

2008 No. 1160

HARBOURS, DOCKS, PIERS AND FERRIES

The Teesport Harbour Revision Order 2008

Made - - - - *18th April 2008*

Coming into force - - *8th May 2008*

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PD Teesport Limited has applied for a harbour revision order under section 14 of the Harbours Act 1964(a) (“the Act”);

The Secretary of State is satisfied as mentioned in section 14(2)(b) of that Act;

The Secretary of State for Transport (being the appropriate Minister under subsection (7) of section 14(b) of that Act) in exercise of the powers conferred by that section and now vested in her(c), makes the following Order:—

PART 1

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Teesport Harbour Revision Order 2008 and shall come into force on 8th May 2008.

(2) The Tees and Hartlepool Port Authority Acts and Orders 1966 to 1982, the Tees and Hartlepool Port Authority Scheme 1991 Confirmation Order 1991(d) (“the existing enactments”) and this Order may be cited together as the Teesport Acts and Orders 1966 to 2008.

Interpretation

2.—(1) In this Order—

“the Company” means PD Teesport Limited, a company incorporated under the Companies Act 1985(e) whose registered number is 2636007;

“deposited plans” and “deposited sections” mean respectively the plans and sections (numbered sheets 1, 2, 3 and 4) prepared in duplicate, signed by the Head of Ports Division in the Department for Transport and marked “The Teesport Harbour Revision Order 2008” of which copies are deposited at the offices of the Secretary of State for Transport and the head office of the Company;

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

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

“the river” means the river Tees;

“tidal work” means so much of any work authorised by this Order 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 harbour undertaking of the Company as from time to time existing;

“works” means any works authorised by articles 3 (Power to construct works) and 5 (Subsidiary works).

(2) All points, directions, lengths, areas and other measurements stated in this Order (other than the limits of deviation) shall be construed as if the words “or thereabouts” were inserted after each such point, direction, length, area or other measurement.

(a) 1964 c.40; section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2, 3, 4(1) and 14, and by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 1. Schedule 3 was substituted by S.I. 1999/3445 as amended by S.I. 2000/2391.

(b) For the definition of “the Minister” (mentioned in section 14(7)) see section 57(1).

(c) S.I. 1981/238, S.I. 1997/2971, S.I. 2001/2568 and S.I. 2002/2626.

(d) S.I. 1991/2908.

(e) 1985 c.6.

(3) Reference points specified in this Order shall be construed as references to Ordnance Survey National Grid reference points.

(4) References in the existing enactments to the undertaking of the Company shall be construed as including references to any works carried on by the Company or any of its subsidiaries under or by virtue of this Order.

PART 2

WORKS PROVISIONS

Power to construct works

3.—(1) Subject to the provisions of this Order, the Company may in the lines and situations and upon the lands delineated on the deposited plans and within the limits of deviation shown thereon and according to the levels shown on the deposited sections, construct and maintain the following works in the Borough of Redcar and Cleveland, with all necessary works and conveniences connected therewith—

Work No.1 A wall, including a quay face 1035 metres in length forming berths for vessels, extending into the river enclosing an area of 9 hectares, commencing by a retaining wall south of Teesport Container Terminal 1 at a point at NZ523696454563, thence extending in a straight line into Tees Dock at Potash Quay to a point at NZ523660454526, thence extending in a straight line to a point at NZ523672454514, thence extending in a straight line to the commencement of the quay face at a point at NZ523698454540, thence extending in a straight line in the river to the termination of the quay face at a point at NZ524685454869, thence extending in a straight line by means of a retaining wall to a point at NZ524718454880, thence extending in a straight line to a point at NZ524712454899 at Dabholm Gut, thence extending in a straight line to a point at NZ524678454888, thence extending in a straight line and terminating at a point at NZ524663454935.

Work No 2 A floating pontoon steel fabrication linkspan bridge commencing on the bank of the river at a point at NZ523319454175 and terminating in the river at a point at NZ523382454135 and a series of dolphins forming a mooring and berthing line, including the excavation of that part of the bank of the river under the proposed linkspan bridge and the removal of the Queen Elizabeth II Quay.

(2) The Company may, for the purposes of Work No.1 authorised by paragraph (1), demolish and remove any structures lying within the limits of deviation of Work No.1 (including Teesport Container Terminal 1, the former oil jetty and the roll on - roll off facility at the entrance to Dabholm Gut) and enclose and reclaim so much of the bed of the river and of the foreshore as lies within the limits of deviation and may hold and use the same as part of the undertaking.

(3) Subject to the provisions of this Order, the Company may, within the limits of deviation, reconstruct, extend, enlarge, replace or relay the work and may maintain the same as reconstructed, extended, enlarged, replaced or relaid.

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

Power to deviate

4. In the construction of the works authorised by article 3 (Power to construct works) the Company may deviate laterally from the lines or situations thereof shown on the deposited plans to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the works shown on the deposited sections to any extent not exceeding 1 metre upwards and to any extent downwards as may be found necessary or convenient.

Subsidiary works

5.—(1) The Company may from time to time within the limits of deviation provide and operate such dock facilities, together with works ancillary to those facilities, as may be necessary or convenient for the construction of the works or the operation of the undertaking and for this purpose the Company may construct and maintain buildings, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances and such other works and conveniences as may be necessary or expedient.

(2) Without prejudice to paragraph (1), the Company may, within the limits of deviation, carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the works including—

- (a) works for the accommodation or convenience of vessels (including dolphins and pontoons); and
- (b) works to alter or extend the position of apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines.

