

**PROPOSED FOLKESTONE HARBOUR REVISION ORDER  
2016**

**HARBOURS ACT 1964**

**MARINE MANAGEMENT ORGANISATION**

**STATEMENT IN SUPPORT OF APPLICATION BY  
FOLKESTONE HARBOUR COMPANY LIMITED**

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## 1 INTRODUCTION

- 1.1 This statement has been prepared in support of the application by Folkestone Harbour Company Limited (the "**Harbour Company**") for the proposed Folkestone Harbour Revision Order 2016 (the "**HRO**"). The Harbour Company is the statutory harbour authority for Folkestone Harbour (the "**Harbour**").
- 1.2 The Harbour has been used over the years by passenger and freight ferries and cargo ships operating from the Harbour to various destinations, principally between Folkestone and Boulogne. However, ferry usage in Folkestone Harbour declined rapidly during the 1990s with the increased demand for car travel and by the late 1990s, ferry operations had become unsustainable and the last ferry link was closed down in 2000. The railway line, which extended onto the Harbour Arm and at one stage had delivered thousands of passengers a year to the Harbour Arm, was designated "permanently out of use" by Network Rail in March 2012. This closure was then formally ratified by the Office of Rail Regulation on 31 July 2014. Regeneration and redevelopment of Folkestone Harbour has long been recognised as the solution for the Harbour with the Folkestone Harbour Act 1992 authorising redevelopment of the Seafront and Harbour (although this never happened). As explained in more detail in Section 5 below, the Local Plan and Core Strategy policies allocate Folkestone Seafront and Harbour for large scale mixed use development.
- 1.3 Folkestone Harbour (GP) Limited applied for planning permission for the redevelopment and regeneration of Folkestone seafront. Planning permission was granted on 30 January 2015 by Shepway District Council (reference Y12/0897/SH) (the "**Planning Permission**") for the redevelopment of Folkestone Seafront for a comprehensive mixed use development comprising up to 1000 dwellings; up to 10,000 m<sup>2</sup> of commercial floorspace including retail, leisure and offices and other community uses as well as sea sports and beach sport facilities (the "**Development**"). The Development proposed also includes improvements to the beaches, pedestrian and cycle routes and accessibility into, within and out of the seafront and Harbour. The HRO applied for is not only a works order but also seeks to clarify and formalise some of the Harbour powers to assist the Harbour Company in the management of the Harbour and maintain the statutory and legal framework underpinning the effective operation of the Harbour in accordance with Modernising Trust Ports guidance (second edition).<sup>1</sup>
- 1.4 This application is for a harbour revision order under section 14 of the Harbours Act 1964, (the "**Act**") to:
- 1.4.1 authorise works to be undertaken in Folkestone Harbour, namely the construction of a wave wall and rock revetment in the location shown on the order plans which will act as a flood defence for the redevelopment and regeneration of land along Folkestone Seafront. A copy of the Phasing plan is provided at Appendix 1 to this Statement. The works will also require the temporary stock piling of rock and plant for the revetment. Rights of navigation over the area used for the stock pile will need to be temporarily suspended. Without these works being constructed, the Development within phase 6 cannot be occupied;

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<sup>1</sup> Whilst the Harbour is not a Trust Port the section on "coverage" in the guidance indicates that "*all ports are encouraged to use the relevant elements of this guidance as a benchmark, as all ports on whom Parliament has devolved statutory powers and duties in the public interest should be accountable for their use.*"

