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Your ref:

Neil Amner  
Biggart Baillie

By email to [namner@biggartbaillie.co.uk](mailto:namner@biggartbaillie.co.uk)

Our ref:

Date:  
18 June 2013

Dear Mr Amner,

## Harbours Act 1964 - The Rosyth International Container Terminal (Harbour Revision) Order

1. I refer to the application submitted on behalf of your client, Port Babcock Rosyth (the applicant) for the making of The Rosyth International Container Terminal (Harbour Revision) Order (the HRO) under section 14 of the Harbours Act 1964 (the 1964 Act). Following my letter to you of 19 March, which is annexed to this letter for ease of reference, Scottish Ministers have now received and considered the representations made on the modifications, which they proposed to make to the order as recommended in the report of the public local inquiry(PLI).

This letter conveys their final decision and should be read in conjunction with the 19 March letter.

### Representations received

2. A total of 44 representations were received on the proposed modifications with the majority (34) coming from residents of the village of Limekilns immediately to the west of the proposed development. Most of these were existing objectors who had been represented by the Joint Action Group (JAG) at the PLI, although there were 7 representations from other residents. Local residents' representations generally restated their original objections although some made comments on the modifications which they felt would help re-enforce mitigation of likely impacts if the HRO were made. No new issues not considered in the PLI were raised. The main concerns of residents highlighted:-

- on-going concerns over noise from the proposed development and sought assurances that this would be adequately controlled.
- the effects of dredging on the sea wall and the protected habitat of the Firth of Forth SPA
- impact on traffic on A985 and the junction into Limekilns
- the economic case for the development not having been established or examined at the PLI

3. In addition to representations from local residents 10 were received from others including:-

- Forth Ports
- Royal Society for the Protection of Birds (RSPB)
- Fife Council
- Scottish Natural Heritage (SNH)
- Scottish Environment Protection Agency (SEPA)
- Broomhall Estate (owners of the foreshore and seawall)
- Port Babcock Rosyth (the applicant)
- Northern Lighthouse Board (NLB)\*
- Royal Yachting Association (RYA)\*
- Royal Yachting Association Scotland (RYAS)\*

\*These 3 responders had no outstanding issues on the proposed modifications or the making of the order.

4. The applicant and Forth Ports both proposed minor changes to the order to clarify defined terms such as “the Forth” in place of “the river” and correct some typos, which have been accepted.

5. Forth Ports also reiterated its concerns about the making of the Order, and the key areas of its objections. It also proposed a number of other modifications, some of which were accepted while others were considered either contrary to the recommendation of the reporters or otherwise dealt with in the Order.

6. The applicant requested that the coming into force of the revised port limits should take effect immediately the order was made and this has been accepted as the reporters had indicated that if the reduced limits they recommended were accepted, consideration could be given to immediate implementation of the new limit to the east and south of the main basin. In light of that it was considered that a delay in implementation of the limits was not required. The applicant’s further representation as regards the application of byelaws was rejected as byelaws made under this order or the 2009 HEO can only apply in the port. The applicant also sought reassurance that the provision relating to Work 21(the acoustic barrier) would allow other works to proceed if that work was not deemed necessary following consultation with relevant environmental bodies.

7. RSPB and SNH maintained reservations on the making of the order before the full assessment of the impacts of dredging. SNH however noted that Ministers considered it appropriate to make the Order while leaving Marine Scotland to consider and carry out any appropriate assessment in respect of the impacts of the marine works and dredging when a licence for these was applied for. They were satisfied that the additional mitigation measures in the Order and CEMP meant that there was no adverse effect on the Firth Of Forth SPA from the landward elements of the works.

8. SEPA and Fife Council and others suggested further changes to the Construction Environmental Management Plan (CEMP) which will be agreed at a later date prior to construction commencing.

