Suffolk Minerals and Waste
Local Plan Examination

Hearing Session – Thursday 20 June (am)

Matter 3 – Issues 1 – 3 (Policies MP1 – MP10)

Statement on behalf of:

Associated British Ports

Statement Prepared by
Adams Hendry Consulting Ltd

4 June 2019
Introduction

1.1 This statement is submitted on behalf of Associated British Ports (ABP), the owner and operator of both the Port of Lowestoft and the Port of Ipswich. This statement should be read alongside ABP’s Representations – provided at Appendix 1.

ABP’s statutory basis

1.2 The following paragraphs provide a summary of key aspects of ABP’s statutory basis that is of relevance to its concerns with the emerging Minerals and Waste Plan (MWP). What follows, should not, however, be taken as a comprehensive explanation of ABP’s statutory functions or basis.

1.3 At both the Port of Lowestoft and the Port of Ipswich, ABP is the Statutory Port Authority, as successor to various dock and railway undertakers, and is required to operate the ports in accordance with the duties and obligations set out in the various enabling legislation that brought the two Ports into being.

1.4 Elements of the relevant acts contain statutory provisions which require ABP to operate the two Ports under what is commonly referred to as the Open Port Duty. This is achieved through:

(i) Sections 1 and 12 of the Great Eastern Railway Act 1865, through the incorporation of the Harbours, Docks and Piers Clauses Act of 1847 (in respect of the Port of Lowestoft) – see Appendix 2, and
(ii) Section 35 of the Ipswich Dock Act 1971 (in respect of the Port of Ipswich) – see Appendix 3.

1.5 Section 33 of the Harbours, Docks and Piers Clauses Act of 1847 states that:

“Upon payment of the rates made payable by this and the special Act, and subject to the other provisions thereof, the harbour, dock, and pier shall be open to all persons for the shipping and unshipping of goods, and the embarking and landing of passengers.”

1.6 The incorporation of these clauses into the enabling legislation for the Ports means, in simple terms, that provided that the trade is legal and the necessary rates and dues are paid both
Ports must be open to all persons for the shipping and unshipping of goods and the movement of passengers.

1.7 Such a duty is widely recognised as a key provision in harbour legislation and highlights that the two Ports serve the public interest.

1.8 In addition to the various acts of relevance to each Port, it is also relevant to have regard to the general duties of ABP which are set out in Section 9 of the Transport Act 1981. Section 9(1) makes it clear that “It is the duty of Associated British Ports to provide port facilities at its harbours to such an extent as it may think expedient”. To enable ABP to carry out this duty it is provided with a wide range of powers – which are set out in Schedule 3 of the Transport Act 1981 (see Appendix 4).

1.9 Finally, it should be noted in this regard that for the purposes of planning matters, ABP is a Statutory Undertaker (as defined in section 262 of the Town and Country Planning Act 1990) and the port land owned by ABP at both ports constitutes operational land of a Statutory Undertaker (as defined in section 263 and 264 of the 1990 Act). As such, the two Ports benefit from extensive permitted development rights that enable port operations to react to the needs of the market in an efficient and timely way. The Ports are, therefore, dynamic – and often fast changing – land uses.

The national ports policy context

1.10 The two Ports need to be able to react to the needs of the market in this way because of the nature of the industry within which they operate. This is best explained by having regard to the Government’s policy for ports, which is contained in the National Policy Statement for Ports (DfT, 2012) (NPSfP) (a national policy document to which the Local Plan should have regard).

1.11 Amongst other things, the NPSfP makes it clear that it is Government policy to “allow judgements about when and where new developments might be proposed to be made on the basis of commercial factors by the port industry or port developers operating within a free market environment” (paragraph 3.3.1). This position – which is a continuation of the ‘market led’ ports policy position which has been in place for some time – is further emphasised in the context of the policy identifying that an element of overall need for port infrastructure is that capacity is provided in the right place. In respect of this matter the NPSfP highlights that it is not for public bodies such as Government to dictate where port development and capacity should be provided (paragraph 3.4.12).

1.12 In terms of the need for capacity and development, the NPSfP makes it clear that this depends not only on demand, but also on the need to retain flexibility that ensure that port capacity is
located where it is required, and on the need to ensure effective competition and resilience in port operations.

**ABP’s concerns with SCC emerging policy**

1.13 Against this preceding – albeit very brief – background summary, it is clear that it is unsound for the Council through Minerals and Waste plan policies MP9 and WP18 to seek to safeguard land and facilities within the two Statutory Ports for a particular minerals or waste related trade or use, whilst those sites form and remain part of a Statutory Port estate.

1.14 ABP acknowledge that the NPPF (at paragraph 143) makes it clear that minerals planning authorities should set out policies which safeguard existing, planned and potential wharfage and associated storage. However, within a Statutory Port setting, such safeguarding could only be said to be sound in circumstances where the sites in question were to be sold off or somehow made available by the statutory undertaker for non-port / port related development. Due to the legislative and policy background of relevance to the Statutory Ports, such safeguarding is not sound in circumstances where the sites remain an active and ongoing element of the statutory port estate.

1.15 Having said this, however, ABP wishes to make it clear that its concern over the potential safeguarding of sites within its operational port areas does not mean that it is saying the sites in question are necessarily unsuitable for minerals and waste purposes.

1.16 Having regard to the fact, therefore, that some sites within the two Ports may well be used for minerals and waste purposes during the plan period, ABP does welcome and support the aspect of policy MP9 and WP18 which seeks to ensure that the use of existing or potential sites and facilities – including those existing or potential sites within the two Ports - is not adversely impacted upon by other development proposals occurring in proximity to them.

1.17 However, in respect of existing or potential sites and facilities within the Statutory Ports, the protection / mitigation requirements set out in the policies can clearly only be applied in respect of third party non-port developments outside of the Port area – and, for the reasons set out, clearly not other port related developments within the Port area - or in circumstances where ABP was to somehow dispose of the site in question or make it available to non-port / port related use.

1.18 In order to be sound, therefore, policies MP9 and WP18 need to be amended, and suggested amendments have been provided by ABP within its representations. These amendments
enable the plan to have a policy safeguarding sites – as required by the NPPF – but take account of the specific circumstances surrounding such sites within a Statutory Port Estate.