- 1.4.2 modernise and extend existing powers vested in the Harbour Company in relation to the management and maintenance of the Harbour in accordance with the Modernising Trust Ports guidance (second edition) and the Port Marine Safety Code. The guidance provides at paragraph 2.4.1 that it "*is essential that the statutory and legal framework underpinning the effective operation of the Trust Port be maintained*". The Schedule at Appendix 2 of this Statement sets out the powers sought, briefly summarises why each of these are required and specifies the objects achieved;
- 1.4.3 define more precisely the limits of the Harbour both landward and seaward. The existing Harbour Orders and local acts do not show precisely the limits of the Harbour. It is considered advisable to take the opportunity to clarify for Harbour users precisely which areas fall within and which areas fall outside the Harbour;
- 1.4.4 release land which is no longer being used for Harbour purposes for residential/commercial development thereby reducing the extent of the area of land within the Harbour;
- 1.4.5 remove the right to embark and disembark and to load and unload goods along the Harbour Arm and parts of South Quay and vest powers in the Harbour Company to control which vessels may moor alongside them. This formalises the existing situation in which trading including shipping and unshipping of goods and/or a commercial ferry operation no longer takes place from or on the Harbour Arm and South Quay given the current state of facilities, depth of water, local infrastructure and market demand. The Harbour Arm and South Quay are not therefore currently being used for commercial shipping and ferry operations and future commercial use of the Harbour Arm and South Quay is considered to be unviable. The Harbour Arm is intended to form public open space as part of the Development.
- 1.5 The above points are considered in more detail below.
- 1.6 This application was screened by the MMO who concluded that the proposed works relate to a project which falls within Annex I or Annex II of European Directive 2011/92/EU and therefore constitutes development requiring an Environmental Impact Assessment. The application was consulted upon and a Scoping Opinion issued by the Marine Management Organisation ("**MMO**") on 6 September 2013.

## 2 **DOCUMENTS**

- 2.1 This application for an HRO comprises the following:
- (a) A draft of the proposed HRO;
  - (b) Accompanying plans and drawings including plan of Harbour Limits, location plan for the work, work plan, and longitudinal sections and cross sections for the work;
  - (c) This statement including appended schedules summarising the powers sought under the HRO;
  - (d) Folkestone Seafront Environmental Statement Main Report (29 August 2012) which includes a Flood Risk Assessment;
  - (e) Folkestone Seafront Environmental Statement Addendum (24 April 2013);

(f) Folkestone Seafront Harbour Revision Order and Marine Licence Applications Environmental Statement Addendum (17 September 2014); and

(g) The application fee in the sum of £10,000.

2.2 Although not part of this application, copies of the Planning Permission and related application documents are available on Shepway District Council's website.

### 3 HARBOUR COMPANY

3.1 Folkestone Harbour was built in stages between the 1840s and early 1900s around the old fishing port of Folkestone. Over the years passenger and freight ferries, and cargo ships, operated from the Harbour to various destinations, principally between Folkestone and Boulogne. In the early 1990s Sea Containers Limited took over the running of the ferry operation from the port<sup>2</sup>. By the late 1990s ferry operations had become unsustainable and the last ferry link was closed down in 2000.

3.2 In 2004 Folkestone Properties Limited was acquired by Folkestone Harbour Holdings Limited and was subsequently renamed Folkestone Harbour Company Limited. The Harbour Company is the statutory harbour authority for the Harbour. The Harbour Company is a wholly owned subsidiary of Folkestone Harbour Holdings Limited.

3.3 Folkestone Harbour (GP) Limited, another wholly owned subsidiary of Folkestone Harbour Holdings Limited, subsequently acquired other land adjacent to the harbour land owned by Folkestone Harbour Company. The harbour land was then transferred to Folkestone Harbour (GP) Limited for consistency of land ownership and leased back to Folkestone Harbour Company.

3.4 Since that time, extensive consultation has taken place with planning authorities and Government agencies, examining a wide variety of options for the development of the 35 acre site.

3.5 Architects, Sir Terry Farrell and Partners, were commissioned to research and develop a Masterplan to show how the Harbour and Seafront could be re-developed in a way that would re-establish Folkestone's traditional links with the sea.

3.6 The applicant for the HRO is the statutory harbour authority for the Harbour. This application is therefore made in accordance with section 14(2)(a) of the Act which requires that it be on written application by the "*authority engaged in improving, maintaining or managing*" the Harbour or "*by a person appearing to him to have a substantial interest or body representative of persons appearing to him to have such an interest*". As statutory harbour authority for the Harbour the Harbour Company is directly responsible for maintaining and managing the Harbour.

3.7 The Harbour Company is the body in law that has statutory functions as statutory harbour authority in relation to the Harbour. In response to the Department for Transport's Port Marine Safety Code the Harbour Company set up the non-statutory Folkestone Harbour Authority ("**FHA**") to provide oversight of marine safety at the Harbour, to perform the role of Duty Holder under the Code, and to enable compliance with the Code more generally. The current FHA Board members are

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<sup>2</sup> Sealink Harbours Limited transferred the harbour undertaking to Folkestone Properties Limited in 1991 under The Sealink (Transfer of Folkestone Harbour) Harbour Revision Order 1991

Captain T Miller, Mr T Minter, Mrs R Jones and Mr J Smith. FHA supports the promotion by the Harbour Company of the HRO – see letter from FHA included at Appendix 3.

