

**MARINE MANAGEMENT ORGANISATION**

**HARBOURS ACT 1964 (AS AMENDED)**

**PROPOSED PORT OF LOWESTOFT (TRANSFER of MUTFORD LOCK) HARBOUR  
REVISION ORDER 2018**

**STATEMENT IN SUPPORT OF APPLICATION FOR THE ORDER BY ASSOCIATED BRITISH  
PORTS**

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## 1. INTRODUCTION

- 1.1. This statement relates to concurrent applications by Associated British Ports and the Broads Authority for Harbour Revision Orders ("the HROs") in order to effect in law the transfer of jurisdiction for, and ownership of, a lock at Lowestoft from Associated British Ports to the Broads Authority. This Statement should be read with the related Statement for the application for the proposed The Broads Authority (Transfer of Mutford Lock) Harbour Revision Order 2017. The Port of Lowestoft order is required to transfer ownership of Mutford Lock and adjoining land together with associated rights and liabilities and statutory responsibilities under local legislation from Associated British Ports to the Broads Authority and to remove Mutford Lock from the jurisdiction of Associated British Ports, and the second Broads Authority order is required to confer jurisdiction in the Broads Authority. One order will not be made without the other. The justification for each order is the same and the respective Statements differ only as to the significance for each body.
- 1.2. The Broads Authority is the navigation authority for the Broads area (including Oulton Broad at Lowestoft) and Associated British Ports is the harbour authority for the Port of Lowestoft. The HROs relates to the lock separating the fresh waters of Oulton Broad from the salt waters of Lake Lothing ("Mutford Lock"). Mutford Lock has been part of the harbour undertaking at Lowestoft since the early 19<sup>th</sup> century and therefore fell within the jurisdiction of ABP. Mutford Lock was constructed under the authority of a Private Act of Parliament in the early nineteenth century as part of works which included the opening of Lake Lothing to the sea at its eastern end and the formation of a harbour, together with other works to improve the navigation between Lowestoft and Norwich. The concurrent applications are being made with the mutual concurrence of Associated British Ports and the Broads Authority and have been jointly agreed between them. . The applications are also made with the full support of Suffolk County Council, as the relevant highway authority with bridges over waters covered by the HROs.
- 1.3. The application for the Port of Lowestoft order, (made in a letter to the MMO) is accompanied by:
  - (a) A draft of the proposed HRO, with the relevant plan;
  - (b) This Statement, with location maps and photographs for identification;
  - (c) The fee for the application, paid to the MMO by BACS in advance of the application, in the sum of £4,000.00; and
  - (d) A letter in support of the application from Suffolk County Council.
- 1.4. 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).
- 1.5. The Port of Lowestoft HRO would bring to an end jurisdiction for, and ownership of, Mutford Lock in relation to Associated British Ports and the Broads Authority HRO would transfer harbour jurisdiction for Mutford Lock to the Broads Authority, which has been managing and maintaining Mutford Lock for many years. The Broads Authority, Associated British Ports

and Suffolk County Council are the bodies most directly concerned with arrangements for public passage by water and on highways at this western end of Lake Lothing and together believe that this legal transfer is the appropriate way for their relations with each other to be managed in relation to the most efficient and economical operation, maintenance and improvement of this connection between the waters under the jurisdiction of the Broads Authority and the waters under the jurisdiction of Associated British Ports and further that it is in the best interests of the general public and conducive to the economic and social wellbeing of the town and community of Lowestoft and wider seafaring and Broads boating activities and interests.

## **2. THE BROADS AUTHORITY AND ASSOCIATED BRITISH PORTS**

- 2.1 The Broads Authority is a special statutory authority (with equivalent status to national parks authorities) established by statute in 1988 to manage the area containing the Broads and other waterways under the Norfolk and Suffolk Broads Act 1988 ("the Broads Area"). The Broads Authority is not an elected public body but members are appointed, including those from both Norfolk and Suffolk County Councils and other local authorities. Under the 1988 Act, the Broads Area has the same status as a national park.
- 2.2 Lowestoft is one of the ports in East Anglia owned and managed by Associated British Ports. The name "Associated British Ports" ("ABP") is the successor name for the British Transport Docks Board, which was created in 1962 on the dissolution of the British Transport Commission (established in 1947 following the nationalisation of ports owned by railway and canal companies). ABP is the largest port operator in the UK, running 21 ports and accounting for some 25% of sea-borne trade.
- 2.3 Oulton Broad falls within the area of jurisdiction of the Broads Authority, in particular as navigation authority. The Broads Authority is a planning authority for its area and has three main purposes:
  - (a) conserving and enhancing the natural beauty, wildlife and cultural heritage of the Broads
  - (b) promoting opportunities for the understanding and enjoyment of the Broads by the public
  - (c) protecting the interests of navigation.

