensuring compliance with the obligations set out in Schedule 1 and the terms of the CEMP, the following statutory bodies will have power to approve on behalf of the 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 1 or the CEMP:~~

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~~(a) Fife Council;~~

~~(b) Scottish Environment Protection Agency; and~~

~~(c) Marine Scotland.~~

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~~(8) The CEMP shall not be amended so as to reduce the standards of mitigation and protection contained in the same.~~

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~~(9) The Company shall after receipt of intimation to the Company of the approval by 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;~~

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~~(10) The Company shall employ all reasonably practicable means to ensure that:-~~

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~~(a) the works are carried out in accordance with the CEMP; and~~

~~(b) the CEMP as may from time to time be amended or superseded is applied to the use and operation of the works.]~~

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~~(11) 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.~~

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Mitigation Measures

~~17. Schedule 1 (Mitigation Measures) to this Order has effect.~~

**Special exemptions**

~~18. Without prejudice to the generality of article 4(5) (Limits of port), Section 26 (Restriction on construction of works and dredging) of the 1969 Act shall apply to the exercise by the Company of the powers of article 5 (Power to construct works) of this Order.~~

For protection of Forth Ports

~~19. Schedule 2 (For protection of Forth Ports) has effect.~~

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Name  
[Doquet]

St Andrew's House

Edinburgh

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PORT LIMITS ... [3]

SCHEDULE 1

MITIGATION MEASURES

1 Application of permitted development rights

(1) In their application to the works, article 3 of, and Class 29 in Part 11 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 the 1992 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 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 11 of Schedule 1 to the 1992 Order, have effect as if the 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 Town and Country Planning (Scotland) Act 1997, the restrictions contained in paragraphs [2 to [5] of this Schedule are deemed to be conditions imposed on the grant of planning permission.

2 Restrictions on construction

(1) The Company must identify to the reasonable satisfaction of [Fife Council / Scottish Ministers] prior to the commencement of the works the area of the works site which will be required for the provision of a rail terminal to enable the existing railway in the port to be used for transporting containers and no works may be constructed in that area other than works for that purpose and temporary works.

- (2) [height and mass of buildings]
- (3) [height of cranes, lighting columns, fencing etc]
- (4) [details of construction and permanent lighting]
- (5) [landscape management plan]
- (6) [working hours]
- (7) [requirements for wheel washing and handling of materials]

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Deleted: north westerly direction to point 25A; thence proceeding in a north easterly direction in line with and along the line of the said Rosyth "Protected Area" to point 26A; thence in a south-easterly direction to point 26B; thence proceeding generally in an north-easterly direction along the level of high-water and the boundary of the subjects registered under the said Title Number FFE 15084 to point 27; thence proceeding on the outer face of the existing fence line, first generally in a north-easterly direction to point 28, then in a north-easterly direction to point 29, then in a northerly direction to point 30, then in an easterly direction to point 31 and then in a north-westerly direction to point 32; thence proceeding in a north-easterly direction over roadside verge, footway and road along the line of a former barrier to point 33; thence proceeding along the outer face of the existing fence line, first generally in an easterly direction to point 34, then in a northerly direction to point 35, then in a north-easterly ... [4]

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(8) [noise limits and restrictions on percussion piling]

(9) [construction dust management plan]

(10) [ambient dust monitoring strategy]

(11) [lorry routes]

(12) [materials to be brought by sea and not by road].

### 3 Contaminated land strategy

Before the commencement of the construction of works, a contaminated land strategy must be submitted to and agreed with [SEPA and Fife Council] to provide for:

- (a) the identification of any radioactive or other contaminated material and any unexploded ordnance on the works site which may be disturbed by the works;
- (b) procedures to be adopted by workers to minimise risks arising from such material;
- (c) the containment, treatment or removal of such material;
- (d) monitoring of the disturbance or release of such material;
- (e) appropriate emergency measures; and
- (f) any necessary remediation works

and, once approved, the works may only be constructed in compliance with the strategy.

### 4. CEMP

The works may only be constructed in accordance with the CEMP.

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### 5. Operational restrictions

(1) The works site (excluding tidal waters and tidal lands below the level of high water) may not be used except as an international container terminal.

