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Subject: RICT: Forth Ports response to current draft CEMP
Attachments: RICT - CEMP etc submissions 13_3_12 (2).PDF; CEMP submissions - Appendix 1.PDF; CEMP submissions - Appendix 2.PDF

Scott

I attach Forth Ports' response to the current draft CEMP, that response comprising:

- a) Initial submission by Forth Ports;
- b) Appendix 1: amendments to draft Order proposed by Forth Ports;
- c) Appendix 2: revised version of the draft Order (on matters other than the CEMP and the original environmental requirements article).

Regards
Paul.



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HARBOURS ACT 1964

PUBLIC INQUIRY

INTO

THE APPLICATION BY PORT BABCOCK ROSYTH LIMITED

FOR

THE ROSYTH INTERNAL CONTAINER TERMINAL (HARBOUR REVISION) ORDER

**HEARING SESSION ON AMENDMENTS TO ARTICLE 17 OF THE HRO, THE DRAFT
CONSTRUCTION AND ENVIRONMENTAL MANAGEMENT PLAN AND RELATED MATTERS**

INITIAL SUBMISSION OF FORTH PORTS

1 Forth Ports' submissions to the hearing session

1.1 The proposals for amendment of the draft HRO and CEMP made in this initial submission are advanced for consideration only if our primary arguments, that the HRO should not be made, are rejected. The applicants have produced the following items in an attempt to make provision for the identification, monitoring, enforcement and remediation of the environmental effects of the proposed RICT:

- (a) a revised article 17 to the draft HRO
- (b) a revised article 18 to the draft HRO
- (c) consequential amendments to the draft HRO as a result of the items a) and b)
- (d) a new Schedule 2 to the Order, which will presumably contain environmental commitments
- (e) a draft Construction and Environmental Management Plan ('CEMP')

The Reporters are to hold a hearing session for discussion of these various matters. Forth Ports Limited ('Forth Ports') comments in these submissions on the adequacy of the applicant's proposals as they currently stand. Forth Ports reserves the right to comment further on the revised draft CEMP which is due to be produced by the applicant on 21 March 2012, both in respect of the matters raised in this submission and any further matters which arise as a result of the applicant's submissions.

- 1.2 Forth Ports comments can be divided in to the following sections:
- 1.2.1 New articles and consequential amendments to the draft HRO proposed by the applicant
 - 1.2.2 Schedule 2 to the Order
 - 1.2.3 The CEMP
 - 1.2.4 Further protective provisions
- 1.3 Each of these sections is considered in detail below. Where appropriate Forth Ports has proposed amendments to remedy any shortcomings that it perceives in the current approach.

2 New articles and amendments to the draft HRO proposed by the applicant

- 2.1 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.
- 2.2 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.
- 2.3 It is Forth Ports' assumption that Schedule 2, introduced by new article 18, will contain environmental constraints for the development which will be dealt with in the next section of this submission. However, if this assumption is correct then Forth Ports consider that article 7 of the draft Order (power to deviate) will need to be amended to ensure that the powers of deviation do not overrule the constraints to be contained in Schedule 2.
- 2.4 Forth Ports proposes the following changes to the drafting of the RICT Order to remedy the problems identified in this section:

Article 5 (Power to construct works)

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.

Article 7 (power to deviate)

Page 9, 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.

Original article 17(environmental requirements)

Page 11, re-instate and amend paragraph (1) as follows:

- (a) after “given in” insert “(a)”, and
- (b) after “Scottish Ministers” insert:
 - “(b) the Carbon Balance Assessment;
 - (c) the Rail Freight Access Report;
 - (d) the Report on Coastal Process;
 - (e) the RICT Maintenance In Combination Assessment (October 2011); and
 - (f) RICT Noise Supplement to the Environmental Statement (October 2011),”.

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

New article 17 (CEMP)

In paragraph (2), after sub-paragraph (e) insert:

“(ee) Forth Ports Limited;”

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

Leave out paragraph (7) [Note: see proposed paragraph 4 for Schedule 2 below].

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

3 Schedule 2 to the HRO

3.1 Schedule 2 is presumably intended to contain environmental constraints. However, the applicant has not provided content for Schedule 2. It is the view of Forth Ports that Schedule 2 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.

