

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

PINS – TR030001

Objector Reference – 10015525

Proposed AMEP

Associated British Ports - Responses to ExA Questions

39. Please clarify the current status of any consultation draft Master Plan for the Port of Immingham. Specifically:

(a) Would this have any status other than as a public statement of ABP's intentions?

National Policy Position on Port Master planning

39.1 Port Master Plans have, since July 2007, assumed an important role within the planning process. This role is set out in national ports policy, whereby the Government recommended that the major UK ports (which includes the Port of Immingham) produce Master Plans, and consult upon these plans, so as to assist with the co-ordination of future planning¹.

39.2 Subsequent Master Plan guidance issued in 2008 by the Department for Transport indicated that such plans should be produced by major ports (defined as those handling in excess of 1 million tonnes), in order to:

- clarify their strategic plans over the medium to longer-term;
- assist local and regional planning bodies and transport network providers in preparing and revising their development strategies;
- inform port users, employees, local communities and stakeholders of anticipated development over the coming years

¹ National policy on Port Master Plans is provided within 'Ports Policy Review – Interim Report' (DfT July 2007) and guidance on port master plans is contained within 'Guidance on the Preparation of Port Master Plans' (DfT December 2008). These aspects of policy relating to master plans have not been superseded by the National Policy Statement for Ports.

DfT Guidance on Port Master Plans

39.3 In their 2008 Guidance, the Department for Transport state that Port Master Plans are expected to set out:

- *how the port expects to grow and develop its business over time;*
- *why this is feasible in the context of wider patterns of supply and demand;*
- *where changes of land-use are likely to be required to support growth areas;*
- *what alternative ways of meeting demand have been and will be considered;*
- *what environmental measures will be taken to ensure that not only are adverse effects mitigated, but as far as possible the port makes a positive contribution to environment and amenity;*
- *when individual development proposals will be put forward;*
- *how people will be consulted — both within the master planning process itself, and beyond; and*
- *how the port's development plans integrate, support and inform the regional and local economic, transport and planning policy context as the result of close liaison with local and regional planning bodies during the production of the master plan.*

39.4 DfT continue by stating:

Master planning is not just for the benefit of regional and local planning bodies and local stakeholders; we believe that the process of producing a master plan will benefit the port itself in a number of ways:

- *engaging with local and regional planning bodies at an early stage of expansion plans will allow port development to be incorporated at various levels of spatial planning and will help to secure the buy-in of these crucial stakeholders;*
- *keeping local stakeholders informed of the business direction of the port will help the port to build good working relationships locally;*
- *being clear and transparent about demand forecasts and expansion plans will raise the profile of the port both locally and nationally; and*
- *strategically considering future developments will reduce the lead-time for individual projects when they come to fruition.'*

39.5 One of the driving factors behind the publication of the draft Master Plan for Immingham, apart from compliance with Government guidance, was the emergence of relevant local and regional policy for the Yorkshire and Humber area, the Master Plan thereby being able to play its part in identifying and protecting what is required to ensure compliance with the Government's strategy for the sub-region and the region as a whole – as well as ensuring that the Port of Immingham's importance to the overall UK economy is highlighted.

Current Status of Immingham Port Master Plan

39.6 The current status of ABP's Master Plan for the Port of Immingham is that the draft has been subjected to extensive public consultation commencing March 2010 and the final version of the Plan is in the last stage of completion, having regard to the consultation responses generated. This final version is expected to be adopted before the end of the AMEP examination period.

39.7 The Master Plan sets out the strategy for, and details the anticipated development of the Port of Immingham in the years to 2030. Given that the final version of the Plan will have had regard to the results of the extensive public consultation exercise undertaken, it cannot be dismissed as a document that merely sets out ABP's intentions for the future development of the Port of Immingham. To do so would be to overlook the public policy objectives of port master planning as set out in extant National Ports Policy and, indeed, to ignore the extensive public consultation exercise – which exercise has involved Able. The only material change in the final version of the Master Plan, as compared to the consultation version that is relevant to this Examination is the identification of the use of the Western Deepwater Jetty specifically as a bulk liquids jetty. This is discussed in more detail in paragraph 40.4 onwards below.

In summary, in light of the Port of Immingham Master Plan's provenance, it should be given significant weight as a material consideration in the determination of the AMEP development proposal.