#### 4 **FOLKESTONE HARBOUR**

- 4.1 The Harbour is defined in the local acts as being an area extending from Copt Point to the eastward of the Harbour to Mill Point to the westward of the Harbour. The Harbour includes an Inner and Outer Harbour to the east of East Pier in which small craft and fishing vessels are moored. Between the Inner and Outer Harbour runs the railway viaduct from Fish Market to the north of the Harbour across to South Quay. The viaduct is grade two listed. Fishing vessels use a jetty on the north side of the Outer Harbour to load and unload fish.
- 4.2 The Inner and Outer Harbour are currently only accessible two hours either side of high tide due to ongoing siltation reducing the navigable depth. As a result, vessels often have either to moor up outside of the Outer Harbour or moor alongside the Harbour Arm whilst waiting for a navigable water depth at high tide. Enclosing the Outer Harbour is the East Pier running from The Stade to the north of the Harbour in a southerly direction. The East Pier is not publically accessible and serves as a breakwater for the Outer Harbour.
- 4.3 To the south of the railway viaduct is South Quay which is currently used for car parking. Along parts of the northern harbour wall of South Quay there is a lower level mooring platform used by visiting recreational sea-going craft. The area at South Quay is proposed for phase 6 of the Development (explained further in Section 7 below). Protruding into the sea from South Quay is a pier of approximately 500 metres in length known as the Harbour Arm.
- 4.4 The Harbour Arm consists of principally three levels, the upper westerly-facing walkway, the passenger railway station level, and the main easterly-facing deck area which housed the railway lines and served as the principal quayside for mooring vessels. In addition, there are two lower deck areas inset into the main deck which are submerged during mid to high tide. At the end of the Harbour Arm is a listed lighthouse. The Harbour Arm underwent a major refurbishment in 2014-2015.
- 4.5 The former ferry service operating from the Harbour Arm to Boulogne in France declined in the 1990s to a catamaran service only and eventually ceased operation in 2000 principally because Sea Containers (who operated the route) could not compete with routes via Dover and Eurotunnel. Since that date there has been no ferry service operated from Folkestone. At the Core Strategy examination, the Inspector concluded that the Core Strategy policy for Folkestone Seafront and Harbour did not need to be amended to include the protection for a ferry link as the protection of the potential for a cross-Channel ferry link had failed to deliver regeneration of the area. This is considered in more detail at Section 5 of this Statement.
- 4.6 Regular train services on the branch line ended in about 2000, and Network Rail designated the line "permanently out of use" in March 2012. In November 2013 Network Rail began a consultation process which led to the Department of Transport recommending the closure of the existing Folkestone Harbour branch line and station. On 31 July 2014 the Office of Rail Regulation ratified this decision. Network Rail is now in the process of decommissioning and removing the existing railway infrastructure.