- 3.2 Forth Ports suggests that the following amendments, which will act to incorporate a number of items into the Schedule 2, would be appropriate given the nature of the proposed RICT development.

New Schedule 2 (Conditions of development)

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 Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (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 Town and Country Planning (General Permitted Development) (Scotland) Order 1992, 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).

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.

- (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].

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.

4 CEMP

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

Reason: To require compliance with the CEMP.

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.

(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.

(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 access once a throughput threshold has been reached.

(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.

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

3 The draft CEMP

3.1 It is Forth Ports view that the current CEMP is nothing more than an employer's document listing various best practices. It does 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 Schedule 2 to the Order, there is no requirement for RICT to be constructed in accordance with the CEMP.

3.2 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.

4 Protective provisions for the benefit of Forth Ports

- 4.1 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. Attached to this paper as appendix 1 are further reasoned amendments which amend existing provisions of the HRO and introduce protective provisions. Appendix 2 shows those amendments (but not those other amendments specifically mentioned in the other sections of these submissions) as tracked changes to the draft HRO. 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.

5 Conclusion

It is Forth Ports view that the applicant's current proposals are inadequate to protect it, and other parties against the impacts of the proposed RICT scheme. Without substantial amendments to the Order and the CEMP there will be no guarantee that the environmental effects of the scheme will be identified. The appropriate mechanisms to ensure monitoring, mitigation and enforcement of remediation will also be unavailable. Forth Ports invites the Reporters to recommend to the Scottish Ministers that, if the Order is to be made, it is made with the modifications proposed in these submissions.

FORTH PORTS CEMP SUBMISSIONS APPENDIX 1 (14/3/12)**PROPOSED RICT HARBOUR REVISION ORDER****AMENDMENTS PROPOSED BY FORTH PORTS LIMITED****Article 2 (interpretation)**

- 1 Page 5, in paragraph (1), leave out the definitions of "dredging limits"

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

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

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

Reason: To reduce Babcock's new limits of jurisdiction as proposed by Forth Ports. A revised Port Map will then need to be deposited delineating the area concerned.

- 3 Page 5, in paragraph (1), in the definition of "port map" leave out the words after "and forming sheet no. 1 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.

- 4 Page 5, 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 omission of article 8.

- 5 Page 5, in paragraph (1), in the definition of "works site", leave out "outlined by a broken red line on sheet II 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.

Article 3 (incorporation of 2009 Order)

6 Page 6, in the head note to the article, at the beginning insert "Adaptation and".

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

7 Page 6, 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 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 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: To retain the right of navigation arising under the open port duty in relation to Babcock's proposed limits of jurisdiction. Note: this will not be required if Forth Ports proposal for reducing Babcock's proposed limits is accepted.

Article 4 (limits of port)

8 Page 6, 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.

9 Page 6, in paragraph (2), leave out the words "the boundaries of which are described in the Schedule to this Order" 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".

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

- 10 Page 6, leave out paragraphs (3) and (4)

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

Article 5 (power to construct works)

- 11 Page 8, 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).

Article 6 (subsidiary works)

- 12 Page 8, 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 (other than navigation signals and dredging) to the new terminal area, ie to preclude such works also in the dredging limits.

- 13 Page 8, 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 (other than navigation signals and dredging) to the new terminal area ie to preclude such works also in the dredging limits.

Article 7 (power to deviate)

- 14 Page 9, leave out paragraph (2).

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

Article 8 (power to dredge)

15 Page 9, 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.

Article 10 (Scottish Ministers' approval of tidal works)

16 Page 9, 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 Port Babcock Rosyth Harbour Empowerment Order 2009 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 any operations authorised by article 8 (power to dredge) of the [201...] Order and 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.

17 Page 10, 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.

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

After article 18 (special exemptions) insert the following new article-

“For protection of Forth Ports

[...] Schedule [...] (For protection of Forth Ports) has effect.

Reason: to introduce new Schedule (see below).

Schedule (Port Limits)

18 Leave out the Schedule to the Order (Port Limits).

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

New Schedule

Insert the following new Schedule-

“For protection of Forth Ports.

1 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

2 (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.