(b) When was the most recent consultation draft produced and circulated?

39.8 The Port of Immingham Master Plan was first promoted by ABP in March 2010 with the aim of engaging with members of the public via consultation events, as well as with established stakeholders via a written consultation process. Public consultation events and a consultation exercise involving statutory consultees was undertaken in spring/summer of 2010. The

feedback from these consultation exercises has been incorporated into a revised document, which will be adopted later this year. It is important to note that the adopted Plan will take account of not only the consultation responses that we have received, but also an updated appraisal of how prevailing market conditions are impacting upon business direction.

(c) Is that draft an accurate reflection of ABP's current intentions?

39.9 The ABP consultation draft Master Plan reflects ABP's emerging development plans for the Port of Immingham and reflects commercial conditions that existed at the time of its circulation as a consultation draft. The final version of the Master Plan, which is expected to be adopted later this year, will have taken into account comments from both statutory and non-statutory consultees as well as changes resulting from commercial developments at the Port and the wide range of customers it serves. It will confirm the need, firstly, to redevelop the Immingham Gas Terminal jetty for dry bulk cargoes and, secondly, to construct the Western Deepwater Jetty for liquid bulk cargoes albeit sooner than was originally envisaged. The rationale for this is discussed in ABP's response to question 40.

(d) Where does it show provision for the replacement gas jetty?

39.10 The Western Deepwater Jetty has always been identified as a strategic expansion opportunity for the Port. It is shown, for example, in Figure 7.2 of the consultation version of the Port Master Plan ('Port of Immingham Land Use 2030')²

39.11 During the public consultation period it emerged that the physical limitations of the Immingham Oil Terminal and its physical distance from the Phillips 66 and Calor Gas underground gas caverns (one of the main liquid cargo storage areas) were such that it would be unlikely to prove feasible to relocate liquefied gas cargoes from the Immingham Gas Terminal jetty to the Immingham Oil Terminal. These cargoes will therefore be accommodated on the Western Deepwater Jetty (WDJ), although it is anticipated that the WDJ will provide more than just replacement capacity to the adjacent Immingham Gas Terminal jetty. This is further explained in the answer to question 40.

² Indeed, it is relevant to point out that the site is also identified in the North Lincolnshire Local Plan – see para 5.1 of John Fitzgerald's written representations in relation to the proposed CPO

40. **What are ABP's current intentions for the 'Western Deepwater Jetty' site? Specifically:**

(a) **Is it solely to replace the existing Immingham Gas Jetty to allow the development of a third solid fuel berth ('HIT3')?**

40.1 The Western Deepwater Jetty (WDJ) has been identified and allocated in the Master Plan with a view to further enhancing and expanding liquid bulk handling capacity at the Port of Immingham, through the provision of additional deepwater berthing capacity for Panamax-sized vessels.

Construction of the WDJ will provide:

- Suitable alternative capacity for Liquid Petroleum Gas and White Oils traffic displaced from the Immingham Gas Terminal jetty given that redevelopment of this berth for further solid bulk cargoes is necessary sooner than originally envisaged,
- Further liquid bulk handling capacity at the Port in order to accommodate new cargoes. In this regard, ABP has already outlined its intention to work with a major international company active in the bulk liquids market, who has already signed a Memorandum of Understanding with ABP, for the handling of cargoes such as kerosene and aviation fuel, and
- Opportunities to target new cargoes such as Liquefied Natural Gas for the emerging marine bunker supply market.

By way of additional background:

Dry Bulks Cargoes

40.2 Expansion of dry bulk handling facilities for deep-sea vessels at the Port of Immingham will constitute a vital development aspiration opportunity at the port in the near future. The port already handles more dry bulks than any other UK port, and is a major part of the energy supply industry. Proximity to power stations, a number of heavy industries and effective road and rail links will ensure that dry bulks remain a major feature of any future cargo streams transiting the port or, indeed, for use at the already consented biomass-fuelled power stations at the Port of Immingham.

