STATUTORY INSTRUMENTS

1981 No. 865

LAND DRAINAGE

The Mucking Creek (Closure) Order 1981

Made - - - - 16*th June* 1981

Coming into Operation 24*th June* 1981

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The Minister of Agriculture, Fisheries and Food and the Secretary of State for Trade, in exercise of their powers under section 56 of the Thames Barrier and Flood Prevention Act 1972(a) and of all other powers enabling them in that behalf, hereby order as follows:

Citation and commencement

1. This Order may be cited as the Mucking Creek (Closure) Order 1981 and shall come into operation on 24th June 1981.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

"the Act of 1965" means the Compulsory Purchase Act 1965(b);

"the Act of 1968" means the Port of London Act 1968(c);

(a) 1972 c. xlv. (b) 1965 c. 56. (c) 1968 c. xxxii.

"the authorised work" means the work authorised by Article 6 of this Order and any works, apparatus or conveniences (whether temporary or permanent) constructed, provided or installed by the Water Authority as part of, or in connection with, or for the purposes of, that work;

"the creek" means that part of the river known as Mucking Creek;

"the deposited plan" and "the deposited section" mean the plan and section prepared in triplicate signed by an Assistant Secretary in the Ministry of Agriculture, Fisheries and Food and marked "Plan and section referred to in the Mucking Creek (Closure) Order 1981", of which one set is deposited and available for inspection at the office of the Chief Executive of the Water Authority and one set each at the offices of the Minister and of the Secretary of State for Trade respectively;

"enactment" means any enactment, whether public general or local, and includes any order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;

"land" or "lands" includes land covered by water and any interest in land and any easement or right in, to, over or under land;

"the Minister" means the Minister of Agriculture, Fisheries and Food and "the Ministers" means the Minister and the Secretary of State for Trade acting jointly;

"the Port Authority" means the Port of London Authority;

"the river" means the River Thames and includes—

(*a*) any tributary or other watercourse or any basin, bay, channel or creek the water in which ultimately flows into, or which is directly or indirectly connected with, the River Thames; and

(*b*) the bed, banks and foreshore of the River Thames and of any such tributary, watercourse, basin, bay, channel or creek;

"tidal work" means so much of any work authorised by this Order as is in, on, under or over tidal waters or tidal lands below the level of mean high water springs;

"the tribunal" means the Lands Tribunal;

"vessel" means every description of vessel, whether with or without means of propulsion of any kind, and includes anything constructed or used to carry persons, goods, plant or machinery, or to be propelled or moved, on or by water, a seaplane on or in the water and a hovercraft within the meaning of the Hovercraft Act 1968(**a**);

"the Water Authority" means the Anglian Water Authority;

"watercourse" has the same meaning as in the Land Drainage Act 1976(**b**).

(2) References in this Order to reference points shall be construed as references to National Grid Reference points.

Application of Act of 1965

3.—(1) Part I of the Act of 1965, in so far as it is applicable for the purposes of this Order and is not inconsistent with the provisions thereof, shall apply to the compulsory purchase of land under this Order as it applies to a compulsory purchase to which the provisions of Schedule 1 to the Acquisition of Land (Authorisation Procedure) Act 1946(**c**) apply and as if this Order were a compulsory purchase order under the said Act of 1946.

(**a**) 1968 c. 59. (**b**) 1976 c. 70. (**c**) 1946 c. 49.

(2) The provisions of the Act of 1965, as so applied, shall have effect subject to the following exceptions and modifications:—

(*a*) at the end of section 4 there shall be added the following proviso:—

"Provided that such powers shall in relation to any of the land be deemed to have been exercised if before the expiration of the said three years notice to treat has been served in respect of that land";

(*b*) in subsection (1) of section 11 for the words "fourteen days" there shall be substituted the words "one month";

(*c*) in subsection (3) of section 11 for the words "not less than three nor more than fourteen days' notice" there shall be substituted the words "not less than seven days' notice in the case of the first entry and not less than twenty-four hours' notice in the case of a subsequent entry";

(*d*) subsection (5) of section 24, section 27 and subparagraph (3) of paragraph 3 of Schedule 3 shall not apply.

Power to acquire lands

4. Subject to the provisions of this Order the Water Authority may purchase compulsorily such of the lands delineated on the deposited plan and shown on that plan as being within the limit of land to be acquired as they may require for the construction, maintenance and operation of the authorised work or other purposes connected therewith, including (without prejudice to the generality of the foregoing) for the purpose of obtaining access thereto, obtaining materials for the construction thereof, depositing spoil or other material excavated during the construction thereof, or otherwise for the purposes of this Order or other purposes connected therewith.

