

MARINE MANAGEMENT ORGANISATION

HARBOURS ACT 1964 (AS AMENDED)

**THE PORT OF TEIGNMOUTH (TRANSFER OF UNDERTAKING)
HARBOUR REVISION ORDER 201[X], AS PROPOSED**

**STATEMENT IN SUPPORT OF APPLICATION FOR THE ORDER BY
TEIGNMOUTH QUAY COMPANY LIMITED**

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1. INTRODUCTION

- 1.1 This statement relates to the application by Teignmouth Quay Company Limited (“TQC”) for the proposed Teignmouth Harbour Revision Order (“the HRO”). Currently, TQC is the harbour authority for the Port of Teignmouth in Devon. TQC is owned by Associated British Ports (“ABP”). The HRO relates to the transfer of functions, property and other matters from TQC to ABP. The application is being made with the concurrence of ABP and has its full support.
- 1.2 The application, made in a letter to the Marine Management Organisation (“the MMO”) dated 2 September 2016, is accompanied by:
- (a) Six hard copies of the draft proposed HRO;
 - (b) An electronic copy of the draft proposed HRO;
 - (c) A hard copy of this statement of support;
 - (d) An electronic copy of this statement of support;
 - (e) Electronic copies of the following local legislation affected by or mentioned in the HRO:
 - Teignmouth Quay Order 1887,
 - Teignmouth Quay Order 1893, and
 - Teignmouth Quays Harbour Revision Order 2004;
 - (f) An electronic copy of a letter in support of the application from ABP; and
 - (g) The fee for the application, paid to the MMO by BACS in advance of the application, in the sum of £4000.
- 1.3 The application is for a harbour revision order to be made under the powers conferred on the Secretary of State for Transport by section 14 of the Harbours Act 1964 which are delegated to the MMO by the Harbours Act 1964 (Delegation of Functions) Order 2010 (S.I. 2010/674).
- 1.4 The HRO would transfer all statutory and other powers and duties in relation to the port of Teignmouth from TQC to ABP. ABP is currently the owner of TQC but, under the relevant local legislation, TQC remains responsible for the statutory dock operation. TQC is therefore making the application for the proposed Teignmouth HRO so that the running of the harbour undertaking can be transferred to ABP, as is the case for the other harbours under ABP ownership.

2. PORT OF TEIGNMOUTH

- 2.1 The Teignmouth Quay operation is a statutory dock operation run by TQC under statutory powers conferred by the Teignmouth Quays Orders 1887 and 1893 and the Teignmouth Quays Harbour Revision Order 2004. TQC is a wholly-owned subsidiary of ABP.
- 2.2 Unusually for an ABP harbour, therefore, the harbour authority is not ABP but an ABP subsidiary. Although ABP is the ultimate owner of the port, the day-to-day management must be carried out by TQC. This creates inefficiencies for ABP which TQC is seeking to

rectify through the making of the proposed HRO. This application is being made with the support of ABP, as demonstrated by the letter referred to above.

3. THE HARBOURS ACT 1964

3.1 Section 14 of the Harbours Act 1964 (“the 1964 Act”) confers powers (now delegated to the MMO as described above) to make an order under that section (known as a harbour revision order) in relation to a harbour for achieving all or any of the objects specified in Schedule 2 to the Act. Under paragraph 1 of that Schedule the HRO can establish as the harbour authority, in lieu of the existing one, an existing body (in this case ABP) designated in that behalf. Under paragraph 5 of that Schedule the HRO can transfer property vested in the harbour authority and held for harbour purposes, as well as the harbour authority’s powers and duties, to another party (in this case ABP). Section 14(3) provides that the HRO may include provision for excluding or modifying any provision of any Act or of any instrument made under any Act.

3.2 Section 14(2)(a) of the 1964 Act provides that written application must be made to the MMO by either the authority engaged in improving, maintaining or managing the harbour or by a person appearing to have a substantial interest or a body representative of persons appearing to have such an interest. Section 14(2)(b) provides that the MMO must be:

“satisfied that the making of the order is desirable in the interest of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships”.

3.3 Because this is not an application for a harbour revision order which, directly or indirectly, authorises a project (within the meaning of paragraph 1 of Schedule 3 to the 1964 Act), prior notification to the MMO under paragraph 3(a) of Schedule 3 to the 1964 Act is not required.