(2) The works site (excluding tidal waters and tidal lands below the level of high water) must not be brought into use for the handling of containers until the Company demonstrate that:

- (a) a railway with a W8 loading gauge capable of transporting 2.74 metres (9'6") containers of at least 5.5 metres width, on wagons registered for UK operation, between the port and the national rail network is operational and available for use;
- (b) daytime paths (0700 - 1900) are available for freight trains to enter and leave the port so that activity is not limited to night time, thereby ensuring that rail services are attractive to the market and cost effective; and

(c) there is available a purpose designed intermodal terminal within the port that corresponds with normal custom and practice for such facilities and that allows trains to be handled quickly and efficiently.

(3) The works site (excluding tidal waters and tidal lands below the level of high water) must not be brought into use for the handling of containers until road improvements [to be specified] have been completed.

(4) At least [...] % of containers transported into or out of the port by land must be transported by rail.

(5) [height of stacks]

(6) [provision of noise barriers]

(7) [operational noise limits]

(8) [noise monitoring scheme].

6. Work No. 21

Work No. 21 shall be completed prior to any other Works detailed in Article 5(1) being commenced.

7. Work No. 20

Work No. 20 shall only be carried out during the period [ ] to [ ] in any year.

8. Capital Dredging

No capital dredging for the formation of the approach channel shall take place in the period 1 November to 1 March unless otherwise authorised by Marine Scotland.

9. CAR Licensing

All activities to which the Water Environment (Controlled Activities) (Scotland) Regulations 2011 apply shall comply with those Regulations.

10. Marine Licensing

Appropriate licences shall be obtained from Marine Scotland under the Marine (Scotland) Act 2010 for dredging, the disposal of dredged material and other construction work below MHWS. Applications for such licences shall, as applicable, include a Best Practicable Environmental Option (BPEO) assessment and an assessment under the Conservation (Natural Habitats &c.) Regulations 1994 (as amended).

11. Nature Conservation

All construction activities shall comply with all nature conservation legislation including the Conservation (Natural Habitats & c.) Regulations 1994 (as amended). Nature Conservation (Scotland) Act 2004 and the Wildlife and Natural Environment (Scotland) Act 2011.

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Development Rights¶  
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12. Management of Land Contamination

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12.1 No construction works, other than investigative works, shall be carried out on site prior to the receipt of Fife Council's and Scottish Environment Protection Agency's written approval of a Contaminated Land Management Plan to provide for.

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(a) the identification of unacceptable risks to human health and the wider environment due to ~~the presence of land contamination and/or unexplored~~ ordnance;

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(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 and/or unexplored ordnance during construction works (including the implementation of 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, once approved, the works may only be constructed in compliance with the Contaminated Land Management Plan.

12.2 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.

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SCHEDULE 2

**FOR PROTECTION OF FORTH PORTS**

The provisions of this Schedule have effect for the protection of Forth Ports Limited, unless otherwise agreed in writing between the Company and Forth Ports Limited.

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**Tidal Works and dredging: approval of detailed design**

1 (1) Before—

- (a) submitting any plans and sections for any tidal work or capital dredging to Scottish Ministers for approval under article 10 of the 2009 Order (Scottish Ministers' approval of tidal works);
- (b) commencing any operation for the construction of a tidal work or capital dredging where approval of the Secretary of State under article 10 of the 2009 Order (Scottish Ministers' approval of tidal works) is not required; or
- (c) commencing any operation for the maintenance of a tidal work or for maintenance dredging in the Forth.

the Company must submit to Forth Ports Limited plans and sections of the tidal work, dredging or other operation and such further particulars as Forth Ports Limited may, within 28 days from the day on which the plans and sections are submitted under this sub-paragraph, reasonably require.

(2) No application for the approval of Scottish Ministers under article 10 of the 2009 Order (Scottish Ministers' approval of tidal works) must be made in respect of a tidal work or dredging until plans and sections in respect of that tidal work or dredging submitted under sub-paragraph (1) have been approved by Forth Ports Limited.