### **The Scottish Ministers’ Consideration**

9. Section 14(2) (b) of the Harbours Act requires that an HRO shall not be made in relation to a harbour unless the appropriate Minister is satisfied that the making of the Order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an

efficient and economical manner or of facilitating the efficient and economical transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships.

10. The Scottish Ministers are satisfied that this modified HRO meets these objectives and that the HRO should be made in the interests of securing the improvement, maintenance and management of the harbour in an efficient and economical manner and facilitating the efficient and economical transport of goods by sea.

11. Ministers have considered the representations made on the modifications proposed by the reporters and have decided to make the order with these modifications as recommended and on which all those with an interest have had the opportunity to comment. They have also decided to make some further modifications, as mentioned above and as proposed in the representations made.

12. These modifications include acceptance of Babcock's representation about the timing of the (restricted) port limits coming into force. In finalising the terms of the Order, Ministers have made a minor revision to the limits proposed at the PLI to ensure that any new infrastructure would be within the limits of the port once constructed (in particular the proposed berthing dolphins).

13. Scottish Ministers are satisfied that the representations raised no new issues not considered at the PLI and that the further minor modifications do not substantially change the character of the Order from the draft which accompanied my letter of 19<sup>th</sup> March.

14. Ministers will require to approve the final version of the Construction Environmental Management Plan prior to works commencing and accept the recommendations that the protective and mitigation measures in version 3 considered by the reporters should not be diluted in the final document. It is not however considered necessary to include in the final Order the provision which appeared at article 17(6) in the last draft.

### **Next Steps**

15. As the Order will, if made, authorise the carrying out of work which constitutes a national development (within the meaning of the Town and Country Planning (Scotland) Act 1997), section 54A of the 1964 Act requires a draft of the Order to be laid before the Scottish Parliament. It can only be made if the draft is approved by a resolution of the Parliament. If made, the Order will come into force on the day following its making. It is intended to lay the draft Order before the Parliament on 20 June.

### **Right to Challenge Decision**

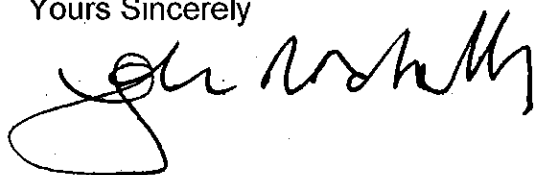
16. If and when the HRO is made, then any person who desires to question its making on the ground that there was no power to make the HRO or that a requirement of the 1964 Act was not complied with in relation to the HRO may, within six weeks from the date on which the HRO becomes operative, make an application for this purpose to the Court of Session.

Any person thinking of challenging the decision to make the HRO is advised to seek legal advice before taking any action.

### **Availability of Decision**

17. A copy of this letter is being sent to all those who were consulted/made objections or representations on the order and will be published on the Transport Scotland website.

Yours Sincerely



**JOHN NICHOLLS**

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By email to [namner@biggartbaillie.co.uk](mailto:namner@biggartbaillie.co.uk)

Date:  
19 March 2013

Dear Neil,

## **Harbours Act 1964 - The Rosyth International Container Terminal (Harbour Revision) Order**

1. I refer to the application submitted on behalf of your client, Port Babcock Rosyth (the applicant) for the making of The Rosyth International Container Terminal (Harbour Revision) Order (the HRO) under section 14 of the Harbours Act 1964 (the 1964 Act). This letter conveys the Scottish Ministers' intentions following the Public Local Inquiry.

### **Purpose of the HRO**

2. The order would authorise the construction and operation of an international container terminal on the site known as RD57 to the west of the main basin at Port Babcock Rosyth and would extend the current port limits on the seaward side of the port. In addition it would amend existing powers of the applicant in respect of dredging and charges and would exempt the applicant from the requirements to obtain works and dredging licences from Forth Ports as harbour authority for the river Forth.