3.4 The application for the HRO under section 14 of the 1964 Act meets the conditions set out in that section. In particular, the application meets the requirements of:

(a) section 14(1) of the 1964 Act because it is made in relation to a harbour which is being improved, maintained and managed by a harbour authority in the exercise and performance of its statutory powers and duties for the purpose of achieving objects falling within Schedule 2 to the Act.

(b) section 14(2) of the 1964 Act because:

(i) the application is made upon the written application of the authority engaged in improving, maintaining and managing the harbour; and

(ii) the making of the HRO is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner.

4. NEED AND JUSTIFICATION FOR THE HRO

- 4.1 The Port of Teignmouth is the only port in the ABP Group which is not owned directly by ABP. This gives rise to a number of operational and administrative inefficiencies in particular:
- (a) whilst the twenty other ports owned by ABP have a single controlling board for all purposes including health and safety and compliance with the Port Marine Safety Code, TQC has its own board comprising certain directors who are also ABP board directors but not all directors. This requires separate board meetings to be held when one meeting a consistent group of accountable directors would be more efficient and appropriate;
 - (b) the fact that TQC is part of the ABP Group but currently holds the Port of Teignmouth rather than ABP holding the Port's business directly often causes confusion for customers, suppliers and employees which can lead to administrative inefficiencies if contracts are initially written in the wrong name or if correspondence, cheques etc are written to ABP rather than TQC;
 - (c) the ABP Group currently has a large number of legacy IT systems which to a significant extent do not interconnect with each other. The Group is in the process of a major business transformation project including the implementation of a single universally applicable IT system using SAP software, however, the separation of TQC's business from ABP's business means that additional, and unnecessary systems processes would need to be created to cater for the fact that Port of Teignmouth is not owned directly by ABP;
 - (d) ABP has a much bigger balance sheet and much greater financial strength and resource than TQC. Accordingly, the transfer of TQC's business to ABP will provide significantly greater financial resource and covenant strength to the Port of Teignmouth.

5. EXPLANATION OF THE HRO

- 5.1 An explanation of, and the need for, each substantive article in the HRO is set out below.
- 5.2 Article 1 is for citation purposes. Article 2 contains definitions for the HRO, including the meaning of "the undertaking" of TQC in relation to the port of Teignmouth, and of "the transfer date" which is 1 January 2017. Article 3 establishes that on the transfer date ABP shall become the harbour authority for the port of Teignmouth instead of TQC.

5.3 Article 4 – Transfer of functions, property, etc

This article effects the transfer in law of all statutory and other powers and duties conferred or imposed on TQC by the local legislation to ABP. It also transfers all property, assets and effects, rights, powers and privileges conferred or imposed on TQC in respect of the undertaking to ABP.

5.4 Article 5 – Byelaws etc

Under this article, any byelaw, regulation, licence or consent made, issued or consented to by TQC prior to the transfer date will be treated as if it had been made, issued or consented to by ABP.

5.5 Article 6 – Contracts to be binding

The purpose of this article is that any arrangement of legal effect affecting TQC's undertaking in respect of Teignmouth will continue to apply but ABP will be substituted for TQC.

5.6 Article 7 – Continuance of proceedings

This article has a similar effect to article 5 but substitutes ABP for TQC in respect of any legal proceedings through the courts or arbitration.

6. CONCLUSION

Paragraph 1 of Schedule 2 to the 1964 Act provides that a Harbour Revision Order may include provisions providing for:

"[...] establishing, as the harbour authority, in lieu of the existing one, an existing body designated in that behalf or a body constituted for the purpose."

Paragraph 5 of Schedule 2 to the 1964 Act provides that a Harbour Revision Order may also include provisions providing for:

"Transferring from the authority to another [...] all or any of the property vested in [...] the authority [...] and held for the purposes of the harbour and, so far as they relate to the transferred property, all or any of the duties and powers imposed and conferred on [...] the authority [...] by a statutory provision of local application affecting the harbour."

For the reasons mentioned above, it is considered that to the extent that any provision contained in the HRO does not fall specifically within other paragraphs of Schedule 2, the provisions of the HRO would be conducive to the efficient functioning of the Port of Teignmouth and it is therefore within the scope of the 1964 Act for them to be included in the HRO.

Dated: 2 September 2016

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On behalf of Teignmouth Quay Company Limited