Power to acquire easements only

5.—(1) The Water Authority may, instead of acquiring any land which they are authorised to acquire compulsorily under this Order, acquire compulsorily such easements and rights in, to, over or under the land as they may require for the purposes of or in connection with the exercise of any of their powers under this Order.

(2) Accordingly the Water Authority may give notice to treat in respect of any such easement or right describing the nature thereof; and the provisions of Part I of the Act of 1965 as applied for the purposes of this Order shall apply in relation to the acquisition of such easements and rights as if they were land within the meaning of the Act of 1965.

(3) Where the Water Authority have acquired an easement or right only in, to, over or under any land under this Article—

(*a*) they shall not be required or, except by agreement or during the execution of the works, entitled to fence off or sever that land from the adjoining land;

(*b*) the owner or occupier of the land for the time being shall, subject to the easement or right, have the same right to use the land as if this Article had not been enacted.

(4) If in his particulars of claim the owner of any land in respect of which notice to treat for an easement or right is given under this Article requires the Water Authority to acquire the land, the Water Authority shall not be entitled under this Article to acquire the easement or right unless the tribunal determines

that the easement or right can be granted without material detriment to the land or, in the case of a park or garden belonging to a house, without seriously affecting the amenity or convenience of the house; and, if the tribunal does not so determine, the Water Authority may acquire the land compulsorily notwithstanding that the period mentioned in section 4 of the Act of 1965 has expired, but not later than one year after the determination of the tribunal:

Provided that nothing in this paragraph shall apply to land forming part of a street.

(5) A notice to treat given under this Article shall be endorsed with notice of the effect of paragraph (4) of this Article.

Construction of authorised work

6.—(1) Subject to the provisions of this Order, the Water Authority may, in the lines or situations and within the limits of deviation shown on the deposited plan and according to the levels shown on the deposited section, construct the following work in the borough of Thurrock in the county of Essex, together with all necessary and proper works and conveniences connected therewith or incidental thereto (that is to say):—

A dam across the creek incorporating a sluice (fitted with tide flaps and stoplogs) and a flushing pipe (with or without a sluice valve) commencing on the west side of the creek at reference point TQ6913480831 and terminating on the east side of the creek at reference point TQ6917680815.

(2) Notwithstanding anything to the contrary in this Order or shown on the deposited plan or the deposited section, but without prejudice to the provisions of the next following Article, the Water Authority may, if they think fit, subject to the approval of the Ministers execute the whole or any part of the authorised work within the limits of deviation shown on the deposited plan in accordance with dimensions and descriptions other than the dimensions and descriptions shown on the deposited plan and the deposited section or set out in the last foregoing paragraph.

(3) Without prejudice to the provisions of the last foregoing paragraph, the Water Authority may maintain and may from time to time alter, extend, enlarge, replace, repair or renew—

(*a*) the authorised work, or any part thereof, within the limits of deviation; or

(*b*) any other works, conveniences or other things, provided by or belonging to them in connection with the authorised work;

or may remove the authorised work or any part thereof.

(4) The construction of all tidal works shall when commenced be proceeded with and completed as soon as practicable.

(5) The public rights of navigation in the portion of the creek upstream of the authorised work shall cease to be exercisable as from the date on which the Water Authority shall certify that that work is completed but shall be revived if and when, in consequence of the removal of that work in pursuance of paragraph (3) of this Article, the said portion of the creek becomes tidal.

Power to deviate

7. In the construction of the authorised work, or any part thereof, the Water Authority may deviate from the lines or situations thereof shown on the deposited plan to any extent within the limits of deviation shown on that plan,

and may deviate vertically from the levels shown on the deposited section to any extent upwards or downwards.

Subsidiary powers to Water Authority

8.—(1) Subject to the provisions of this Order and within the limits of deviation shown on the deposited plan or on any land acquired by the Water Authority under the powers of this Order the Water Authority, in connection with and for the purposes of the authorised work, may—

(*a*) make junctions and communications between the authorised work and any watercourses and any existing streets, roads, ways, bridges and footpaths;

(*b*) make, provide and maintain all necessary or convenient buildings, walls, banks, embankments, borrow pits, quays, slipways, pavings, hards, moorings, boat-hoists, rollers and other facilities for transporting boats, fish ladders or passes or other apparatus for facilitating the passage of fish, piling, fences, culverts, drains, intakes, syphons, watercourses, weirs, sluices, wharves, mattresses, pitching, gabions, roads, bridges, towing paths, footpaths and landscaping works and all such mains, pipes, cables, wires, machinery, works and appliances as may be required;

(*c*) dispose of spoil or other material excavated in the construction of the authorised work;

(*d*) execute any works for the protection of any adjoining lands or buildings;

(*e*) remove, alter, divert or stop up any watercourse or sewer (not being a watercourse) the Water Authority providing a proper substitute before interrupting the flow of water or sewage in any such watercourse or sewer;

(*f*) alter any mains, pipes, wires and other works and apparatus for conveying or transmitting water, sludge, gas, electricity or petroleum (as defined in the Petroleum (Consolidation) Act 1928**(a)**).

