

MARINE MANAGEMENT ORGANISATION

HARBOURS ACT 1964 (AS AMENDED)

PROPOSED BLYTH HARBOUR REVISION ORDER 201[]

**STATEMENT IN SUPPORT OF APPLICATION
FOR ORDER BY THE BLYTH HARBOUR COMMISSIONERS**

1. INTRODUCTION

- 1.1 This statement relates to the application by the Blyth Harbour Commissioners for the proposed Blyth Harbour Revision Order ("the HRO"). The Commissioners are the statutory harbour authority for the Port of Blyth.
- 1.2 The application, made in a letter to the Marine Management Organisation ("the MMO") dated 26 January 2015, is accompanied by:
- (a) A draft of the HRO;
 - (b) This statement; and
 - (c) The fee for the application, paid to the MMO by BACS in advance of the application, in the sum of £2,000.00.
- 1.3 The application is for an HRO to be made under the powers conferred on the Secretary 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 confer further modernising powers on the applicant considered conducive to the efficient and economical operation, maintenance, management and improvement of the Port of Blyth.

2. THE BLYTH HARBOUR COMMISSIONERS

- 2.1 The Port of Blyth ("the Port") is a trust port owned and managed by the Blyth Harbour Commissioners ("the Commissioners") being a body established and governed by its own local legislation collectively known as the Blyth Harbour Acts and Orders 1858 to 2004. The Commissioners are responsible for the administration, maintenance and improvement of the Port which is more fully described in section 3 below. As a Trust Port, the Commissioners are appointed under the Blyth Harbour Revision (Constitution) Order 2004 and there are no shareholders or owners.

3. THE PORT OF BLYTH

The Port has grown rapidly over recent years with group turnover expected to exceed £18 million in 2014 across a diverse range of cargo sectors including offshore energy, unitised (containers), dry bulks, liquid bulks, forest products and general breakbulks. The Port is one of the largest Trust Port's in the UK and is identified as one of the key economic drivers in the region, employing well over 100 full time employees and supporting 500+ direct jobs linked to port

activity. It is also an essential gateway for international trade from northeast England and is central to Northumberland's strategy for future economic growth.

4. THE HARBOURS ACT 1964

4.1 Section 14 of the Harbours Act 1964 ("the 1964 Act") confers powers which have been devolved to the MMO (see paragraph 1.3 above) to make an order under that section (known as a harbour revision order) in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties for achieving all or any of the objects specified in Schedule 2 to the Act.

4.2 Section 14(2)(a) of the 1964 Act requires that written application be made to the MMO by the authority engaged in improving, maintaining or managing the harbour in question and section 14(2)(b) provides that the MMO must be:

"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 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.

4.4 The application for the HRO under section 14 of the Act of 1964 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 or 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 a harbour authority engaged in improving, maintaining or 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.

5. **NEED AND JUSTIFICATION FOR HRO**

General

- 5.1 Port of Blyth's rapid growth over recent years is expected to accelerate still further with a number of developments planned that are predicted to at least double turnover and tonnage throughput across the current ten year plan.

These schemes are clearly identified, and a number are close to being secured which will severely stretch the current borrowing limits which were set nearly thirty years ago. Some of these are linked to strategic development sites around the estuary and the nationally important offshore energy sector and there is a real danger that development will be restricted by the current borrowing limits.

Conversely allowing the Port to borrow against assets to a level the commercial financial sector deem appropriate would help to unlock much needed growth, development and employment for the region.

5.2 ***Articles 3 and 4 of the Order - Power to borrow and repeals***

5.2.1 Article 3(1) provides that the Commissioners (including any subsidiary) may borrow, by any methods they see fit, such sums of money as they think necessary for the purposes of meeting their obligations in carrying out their functions. Where moneys are borrowed by the Commissioners or a subsidiary, the Commissioners or subsidiary may borrow those moneys upon the security of some or all of their assets for the time being or of some or all of their revenues or of some or all of both their assets and their revenues in whatever way they think fit.

5.2.2 Article 3(2) enables the Commissioners (including any subsidiary) to effect such arrangements as they think fit to mitigate against any financial risk incurred for the purpose of meeting their obligations in carrying out their functions. This would enable the Commissioners to achieve a fixed rate loan by entering into a floating rate loan with a separate interest rate swap contract.

5.2.3 The Commissioners' current borrowing powers and those of their subsidiaries conferred by sections 13 and 14 of the Blyth Harbour Act 1986 are replaced by article 3 and are therefore repealed by article 4.

Relevant provision of Schedule 2 to the 1964 Act

5.2.4 Article 3 so far as relating to the Commissioners' power to borrow is authorised by paragraph 10 of Schedule 2:

“Empowering the authority to borrow money, with or without limitation with respect to the amount that may be borrowed or the time or manner in which the power may be exercised.”.

- 5.2.5 It is considered that paragraph 10 of Schedule 2 is wide enough also to authorise article 3 so far as relating to the power of a subsidiary to borrow and charge assets on the basis that making provision for a subsidiary of the Commissioners can be viewed as making provision for the Commissioners themselves. However, in any event, the provisions relating to a subsidiary are covered by paragraph 17 of Schedule 2 which enables a provision to be included in a Harbour Revision Order if the object of the provision appears to the MMO to be one the achievement of which will conduce to the efficient functioning of the harbour. The case for this is set out in paragraph 5.1 as an integral part of the need for article 3.
- 5.2.6 Similarly it is considered that the power in article 3(2) is covered by paragraph 17 of Schedule 2. The power to enter into arrangements to mitigate against financial risk is restricted to financial risks which the Commissioners or their subsidiaries incur in meeting obligations in carrying out their statutory functions. Risk mitigation would conduce to the efficient functioning of the harbour and is needed, in particular, to enable the Commissioners to exercise their power of borrowing in a prudent and cost effective manner.

Need for Provision

- 5.2.7 The Commissioners already have borrowing powers under sections 13 and 14 of the Blyth Harbour Act 1986. However those powers are capped at £25,000,000 for permanent borrowings and £5,000,000 for temporary borrowing which for the reasons set out in paragraph 5.1, are inadequate for the requirements of the Commissioners.
- 5.2.8 The Commissioners and its subsidiaries require the power to borrow against the security of assets to enable substantial funds to be raised from commercial sources to improve the Port and to invest in the future. As mentioned above, the power to enter into risk mitigation arrangements is needed to enable the Commissioners to exercise their powers of borrowing in a prudent and cost effective manner.

5.2.9 Similar powers have been conferred on several other trust ports.
These include:

the Lerwick Port Authority – see article 20 of the Lerwick Harbour Revision Order 2015;

the Dover Harbour Board – see article 9 of the Dover Harbour Revision Order 2014;

the Port of Tyne – see article 2 of the Port of Tyne Harbour Revision Order 2008.

Dated: 29 January 2015

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Solicitors and Parliamentary Agents on behalf of the Commissioners

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