In addition, the Broads Authority must consider agriculture and forestry and promoting the economic and social interests of those who live or work in the Broads.

By virtue of its functions of maintaining, for the purposes of navigation, waters in its area navigated by sea-going vessels, the Broads Authority is a harbour authority as defined in the Harbours Act 1964.

- 2.4 Lake Lothing was an inland freshwater lake until the formation of the inner and outer harbours at Lowestoft, after which it became a salt water area. As explained in more detail in paragraph 3.7 below, ABP has come to be the harbour authority through a succession of statutory transfers and as such inherited responsibility for Mutford Lock.

### 3. **LOWESTOFT HARBOUR and MUTFORD LOCK**

- 3.1 The Port of Lowestoft is an important part of the economy of Lowestoft. It is situated near England's most easterly point and is directly opposite major Continental ports. It serves the busy sea routes between the UK and mainland Europe as well as Scandinavia and the Baltic States. The Port is linked by A class roads to the M11, the M1 and the M25. Not far away, Norwich Airport has links to destinations elsewhere in the UK and in Europe.
- 3.2 The Port is home to Lowestoft's inshore fishing fleet and has an important role in cargo handling. For dry bulks, there is a 14,000-tonne capacity silo and storage facility at Silo Quay which accommodates a range of bulk materials, including grain and cement. For general cargo, the Port's inner and outer harbours accommodate project and specialised cargoes. The North Quay Terminal provides mobile cranes, together with 16,000 square metres of storage for forest products, steel, and general cargo. Four modern transit sheds provide 10,000 square metres of storage space. Wide areas of open storage are also available. The Port is capable of handling a wide array of cargo as well as these capabilities and it handles about 100,000 tonnes a year. The total Port area is 97 acres.
- 3.3 The Port is also of importance in relation to offshore opportunities. It is home to the operation and maintenance base for the Greater Gabbard offshore windfarm. Sembmarine SLP Engineering Ltd offers extensive facilities for the construction of large topside-deck structures and jackets destined for the North Sea and other oil and gas fields and wind farms. The Port is home to a substantial fleet of offshore standby/support vessels and facilities are available for ship repairs, including a dry dock.
- 3.4 For many years, it was thought that the Broads were natural landscape features but the results of fieldwork by the noted Norfolk botanist Dr. Joyce Lambert in 1952 revealed that they were artificial creations. Further research in the 1950s on broads separated from river channels and on side valley broads revealed that they had been dug for peat and possibly as far back as the 10<sup>th</sup> century, it being thought that the practice may have been initiated by Danish settlers to obtain fuel, given a relative absence of timber in areas they inhabited. Documentary evidence was found of the large early medieval industry of peat digging, which was a fruitful source of income for landowners and in particular religious institutions. By the late 13<sup>th</sup> century, changes in land and sea levels resulted in the decline of the industry and flooding of the peat diggings, with some then becoming used for fishery purposes.

- 3.5 It is thought that at one time the River Waveney passed to the sea through the Oulton Broad/Lake Lothing valley and that the exposed peat was dug out when exposed by lower water levels. As the river changed its course and the seashore bank built up, Lake Lothing and Oulton Broad were left as freshwater areas. It is known that as far back as the 17<sup>th</sup> century Commissioners of Sewers were made responsible for a breakwater to prevent inundation by the sea through the shingle bank; 19<sup>th</sup> century maps show the length of channel that had to be cut to open Lake Lothing to the sea through what was a substantial width of land by then.
- 3.6 There is a long history of a bridge across a channel between Oulton Broad and Lake Lothing. Saxton showed a bridge on his map of 1576 and that bridge is thought to have been built in 1554. It is possible that the road to the south from the Roman Burgh Castle may have come down to a crossing at the same location.
- 3.7 Proposals were made in the 1820s for the creation of a navigable way from Lowestoft to Norwich. These culminated in the passing of the Norwich and Lowestoft Navigation Act 1827 to give authority for the necessary works, including Mutford Lock, which works were undertaken by the Company of Proprietors of the Norwich and Lowestoft Navigation; the lock was opened in 1833. Unfortunately, as a commercial enterprise, the navigation failed and by 1842 the company had insufficient income to repay the loan from the Public Works Loan Board. The company was bought by a local syndicate in 1843 and a year later by Samuel Morton Peto, a railway entrepreneur responsible for much of the development of Lowestoft. The company was re-constituted and obtained further powers under the Lowestoft Railway and Harbour Act 1845; its interests were then taken over by the Norfolk Railway Company under the Norfolk Railway Act 1846, as extended by the Norfolk Railway (Lowestoft Harbour Improvement) Act 1854. A railway line to Reedham was opened in 1847, to connect to Norwich, with the East Coast line to Ipswich being completed by 1859 (and carried over Lake Lothing by a bridge to the east of Mutford Lock). The Norfolk Railway Company's interests devolved to the Great Eastern Railway Company under the Great Eastern Railway Act 1862. The London and North Eastern Railway Company ("LNERy Company") took over the Great Eastern Railway Company under the Railways Act 1921 but its interests were transferred to the British Transport Commission under the Transport Act 1947.