3. The works authorised to be constructed and operated include:-

- New quay walls within the existing void and infilling behind them
- Lighting columns and an electrical substation
- Truck holding and container stacking areas
- Various buildings related to the operation of the terminal
- Security fencing and car parking areas
- Various types of cranes to load and unload containers from ships
- Removal of a section of sea wall/embankment to flood the existing void and create a berthing pocket
- Berthing dolphins and repairs to the contractors' jetty

### **Pre-application Consideration of Environmental Impact**

4. Having been advised of the intention to make an application, Ministers consulted with the applicant, Scottish Natural Heritage ("SNH"), Scottish Environment Protection Agency ("SEPA") and Fife Council to determine whether the proposed order would authorise a project which falls within Annex I or II of the Directive 85/337/EEC as amended by 97/11/EC and 2003/35/EC and if so whether it was a relevant project in terms of paragraph 4 of Schedule 3 to the 1964 Act.

5. Following that consultation Ministers concluded that the works were a project falling within Annex II and that it was a relevant project due to its size and location. In accordance with paragraph 5 of Schedule 3 to the 1964 Act they advised the applicant accordingly on 17 August 2010.

## The Application

6. The applicant is the statutory harbour authority for Port Babcock Rosyth and submitted an application for a HRO under section 14 of the Harbours Act 1964 to Scottish Ministers on 18 January 2011

7. Notice of the application was advertised in the Dunfermline Press and the Courier and Advertiser on 20 and 27 January 2011 and in the Edinburgh Gazette on 21 January 2011.

## Objections

8. Scottish Ministers received 75 objections within the 42 day statutory notice period provided for in Schedule 3 to the 1964 Act, which ended on 4 March 2011. The majority (69) of the objections were from residents of Limekilns and other villages to the west of the site. Other objectors included Forth Ports, RSPB, DFDS, SEPA and Historic Scotland.

9. Five letters of support for the proposal were also received and representations on the Environmental Statement were received from Northern Lighthouse Board, Marine Scotland, Scottish Natural Heritage (SNH) and Fife Council.

10. The grounds of the objections included:-

- Noise both from construction and operation
- Adverse impacts on protected species and habitats
- Effects of dredging and construction on marine sediments
- Impacts on navigation
- Impacts of increased road traffic on local roads
- Lack of economic case for the development

11. Following the 42 day notice period the applicant entered into correspondence with the objectors to attempt to address the issues raised.

12. Further information was provided by the applicant in the form of three additional reports which were advertised in the local press on 19 and 26 May 2011 and in the Edinburgh Gazette on 27 May 2011. Four objections were subsequently withdrawn.

## Handling of Objections

13. In terms of paragraph 18 of Schedule 3 to the 1964 Act, where there are unresolved objections, it is open for Scottish Ministers to cause a public inquiry or a hearing to be held, although this is not a requirement. Ministers were of the opinion that the issues raised were sufficient to merit consideration by an inquiry and on 14 July 2011 instructed that such an inquiry be held.

14. Reporters were appointed and held a pre-inquiry meeting on 14 September 2011 with all parties to the inquiry invited to attend. The reporters invited Scottish Natural Heritage (SNH) to

provide evidence to the inquiry and on 28 October 2011 SNH escalated their previous representation to an objection on the grounds that insufficient information had been provided to determine whether the proposal would have an adverse effect on the Firth of Forth Special Protected Area (SPA). Submissions were made and an inquiry session took place from 16 January until 1 March 2012 and again on 4 and 5 April 2012. A report of the inquiry with recommendations was provided to Ministers on 28 December 2012.

### Summary of recommendations

15. The Reporters overall conclusion is that, subject to the qualifications they have made, the HRO meets the statutory requirements and there are no other material considerations that suggest that the Order should not be made. They proposed a number of modifications to the HRO including –

- Strengthening the measures proposed to mitigate impacts on the environment and surrounding areas
- Modifying the proposed new port limits
- Strengthening the Construction Environmental Management Plan (CEMP) which would regulate the construction and operation of the proposed facility and would require to be approved by Ministers prior to construction commencing
- Ensuring that no construction work could commence until a marine licence under the Marine (Scotland) Act 2010 had been issued for the dredging and marine elements of the proposal

16. They observed that with regard to objections on the grounds of lack of a planning application, noise, traffic impact, economic viability and the view that there is sufficient capacity to expand the facilities at Grangemouth, that none of these represented a reason not to make the Order.