- 3 Subject to paragraph 21, no tidal work or dredging undertaken by the Company is subject to any of the controls in sections 63 to 26 of the Forth Ports Authority Order 1969.
- 4 (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

- 5 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

- 6 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

- 7 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

- 8 (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

- 9 (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

- 10 (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

- 11 (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

- 12 (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 conservancy 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

13 (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) The Company's harbour master must not give or enforce any special direction to any vessel under section 52 of the 1847 Act, as incorporated by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847) of the 2009 Order, if to do so would conflict with a special direction given to the same vessel by Forth Ports' harbour master.

(5) 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

- 14 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

- 13 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.

FORTH PORTS CEMP SUBMISSION APPENDIX 2 (14/3/12)

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.

SCOTTISH STATUTORY INSTRUMENTS

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](#)

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. Power to dredge~~
- ~~9.8.~~ Obstruction of work
- ~~10.9.~~ Scottish Ministers' approval of tidal works
- ~~11.10.~~ Period for completion of works
- ~~12.11.~~ Operational land and land within area of Fife Council

PART 4
PORT REGULATION

~~13-12.~~ Charges

PART 5
MISCELLANEOUS AND GENERAL

~~14-13.~~ Saving for Commissioners of Northern Lighthouses

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~~3-15.~~ Crown rights

~~17-16.~~ Environmental requirements

~~18-17.~~ Special exemption

18. For protection of Forth Ports Limited

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^a and all other powers enabling them to do so.

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

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^d as relevantly amended by Council Directive 97/11/EC^c and Council Directive 2003/35/EC^e 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.

^a 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).

^b Schedule 2 was relevantly amended by the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 9.

^c Paragraph 4 of Schedule 3 was substituted by S.I. 1999/3445.

^d O.J. L 175, 5.7.1985, p.40.

L 73, 14.3.1997, p.5.

L 156, 25.6.2003, p.17.

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^d.

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^e 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^k.]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^b, 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^d and this Order shall be read together and may be cited together as the Port Babcock Rosyth Orders 2009 to 201[X].

Interpretation

1.2. (1) In this Order —

"1964 Act" means the Harbours Act 1964^e;"1969 Act" means the Forth Ports Authority Confirmation Order Act 1969^f

"2009 Order" means The Port Babcock Rosyth Harbour Empowerment Order 2009^g;

"berthing pocket" means the area shown hatched at sheet no VI of the deposited plans;

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

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

"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;

~~"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 of the deposited plans;~~

"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 blue in 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 ;

"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 and forming sheet no. I 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 ~~but excluding any operations authorised by article 8 (power to dredge)~~ and excluding the projection over waters by booms, cranes and similar plant and machinery operating within the port;

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

"works site" means the part of the port shown ~~outlined by a broken red line on sheet no. II of the deposited plan~~ on the works site plan 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.

- (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

3-(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 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 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."

(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.

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

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

~~(a) a direction shall be construed as if the words "or thereabouts" were inserted after that direction; and~~

~~(b) a point is a reference to that point as shown on the port map and to the castings and northings of that point which are stated in the table on the port map.~~

~~(4) The area described in the Schedule 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.~~

(45) 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]".

PART 3 WORKS PROVISIONS

Power to construct works

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

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

Work No. 2 — in-filling of the void behind the quay walls formed by Work No. 1; Work No. 3 — lighting columns with elevations not exceeding 25 metres in height;

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

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

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

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

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

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

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

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

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

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

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

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

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

Work No. 17 — preparation for use as a berthing pocket of the proportion of the base of the existing void at the works site as remains exposed after completion of Work No. 1; Work No. 18 — removal of the section of sea wall embankment behind and revetment in front shown crosshatched on sheet no. IV of the deposited plans, reduction of underlying bed level and stabilisation of the entrance portal so created and flooding of the berthing pocket formed by such and Work No. 1; Work No. 19 — dolphin structures and associated walkways at the locations shown on sheet no. III of the deposited plans; and Work No. 20 — repair and maintenance of the Contractors Jetty with associated piling.

~~(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 ~~works site 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.

(2) Without prejudice to paragraph (1), the Company may within the ~~works site 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—

(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

~~77. (1)~~ 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.