(3) Any tidal work or dredging not requiring the Secretary of State's approval under article 10 of the 2009 Order (Scottish Ministers' approval of tidal works) must not be constructed, and no tidal work may be maintained, except in accordance with such plans as may be approved in writing by Forth Ports Limited or determined under paragraph [13].

(4) Any approval of Forth Ports Limited required under this paragraph must not be unreasonably withheld but may be given subject to such reasonable requirements as Forth Ports may make for the protection of—

- (a) traffic in, or the flow or regime of, the river;
- (b) the use of its operational land or the river for the purposes of performing its functions; or
- (c) the performance of any of its functions connected with environmental protection.

(5) Requirements made under sub-paragraph (4) may include conditions as to—

- (a) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the tidal work or dredging; and
- (b) the expiry of the approval if the Company does not commence construction of the tidal work or dredging approved within a prescribed period.

(6) Subject to sub-paragraphs (8) and (9), any such approval is deemed to have been refused if it is neither given nor refused within 42 days of the specified day.

(7) Before making a decision on any such approval, Forth Ports Limited must take into account any opinion on the plans and sections provided to it by the Scottish Environment Protection Agency.

(8) Accordingly, an approval of Forth Ports under this paragraph is not deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (6) has not been given pending the outcome of any consultation on the approval in question that Forth Ports is obliged in the proper exercise of its functions to carry out provided that during the course of such consultation, Forth Ports has acted with all due expedition.

(9) In this paragraph “the specified day” means, in relation to any tidal work—

- (a) the day on which plans of that work are submitted to Forth Ports Limited under sub-paragraph (1); or
- (b) the day on which the Company provides Forth Ports Limited with all such particulars of the work as have been requested by Forth Ports Limited under that sub-paragraph;

whichever is the later.

(10) Whenever the Company provides Scottish Ministers with an environmental document it must at the same time send a copy to Forth Ports Limited.

2 Subject to paragraph 21, no tidal work or dredging undertaken by the Company is subject to any of the controls in sections 23 to 26 of the Forth Ports Authority Order 1969.

3 (1) Any operations for the construction of any tidal work or dredging must, once commenced, be carried out by the Company Authority with all reasonable dispatch and to the reasonable satisfaction of Forth Ports Limited so that river traffic, the flow or regime of the river and the exercise of Forth Ports Limited’s functions suffer no more interference than is reasonably practicable.

(2) Forth Ports Limited is entitled by its officer at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

**Obstruction in river**

4 If any pile, stump or other obstruction to navigation 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 must, as soon as reasonably practicable after the receipt of notice in writing from Forth Ports Limited requiring such action, remove it from the river or, if it is not reasonably practicable to remove it—

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

**Removal, etc. of Forth Ports' moorings and buoys**

5 If—

- (a) by reason of the construction of any tidal work or dredging it is reasonably necessary for Forth Ports Limited 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 Limited, or laying down and removing substituted 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 Limited gives to 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 must pay the costs reasonably so incurred by Forth Ports Limited.

**Removal of temporary works**

6 On completion of the construction of any part of a permanent work, the Company must as soon as practicable remove—

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

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



**Protective action**

7 (1) If any of the works (including dredging) during construction gives rise to sedimentation, scouring, currents or wave action detrimental to traffic in, or the flow or regime of, the river, then Forth Ports Limited 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 sub-paragraph (1) are such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the river.

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

(4) If any of the works (including dredging) give rise to environmental impacts over and above those anticipated by any environmental document, the Company must, in compliance with its duties under any enactment and, in particular, under section 48A of the 1964 Act, take such action as is necessary to prevent or mitigate those environmental impacts and in so doing must consult and seek to agree the necessary measures with Forth Ports Limited.

(5) If Forth Ports Limited becomes aware that any of the works (including dredging) is causing an environmental impact over and above those anticipated by any environmental document, Forth Ports Limited must notify the Company of that environmental impact, the reasons why Forth Ports Limited believes that the environmental impact is being caused by the works and of measures that Forth Ports Limited reasonably believes are necessary to counter or mitigate that environmental impact. The Company must implement the measures that Forth Ports Limited has notified to the Company or implement such other measures as the Company believes are necessary to counter the environmental impact identified, giving reasons to Forth Ports Limited as to why it has implemented such other measures.