- 4.7 The Harbour also includes harbour premises adjacent to the Harbour Arm and South Quay. Harbour House, the Harbour Master's Office, is the only building currently used as part of the Harbour undertaking. It is proposed that areas of land at South Quay and directly to the west of South Quay will be removed from the Harbour limits for redevelopment.
- 4.8 The Folkestone Seafront regeneration site is the area shown edged red (the "**Site**") in the Phasing Plan at Appendix 1 this statement and occupies approximately 23 hectares of Folkestone's seafront, which includes the Harbour, and is bounded by the Leas Park to its west and a steep embankment to its north. At the eastern end of the Site lie the former cross-channel ferry port, disused harbour railway station, and associated buildings and infrastructure, with some buildings still in use. Immediately adjacent to the Harbour is the Grand Burstin Hotel, north-east of the site next to the Inner harbour, and residential properties clustered together along the northern edge of the Site; the most prominent of these being the Victorian 'Marine Crescent' on the north side of Marine Parade. Marine Parade forms the northern boundary of the Site.
- 4.9 A large proportion of the southern half of the Site is shingle beach, which has built up to the west of the Harbour Arm over time due to the harbour interrupting the eastward drift of material. There are large areas of hard-standing throughout the Site, particularly at its western end and between the residences and beach. These areas have had a variety of previous uses including public baths, lifeboat station, gardens, boating lake, market, funfair, and station marshalling yard; buildings associated with these uses have since been demolished and the sites have been left empty or used for car parking.
- 4.10 The works proposed under the HRO will take place to the east of South Quay and alongside the landward end of the Harbour Arm. It is also intended in the context of the Development to use the railway viaduct for pedestrian and cycle access to South Quay, although this will depend on the removal of the existing railway infrastructure. The Harbour Company also proposes to dredge the Outer Harbour as part of the Development and to use the dredged material as fill for the Development in order to raise the site level and reduce the risk of flooding. This work will result in the additional benefit of providing greater navigable access to the Outer Harbour. This dredging of the Outer Harbour is a benefit that the HRO will facilitate.
- 4.11 The Harbour Arm was used in the past for commercial trade. However, no shipping or unshipping of goods now takes place in the Harbour apart from the landing of fish. Occasionally the Harbour Company receives requests from companies to ship goods to Folkestone, but in each case the company wishing to ship goods has concluded that Folkestone is not suitable and they switch to an alternative port.
- 4.12 The Harbour accommodates up to 36 moorings. The Harbour maintains a working fishing fleet and is used by leisure craft. The Harbour has the potential for far greater recreational use of sea-going ships with the proposed HRO as a result of the increase in tourism and therefore footfall to the Harbour that the regeneration of the Seafront is expected to bring.

## 5 **PLANNING POLICY**

- 5.1 Policy SS6 of Shepway Core Strategy 2013 allocates Folkestone Seafront for mixed use development providing up to 1,000 homes, in the region of 10,000 sqm of floorspace comprising small shops and retail services, offices and other community and leisure together with beach sports and sea sports facilities and with associated

and improved on and off site community and physical infrastructure. The core strategy requires that the layout features "a range of open and enjoyable coastal environments".

5.2 This Site was proposed for regeneration in 2006 when allocated for redevelopment under the Shepway Local Plan (adopted March 2006). Policy FTC4 designated the Port of Folkestone area for redevelopment, provided that the potential for continuation of passenger ferries in the interest of tourism remained, employment opportunities replaced those lost as a result of curtailment of port activities and the public use of the Harbour Rail station was retained and enhanced. The relevant local plan policies have now been superseded and replaced with the more recent Core Strategy designation. The recently adopted Core Strategy is fundamentally different to the previous site allocation policies in the Local Plan which required the retention and enhancement of the Folkestone Harbour Railway Station and rationalisation of the port to maintain the potential for ferry operations.

5.3 In considering the draft Core Strategy policy the Inspector concluded in his report that the site specific policy for the Harbour in the Core Strategy did not need to be amended to include the protection for a ferry link as required under the Local Plan policy FTC4 for the reasons set out below, in particular that the protection of the potential for a cross-Channel ferry link has failed to deliver regeneration of the area.

*"Given their proximity to the town centre and the presence of significant areas of vacant land, Folkestone's seafront and harbour provide clear potential for substantial urban regeneration activity".*

*"Freight and pedestrian traffic between Folkestone and Boulogne ceased a number of years ago (2000). The specific area of concern is whether the CS should include safeguards to allow the reintroduction of cross channel ferry services and the re-establishment of the harbour rail link. Neither is explicitly ruled out by policy SS6, which, for example retains the rail corridor as a cycle/pedestrian link. However, the Council clarified at the hearing session that development that met this policy's requirements but did not retain the potential for passenger ferries to be reintroduced would be acceptable in principle. As such, the CS proposes the deletion of LP policy FTC4 and its safeguards".*

*"I have had regard to the documents submitted by representors supporting these projects. However, in both cases there is no strong evidence that there is sufficient likelihood of either being delivered within the likely development timescale of this site. Although a business plan has been prepared for the reopening of the Folkestone Harbour Branch Railway, key delivery elements (including project funding and the conclusion of negotiations with Network Rail) do not appear to have been secured. Investigations by the owner of Folkestone Harbour and the Mayor of Boulogne concluded that reintroducing the ferry service would be unfeasible for both technical and commercial reasons. While this is disputed by some parties, very little evidence to the contrary has been submitted. For example, a funding package for a resumed ferry service is not in place. Neither project is a national policy requirement. Notwithstanding its revocation, neither scheme was required by the SEP, which (within East Kent) made reference to the Ports of Dover and Ramsgate – identifying the latter as Kent's second cross-channel port."*