17. The reporters observed that the Environmental Statement and information provided to them was insufficient for them to fully consider the impacts of dredging but that they considered that these inadequacies did not present an obstacle to the making of the HRO.

18. A copy of the full report, the modified order, this letter and related documents have been added to the Transport Scotland website <http://www.transportscotland.gov.uk/water/ports-harbours/decision-letters> to allow all parties to see the arguments and recommendations of the reporters.

### Appropriate Assessment /Construction Environmental Management Plan

19. Before consenting any project, which is likely to have a significant effect on a European site, Ministers are required by regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994 (the Habitats Regs), to undertake an appropriate assessment. They may only consent the project having ascertained that it will not adversely affect the integrity of the site. Regulation 52 applies where a project requires the consent, permission or other authorisation of more than one competent authority and provides that nothing in regulation 48 requires a competent authority to assess any implications of a plan or project which would be more appropriately assessed under that provision by another competent authority.

20. The reporters indicated it would be for Ministers to determine if regulation 52 applied and would allow the HRO to be made before any additional environmental information was provided to inform the assessment of the marine elements, including dredging, which would be carried out when a marine licence was applied for. Ministers are satisfied that the HRO can be so made.

21. Ministers have accordingly carried out an appropriate assessment in relation to the terrestrial elements of the project and have taken further advice from SNH in doing this. Ministers have concluded that, in light of the mitigation measures set out in the modified order at Annex A, there will be no adverse effect on the integrity of the Firth of Forth SPA. This will be reviewed before a final decision is taken.

22. The reporters' recommendations include changes to the draft Construction Environmental Management Plan (CEMP). The modifications to the HRO will ensure that any subsequent amendments to the CEMP do not reduce the level of protection provided in the latest draft considered by the enquiry. The version at annex B includes the reporters recommended changes.

### **The Scottish Ministers' Consideration**

23. Section 14(2) (b) of the Harbours Act requires that an HRO shall not be made in relation to a harbour unless the appropriate Minister is satisfied that the making of the Order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or of facilitating the efficient and economical transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships.

24. The Scottish Ministers are satisfied that this modified HRO meets these objectives and that the HRO should be made in the interests of securing the improvement, maintenance and management of the harbour in an efficient and economical manner and facilitating the efficient and economical transport of goods by sea.

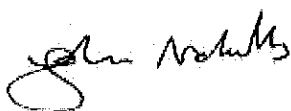
25. Ministers are therefore minded to make the order with modifications as recommended by the reporters. A draft order with proposed modifications is attached at annex A.

26. These modifications are considered substantially to affect the character of the order in terms of paragraph 21 of Schedule 3 to the 1964 Act. Ministers therefore intend to allow 42 days for the consideration of these modifications by the applicant and persons likely to be concerned including those who made objections or representations. A notice to this effect will appear in local press and the Edinburgh Gazette on 21 and 22 March 2013 and a copy is attached at annex C. Your client is invited to make any representations on these modifications by 2 May 2013. Please address your representations to Val Ferguson, Area 2GN, Victoria Quay, Edinburgh EH6 6QQ or by email to [harbourorders@scotland.gsi.gov.uk](mailto:harbourorders@scotland.gsi.gov.uk).

27. A copy of this letter will be sent to those who objected, made representations or sent letters of support, inviting them to make any representations and Ministers will take a final decision once any representations have been considered.

28. Should Ministers decide to make the order, it will be subject to procedure in the Scottish Parliament as it relates to a project designated in the second National Planning Framework as a national development.

Yours Sincerely



JOHN NICHOLLS