#### **4. THE HARBOURS ACT 1964**

- 4.1 Section 14 of the Harbours Act 1964 ("the 1964 Act") confers powers (now devolved 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 5 of that Schedule the HRO can authorise the transfer of property vested in a harbour authority together with duties and powers under local legislation relating to that property, under paragraph 6 it can alter the area of jurisdiction of the harbour authority and under paragraph 9 it can empower the harbour authority to dispose of property it no longer requires. It is considered that the purposes of the Order fall within the scope of these provisions. In addition paragraph 17 contains a general power to achieve an object not falling within specific powers but which will be conducive to the efficient functioning of the harbour and in so far as it may be considered that any provision of the Order does not fall within those paragraphs it will fall within the scope of that provision.

- 4.2 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”.*

- 4.3 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. The MMO has been consulted, however, on the proposals.

- 4.4 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 harbour authority; 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.

## **5. NEED AND JUSTIFICATION FOR HRO**

- 5.1 Mutford Lock has been managed, maintained and improved by the Broads Authority for almost 25 years, under arrangements agreed in 1992 for operational responsibility to be transferred from ABP to the Broads Authority and in consideration of ABP having borne the major part of the costs involved in works to bring the lock into a satisfactory state for continued use. This collaborative refurbishment project was achieved as part of a scheme for construction of a new lifting bridge to carry the A1117 road over the waters immediately east of Mutford Lock. That scheme was carried out by Suffolk County Council to replace a swing bridge constructed under an agreement in 1937 with the LNERy Company to replace the swing bridge across the lock (itself a replacement in the late nineteenth century of that originally constructed under the 1827 Act). Suffolk County Council had considered whether it should seek parliamentary powers to close Mutford Lock but decided that an opening bridge would be more appropriate to preserve the navigation way. It also provided a new lifting bridge for pedestrians and cyclists across the lock.
- 5.2 Prior to that road scheme being undertaken, use of Mutford Lock had diminished to such an extent that it was opened only on a Wednesday afternoon between 2 pm and 4 pm, provided that a booking was made 2 weeks beforehand. Given the age of the structure, substantial works were required to the lock walls and floors, the lock gates, the lock gate operating mechanism and for enhanced safety provision. The lock structure comprised brick counter-fort lock walls with a reinforced concrete inverted portal structure forming the locking chamber. General brickwork repairs to damaged areas were undertaken and more significantly excavation and exposure and re-establishment of the integrity of the counter-fort walls by stitch drilling and the installation of reinforcing tie bars. The lock gates were replaced and the lock gate sills refurbished. Further works were carried out later to re-seal and bed in the lock gates satisfactorily and for more brickwork repairs and repointing, with additional drainage. Operation of the lock gates has been changed in recent years from manual to hydraulic. The opening of the lock is undertaken from within the control tower so that it can be undertaken as a combined operation for the lock and the road bridge and also the pedestrian/cyclist bridge across the lock.
- 5.3 It is something of an accident of history that ABP became responsible for Mutford Lock through the succession of statutory transfers. What may have seemed a worthwhile commercial venture in the 1820s (to compete with the river traffic route between Great Yarmouth and Norwich) had already failed by the early 1840s but the harbour operation was and remains a success story. Mutford Lock, however, ceased to be of significance to the operation of the Port as a commercial venture at a very early stage in its life; that remains the case and indeed particularly so as the Port has developed over the last century. Rather than ABP remaining nominally responsible for Mutford Lock (but no longer having any actual engagement in its operation, management, maintenance or

improvement), it is more conducive to the efficient and economical operation, maintenance, management and improvement of the Port of Lowestoft as a whole that jurisdiction over and ownership of Mutford Lock be transferred finally to the Broads Authority under the HROs, thereby confirming what has been the intent behind the arrangements which have now operated successfully for many years. Mutford Lock now serves purposes which are more consistent with the Broads Authority's responsibilities than those of ABP.