Liquid Bulks Cargoes

- 40.3 The Port's liquid bulk cargoes are also set to increase in volume, with increases in ship size also an inevitable consequence of the ongoing globalisation of energy and fuel-related cargoes. Liquid bulk traffic through UK ports is set to become a significant business growth area, particularly when viewed in the context of declining indigenous refining capacity and increased global interest in the international LNG market and other liquefied gases. The proximity of the Government Pipeline Storage System (GPSS) to the South Killingholme storage site makes the development of the Western Deepwater Jetty a rare and nationally important opportunity to increase energy security.
- 40.4 The Immingham Deepwater Jetty has reached the stage of a Memorandum of Understanding (MoU) between ABP and an existing liquid bulks customer at the port (which is a major international company active in the bulk liquids market) for the importation of liquid bulks (fuels). The customer's interest is heightened by the possibility of an interface in to the GPSS facilitated by the proximity of the site to the South Killingholme Jetty, owned by the Oil and Pipelines Agency (OPA). Indeed recent news of the impending privatisation process of OPA assets including the GPSS network is likely to accelerate interest in realising the opportunities for liquid bulk and fuel cargoes to transit the western part of the Port of Immingham.
- 40.5 The business case for this additional berthing capacity on the Immingham waterfront at the Western Deepwater Jetty is further highlighted by the ability to be able to accommodate displaced gas jetty traffic, most notably Liquid Petroleum Gas (LPG). The case for retaining LPG traffic at the western part of the port is underlined by the need to maintain proximity of the point of import to the Phillips 66 and Calor Gas underground gas cavern network at South Killingholme.
- 40.6 The ability to relocate and build upon existing gas jetty traffic is an essential part of the Port of Immingham's business direction, as it will necessarily pave the way for the expansion of dry bulk (both solid fuels and developing biomass traffic) handling capacity at the Humber International Terminal (the HIT 3 jetty). Renewable fuel generation is becoming a significant growth area within the port, as the UK starts to move towards a low-carbon economy. To summarise, therefore, ABP anticipate that the proposed Western Deepwater

Jetty will be required to handle a range of liquid bulk cargoes, including petroleum products, kerosene, aviation fuel, LPG and other liquefied gases such as LNG.

- 40.7 The development of the Western Deepwater Jetty is supported by Government policy. The National Policy Statement for Ports (January 2012) states, for example, in relation to energy supplies:

'Ports have a vital role in the import and export of energy supplies, including oil, liquefied natural gas and biomass, in the construction and servicing of offshore energy installations and in supporting terminals for oil and gas pipelines.'

It is also important to note that ABP, in promoting the development of the Western Deepwater Jetty, is responding directly to the needs of an existing customer of the Port and therefore the need for this development is demonstrable. At the time of writing, and in contrast to the position in relation to the Western Deepwater Jetty, AMEP has not identified a customer and, therefore, the need for AMEP cannot be said to be demonstrable.

- (b) If so, what is the status of HIT3 in terms of the acquisition of necessary consents?**

- 40.8 Alterations to the jetty face and berthing facilities at the current Immingham Gas Terminal Jetty in order to construct HIT3 so as to accommodate dry bulk cargoes would necessitate the promotion of a Harbour Revision Order under the Harbours Act 1964. Such an Order has been drafted and a copy is attached to this response. A Marine Licence in terms drafted by the Marine Management Organisation will also be required.

- (c) Has a Harbour Revision Order been prepared or submitted to the Marine Management Organisation, and what is its current progress?**

- 40.9 As explained above, a draft HRO has been prepared and a copy is attached to this response. Subject to several relatively minor amendments relating to the detailed specification of the proposed design of the structure, we expect the draft HRO to be submitted to the Marine Management Organisation later this year and certainly before a decision on AMEP. It is important to note that the proposed HRO encompasses not just the necessary restructuring at the Immingham Gas Terminal Jetty to allow for the creation of a dry bulks handling berth, but also the construction of the Western Deepwater Jetty,

which we anticipate will be required at the same time, as part of the Port's expansion programme.

(d) Is there a current Environmental Statement? How does it assess the impacts of development on the 'triangle' site? And how does it propose to mitigate or compensate for them?

40.10 An environmental feasibility study of the Immingham Western Deepwater Jetty has been completed and is currently being used to produce an environmental scoping report.

40.11 ABP's ongoing environmental monitoring programmes along the Immingham river frontage as part of its consent to build the Immingham Outer Harbour is providing a ready supply of appropriate base-line environmental data. This will facilitate an early completion of an Environmental Statement relating to the proposal.