*"Clearly, the re-establishment of the cross-channel ferry and harbour rail link would accord with sustainable transport objectives. Both would be likely to result in economic benefits. Nevertheless, LP policy FTC4's protection of the potential for a cross-Channel ferry link and the retention of the Harbour Station has failed to deliver either the Port area's regeneration or the implementation of the projects*

*themselves. Bearing in mind both the accepted need for the area's regeneration and the wider housing pressures that apply to the District as a whole (discussed elsewhere in this report), the alteration of policy SS6 in order to perpetuate safeguards for passenger ferry services and the harbour rail link is not needed to make the Plan sound."*

- 5.4 As indicated in the section above, since the adoption of the Core Strategy the Office of Rail Regulation have formally ratified the closure of Folkestone Harbour Branch railway and station.
- 5.5 Despite the deletion of the relevant Local Plan policies it is worth noting that even for the development envisaged under the Local Plan (paragraph 13.12) the Council recognised that *"successful redevelopment will however require some rationalisation/reorganisation of the area previously used for port activities"*. In order to deliver regeneration of Folkestone Seafront as envisaged under local planning policy, statutory authorisation in the form of an HRO is required for flood defence works in the Harbour to act as flood protection measures for the development but also to authorise the reorganisation of the Harbour to release areas of Harbour land for redevelopment. This in turn will secure the improvement, management and maintenance of the Harbour in an efficient and economical manner as explained below and the HRO will facilitate development in the interests of recreational use of sea-going ships.
- 5.6 The regeneration of the Harbour has already been the subject of legislation, the Folkestone Harbour Act 1992, which was an act to *"empower Folkestone Properties Limited to reclaim land and construct works at Folkestone Harbour"*. The 1992 Act authorised works relating to a mixed use development in the Harbour. Recital 3 of the Act states that *"it would be of public and local advantage to regenerate parts of Folkestone Harbour by the creation of a waterside development comprising housing, shops and leisure facilities together with facilities for mooring vessels"*. These works have never been undertaken, but demonstrate that as far back as 1992 redevelopment of the Harbour was not only envisaged but also works to the Harbour were authorised under local Harbour legislation to enable reorganization of the Harbour to facilitate the regeneration of the wider area.
- 5.7 Policy FTC5 of the Local Plan 2006 designated the Harbour area for redevelopment where proposals were consistent with the following: *"increases the potential usage of the Harbour by pleasure craft (through the provision of a new marina and associated facilities) whilst protecting the interests of Folkestone fishing fleet"* (our emphasis). Whilst this policy has now been deleted the aims of increasing the usage of the Harbour for pleasure craft and protection of the fishing fleet are aims which have followed through into the masterplanning of the development. This is explained further at paragraph 5.11 below.
- 5.8 As summarised above, a planning application for redevelopment of Folkestone Seafront was made on 1 October 2012. The planning application was considered by Shepway District Council's Development Control Committee on 31 July 2013.
- 5.9 The Council overwhelmingly voted in favour of the proposals with no votes against, one abstention and 37 votes in favour. The resolution to grant consent was subject to adoption of the Core Strategy, planning conditions and completion of a satisfactory section 106 agreement. The Core Strategy was adopted on 18 September 2013. Planning conditions and section 106 negotiations were subsequently satisfactorily concluded with Shepway District Council enabling Planning Permission to be granted on 30 January 2015.