Period for completion of works

6.—(1) Subject to paragraph (2), if the works are not completed within ten years from the coming into force of this Order or such extended time as the Secretary of State may on the application of the Company allow, 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 the works shall cease except as to so much thereof as is then substantially commenced.

(2) Nothing in paragraph (1) shall apply to any works carried out under paragraph (3) of article 3 (Power to construct works) or article 5 (Subsidiary works).

Power to dredge

7.—(1) The Company may, for the purposes of constructing and maintaining the works and of affording access to the works by vessels from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the river as adjoin or are near to the works and the approaches thereto and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1995(a)), from time to time dredged by them.

(2) No such materials shall be laid down or deposited—

- (a) in contravention of the provisions of any enactment as respects the disposal of waste; or
- (b) 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 Secretary of State.

Obstruction of works

8. Any person who intentionally obstructs any person acting under the authority of the Company in setting out the lines of the works, or who 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.

Works to be within the area of Redcar and Cleveland Borough Council

9.—(1) On the accretion date, the area of the whole or of so much of the works authorised by article 3 (Power to construct works) and article 5 (Subsidiary works) as shall have been completed

(a) 1995 c.21, *see* section 255(1).

or substantially commenced shall, to the extent that they are outside the area of the Redcar and Cleveland borough council, be annexed to and incorporated with the area of the council.

(2) In this article “accretion date” means whichever of the following dates first occurs, namely, the date when the works so authorised have been completed or the date when the powers conferred by article 6 (Period for completion of works) shall cease to have effect.

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

10.—(1) Unless construction has commenced within one year of the coming into force of this Order, a tidal work shall not be constructed, reconstructed, extended, enlarged, replaced or relaid 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, reconstructed, extended, enlarged, replaced or relaid in contravention of paragraph (1) or of any condition or restriction imposed under that paragraph—

- (a) the Secretary of State may by notice in writing require the Company at its 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 the Company it has failed to take reasonable steps to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or
- (b) if it appears to the Secretary of State urgently necessary so to do, the Secretary of State 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 so doing shall be recoverable from the Company.

Lights on tidal works during construction

11.—(1) The Company shall at or near a tidal work during the whole time of the construction, reconstruction, extension, enlargement, replacement or relaying 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 the Company fails to comply in any respect with any requirement of a direction given under this article, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Provision against danger to navigation

12.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof the Company 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 the Company fails to notify Trinity House as required by paragraph (1) or to comply with any requirement of a direction given under this article it shall be guilty of an offence and 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

13.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the Company at its own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof 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 thereof, in any notice under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Company, 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 so doing shall be recoverable from the Company.

Survey of tidal works

14. If the Secretary of State deems it expedient to do so, the Secretary of State may 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 the Company.

Permanent lights on tidal works

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

(2) If the Company fails to comply in any respect with any requirement of a direction given under this article it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

PART 3

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

16.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a)(summary proceedings by person aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (statutory nuisances and inspections therefor) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the construction or maintenance of the works; and
- (b) that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65, of the Control of Pollution Act 1974(b); or
- (c) that the nuisance is a consequence of the construction, maintenance or use of the works and that it cannot reasonably be avoided.

(2) The following provisions of the Control of Pollution Act 1974, namely—

- (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and
- (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded),

(a) 1990 c 43.

(b) 1974 c.40.

shall not apply where the consent relates to the use of premises by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the construction or maintenance of the works.

Defence of due diligence

17.—(1) In proceedings for an offence under any provision of this Order mentioned in paragraph (2) it shall be a defence for the Company to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) The provisions referred to in paragraph (1) are—

- (a) article 11 (Lights on tidal works during construction);
- (b) article 12 (Provision against danger to navigation); and
- (c) article 15 (Permanent lights on tidal works).

(3) 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, the Company 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 their possession.

Disapplication of Regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994

18.—(1) Regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994^(a) (“the Habitats Regulations”) shall not apply to any planning permission which relates to the development authorised by this Order 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 48 of the Habitats Regulations in connection with the making of this Order; and
- (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

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

Crown rights

20.—(1) Nothing in this Order affects prejudicially any estate, interest, right, power, privilege, authority or exemption of the Crown and, in particular and without prejudice to the generality of the foregoing, nothing in this Order authorises the Company 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 Her Majesty in right of Her Majesty’s Duchy of Lancaster without the consent in writing of the Chancellor of the Duchy of Lancaster; or

^(a) S.I. 1994/2716
^(b) S.I. 1995/418

- (c) belonging to a government department, or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.
- (2) A consent under paragraph (1) may be given unconditionally or subject to such conditions and upon such terms as may be considered necessary or appropriate.

Signed by authority of the Secretary of State for Transport

18th April 2008

Richard Bennett
Head of Ports Division
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises PD Teesport Limited to construct and maintain works on the river Tees adjacent to Tees Dock in the Borough of Redcar and Cleveland. The Order also authorises the Company to carry out subsidiary works. The works will form part of the undertaking of the Company.

The deposited plans and sections referred to in Article 2(1) may be inspected during normal working hours at the offices of P D Teesport Limited at 17-27 Queen's Square, Middlesbrough, TS2 1AH.

STATUTORY INSTRUMENTS

2008 No. 1160

HARBOURS, DOCKS, PIERS AND FERRIES

The Teesport Harbour Revision Order 2008

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