40.12 It is important to note that (based on ABP's significant experience of developing Habitats Regulations-compliant port facilities), the nature of the development being considered - a piled jetty structure with a dredged berth pocket - represents the least environmentally-damaging development option at this location. It is yet to be determined whether the proposal triggers a requirement to mitigate and/or compensate for its environmental impact (although ABP has established itself as an organisation that is prepared to mitigate and, where necessary in order to ensure the ongoing coherence of Natura 2000, compensate for the impacts of its Port developments).

64. Directed to Able UK, but for which ABP would like to submit a written response: Does AMEP submit that its case for acquisition [of ABP's land] should stand on:

(a) The extent to which its plans for the use of this land can be demonstrated to be more advanced than those of ABP might be?

(b) The importance or significance of its proposed use of the land as an NSIP compared to the plans of ABP?

ABP's response below covers questions 64(a) and 64(b).

64.1 The Western Deepwater Jetty project is one that is of national strategic importance, necessary for the continuity of national energy supplies. In so far as a comparison has to be made between ABP's plans and Able's plans, ABP is the more important national interest, with more immediate benefits to the nation.

64.2 Further the categorisation of a project, such as AMEP, as an NSIP (which, in any event, ABP does not accept) does not give any indication of its relative importance to the nation.

64.3 Even if Able could justify in general terms a need for a facility of the kind they propose, such a facility could be realistically accommodated on a smaller site which would not prohibit the development of ABP's Western Deepwater Jetty. The largest supplier in this market (Siemens) has confirmed their berthing requirements at Hull for a quayside around half of that being promoted by Able. We remain firmly of the view that it is possible to meet the (as yet unproven) need for the development within a much-reduced site 'footprint', which would eliminate any requirement to acquire ABP's land, land which is needed by ABP as part of its statutory undertaking.

(c) The ability of ABP to find alternative sites for its proposed use within its existing estate?

64.4 There are no suitable alternative sites for the Western Deepwater Jetty in ABP's estate.

Glossary of Terms

GPSS Government Pipeline Storage System – a UK pipeline system run by the Oil and Pipelines Agency (OPA) for the Ministry of Defence, comprising approximately 2,500km of pipeline. The primary purpose of the pipeline system is to supply the required fuel for defence purposes although, in addition, the OPA encourages the maximum development of private sector usage of the GPSS.

LNG Liquefied Natural Gas – natural gas converted to a liquid form for ease of transport. It is used extensively as an energy source and, increasingly, as a clean fuel source for ocean-going shipping.

LPG Liquid Petroleum Gas – a liquefied gas used for heating buildings and appliances and also, increasingly, being used as an environmentally friendly aerosol propellant and refrigerant.

White Oil A highly refined mineral oil derived from crude oil, that is clear and odourless, often used in lubricants.

Attachment – draft Harbour Revision Order

.....

Osborne Clarke on behalf of
Associated British Ports

7 September 2012

 STATUTORY INSTRUMENTS

2012 No.

HARBOURS, DOCKS, PIERS AND FERRIES

**The Associated British Ports (Port of Immingham Riverside
Quays) Harbour Revision Order 2012**

Made - - - - - ***

Coming into force - - - - - ***

CONTENTS

1. Citation and commencement
2. Interpretation
3. Incorporation of general enactments
4. Power to make works
5. Power to make subsidiary works
6. Power to deviate
7. Fine for obstructing works
8. Power to dredge in Humber
9. Limits of jurisdiction of Dock Master
10. Application of byelaws of A.B. Ports
11. Works to be within the district of North Lincolnshire
12. Tidal works not to be executed without approval of Secretary of State
13. Provision against danger to navigation
14. Abatement of works abandoned or decayed
15. Survey of tidal works
16. Permanent lights on tidal works
17. Lights on tidal works during construction
18. Defence of due diligence
19. For protection of Environment Agency
20. Disapplication of regulation 73 of the Conservation of Habitats and Species Regulations 2010
21. Saving for Trinity House
22. Restrictions on permitted development rights
23. Saving for Crown Rights

Schedule — Restrictions on permitted development rights

Associated British Ports have applied to the Marine Management Organisation for a harbour revision order under section 14 of the Harbours Act 1964(a).