(2) In the exercise of the powers conferred by this Article, the Water Authority shall cause as little detriment and inconvenience to any person as circumstances admit.

Temporary closing of creek in connection with works

9.—(1) Notwithstanding anything to the contrary in any other enactment or in any rule of law, but without prejudice to any requirement imposed on the Water Authority under the provisions of this Order, the Water Authority may, in executing or doing in, on, under or over the creek any works or things authorised by or under the foregoing provisions of this Order, close the creek or any part thereof to navigation.

(2) Without prejudice to the provisions of Article 3 (Application of Act of 1965) or paragraph (3) of Article 16 (For protection of Port Authority and creek users) of this Order neither the Water Authority nor the Port Authority shall be liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of any closure of the creek under the foregoing paragraph.

Power to Water Authority to dredge

10. Subject to the provisions of this Order the Water Authority may from time to time both during and after the construction of the authorised work

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(a) 1928 c. 32.

deepen, dredge, and improve, and remove obstructions from the bed, foreshore and banks of the creek for the purposes of or in connection with the construction, operation, maintenance, alteration, extension, enlargement, replacement, repair, renewal or removal of that work.

Removal of vessels

11.—(1) Where any vessel is sunk, stranded or abandoned in any part of the creek downstream of the authorised work or without lawful authority left or moored therein, the Water Authority, after consultation with the Port Authority and unless the Port Authority inform the Water Authority that they will proceed forthwith to take all reasonable steps to secure the prompt removal of the vessel in pursuance of the provisions of section 120 (Power to raise and remove vessels sunk, etc.) of the Act of 1968, may take all such action as may be necessary to remove the vessel.

(2) The Water Authority may recover from the owner of any vessel removed by them under the foregoing paragraph all expenses reasonably incurred by them in respect of the removal and storage of the vessel and of any furniture and tackle thereof or any cargo, goods, chattels and effects removed therefrom.

(3) If any such vessel be not within six weeks of its removal by the Water Authority proved to their satisfaction to belong to any claimant it shall together with any furniture, tackle, cargo, goods, chattels and effects thereupon vest in the Water Authority:

Provided that if within six months of its removal by the Water Authority a claim is made to the vessel by a person who subsequently proves to the satisfaction of the Water Authority that he is the owner thereof then they shall, if the vessel is unsold, permit the owner to retake it with any furniture, tackle, cargo, goods, chattels and effects thereupon upon payment of the expenses referred to in paragraph (2) of this Article and of any expenses incurred by the Port Authority in respect of the vessel or its cargo, or anything else associated with the vessel and referred to in subsection (2) of the said section 120 of the Act of 1968 or, if the vessel, furniture, tackle, cargo, goods, chattels and effects thereupon have been sold, the Water Authority shall pay to such owner the amount of the proceeds of such sale after deducting the said expenses, and in case such proceeds shall be insufficient to reimburse the Water Authority and the Port Authority such expenses the deficiency may be recovered by the Water Authority or (as the case may be) the Port Authority as a simple contract debt.

(4) (a) Except where there is, in the Water Authority's opinion, an emergency, paragraph (1) of this Article shall not authorise the removal of any vessel by the Water Authority unless the Water Authority have given to the owner of the vessel not less than forty-eight hours' notice of their intention to remove the vessel, and if before the notice expires the Water Authority receive from the owner a counternotice in writing that he desires to remove the vessel himself he shall be at liberty to do so and the Water Authority shall not take any action to remove the vessel themselves until the expiration of seven days from the receipt of the counternotice and of any further continuous period thereafter during which the owner of the vessel proceeds with the removal thereof with a reasonable diligence.

(b) If the owner of a vessel to whom notice is to be given under this Article is not known to the Water Authority, or if his place of business or abode is not known to the Water Authority or is outside the United Kingdom, the notice may be given by affixing it to the vessel in a conspicuous position.

(5) In this Article "owner" in relation to any vessel sunk, stranded, abandoned, left or moored as aforesaid means the owner of the vessel at the time of the sinking, stranding, abandonment, leaving or mooring thereof.