1.19 For the avoidance of doubt, ABP will continue to discuss these matters with Suffolk County Council prior to the examination hearing session with a view to trying to narrow down any differences.

Word Count – 1304

Appendix 1 – ABP Representations to the Minerals and Waste Plan
Appendix 2 – Relevant extracts from the Great Eastern Railway Act 1865
Appendix 3 – Relevant extracts from the Ipswich Dock Act 1971
Appendix 4 – Relevant extracts from the Transport Act 1981
APPENDIX 1 – ABP Representations to the Minerals and Waste Plan
This form has two parts –

Part A – Personal Details

Part B – Your representation(s). Please fill in a separate sheet for each representation you wish to make.

## Part A

<table>
<thead>
<tr>
<th>1. Personal Details*</th>
<th>2. Agent’s Details</th>
</tr>
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<tbody>
<tr>
<td><strong>Title</strong></td>
<td>Mr</td>
</tr>
<tr>
<td><strong>First name</strong></td>
<td>Philip</td>
</tr>
<tr>
<td><strong>Last Name</strong></td>
<td>Rowell</td>
</tr>
<tr>
<td><strong>Job Title</strong> (where relevant)</td>
<td>Director</td>
</tr>
<tr>
<td><strong>Organisation</strong> (where relevant)</td>
<td>Adams Hendry Consulting Limited</td>
</tr>
<tr>
<td><strong>Address Line 1</strong></td>
<td>Old Custom House</td>
</tr>
<tr>
<td><strong>Address Line 2</strong></td>
<td>Key Street</td>
</tr>
<tr>
<td><strong>Address Line 3</strong></td>
<td>Ipswich</td>
</tr>
<tr>
<td><strong>Address Line 4</strong></td>
<td>Suffolk</td>
</tr>
<tr>
<td><strong>Post Code</strong></td>
<td>IP4 1BY</td>
</tr>
<tr>
<td><strong>Telephone Number &amp; Email Address</strong> (where relevant)</td>
<td>01962 877414</td>
</tr>
</tbody>
</table>

*If an agent is appointed, please complete only the Title, Name and Organisation boxes below but complete the full contact details of the Agent in 2.
Part B – Please use a separate sheet for each representation

Name or Organisation: Associated British Ports

3. To which part of the Local Plan does this representation relate?

Paragraph: 5.42 and 5.43
Policy: MP9
Policies Map: Insets W1

4. Do you consider the Local Plan is:

4. (1) Legally Compliant
   Yes [ ] No [ ]

4. (2) Sound
   Yes [ ] No [ X ]

4.(3) Complies with Duty to co-operate
   Yes [ ] No [ ]

Please tick as appropriate

5. Please give details of why you consider the Local Plan in not legally compliant or is unsound or fails to comply with the duty to co-operate. Please be as precise as possible.

If you wish to support the legal compliance or soundness of the Local Plan or its compliance with the duty to co-operate, please use this box to set out your comments.

The submission draft local plan, through policies MP9 and WP18, seeks to safeguard the following specific sites within the statutory Ports of Lowestoft and Ipswich for particular minerals and waste purposes, namely:

**Port of Ipswich**
- Cliff Quay (Site ref W1 and AP3 – Wharf and Asphalt Plant);
- West Bank Waste Transfer Station (Site Ref WTF4 – Waste Transfer Station); and
- West Bank Terminal (Site ref W4 and R4 – Wharf and Rail Head).

**Port of Lowestoft**
- Hamilton Dock (Site W2 – Wharf), and
- North Quay (Site W3 – Wharf)
This is an unsound position, for the reasons now summarised.

The two Ports of Lowestoft and Ipswich are owned and operated by Associated British Ports (ABP). For the purposes of planning matters, ABP is a statutory undertaker (as defined in section 262 of the Town and Country Planning Act 1990) and the port land owned by ABP constitutes operational land of a statutory undertaker (as defined in section 263 and 264 of the 1990 Act). As such, the two ports benefit from extensive permitted development rights that enable port operations to react to the needs of the market in an efficient and timely way. The Ports are, therefore, dynamic—and often fast changing—land uses.

The Ports need to be able to react to the needs of the market in this way—and, therefore, rely upon their extensive permitted development rights—because of the nature of the industry within which they operate. This is best explained by having regard to the Government’s policy for ports, which is contained in the National Policy Statement for Ports (DfT, 2012) (NPSfP) (a national policy document to which the Local Plan should have regard).

Amongst other things, the NPSfP makes it clear that it is Government policy to “allow judgements about when and where new developments might be proposed to be made on the basis of commercial factors by the port industry or port developers operating within a free market environment” (paragraph 3.3.1). This position—which is a continuation of the ‘market led’ ports policy position which has been in place for some time—is further emphasised in the context of the policy identifying that an element of overall need for port infrastructure is that capacity is provided in the right place. In respect of this matter the NPSfP highlights that it is not for public bodies such as Government to dictate where port development and capacity should be provided (paragraph 3.4.12).

In terms of the need for capacity and development, the NPSfP makes it clear that this depends not only on demand, but also on the need to retain flexibility that ensure that port capacity is located where it is required, and on the need to ensure effective competition and resilience in port operations.

In addition to the policy context within which the Ports of Lowestoft and Ipswich function, it is also necessary to understand the legislative context. In addition to being a statutory undertaker, ABP is also the statutory harbour authority for the two Ports and has to operate the two ports in accordance with both general and port specific legislation. Of note is that both ports are required to operate in accordance with an aspect of legislation commonly known as the ‘open port duty’.

This duty is founded in section 33 of the Harbours, Docks and Piers Clauses Act of 1847, which states:

“Upon payment of the rates made payable by this and the special Act, and subject to the other provisions thereof, the harbour, dock, and pier shall be open to all persons for the shipping and unshipping of goods, and the embarking and landing of passengers.”

In simple terms, the duty is one that provided that the trade is legal and the necessary rates and dues are paid, the two Ports must be open to all for the shipping and unshipping of goods and the movement of passengers.