The Secretary of State, as the appropriate Minister for the purposes of section 14, has by an Order(b) under section 42A(c) delegated the functions of the appropriate Minister under section 14(d) to the Marine Management Organisation(e).

The Marine Management Organisation, being satisfied as mentioned in section 14(2)(b) and in exercise of the powers conferred by section 14(1) and (3), makes the following Order.

Citation and commencement

1. This Order may be cited as The Associated British Ports (Port of Immingham Riverside Quays) Harbour Revision Order 2012 and shall come into force on 2012.

Interpretation

2.—(1) In this Order—

“A.B. Ports” means Associated British Ports;

“the Act of 1847” means the Harbours, Docks and Piers Clauses Act 1847(d);

“the 1995 Order” means the Town and Country Planning (General Permitted Development) Order 1995(e);

“Chart Datum” in relation to any depth of dredging is 3.9 metres below Ordnance Datum (Newlyn) as measured in the Grimsby area of the Humber Estuary;

“the deposited plans” and “the deposited sections” mean respectively the plans and sections prepared in triplicate, signed by [] in the Marine Management Organisation and marked “Plans and Sections referred to in The Associated British Ports (Port of Immingham Riverside Quays) Harbour Revision Order 2012” one copy of which is deposited at the Marine Management Organisation and the others at the principal office of A.B. Ports and at its office in Grimsby;

“the Dock Master” means the Dock Master of A.B. Ports at Immingham and Grimsby;

-
- (a) 1964 c.40: section 14 was amended by the Transport Act 1981 (c.56), section 18 and Schedule 6, paragraphs 2 to 4(1) and 14 and section 40 and Schedule 12 (Part II), by S.I. 2006/1177, paragraph 2 and Part 1 of the Schedule, by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 1, by the Planning Act 2008 (c.29), section 36 and Schedule 2, paragraph 8 and 9, and by S.I. 2009/1941, article 2(1) and Schedule 1, paragraph 12. Section 54 (orders and regulations) was amended by the Transport Act 1981 (c.56), sections 18 and 40 and Schedules 6 and 12 (Part II) and by the Marine and Coastal Access Act 2009 (c.23), section 315 and Schedule 21, paragraphs 1 and 3(2).
- (b) S.I. 2010/674.
- (c) Section 42A was inserted, in relation to England and Wales, by the Marine and Coastal Access Act 2009 (c.23), section 315 and Schedule 21, paragraphs 1 and 3(1).
- (d) For the definition of “the Minister” (mentioned in section 14(7)) see section 57(1).
- (e) The Marine Management Organisation was established by the Marine and Coastal Access Act 2009 (c.23), section 1.
- (d) 1847 c.27.
- (e) S.I. 1995/418 to which there have been amendments not relevant to this Order.

“enactment” includes any order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;

“the existing Immingham gas jetty” means the Immingham Gas Jetty in the river Humber authorised by the Associated British Ports Act 1983(a);

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

“the limits of deviation” means the limits of deviation shown on the deposited plans;

“reference point” means Ordnance Survey National Grid reference point;

“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;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“the undertaking” means the undertaking of A.B. Ports as authorised from time to time;

“vessel” means every description of vessel, however propelled or moved, including a hovercraft (within the meaning of the Hovercraft Act 1968)(b), a hydrofoil vessel and anything constructed or used to carry persons or goods by water; and

“the works” means the works authorised by this Order.

(2) 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.

(3) All directions, distances, points and dimensions stated in any description of works, shall be construed as if the words “or thereabouts” were inserted after each such direction, distance, point or dimension.

Incorporation of general enactments

3.—(1) The Act of 1847, except sections 6 to 23, 25, 31, 48 to 50, 79, 80, 84 to 88, 90, 97 and 98 is incorporated with and forms part of this Order.

(2) For the purposes of construing the Act of 1847, as so incorporated—

(a) the expression “the special Act” means this Order;

(b) the expression “the harbour, dock, or pier” means the works;

(c) the expression “the harbour master” means, in relation to the works, the Dock Master and includes any assistants of the Dock Master;

(d) for the definition of “vessel” in section 3 of the 1847 Act there is substituted the definition of the word “vessel” contained in article 2(1); and

(a) 1983 c.viii.