**Facilities for navigation**

8 (1) The Company must 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 Limited, and must ensure that access to such aids remains available during and following construction of any tidal work.

(2) The Company must provide at any tidal work, or must afford reasonable facilities at such works (including an electricity supply) for Forth Ports Limited 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 as Forth Ports may deem necessary by reason of the construction of any tidal work, and must ensure that access remains available to apparatus during and following construction of such works.

(3) The Company must comply with the directions of the Forth Ports Limited's 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.

**Survey of riverbed**

9 (1) Before the commencement of construction of the first tidal work (or any dredging for the purposes of the works), Forth Ports may, at the Company's expense, carry out a survey of such parts of the river as might be affected by sedimentation, scouring, currents or wave action that might result from the construction of such works or dredging, for the purposes of establishing the condition of the river at that time.

(2) Forth Ports Limited may carry out such surveys of the river as are reasonably required during the construction of any tidal work or dredging to ascertain the effect of that tidal work or dredging on the river and Forth Ports Limited must make available to the Company the results of any such survey.

(3) After completion of, respectively, any tidal work or dredging and all the tidal works and dredging constructed under this Order, Forth Ports Limited may, at the Company's expense, carry out a further survey of the parts of the river which were surveyed prior to the construction of that work or dredging, or as the case may be a survey of the completed tidal works and dredging as so constructed, for the purpose of establishing the condition of the river and the effect that the tidal work or dredging is, or as the case may be the tidal works and dredging are, having on navigation, the flow and the regime of the river and the exercise of Forth Ports' functions.

(4) Forth Ports Limited must not under this paragraph carry out a survey of any part of the river as respects which the Company has provided to Forth Ports Limited survey material which Forth Ports Limited is satisfied establishes the condition of the river, and in the case of a survey under sub-paragraph (3), the effect of the tidal work or dredging, or as the case may be the tidal works and dredging.

**Sedimentation, etc.: remedial action**

10 (1) This paragraph applies if any part of the river becomes subject to sedimentation, scouring, currents or wave action 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 for the protection of works in the river, should in the reasonable opinion of Forth Ports Limited be removed or made good.

(2) The Company must either—

- (a) pay to Forth Ports Limited any additional expense to which Forth Ports Limited may reasonably be put in dredging the river to remove the sedimentation or in making good the scouring so far as (in either case) it is attributable to the tidal work; or
- (b) carry out the necessary dredging at its own expense and subject to the prior approval of Forth Ports Limited, such prior approval not to be unreasonably withheld or delayed;

and the expenses payable by the Company under this paragraph include any additional expenses accrued or incurred by Forth Ports Limited in carrying out surveys or studies in connection with the implementation of this paragraph.

### **Indemnity**

11 (1) The Company is responsible for and must make good to Forth Ports Limited all financial costs or losses not otherwise provided for in this Schedule which may reasonably be incurred or suffered by Forth Ports Limited, in its capacity as a harbour authority within the meaning given in section 313 of the Merchant Shipping Act 1995, 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 Limited 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 Limited 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 Limited, or in a manner approved by Forth Ports Limited, 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 Limited or its duly authorised representative, employee, contractor or agent) excuse the Company from liability under the provisions of this paragraph.

(3) Forth Ports Limited must 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.

**Statutory functions**

12 (1) Any function of the Company or any officer of the Company, whether conferred by or under this Order or any other enactment, is subject to—

- (a) any enactment relating to Forth Ports Limited;
- (b) any byelaw, direction or other requirement made by Forth Ports Limited or its harbour master under any enactment; and
- (c) any other exercise by Forth Ports Limited or its harbour master of any function conferred by or under any enactment.

(2) The Company or its harbour master must not take any action in the river outside the area of jurisdiction under sections 57, 65 and 69 of the 1847 Act as incorporated by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847) except with the consent of Forth Ports Limited's harbour master, which must not be unreasonably withheld.

(3) Forth Ports Limited must consult the Company before making any byelaw under the Forth Ports Authority Order 1969 which directly applies to or which could directly affect the construction, operation or maintenance of the works or the port premises.