Against this—albeit very brief—background summary, it is clear that it is unsound for the Council through the emerging Minerals and Waste plan to seek to safeguard land and facilities within these Ports for a particular minerals or waste related trade or use, whilst those sites form and remain part of a statutory port estate.
Such safeguarding could only be said to be sound in circumstances where the sites in question were to be sold off or somehow made available by ABP for non-port / port related development. ABP has no intentions to take such steps in respect of the sites in question or any other parts of the statutory Lowestoft and Ipswich port estates.

Having said this, however, ABP wishes to make it clear that its concern over the potential safeguarding of sites within its operational port areas does not mean that it is saying the sites in question are necessarily unsuitable for minerals and waste purposes. For example, in respect of Wharf Site W3 within the Inner Harbour area of the Port of Lowestoft, ABP is currently giving active considerations – along with potential customers – to its use for the import of aggregate, a use for which ABP consider there to be a clear demand. However, conversely, there is no prospect – currently or in the foreseeable future - of wharf site W2 within the Port of Lowestoft being used for a minerals or waste purpose as this is in use for an alternative port related purpose.

Having regard to the fact, therefore, that some sites within the two ports may well be used for minerals and waste purposes during the plan period, ABP does welcome and support the aspect of policy MP9 which seeks to ensure that the use of existing or potential sites and facilities – including those existing or potential sites within the two ports - is not adversely impacted upon by other development proposals occurring in proximity to them. ABP further supports the requirement set out in policy MP9 that necessary mitigation - in the form of satisfactory alternative facilities – should be made available by those promoting the development causing the adverse impacts for the handling facility.

However, in respect of existing or potential sites and facilities within the operational ports, the protection / mitigation requirements set out in the policy can clearly only be applied in respect of third party non-port developments outside of the port area – and, for the reasons set out, clearly not other port related developments within the port area - or in circumstances where ABP was to somehow dispose of the site in question or make it available to non-port / port related use.
6. Please set out what modification(s) you consider necessary to make the Local Plan legally compliant or sound, having regard to the matter you have identified at 5 above where this relates to soundness. (NB Please note that any non-compliance with the duty to co-operate is incapable of modification at examination). You will need to say why this modification will make the Local Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised working of any policy or text. Please be as precise as possible.

Policy MP9 needs to be amended along the following suggested lines. Additional text is shown in bold italicised text and deleted text is shown crossed through.

*Policy MP9: Safeguarding of port and rail facilities, and facilities for the manufacture of concrete, asphalt and recycled materials*

When proposals are made which would result in the loss of or might potentially compromise the use of:

a) an existing, planned or potential rail head, wharf or associated storage, handling or processing facilities for the bulk transport by rail or sea of minerals, including recycled, secondary and marine-dredged materials, *that is not located on operational port land* and/or;

b) an existing, planned or potential site for concrete batching, the manufacture of coated materials, other concrete products or the handling, processing and distribution of substitute, recycled and secondary aggregate material *that is not located on operational port land*;

applicants will be required to demonstrate to the County Council that those sites no longer meet the needs of the aggregates industry. Where this is not the case, satisfactory alternative handling facilities should be made available by the developer. Development proposals in close proximity to the above minerals related facilities should demonstrate that they would not prejudice or be prejudiced by those facilities.

In respect of facilities or potential facilities located on operational port land, the requirements in the preceding paragraphs will only apply in circumstances where:

(i) an existing or potential facility on operational port land is potentially impacted upon by a third party non-port related development; and / or

(ii) where the statutory port authority sells off the site in question or makes it available for non-port and port related development.

Any mitigation required falls on the development that receives planning permission last.

District and Borough Councils should consult the County Council when a potentially conflicting proposal falls within the 250 metre safeguarding zones as defined in the Appendix 3 Safeguarding Maps. The County Council will then refer to Policies MP9 before providing a consultation response.*
To assist the reader of the Plan, it is also suggested that a paragraph of explanatory text is added after paragraph 5.44 to explain the position further. Wording along the following lines is suggested:

‘5.44 Some facilities of relevance to policy MP9 are located within the statutory Ports of Ipswich and Lowestoft. Having regard to both the national policy of relevance to ports – currently contained within the National Policy Statement for Ports – and the legislative framework within which these ports have to operate it is not possible to safeguard facilities or sites within the ports for a particular minerals or waste use in the same way as it is on other sites. Policy MP9 makes this distinction in respect of the circumstances in which the policy requirements will be applied.’

Finally, and again to assist the reader of the Plan, it is suggested that the sites located on operational port land are distinguished in the list of safeguarded sites provided at Appendix 3 of the Plan. In this way, the reader of the plan can understand which sites the different provisions of policy MP9 apply. It is also necessary for the relevant insets to the policies map (Maps W1 and I1) to distinguish these sites from the others shown.

However, site W2 should be deleted from plan W1 as this area, within the Port of Lowestoft operational area, is in active use for other port related activities and there is no prospect - currently or in the foreseeable future – of this site being used for a minerals or waste related purpose.

7. If your representation is seeking modification, do you consider it necessary to participate at the oral part of the examination?

[ ] No, I do not wish to participate at the oral examination

[ ] Yes, I wish to participate at the oral examination

8. If you wish to participate as the oral part of the examination, please outline why you consider this to be necessary:

This representation relates to matters of importance. It is important that ABP is able to test and explore the unsoundness of the Local Plan in respect of these matters and to discuss the changes sought in more detail with the Council and Inspector.

9. Signature: ___________________________ Date: 23rd July 2018
Part B – Please use a separate sheet for each representation

Name or Organisation: Associated British Ports

3. To which part of the Local Plan does this representation relate?

<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Policy</th>
<th>Policies Map</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.34</td>
<td>WP18</td>
<td>Inset I1</td>
</tr>
</tbody>
</table>

4. Do you consider the Local Plan is:

4. (1) Legally Compliant

Yes [ ] No [ ]

4. (2) Sound

Yes [ ] No [x]

4. (3) Complies with Duty to co-operate

Yes [ ] No [ ]

Please tick as appropriate

5. Please give details of why you consider the Local Plan in not legally compliant or is unsound or fails to comply with the duty to co-operate. Please be as precise as possible.

If you wish to support the legal compliance or soundness of the Local Plan or its compliance with the duty to co-operate, please use this box to set out your comments.