(b) 1968 c.59.

(e) section 53 of the 1847 Act shall not be construed as requiring the Dock Master to serve upon the master of a vessel a notice in writing of his directions but such directions may be given orally or otherwise communicated to such master.

(3) Section 33 of the Act of 1847, as so incorporated, shall not be construed as derogating from the power of A.B. Ports to discontinue any part of the undertaking.

Power to make works

4.—(1) A.B. Ports may, in the lines and situations shown on the deposited plans and according to the levels shown on the deposited sections, make and maintain the following works partly in the district of North Lincolnshire and partly on the bed and foreshore of the river Humber—

Work No. 1

A piled structure comprising—

- (a) a jetty head 100 metres in length between reference points [], and [] and connected to a series of breasting dolphins upstream and downstream, extending to the east up to reference point [], and to the west up to point [];
- (b) an approach jetty connecting the jetty head to the shore commencing at the jetty head at reference point [] and terminating by a connection with the existing sea defences at reference point [].

Work No. 2

An extension of the existing Humber International Terminal berths to the west, [] metres in length, comprising a new piled structure commencing by a connection with the existing Humber International Terminal jetty at reference point [] and terminating at reference point [].
The works will incorporate the redevelopment of the existing Immingham Gas Jetty.

Work No. 3

Realignment of the existing approach jetty roadway to the Immingham Gas Jetty from reference point [] to reference point [] to enable it to accommodate the handling of cargo in connection with the current use of the Humber International Terminal.

(2) In connection with Work No. 1 A.B. Ports may within the area hatched black on sheet 2 of the deposited plans provide facilities for and in connection with receiving, storing and transport of liquid bulk cargoes including storage tanks, pipelines, office accommodation and access road, and a connection with [].

(3) A.B. Ports may, within the limits of deviation and the land hatched black on sheet 2 of the deposited plans, and from time to time alter, enlarge, replace, relay, extend or reconstruct temporarily or permanently the works.

(4) The works shall for all purposes form part of the undertaking.

Power to make subsidiary works

5. A.B. Ports may from time to time within the limits of deviation erect, construct and maintain all such works, conveniences, appliances and apparatus as they from time to time deem necessary or convenient for the purposes of or in connection with or incidental to, the construction and maintenance of the works or the accommodation of vessels at the works.

Power to deviate

6. In constructing the works A.B. Ports may deviate laterally from the lines or situations shown on the deposited plans and described in article 4 (Power to make works) to the extent of the limits of deviation and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding three metres upwards and to such extent downwards as may be found necessary or convenient.

Fine for obstructing works

7. Any person who intentionally obstructs any person acting under the authority of A.B. Ports in constructing the works or who intentionally or recklessly interferes with equipment or materials used in the construction of the works shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Power to dredge in Humber

8.—(1) For the purposes of affording uninterrupted means of access to the works and of enabling their use at all states of the tide, A.B. Ports may from time to time deepen, dredge, scour, cleanse, alter and improve the bed, shores and channels of the river Humber—

- (a) within an area adjoining Works No. 1 equal in size to the area stippled blue on sheet 2 of the deposited plans, to a maximum depth of 14.7 metres below Chart Datum (dredged berth pocket);
- (b) within the area stippled red on sheet 2 of the deposited plans, to a maximum depth of 10 metres below Chart Datum (dredged approach channel and turning area);
- (c) within an area [under and] adjoining Work No. 2 the area stippled blue on sheet 3 of the deposited plans, to maximum depth of 14.7 metres below Chart Datum (dredged berth pocket);
- (d) within the area stippled red on sheet 3 of the deposited plans, to a maximum depth of 10 metres (dredged approach channel and turning area);

and may (subject to paragraphs (2) and (3)) as it thinks fit use, appropriate or dispose of the materials from time to time taken up or collected by it in the course of any such operations.

(2) No materials referred to in this article shall be deposited below the level of high water otherwise than in such places and in accordance with such restrictions as may be prescribed by the Marine Management Organisation under a marine licence granted under Part 4 of the Marine and Coastal Access Act 2009(a).

(3) The power to use, appropriate or dispose of materials referred to in this article shall not extend to wreck (within the meaning of Part IX of the Merchant Shipping Act 1995)(b) found by A.B. Ports.