- 5.4 Mutford Lock does still provide sea-going access to the Broads, as envisaged in the 1827 Act. Positive decisions were made not to seek to close this facility but rather to take the opportunity to carry out an extensive programme of repair and to bring Mutford Lock into a fit condition for future use. The balance of interest has shifted in favour of it being regarded as a facility which enhances the use and enjoyment of the Broads generally and a more extensive programme of openings to enable leisure craft to pass to and from Oulton Broad is now operated by the Broads Authority and Suffolk County Council. The arrangements for the HROs have also provided an opportunity for ABP, Suffolk County Council and the Broads Authority to re-order their landholdings to best suit each party's needs in the context of the transfer of responsibility. The original refurbishment scheme and continued arrangements have been achieved by collaboration between the three bodies concerned and that remains the case in respect of this HRO application.

## **6. EXPLANATION OF THE HRO AND CONCLUSION**

- 6.1 An explanation of, and the need for, each substantive article in the HRO is set out below. Article 1 is for citation purposes. Article 2 contains definitions for the HRO and a general provision as to the meaning of "the undertaking" of ABP at Mutford Lock for the purposes of the HRO.

### **6.2 Articles 3 and 4 – Harbour jurisdiction and byelaws**

Article 3 is for the cessation of jurisdiction on the part of ABP and bringing to an end all powers, duties, obligations, responsibilities, rights and liabilities of ABP as a harbour authority in respect of Mutford Lock. Accordingly, the Lowestoft Harbour Byelaws will no longer apply to Mutford Lock, as provided for in Article 4.

### **6.3 Article 5 – Transfer of property, functions, etc.**

This article brings about the transfer and vesting of Mutford Lock and the relevant land in the Broads Authority, which will take over all the rights, liabilities, responsibilities and obligations of ABP relating to the transferred land. Any powers and duties relating to Mutford Lock which are conferred or imposed on ABP by any local enactment likewise transfer to the Broads Authority. The exclusion of areas coloured yellow on the HRO plan from the land transfer is because the Broads Authority will have jurisdiction over those water areas but ownership will be vested in Suffolk County Council.

### **6.4 Article 6 – Saving of Agreements, etc.**

The purpose of this article is that any arrangement of legal effect affecting ABP's undertaking in respect of Mutford Lock will continue to apply but the Broads Authority will be substituted for ABP.

### **6.5 Article 7 – Continuance of proceedings**

This article has a similar effect to Article 6 but substitutes the Broads Authority for ABP in respect of any legal proceedings through the courts or arbitration. This is a technical legal protection, although there are no such proceedings known as of the date of this application.

### **6.6 Article 8 – Revocation**

This article repeals provisions of the Oulton Broad Revision Order 1975 which authorises the British Transport Docks Board (ABP's statutory predecessor) and Waveney District Council to enter into agency arrangements for the operation and maintenance of Mutford Lock. This provision would be redundant following the transfer effected by the HRO.

### **6.7 Schedule – Descriptions of Mutford Lock and adjoining land**

Part 1 provides an explanation of the areas of land and water coloured blue on the HRO plan which are to comprise Mutford Lock for the purposes of the HRO, which includes the lock gates but not the road and pedestrian/cyclist bridges (which will remain the responsibility of Suffolk County Council as highway authority). The area coloured blue on the HRO plan will vest in the Broads Authority. As explained in 6.3, ownership of the area coloured yellow on the HRO plan is not to be vested in the Broads Authority in terms of title but will be transferred to the jurisdiction of the Broads Authority and form part of the navigation area for the purposes of the Norfolk and Suffolk Broads Act 1988; Suffolk County Council already has control of that area and title to that area will be vested in Suffolk County Council as highway authority by other means.

Part 2 defines the “adjoining land” which will transfer to the Broads Authority as that coloured pink on the HRO plan and the Broads Authority will become the legal owner of that land rather than ABP.

## **6.8 CONCLUSION**

For the reasons set out above it is considered that this application satisfies the requirements of section 14 to the 1964 Act and that the purposes of the Order fall within the scope of paragraphs 5, 6 and 9 of Schedule 2 to that Act (and in so far as any of the purposes of the Order fall outside the scope of those provisions, within the scope of paragraph 17 of that Schedule).

**Winckworth Sherwood**  
**Solicitors on behalf of Associated British Ports**