This representation needs to be read alongside the ABP representation submitted in respect of policy MP9. For the reasons explained, in summary, in that representation, it is unsound for the Council through the emerging Minerals and Waste plan to seek to safeguard land and facilities within these Ports for a particular minerals or waste related trade or use, whilst those sites form and remain part of a statutory port estate.

Having said this, however, ABP does welcome and support the aspect of policy WP18 which seeks to ensure that the ongoing use of the facilities listed – including those within the two ports - is not adversely impacted upon by other development proposals occurring in proximity to them. However, as indicated in the representation on policy MP9, such protection can only be applied to sites within an operational port in certain circumstances.
6. Please set out what modification(s) you consider necessary to make the Local Plan legally compliant or sound, having regard to the matter you have identified at 5 above where this relates to soundness. (NB Please note that any non-compliance with the duty to co-operate is incapable of modification at examination). You will need to say why this modification will make the Local Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised working of any policy or text. Please be as precise as possible.

Policy WP18 needs to be amended along the following suggested lines. Additional text is shown in bold italicised text and deleted text is shown crossed through.

‘Policy WP18: Safeguarding of waste management sites

The County Council will seek to safeguard existing sites and sites proposed for waste management use that are not located on port operational land as shown on the Proposals & Safeguarding Maps and will object to development proposals that would prevent or prejudice the use such sites for those purposes unless suitable alternative provision is made.

Development proposals in close proximity to existing sites that are not located on port operational land, should demonstrate that they would not prejudice or be prejudiced by a waste management facility. The safeguarding policy will also apply to any site where planning permission has already been granted.

In respect of existing or potential waste management sites and facilities located on operational port land, the requirements in the preceding paragraph will only apply in circumstances where:

(iii) an existing or potential site or facility on operational port land is potentially impacted upon by a third party non-port related development; and / or

(iv) where the statutory port authority sells off the site in question or makes it available for non-port and port related development.

Any mitigation required falls on the development that receives planning permission last.

District and Borough Councils should consult the County Council when a potentially conflicting proposal falls within the 250 or 400 metre safeguarding zones as defined in the Appendix 3 Safeguarding Maps. The County Council will then refer to Policies WP18 before providing a consultation response. ‘

It is also suggested that a paragraph of supporting text after paragraph 6.34 is inserted, and the relevant waste management site that is located on port operational land is distinguished in the list of sites provide at Appendix 3 of the Plan and on the policies inset plan Map I1.
7. If your representation is seeking modification, do you consider it necessary to participate at the oral part of the examination?

No, I do not wish to participate at the oral examination

Yes, I wish to participate at the oral examination

8. If you wish to participate as the oral part of the examination, please outline why you consider this to be necessary:

This representation relates to matters of importance. It is important that ABP is able to test and explore the unsoundness of the Local Plan in respect of these matters and to discuss the changes sought in more detail with the Council and Inspector.

9. Signature: [Signature]  Date: 23rd July 2018

Please return to: Graham Gunby, Development Manager, Suffolk County Council, 8 Russell Road, Ipswich, Suffolk, IP1 2BX. All correspondence must be received by Monday 23rd July 2018 at 17:00, or the views expressed will not be able to be taken into account.
APPENDIX 2 – Relevant extracts from the Great Eastern Railway Act 1865
# THE GREAT EASTERN RAILWAY
## (ADDITIONAL POWERS) ACT, 1865.

### ARRANGEMENT OF SECTIONS.

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Preamble. Incorporation of general Acts</td>
</tr>
<tr>
<td>2</td>
<td>Interpretation—Special Act—Company. Promoters of the undertaking in incorporated Acts</td>
</tr>
<tr>
<td>3</td>
<td>Power for Company to raise capital by shares or stock</td>
</tr>
<tr>
<td>4</td>
<td>Shares or stock to form part of Company's general capital</td>
</tr>
<tr>
<td>5</td>
<td>One-fifth part of the shares to be paid on issue</td>
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<tr>
<td>6</td>
<td>Capital under several Acts may be raised by shares or stock of one class</td>
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<td>7</td>
<td>Debenture stock</td>
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<tr>
<td>8</td>
<td>Power to borrow</td>
</tr>
<tr>
<td>9</td>
<td>Priority of existing mortgages</td>
</tr>
<tr>
<td>10</td>
<td>Application of money raised under Act</td>
</tr>
<tr>
<td>11</td>
<td>Power to make Railways</td>
</tr>
<tr>
<td>12</td>
<td>Railways and works to form part of Company's undertaking</td>
</tr>
<tr>
<td>13</td>
<td>Railways to be made according to deposited plans and sections</td>
</tr>
<tr>
<td>14</td>
<td>Notice to be given of taking of houses of labouring classes</td>
</tr>
<tr>
<td>15</td>
<td>As to the crossing of Angel Lane, Leyton Road, and Windmill Street</td>
</tr>
<tr>
<td>16</td>
<td>Notice to be given to the West Ham Local Board of Health of commencement of works, who may require temporary road</td>
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<td>17</td>
<td>Certain lands of P. L. P. Lybbee, Esq., not to be taken</td>
</tr>
<tr>
<td>18</td>
<td>Limiting time for compulsory purchase</td>
</tr>
<tr>
<td>19</td>
<td>Lands for extraordinary purposes</td>
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<tr>
<td>20</td>
<td>Power to cross certain roads on the level</td>
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<td>21</td>
<td>Regulating the crossing over the metropolis turnpike road No. 72 in Edmonton</td>
</tr>
<tr>
<td>22</td>
<td>Regulating the crossing under the metropolis turnpike road No. 62 in Enfield</td>
</tr>
<tr>
<td>23</td>
<td>Company to set curbs at the edges of the footpaths, restore drainage, &amp;c.</td>
</tr>
</tbody>
</table>
Act, and it is expedient that powers should be conferred upon
the Company for effecting the consolidation thereof into a smaller
number of classes, or into one class, of consolidated stock:

And whereas it is expedient that the Company should be
authorised to raise a further sum of money for the building and
enlargement of stations, the supply of additional rolling stock, and
other general purposes of their undertaking:

And whereas it is expedient that the Company should have
further powers with reference to Lowestoft Harbour and the Com-
pany's station and property in connexion therewith, and for the
better regulation thereof, and of vessels, and the fish market
thereat; and that the Company should be empowered to take
certain tolls, duties, and charges, and to make regulations with
respect to the opening and shutting of the swing bridge over the
lock at Lowestoft Harbour, and that the provisions in force with
respect to the Trowse Swing Bridge should be altered:

And whereas the objects aforesaid cannot be effected without
the authority of Parliament:

MAY IT THEREFORE PLEASE YOUR MAJESTY,

That it may be Enacted, and be it Enacted by the Queen's Most
Excellent Majesty, by and with the advice and consent of the Lords
Spiritual and Temporal, and of the Commons, in this present Par-
liament assembled, and by the authority of the same, as follows:

1. The provisions of "The Companies Clauses Consolidation
Act, 1845," with respect to the several matters following (that is
to say): The distribution of the capital of the Company into shares,
the transfer or transmission of shares, the payment of subscriptions
and the means of enforcing the payment of calls, the forfeiture of
shares for non-payment of calls, the remedies of creditors of the
Company against the shareholders, the borrowing of money by the
Company on mortgage or bond, the conversion of the borrowed
money into capital, the consolidation of the shares into stock, and
the provisions to be made for affording access to the "Special Act," Parts I., II., and III. of "The Companies Clauses Act, 1863," relating respectively to cancellation and surrender of shares to additional capital, and to debenture stock, and "The Harbours, Docks, and Piers Clauses Act, 1847," except the provisions thereof with respect to the construction of the harbour, dock, or pier, and except also the provisions with respect to life-boats, and with respect to keeping a tide and weather gauge (so long as the Company are not required by the Board of Trade to provide a life-boat or tide and weather gauge) are hereby incorporated with this Act.

2. In construing the incorporated Acts for the purposes of this Act, and in construing this Act, the words and expressions herein mentioned or referred to shall have the meanings hereby assigned to them respectively, unless there be something in the subject or context repugnant to such construction (that is to say):

The expression "the special Act" shall mean this Act;  

The expression "superior court" or "court of competent jurisdiction," or any other like expression, shall be read and have effect as if the debt or demand with respect to which the expression is used were a common simple contract debt, and not a debt or demand created by statute;

Other expressions and words to which in the incorporated Acts meanings are assigned, shall respectively have the same meanings in this Act.

3. The Company, with the consent of three-fifths of the votes of the shareholders present, in person or by proxy, at any general meeting or general meetings convened with special notice of the purpose, may, for the general purposes hereinbefore mentioned, raise, by the creation of shares or stock ordinary or preference or partly ordinary and partly preference, such additional capital, beyond the amount which they may be authorised to raise by other Acts of Parliament, as they think fit, not exceeding in the whole one million five hundred thousand pounds.
12. The provisions of "The Harbours, Docks, and Piers Clauses Act, 1847," incorporated with this Act, shall apply to the Lowestoft Harbour, and to the Company in respect thereof, as if such Harbour were under this Act authorised to be constructed by the Company, and the Lowestoft Harbour shall for the purposes of this Act be deemed to include the station, wharves, and property of the Company facing the Harbour, or the River Waveney flowing into the same.

13. In addition to the powers given to the Harbour Master by "The Harbours, Docks, and Piers Clauses Act, 1847," the Harbour Master or his deputies may at any time cause to be detained within the Harbour any vessel, which by willfully or negligently fouling the Pier or any of the works of the Company shall have done damage thereto, until the master or person in charge of such vessel shall have satisfied the Company for the damage done, or until such damage shall have been repaired, and the cost of such repair shall have been paid to the Company by such master or person, and it shall be lawful for any person or persons, whom the said Harbour Master or his deputies may call upon for that purpose, to aid and assist him in preventing any such vessel from leaving the Harbour and detaining the same within the Harbour.

14. In addition to the purposes specified in the eighty-third section of "The Harbours, Docks, and Piers Clauses Act, 1847," for which the Company may make bye-laws, the Company may make bye-laws for the following purposes:—

For regulating the times of entry and departure into and from the harbour of all vessels and boats, whether decked or not decked, bringing fish for sale within the harbour, and the mooring, stationing, or placing thereof.

For regulating the fish markets and the places and times for vessels landing their fish, and the sale of fish on that part of the Company's station known as the Fish Market, or on any other part of the Company's property.

For regulating the times for opening and shutting the swing bridge over the lock of Lowestoft Harbour.
APPENDIX 3 – Relevant extracts from the Ipswich Dock Act 1971
Ipswich Dock Act 1971

CHAPTER xiv

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section
1. Short and collective titles.
3. Definitions.

PART II

"LANDS"

4. Lands.
6. Power to acquire easements only.
7. Disregard of recent improvements and interests.
9. Grant of easements by persons under disability.
PART IV
—cont.

(b) to take such action as it considers necessary or desirable
for or incidental to the improvement and conservancy
of the river.

(2) The Commission shall have power either itself or by
arrangement between itself and another person to take such
action as the Commission considers necessary or desirable
whether or not in, or in the vicinity of, the port—

(a) for the purposes of discharging or facilitating the dis-
charge of any of its duties, including the proper develop-
ment or operation of the undertaking;

(b) for the provision, maintenance and operation of—
(i) warehousing services and facilities;
(ii) services and facilities for the consignment of
goods on routes which include the port premises;

(c) for the purpose of turning its resources to account so far
as not required for the purposes of the undertaking.

(3) Particular powers conferred or particular duties laid upon
the Commission by this Act shall not be construed as derogating
from each other or from the generality of subsections (1) and (2)
of this section.

35.—(1) Subject to—

(a) the enactments relating to the Commission;
(b) the byelaws and regulations of the Commission;
(c) payment of the Commission’s charges; and
(d) subsections (2) and (3) of this section;

the port premises for the time being in operation by the Com-
mission shall be open to all persons for the shipping and unship-
ing of goods and the embarking and landing of passengers.

(2) This section shall not apply to the shipping and unship-
ing of goods or the embarking and landing of passengers on or from
hovercraft, hydrofoil vessels and seaplanes.