Opening of sluice, etc.

12. The Water Authority may regulate the opening, shutting and management of the sluice forming part of the authorised work and the operation of the flushing pipe forming part of that work so as to control the passage of water through that work.

Crown rights

13.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege or exemption of the Crown and in particular and without prejudice to the generality of the foregoing nothing in this Order authorises the Water Authority to take, use or in any manner interfere with any land or hereditaments or any rights of whatsoever description—

(*a*) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners without the consent in writing of those Commissioners on behalf of Her Majesty first had and obtained for that purpose; or

(*b*) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Section 115 of the Land Drainage Act 1976 shall not apply to this Order.

Exemption from requirements as to works and dredging licences

14. The authorised work shall for the purposes of subsection (7) of section 66 (Licensing of works) of the Act of 1968 and any dredging or other operations carried out under Article 10 (Power to Water Authority to dredge) of this Order shall for the purposes of subsection (6) of section 73 (Licensing of dredging etc.) of that Act, be deemed to have been constructed or carried out, as the case may be, in the exercise by the Water Authority of their functions under the Land Drainage Act 1976.

Creek to cease to be within jurisdiction of Port Authority

15.—(1)(*a*) As from the date on which the Water Authority shall certify that the authorised work is completed so much of the creek as is above that work shall as provided for by subparagraph (*b*) of this Article cease to be within the jurisdiction of the Port Authority.

(*b*) Paragraph 2 of Schedule 1 to the Act of 1968 shall as from the said date have effect as if after subparagraph (*e*) of that paragraph there were inserted the following new subparagraph—

"(*ee*) Mucking Creek above the work authorised by Article 6 of the Mucking Creek (Closure) Order 1981;".

(2) If in accordance with paragraph (5) of Article 6 (Construction of authorised work) of this Order the public rights of navigation of the creek upstream of the authorised work are revived, this Article shall as from the date when the said rights are so revived cease to have effect and shall be deemed never to have been enacted but without prejudice to anything duly done in or in relation to the creek while this Article was in force.

For protection of Port Authority and creek users

16. For the protection of the Port Authority and users of the creek the following provisions shall, unless otherwise agreed in writing between the Water Authority and the Port Authority, apply and have effect:—

(1) In this Article, except where the context otherwise requires—

"functions" includes powers and duties;

"plans" includes sections and particulars.

(2) Not later than twenty-eight days before—

(i) starting to carry out any tidal work, or

(ii) exercising any of the powers of Article 10 (Power to Water Authority to dredge) of this Order;

the Water Authority shall submit to the Port Authority plans of the proposed work and such further particulars thereof as may be available to the Water Authority and as the Port Authority may reasonably require and, in carrying out such works or in exercising such powers, the Water Authority shall comply with all reasonable modifications and conditions (not involving alteration to the basic design of any tidal work), including the carrying out of works by the Water Authority at their own expense, as may be specified by the Port Authority for the protection of the flow or regime of, the river:

Provided that any such modifications or conditions as aforesaid shall be notified by the Port Authority to the Water Authority within twenty-eight days of the receipt by the Port Authority of the plans or particulars to which such modifications or conditions relate.

(3) (*a*) The Water Authority shall be responsible for and make good to the Port Authority all costs, charges, damages and expenses which may be occasioned to or reasonably incurred by the Port Authority by reason of any negligent or wilful act or omission of the Water Authority or of any officer, servant or agent of the Water Authority in relation to the exercise or purported exercise of any of their functions under this Order;

(*b*) The fact that any act or thing may have been done by the Water Authority or any officer, servant or agent of the Water Authority under this Order in accordance with plans or particulars submitted to or modifications or conditions specified by the Port Authority or in a manner approved by the Port Authority or under their supervision or the supervision of their duly authorised representative shall not excuse the Water Authority from any liability under the provisions of this paragraph, and the Water Authority shall effectively indemnify and hold harmless the Port Authority from and against all claims and demands arising out of or in connection with any act or thing which may have been done as aforesaid;

(*c*) Nothing in this paragraph shall impose any liability on the Water Authority with respect to costs, charges, damages or expenses so far as they may be attributable to any negligent or wilful act or omission of the Port Authority, their servants or agents;

(*d*) The Port Authority shall give to the Water Authority reasonable notice of any claim or demand as aforesaid, and no settlement or compromise thereof shall be made without the prior consent of the Water Authority.

(4) On completion of the construction of the authorised work the Water Authority shall supply to the Port Authority a plan on a scale of not less than 1 in 2500 and sections and cross-sections on scales of not less than 1 in 100 showing the situation and levels of the authorised work.