(4) Forth Ports Limited or its harbour master (as appropriate) must consult the Company before giving any general direction under the Forth Ports Authority Order 1969 which directly affects the construction, operation or maintenance of the works or the port premises.

**Maintenance dredging**

13 [For the avoidance of doubt, section 24 of the 1969 Act (licence to dredge) applies to any maintenance dredging carried out by the Company.]

**Disputes**

14 Any dispute arising between the Company and Forth Ports Limited under this Schedule is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed by the London Court of International Arbitration on the application of either party after giving notice in writing to the other.

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

Article 8 creates an offence of obstructing the works.

Deleted: 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 provides for approval of tidal works.

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Article 10 makes provision as to the time limit for completion of the works authorised under article 5(1) and (2).

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Article 11 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.

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Part 4 makes provision as to port regulation.

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Article 12 authorises the Company to levy charges.

Part 5 makes miscellaneous and general provisions.

Articles 13 to 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.

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Article 16 makes provision as to compliance by the Company with the Construction and Environmental Management Plan submitted to and approved by Ministers.

Deleted: commitments given in the Environmental Statement accompanying its application for the Order.

Article 17 gives effect to the mitigation schedule.

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Deleted: makes provision as to the [environmental] mitigation measures to be procured;

Article 18 makes provision for special exemptions for the works authorised by this Order from restrictions on works and dredging in the Forth.

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[Article 19 introduces protective provisions for Forth Ports contained in Schedule 2.](#)

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SCOTTISH STATUTORY INSTRUMENTS

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**201[X] No. [ I**

**HARBOURS, DOCKS, PIERS AND FERRIES**

The Rosyth International Container Terminal (Harbour Revision) Order

201[X]

*Made* 201[X]

*Laid before the Scottish Parliament* 201[X]

*Coming into force* 2011[X]





, within the dredging limits to allow vessels access to and egress from the works site; or

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.

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.

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<sup>a</sup>) shall be the property of the Company and may be used, sold, deposited or otherwise disposed of as the Company thinks fit.

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.

10.(1) The definition of "tidal works" in article 2 of this Order shall be substituted for the definition of that term in the 2009 Order.

(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 (power to construct works) of this Order and any related works authorised by article 6 (subsidiary works) of this Order and any dredging authorised by article 8 (power to dredge).

## SCHEDULE

## Article 3

### PORT LIMITS

The area outlined in blue on the port map bounded as follows: commencing at point 1 and proceeding in a southerly 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 westerly direction to point 3, then in a southerly direction to point 4, then in a westerly direction to point 5, then in a south-westerly direction to point 6, then in a southerly direction to point 7, then in a south-westerly direction to

point 8, then in a southerly direction to point 9, then in a south-easterly direction to point 10, then in a southerly direction to point 11, then in a south-easterly direction to point 12 and then in an easterly direction to the end of the existing fence line at point 13; thence proceeding in a south then southwesterly 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 south-westerly and then southerly direction along the level of high-water to point 18A; thence proceeding

north westerly direction to point 25A; thence proceeding in a north easterly direction in line with and along the line of the said Rosyth "Protected Area" to point 26A; thence in a south-easterly direction to point 26B: thence proceeding generally in an north-easterly direction along the level of high-water and the boundary of the subjects registered under the said Title Number FFE 15084 to point 27; thence proceeding on the outer face of the existing fence line, first generally in a north-easterly direction to point 28, then in a north-easterly direction to point 29, then in a northerly direction to point 30, then in an easterly direction to point 31 and then in a north-westerly direction to point 32; thence proceeding in a north-easterly direction over roadside verge, footway and road along the line of a former barrier to point 33; thence proceeding along the outer face of the existing fence line, first generally in an easterly direction to point 34, then in a northerly direction to point 35, then in a north-easterly direction to point 36, then in a south-easterly then north-easterly directions to point 37, then in a southerly then easterly directions to point 38 and then in a southerly direction to point 1 UNDER EXCEPTION of the area enclosed by the existing fence line commencing at point 39 and proceeding in a southerly direction to point 40, then in a south-westerly direction to point 41, then in a north-westerly direction to point 42, then in a northerly direction to point 43 and then in an easterly direction back to point 39.