(3) This section shall not be construed as derogating from the
power of the Commission to discontinue any part of the under-
taking.

36. The Commission shall within the port be a local lighthouse
authority for the purposes of the Merchant Shipping Act 1894.

PART V

FINANCIAL

(a) Borrowing powers

37. In this Part of this Act, unless the context otherwise
requires, the following expressions have the meanings hereby
assigned to them respectively, that is to say:—

“bank” means any banking corporation, company, private
banker or other person with whom the Commission
APPENDIX 4 – Relevant extracts from the Transport Act 1981
Transport Act 1981

1981 CHAPTER 56

An Act to make provision with respect to the disposal by the British Railways Board of part of their undertaking, property, rights and liabilities; to provide for the reconstitution of the British Transport Docks Board under the name of Associated British Ports and to confer on a company powers over that body corresponding to the powers of a holding company over a wholly-owned subsidiary; to dissolve the National Ports Council and amend the Harbours Act 1964; to make further provision for promoting road safety; to make provision with respect to road humps; to provide a new basis of vehicle excise duty for goods vehicles; to amend the law as to the payments to be made for cab licences and cab drivers’ licences; to make provision for grants to assist the provision of facilities for freight haulage by inland waterway; to make provision with respect to railway fires; to amend Schedules 7 and 8 to the Public Passenger Vehicles Act 1981; and for connected purposes. [31st July 1981]

Annotations:

Modifications etc. (not altering text)

C1 Act: transfer of functions (2.7.2012) by The British Waterways Board (Transfer of Functions) Order 2012 (S.I. 2012/1659), arts. 1(2), 2, Schs. 1 (with arts. 4-6)

C2 Act restricted (5.9.2017) by The London Overground (Barking Riverside Extension) Order 2017 (S.I. 2017/830), art. 1, Sch. 8 para. 4(1) (with Sch. 8 para. 20)

PART I

Annotations:

Amendments (Textual)

F1 Pt. 1 (ss. 1-4) repealed (31.3.1994) by 1993 c. 43, s. 152(3), Sch. 14; S.I. 1994/571, art. 4.

F21 ..........................................................
PART II

RECONSTITUTION OF BRITISH TRANSPORT DOCKS BOARD

9 General duties of Associated British Ports.

(1) It is the duty of Associated British Ports to provide port facilities at its harbours to such extent as it may think expedient.

(2) Associated British Ports shall have due regard to efficiency, economy and safety of operation as respects the services and facilities provided by it and its subsidiaries.

(3) In the performance of its functions Associated British Ports shall have regard to the interests in general of its employees and the employees of its subsidiaries.

(4) This section does not impose any form of duty or liability enforceable, either directly or indirectly, by proceedings before any court.

Annotations:

Modifications etc. (not altering text)

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SCHEDULES

SCHEDULE 3

POWERS OF ASSOCIATED BRITISH PORTS

Annotations:

Modifications etc. (not altering text)
C1 Sch. 3 restricted (30.12.2002) by S.I. 2002/3269, art.8(d)

1 Each of the powers conferred on Associated British Ports by this Schedule is in addition to, and not in derogation of, any other power conferred on Associated British Ports by this Schedule or by any other enactment.

Operation of harbours and provision of port facilities
2 Associated British Ports has power to operate its harbours and to provide port facilities at them.

Consignment and carriage of goods
3 (1) Associated British Ports may consign goods on behalf of other persons to or from or on routes through its harbours.
(2) Associated British Ports may carry goods by road on behalf of other persons to or from its harbours.

Activities as ship’s agent
4 Associated British Ports may carry on at its harbours the activities of a ship’s agent.

Storage of goods
5 Associated British Ports may provide facilities for the storage of goods.

Development of land
6 (1) Associated British Ports may develop in such manner as it thinks fit land belonging to it or to any of its subsidiaries.
(2) Associated British Ports may in particular—
(a) develop for use by other persons land belonging to it or to any of its subsidiaries which is not otherwise required for the purposes of its business; or
(b) where the use of such land for the purposes of its business can be combined with its use by other persons, develop the land by constructing or adapting buildings on it for use wholly or partly by other persons, with a view to the disposal of any right or interest in the land or, as the case may be, the buildings or any part of the buildings, after the development is carried out.

(3) Where Associated British Ports proposes under this paragraph to develop any land as mentioned in sub-paragraph (2), it may acquire by agreement adjoining land for the purpose of developing it together with the other land.

(4) Except as provided by sub-paragraph (3), Associated British Ports does not have power to acquire land solely for the purpose of developing it as mentioned in sub-paragraph (2).

Pipelines

7 (1) Associated British Ports may construct and operate pipelines in Great Britain.

(2) The power conferred by sub-paragraph (1) includes power to construct and operate any works provided in connection with the operation of a pipeline.

(3) Associated British Ports does not have power to acquire land for the purpose of constructing pipelines except—

(a) where the pipeline is, or is to be, mainly on land acquired for other purposes; or

(b) where the pipeline is required for the purposes of the business of Associated British Ports other than the operation of pipelines.

Incidental amenities and facilities

8 (1) In places where those using the services and facilities provided by Associated British Ports or any of its subsidiaries may require them, Associated British Ports may provide both for them and for other persons facilities for the purchase and consumption of food and drink and such other amenities and facilities as appear to Associated British Ports appropriate.

(2) Associated British Ports may, at any place where, in the exercise of the power conferred by sub-paragraph (1), it or any of its subsidiaries provides a car park, repair motor vehicles, both for persons using the car park and others, and sell to any such persons petrol, oil, spare parts and accessories for motor vehicles.

Other activities

9 Associated British Ports may carry on any business which in its opinion can advantageously be carried on by reason of the fact that the business—

(a) involves the use of machinery, plant or equipment of a kind used by Associated British Ports or any of its subsidiaries in connection with the operation of its harbours; or

(b) requires skills which employees of Associated British Ports or any of its subsidiaries have in connection with the operation of its harbours.

10 (1) Associated British Ports may manufacture for sale to any person and repair for any person anything which it considers can advantageously be so manufactured or repaired by reason of the fact that Associated British Ports or any of its subsidiaries
has materials or facilities for, or skill in, the manufacture or repair of that thing in connection with its existing activities.