~~(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 and up to one metre downwards.~~

Power to dredge

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

~~(a) to form a turning area and channel 150 metres wide dredged to 8.5 metres below chart datum in the position shown outlined by short broken blue lines on sheet no. VI of the deposited plans, to allow vessels access to and egress from the works site; or~~

~~(b) as may be required for the purpose of maintaining the works so described, the berthing pocket to be formed by Work No. 18 or any existing berthing pocket, turning area, channel within or approach or channel leading to the port limits, to enable uninterrupted means of access to the port by vessels and enabling the use of the port at all states of the tide.~~

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

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

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

Obstruction of work

~~89.~~ Any person who —

(a) intentionally obstructs any person acting under the authority of the Company in setting out the lines of or in constructing the works; or

- (b) without reasonable excuse interferes with, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out,

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

Scottish Ministers' approval of tidal works

910. 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 Port Babcock Rosyth Harbour Empowerment Order 2009 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 any operations authorised by article 8 (power to dredge) of the [201...] Order and excluding the projection over waters by booms, cranes and similar plant and machinery."

~~(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.~~

Draft/ 21.12.2010

~~(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).~~

Period for completion of works

~~110.~~(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 date of the coming into force of this Order 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)~~(2) A consent given under paragraph (1) may be given unconditionally or subject to terms and conditions.

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

~~(5)~~(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.

~~(4)~~(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

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

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

PART 4

PORT REGULATION

Charges

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

~~(2)~~(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

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

Saving for other consents etc.

154. 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.

Crown rights

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

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

~~(2)~~(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)~~(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

~~17.~~16.(1) Subject to paragraph (2), in constructing the works, the Company shall act in accordance with the commitments given in the 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.

(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 which is binding on the Company.

Special exemptions

~~17.~~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 neither to the exercise by the Company of the powers of article 5 (Power to construct works) nor article 8 (Power to dredge) of this Order.

For protection of Forth Ports

18. Schedule [...] (For protection of Forth Ports) has effect.

Name
[Doquet]

St Andrew's House
Edinburgh

[] 201[X]

SCHEDULE
PORT LIMITS

Article 3

SCHEDULE [...]

For protection of Forth Ports

1. 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

2. (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.

3. Subject to paragraph 21, no tidal work or dredging undertaken by the Company is subject to any of the controls in sections 63 to 26 of the Forth Ports Authority Order 1969.

4. (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

5. 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

6. 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

7. 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

8. (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

9. (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

10. (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

11. (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

12. (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 conservancy 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

13. (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) The Company's harbour master must not give or enforce any special direction to any vessel under section 52 of the 1847 Act, as incorporated by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847) of the 2009 Order, if to do so would conflict with a special direction given to the same vessel by Forth Ports' harbour master.

(4) 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.

(5) 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

14. 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

15. 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.

The text outlining details of the port has been redacted in full for confidentiality at a point in the Schedule in the redacted area. The redacted area covers the text from point 12 to point 19 and includes an existing reference to point 12, which in a hierarchy directed to point 19 and then an existing reference back to point

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 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 ~~89~~ creates an offence of obstructing the works.

Article ~~94~~ provides for approval of tidal works.

Article ~~140~~ makes provision as to the time limit for completion of the works authorised under article 5(1) and (2).

Article ~~121~~ provides for land within the port limits to be deemed to be operational land for the purposes of the Town and Country Planning (Scotland) Act 1997 and to lie within the area of Fife Council if it otherwise would not do so.

Part 4 makes provision as to port regulation.

Article ~~132~~ authorises the Company to levy charges.

Part 5 makes miscellaneous and general provisions.

Articles ~~143~~ to ~~165~~ make saving provision, including making clear that in carrying out any works or operations pursuant to this Order the Company must obtain any other consent required for those works or operations under the terms of any other enactment.

Article ~~176~~ makes provision as to compliance by the Company with commitments given in the Environmental Statement accompanying its application for the Order.

Article ~~187~~ makes provision for special exemptions for the works authorised by this Order from restrictions on works and dredging in the Forth.

Article 18 introduces Schedule [...] which makes provision for the protection of Forth Ports Limited.

SCOTTISH STATUTORY INSTRUMENTS

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 201[X]