Limits of jurisdiction of Dock Master

9. The limits within which the powers of the Dock Master in relation to the works may be exercised under and subject to the provisions of the 1847 Act, as incorporated with this Order, shall extend to a distance of 200 metres in every direction from those works.

Application of byelaws of A.B. Ports

10.—(1) The Immingham Dock Byelaws 1929 shall, subject to paragraph (2), apply in relation to the works, and nothing in this Order shall affect the right of A.B. Ports to enforce the byelaws or to amend or revoke them.

(2) In the Immingham Dock Byelaws 1929 as applied by paragraph (1), references to “the prescribed limits” shall be construed as references to the limits within which the powers of the Dock Master may be exercised under article 9 (Limits of jurisdiction of Dock Master).

(3) In this article the Immingham Dock Byelaws 1929 means the byelaws made by the London and North East Railway Company on 1st January 1929 and confirmed by the Minister of Transport on 4th January 1929.

Works to be within the district of North Lincolnshire

11. So much of the works as are beyond low water shall be deemed to be within—

- (a) the district of North Lincolnshire;
- (b) the parish of South Killingholme;
- (c) the local justice area of Grimsby and Cleethorpes.

(a) 2009 c.23.

(b) 1995 c.21.

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

12.—(1) Unless construction has commenced within one year of the coming into force of the Order a tidal work shall not be constructed, altered, enlarged, replaced, relaid, extended or reconstructed except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun.

(2) If a tidal work is constructed, altered, enlarged, replaced, relaid, extended or reconstructed in contravention of this article or of any condition or restriction imposed under this article—

- (a) the Secretary of State may by notice in writing require A.B. Ports at their own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition and, if on the expiration of 30 days from the date when the notice is served upon A.B. Ports it has failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; and
- (b) if it appears to the Secretary of State urgently necessary to do so, he may remove the tidal work or part of it and restore the site to its former condition;

and any expenditure incurred by the Secretary of State in doing so shall be recoverable from A.B. Ports.

Provision against danger to navigation

13.—(1) In case of injury to, or destruction or decay of, a tidal work or any part thereof, A.B. Ports shall as soon as reasonably practicable notify Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House shall from time to time direct.

(2) If A.B. Ports fails to notify Trinity House as required by paragraph (1) or to comply in any respect with a direction given under that paragraph, it shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Abatement of works abandoned or decayed

14.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require A.B. Ports at its own expense either to repair and restore the work or any part of it, or to remove the work and restore the site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the

foreshore, the Secretary of State may include that part of the work, or any portion of it, in any notice under paragraph (1).

(3) If, on the expiration of 30 days from the date when a notice under paragraph (1) is served upon A.B. Ports, it has failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; and any expenditure incurred by the Secretary of State in doing so shall be recoverable from A.B. Ports.

Survey of tidal works

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

Permanent lights on tidal works

16.—(1) After the completion of a tidal work A.B. Ports shall at the outer extremity of that work exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as Trinity House shall from time to time direct.

(2) If A.B. Ports fails to comply in any respect with a direction given under paragraph (1), it shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Lights on tidal works during construction

17.—(1) A.B. Ports shall at or near a tidal work during the whole time of the construction, alteration, enlargement, replacement, relaying or extension thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State shall from time to time direct.

(2) If A.B. Ports fails to comply in any respect with a direction given under paragraph (1), it shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Defence of due diligence

18.—(1) In proceedings for an offence under article 13, 16 or 17 it is a defence for A.B Ports to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, A.B Ports shall not,

without leave of the court, be entitled to rely on that defence unless, within a period of seven clear days before the hearing, it has served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in its possession.

For protection of Environment Agency

19.—(1) The following provisions shall apply for the protection of the Environment Agency (“the Agency”) unless otherwise agreed in writing between A. B. Ports and the Agency.

(2) In this article “the specified work” means the connection of Work No. 1 with the existing shore.

(3) Not less than 28 days before commencing construction of the specified work A. B. Ports shall submit to the Agency plans of that work for its consideration.

(4) The specified work shall be constructed materially in accordance with the plan submitted under paragraph (2) subject to such modifications as may reasonably be required by the Agency to secure that the efficiency of the existing harbour wall for flood defence purposes is not impaired.