(2) Associated British Ports may sell to any person, and for that purpose purchase, anything which is of a kind which Associated British Ports or any of its subsidiaries purchases in the course of its existing activities.

(3) In this paragraph “existing activities” includes existing activities carried on by virtue of this paragraph.

Associated British Ports may provide for any person technical advice or assistance including research services as respects any matter in which it or any of its subsidiaries has skill or experience.

Acquisition of further harbour undertakings

(1) Associated British Ports may, either alone or together with any other person, provide, maintain or operate harbours additional to those which it or any of its subsidiaries owns or manages by virtue of Part II of the M1Transport Act 1962 (which provided for the division of the undertaking of the British Transport Commission) or by virtue of a harbour reorganisation scheme under the M2Harbours Act 1964.

(2) For the purposes of sub-paragraph (1) Associated British Ports may acquire by agreement any harbour undertaking, or any part of such an undertaking.

(3) Associated British Ports may subscribe for or acquire shares or securities of a body corporate which is wholly or mainly engaged, or which it is proposed should become wholly or mainly engaged, in the provision, maintenance or operation of a harbour.

Annotations:

Marginal Citations
M1 1962 c. 46.
M2 1964 c. 40.

Disposal and discontinuance of parts of Associated British Ports’ undertaking, etc.

(1) Associated British Ports may dispose of any part of its undertaking, or any property, which in its opinion is not required by it for the purposes of its business.

(2) Associated British Ports may dispose of or discontinue any part of its undertaking carried on by virtue of paragraph 9 or 10.

(3) Associated British Ports may dispose of or discontinue any part of its undertaking acquired under paragraph 12, and may dispose of any shares or securities subscribed for or acquired under that paragraph.

(4) The powers of disposal conferred by this paragraph include power—
   (a) to dispose of property absolutely or for a term of years;
   (b) to dispose of a right in, or interest over, property.
Power to promote and oppose Bills


(2) The power conferred by sub-paragraph (1) is in lieu of any power to promote or oppose Bills which Associated British Ports might otherwise possess as successor to the persons carrying on any undertaking, and, in particular, the persons carrying on any undertaking transferred to the British Transport Commission by the Transport Act 1947, but nothing in this sub-paragraph affects any power exercisable by Associated British Ports as successor to apply for orders and schemes, and oppose applications for orders and schemes, including orders and schemes subject to special parliamentary procedure.

(3) In the application of this paragraph to Scotland, “Bill in Parliament” includes an order under the Private Legislation Procedure (Scotland) Act 1936.

Training, education and research

15 (1) Associated British Ports may do anything it thinks fit for the purpose of advancing—

(a) the skill of its employees and those of its subsidiaries; or

(b) the efficiency and manner in which the equipment of Associated British Ports and its subsidiaries is operated,

including making, or assisting the making, of provision for training and education.

(2) Associated British Ports may do anything which appears to it practicable or desirable for the purpose of—

(a) promoting research into matters affecting, or arising out of, the activities of Associated British Ports and its subsidiaries; or

(b) turning to account the results of any such research.

Provision of accommodation, etc.

16 (1) Associated British Ports may provide houses, hostels and other like accommodation for its employees and those of its subsidiaries.

(2) Associated British Ports may make housing loans to such employees to assist them to acquire housing accommodation and may guarantee loans made for housing purposes to such employees by building societies and other bodies.

Pensions

17 (1) Associated British Ports may pay pensions and enter into obligations under pension schemes.
(2) Associated British Ports may lend money to be applied for the purposes of a pension scheme under which it, or any of its subsidiaries, pays employer’s contributions or is subject to any other obligations.

Acquisition of land

18 (1) Associated British Ports has power to acquire land for the purposes of its business.

(2) Sub-paragraph (1) is subject to paragraphs 6(4) and 7(3).

(3) Where it is proposed to dispose of any land belonging to Associated British Ports or any of its subsidiaries, Associated British Ports may acquire by agreement adjoining land for the purpose of disposing of it together with that land.

Compulsory purchase of land

19 (1) Subject to sub-paragraph (2), the Secretary of State may authorise Associated British Ports to purchase compulsorily any land in Great Britain which it requires for the purposes of its business; and the Acquisition of Land (Authorisation Procedure) Act 1946 shall apply as if Associated British Ports were a local authority within the meaning of that Act and as if this Act had been in force immediately before the commencement of that Act.

(2) This paragraph does not authorise Associated British Ports to purchase compulsorily—

(a) land required for the purposes of a business carried on by a subsidiary of Associated British Ports other than a wholly-owned subsidiary;

(b) land required for the purposes of a business or activity carried on by virtue of paragraph 3(2), 4, 9 or 10;

(c) land required for the purpose of providing facilities for the storage of goods other than goods which have been or are to be loaded or unloaded in or carried through one of Associated British Ports’ harbours; or

(d) land which Associated British Ports has power to acquire by agreement under paragraph 6(3) or 18(3).

(3) Subject to sub-paragraph (4), the power of purchasing land compulsorily in this paragraph includes power to acquire an easement or other right over land by the creation of a new right.

(4) Sub-paragraph (3) does not apply to an easement or other right over any land which forms part of a common, open space or fuel or field garden allotment within the meaning of the Acquisition of Land (Authorisation Procedure) Act 1946.

(5) In the application of this paragraph to Scotland—

(a) for any reference to the Acquisition of Land (Authorisation Procedure) Act 1946 there is substituted a reference to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947;

(b) for any reference to an easement there is substituted a reference to a servitude; and

(c) the reference in sub-paragraph (4) to a fuel or field garden allotment is omitted.
Charges

20  (1) Subject to sub-paragraph (2), Associated British Ports may make such reasonable charges as it thinks fit for services and facilities provided by it or by its subsidiaries.

(2) This paragraph does not authorise—
   (a) the levying of ship, passenger and goods dues within the meaning of the Harbours Act 1964; or
   (b) the making of a charge in any case where an enactment relating to any of Associated British Ports’ harbours expressly provides for freedom from charges or otherwise prohibits the making of any charge.