(5) (*a*) If a tidal work is abandoned or suffered to fall into decay, the Port Authority may by notice in writing require the Water Authority at their own expense to exercise the option either of repairing and restoring the work or any part thereof, or of removing the work and restoring the site thereof to its former condition, to such an extent and within such limits as the Port Authority may reasonably require;

(*b*) If on the expiration of such reasonable period as may be specified in a notice served under this paragraph upon the Water Authority they have failed to comply with the requirements of the notice, the Port Authority may themselves exercise the option and execute the appropriate works specified in the notice and any expenditure incurred by them in so doing shall be recoverable from the Water Authority as a simple contract debt.

(6) Except so far as may be unavoidable in the construction of the authorised work, the Water Authority shall not, without the consent of the Port Authority under the hand of their Secretary or harbour master (which shall not be unreasonably withheld), deposit in or allow to fall or be washed into the river any gravel, soil or other materials (including in particular any spoil or material excavated, whether or not from the river, in the carrying out of the works).

(7) Any consent given by the Port Authority under this Order and any conditions attached to that consent shall have effect also as a consent or conditions attached thereto (as the case may be) given by the Port Authority under section 112 of the Land Drainage Act 1976.

(8) Except as otherwise expressly provided in this Order and except so far as may be necessary to enable the objects of this Order to be effected, nothing in this Order shall prejudice or derogate from the estates, rights, interests, privileges, liberties, or franchises of the Port Authority or alter or diminish any power, authority or jurisdiction vested in the Port Authority at the commencement of this Order.

(9) Any question or difference arising between the Water Authority and the Port Authority under this Article, other than a question or difference to which the provisions of the Land Compensation Act 1961(**a**), the Act of 1965 or the Land Compensation Act 1973(**b**) apply, or as to the meaning or construction of this Article, may be referred by either of the parties (after giving notice in writing to the other of them) for determination by the Ministers and their decision shall be final.

Approval by Secretary of State to tidal works and deposit of spoil

17.—(1) Section 76 (Works to be approved by Board of Trade) of the Act of 1968, except paragraph (*b*) of subsection (1) thereof, shall apply in relation to a tidal work as if it were, or were to be, a work placed or constructed on the bed of the river under the direction or licence of the Port Authority.

(2) No spoil or other material excavated during the construction of the works or dredged in the exercise of the powers of Article 10 (Power to Water Authority to dredge) of this Order shall be deposited in any place below the level of mean

(**a**) 1961 c. 33. (**b**) 1973 c. 26.

high water springs otherwise than in such a position and subject to such conditions and restrictions as may be fixed by the Secretary of State for Trade.

Saving for pollution prevention

18. Nothing in this Order shall authorise the Water Authority to discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise or shall affect the operation of the provisions of the Rivers (Prevention of Pollution) Acts 1951 to 1961**(a)** or the Control of Pollution Act 1974**(b)**.

In Witness whereof the official seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 11th June 1981.

(L.S.)

Peter Walker,
Minister of Agriculture, Fisheries and Food.

Lord Trefgarne,
Parliamentary Under Secretary of State,
Department of Trade.

16th June 1981.

(a) 1951 c. 64; 1960 c. 54; 1961 c. 50. **(b)** 1974 c. 40.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order, made under Section 56 of the Thames Barrier and Flood Prevention Act 1972, empowers the Anglian Water Authority to construct a dam incorporating a sluice fitted with tide flaps, stoplogs and a flushing pipe across Mucking Creek and to execute ancillary works. The Order enables the Authority to acquire the requisite land and rights by agreement or compulsorily, to close temporarily the Creek or part thereof to navigation in connection with and during the execution of any works, to dredge, to remove any vessels sunk, stranded or abandoned in any part of the Creek downstream of the work, and to regulate the sluice and flushing pipe.

The Order provides that from the date of certification of the completion of the work the Creek upstream of the dam shall cease to be within the jurisdiction of the Port of London Authority and rights of navigation therein shall cease to be exercisable (but subject to revival if the dam is removed). It also makes provision for the protection of the Port of London Authority and users of the Creek.

Copies of the plan and section mentioned in this Order are available for inspection during office hours at the office of the Chief Executive of the Anglian Water Authority, at Diploma House, Grammar School Walk, Huntingdon PE18 6NZ, at the offices of the Ministry of Agriculture, Fisheries and Food, Great Westminster House, Horseferry Road, London SW1P 2AE and at the offices of the Secretary of State for Trade, Sunley House, 90 High Holborn, London WC1V 6LP.