(5) In operating and maintaining the specified work and the area adjoining that work A.B. Ports shall secure that the Agency is able to obtain from time to time such access as it may reasonably require for the purpose of maintaining the flood defence capacity of the existing shore while not unreasonably interfering with the operation of the works by A. B. Ports.

(6) Any difference arising between A.B. Ports and the Agency under this article shall be referred to and settled by a single arbitrator appointed by agreement between the parties, on a reference by either party after notice in writing to the other or, in default of agreement, by the President of the Institution of Civil Engineers.

Disapplication of regulation 73 of the Conservation of Habitats and Species Regulations 2010

20.—(1) Regulation 73 of the Conservation of Habitats and Species Regulations 2010(a) (“the Habitats Regulations”) shall not apply to any planning permission which relates to the works and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995(b) for the class of development described as permitted development in Part 11 of Schedule 2 to that Order.

(2) Paragraph (1) does not apply if and to the extent that the works—

- (a) do not form part of the plan and project which was subject to an appropriate assessment in accordance with regulation 61 of the Habitats Regulations in connection with the making of this Order; and

(a) S.I. 2010/490.

(b) S.I. 1995/418 to which there have been amendments not relevant to the Order.

- (b) are not subject to a further consent, permission or authorisation by a competent authority as defined in the Habitats Regulations.

Saving for Trinity House

21. Nothing in this Order shall prejudice or derogate from any of the rights or privileges of Trinity House.

Restrictions on permitted development rights

22. The Schedule to this Order shall have effect.

Saving for Crown Rights

23.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown, and in particular, nothing in this Order authorises A.B. Ports to take, use, enter upon or in any manner interfere with any land, hereditaments or rights of whatsoever description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners without the consent in writing of those Commissioners; or
- (b) belonging to a government department, or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

A consent under paragraph (1) may be given unconditionally or subject to such conditions or upon such terms as may be considered necessary or appropriate.

Signed by authority of the Marine Management Organisation

Date _____ An authorised employee of the Marine Management Organisation
[_____]
Name

RESTRICTIONS ON PERMITTED DEVELOPMENT RIGHTS

Time limits

1.—(1) In their application to the works article 3 of, and Part 11 of Schedule 2 to, the 1995 Order (which permit development authorised by a harbour revision order designating specifically both the nature of the development thereby authorised and the land on which it may be carried out) shall have effect as if the planning permission granted by that Order were limited to such of the works as are substantially commenced within ten years from the coming into force of this Order, or such extended period as the Secretary of State may, on the application of A.B. Ports before the end of that ten year period, allow.

(2) Nothing in paragraph (1) above affects the carrying out of any development which consists of any reconstruction, renewal, alteration, replacement or relaying of the works.

Planning restrictions

2.—(1) In their application, respectively, to—

- (a) development authorised by this Order, and
- (b) 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 Parts 11 and 17 of Schedule 2 to the 1995 Order shall have effect as if the authority to develop given thereunder were subject to the restrictions contained in paragraph 3 below.

(2) For the purpose of the Town and Country Planning 1990(a) the restrictions contained in paragraph 3 below shall be deemed to be conditions imposed on the grant of planning permission.

3. In constructing the works A.B. Ports will:

- (a) comply with the Environment Agency's pollution prevention guidelines for working on construction sites;
- (b) use best practice methods of working wherever practicable; and
- (c) ensure that environmental management and awareness training is provided to all construction staff prior to the commencement of the works on site.

(a) 1990 c.8.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises A.B. Ports to construct and maintain new riverside facilities on the River Humber at Immingham, and confers ancillary powers in connection with the works including powers for dredging and for extending the limits of jurisdiction of the Dock Master.

The deposited plan and sections defined in article 2 of the Order may be inspected during normal hours at the offices of A.B. Ports at Aldwych House, 71 – 91 Aldwych, London WC2B 4HN.

2012 No.

HARBOURS, DOCKS, PIERS AND FERRIES

The Associated British Ports (Port of Immingham Riverside
Quays) Harbour Revision Order 2012

WINCKWORTH SHERWOOD LLP
5 Montague Close
London SE1 9BB
Solicitors and Parliamentary Agents