(3) The provisions of sections 27 to 48 of the Harbours, Docks and Piers Clauses Act 1847 (which provide for various matters connected with liability for and collection of the rates to be taken by the undertakers) as incorporated with or applied by any enactment relating to any of Associated British Ports’ harbours apply to charges under this paragraph as if they were rates payable under that enactment.

Borrowing and guarantees

21  (1) Subject to sub-paragraph (5), Associated British Ports may borrow money for any of the purposes of its business, whether of a capital or revenue nature and including any proposed exercise of the powers conferred by paragraph 12, and may do so in such a manner and on such terms as it considers expedient.

(2) Without prejudice to the generality of sub-paragraph (1), the power conferred by that sub-paragraph may be exercised—
   (a) by the issue of debentures on such terms as Associated British Ports thinks fit;
   (b) by borrowing from a bank on overdraft;
   (c) by opening an acceptance credit with a bank or accepting house;
   (d) by accepting money on deposit.

(3) Subject to sub-paragraph (5), Associated British Ports may, for the purposes of its business, give a guarantee for the benefit of any person for the purposes of an undertaking carried on by him or, where that person is a body corporate, any undertaking carried on by a subsidiary of that body corporate.
(4) Associated British Ports may, by way of security for any of its borrowing or any guarantee given by it, mortgage or charge all or any part of its undertaking, revenues, property or assets (present or future).

(5) The aggregate amount outstanding at any time of—
   (a) the principal of money borrowed by Associated British Ports and its subsidiaries; and
   (b) guarantees given by Associated British Ports and its subsidiaries,
shall not exceed the limit for the time being set by the Holding Company.

Restrictions on certain descriptions of financial arrangement

(1) The Holding Company may from time to time impose restrictions on the descriptions of financial arrangement which may be entered into by Associated British Ports and its subsidiaries.

(2) The Holding Company may, in particular, prohibit Associated British Ports and its subsidiaries from entering into specified descriptions of financial arrangement—
   (a) absolutely, or
   (b) without the consent of the Holding Company,
and may set a limit on the aggregate amount of the liabilities which Associated British Ports and its subsidiaries may incur in respect of arrangements of any specified description.

(3) Restrictions imposed under this paragraph may be varied or revoked by the Holding Company from time to time.

General supplementary powers

Associated British Ports may purchase, manufacture or repair anything required for the purposes of its business.

Associated British Ports may acquire any undertaking of part of an undertaking if the assets of the undertaking or part are wholly or mainly assets which it requires for the purposes of its business.

Associated British Ports may, for the purposes of its business, subscribe for or acquire shares or securities of any body corporate.

Associated British Ports may, for the purpose of its business, lend money to any person for the purposes of an undertaking carried on by him or, where that person is a body corporate, any undertaking carried on by a subsidiary of that body corporate.

Associated British Ports may—
   (a) invest any sums not immediately required for the purposes of its business; and
   (b) turn its resources to account so far as not required for those purposes.

Associated British Ports may do all other things which in its opinion are necessary or expedient to facilitate the proper carrying on of its business.
Subsidiaries

29 (1) Associated British Ports may form and promote, or join with any other person in forming and promoting, a company for carrying on any activities which Associated British Ports has power to carry on.

(2) Associated British Ports may enter into arrangements with a company formed in exercise of the powers conferred by sub-paragraph (1) for the transfer to that company from Associated British Ports or any of its subsidiaries, in such manner and on such terms (including payments by any of the parties to the arrangements to any other of them) as may be provided for by the arrangements, of any property, rights, liabilities or obligations of Associated British Ports or any of its subsidiaries relevant to the carrying on of the activities to be carried on by the company.

Working agreements, etc.

30 (1) Associated British Ports may enter into an agreement with any person for the carrying on by that person, whether as agent of Associated British Ports or otherwise, of any of the activities which Associated British Ports may itself carry on.

(2) Associated British Ports may enter into arrangements with a person with whom an agreement is made under sub-paragraph (1) for the transfer to that person from Associated British Ports or any of its subsidiaries, in such manner and on such terms (including payments by any of the parties to the arrangements to any other of them) as may be provided for by the arrangements, of any property, rights, liabilities or obligations of Associated British Ports or any of its subsidiaries relevant to the carrying on of the activities to be carried on by that person.

Powers in relation to public transport authorities

31 (1) Associated British Ports may purchase, manufacture or repair anything required for the purposes of the business of any public transport authority or any subsidiary of such an authority.

(2) Without prejudice to paragraph 30(1), Associated British Ports may enter into an agreement with a public transport authority or with a subsidiary of such an authority for the management, working and use by one party to the agreement of works, land or other property belonging to the other party, and with respect to the rendering of services and pooling of receipts or expenses.

(3) An agreement under sub-paragraph (2) may be entered into notwithstanding that it involves a delegation of functions under any enactment relating to any part of the undertaking of a party to the agreement.

(4) In this paragraph “public transport authority means the British Railways Board, the British Waterways Board[^12], Canal & River Trust[^13] and[^14] Transport for London[^15][^16] and[^17], the Scottish Transport Group[^18] and the National Bus Company[^19].

Annotations:

Amendments (Textual)

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Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Transport Act 1981. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

F3 Words in Sch. 3 para. 31(4) substituted (E.W.) (15.7.2003) by The Transport for London (Consequential Provisions) Order 2003 (S.I. 2003/1615), art. 1(1), Sch. 1 para. 10
F4 Words in Sch. 3 para. 31(4) repealed (S.) (7.6.2002) by S.S.I. 2002/263, art. 5(1)(2), Sch.
F5 By S.I. 1991/510, art. 5(2) it is provided that in Sch. 3 para. 31(4) the word “and” shall be inserted (E.W.S.) (1.4.1991) after the word “Executive
F6 Words in Sch. 3 para. 31(4) repealed (E.W.S.) (1.4.1991) by S.I. 1991/510, art. 5(2)(4), Sch.

Interpretation

32 In this Schedule—
   (a) references to selling and purchasing include references to supplying or obtaining by exchange, hire or hire-purchase;
   (b) references to manufacture include references to construction and production;
   (c) references to repair include references to maintenance; and
   (d) references to goods include references to fish, livestock and animals of all descriptions.