- 5.10 The Council concluded at paragraph 21.2 of their Report to Committee that *"the application conforms with national planning policies contained in the NPPF and the Council's own planning policies and strategies, as set out in the Core Strategy Local Plan and those policies to be retained of the Shepway District Council Local Plan Review. The Scheme brings to fruition a major element of the Council's core strategy for housing provision and will play a key part in the regeneration of Folkestone."*
- 5.11 The proposed quay side uses will attract a greater footfall to Folkestone Seafront and Harbour with potential to increase business for leisure craft and create a vibrant Harbour area to the benefit of the fishing fleet. As indicated in the planning statement submitted as part of the application for the Planning Permission (paragraph 8.107), one of the design objectives for the Masterplan of the Site is to *"provide new infrastructure to bring new life to the Harbour. It aims to enhance the Harbour environment improving facilities for current uses such as commercial fishing and sailing charters whilst in turn attracting new pleasure sailing users. Renovation of the Harbour Arm will improve pedestrian access to the historic lighthouse and improve amenity for fishing."*
- 5.12 As explained further below, the Planning Permission will also require that the Harbour Arm be made available for public use and provides that the Development should fund the maintenance of the Harbour Arm going forward. Furthermore the Harbour Company intends to dredge the Harbour to use the dredge arisings as fill for the Development. Under the Planning Permission, phase 6 cannot be occupied until the flood protection measures have been constructed. Authorisation for these works is sought under the HRO as outlined in more detail below.
- 5.13 The HRO will therefore facilitate the development of the entire consented scheme, delivering much needed housing and growth in an area in need of regeneration. At the same time the HRO will enable much needed improvements to the Harbour, as envisaged in local policy, and will facilitate a dredging of the Outer Harbour, for the benefit of Harbour users including pleasure craft and the existing fishing fleet.

## 6 OVERVIEW OF WAVE WALL AND ROCK REVETMENT

- 6.1 The assessment of flood risk undertaken for the planning application for the Folkestone Seafront development identified a need for flood protection measures to be incorporated into the proposed development to protect it from a combination of high tide levels and overtopping waves. The optimum design solution was identified as being the combination of an upstand wave wall located on the quayside of South Quay together with a sloping rock revetment immediately seaward of the quay as shown on plan reference HRO2, which, with the exception of the wave wall itself, will extend below mean high and low water.
- 6.2 The rock revetment will extend above mean high water and the base of the revetment will extend below mean low water. It is not anticipated that either the permanent structure, or the plant and rock stockpile required to construct the revetment will restrict practical navigation to the Outer Harbour beyond what is currently possible.
- 6.3 The other design options considered and subjected to modelling and assessment were 'do nothing' and an offshore artificial submerged breakwater. The breakwater was considered to be too costly, would have significantly impacted on navigation into the harbour, and would have been more likely to result in negative impacts on the marine environment. Doing nothing was demonstrated not to provide an acceptable degree of protection from flood risk to the Harbour and proposed Development due to overtopping waves during south-easterly storms.

- 6.4 The materials used for the revetment will be rock-fill and armour rock protection; the latter will be either one or two double-layers of a standard grade of armour rock. The covering armour layer would be designed to be large and dense enough to remain largely stable even under extreme storm events, ensuring that the structure continues to provide the standard of protection to the land behind the defence (by limiting wave overtopping), and does not 'fail' causing the rock fill that makes up the core to be washed out from the structure.
- 6.5 The rock will be specified and tested according to the European Armourstone standard (BS EN 13383) that sets rock size and quality thresholds. These thresholds include limiting the fine content (effectively the amount of broken pieces). Given the high standards for rock quality, and the cost effectiveness of sea delivery, it is likely that the rock would be either high-grade limestone from the quarries near Boulogne in France, or syenite (similar to granite) from Norwegian quarries. Initial calculations indicate the total rock quantity required for the structure to be approximately 50,000 tonnes of imported rock, of which approximately 60% would be rockfill, with the remaining for the covering armourstone layers. It is possible also that a geotextile may be used in the structure. If required, this would also be specified to withstand the rigours of the marine environment, according to the applicable UK and European standards.
- 6.6 It is anticipated that materials for the rock revetment will be delivered directly to the site by sea, most likely on flat-bottomed or split-bottom barges. The number of barge trips would be dependent on the size of barges used, but if a large flat bottomed barge is used then it would be possible to deliver the rock in one trip from the quarry to an offshore mooring site, with a smaller transshipment barge used to ferry the rock from the mooring site to the Site in approximately 5-10 trips. The split-bottomed barges would bring the rock directly to site and unload in the area identified, with multiple trips anticipated.
- 6.7 The materials would be unloaded and stockpiled in the inter-tidal area shown on the plans and then profiled and placed by a combination of marine-based plant and land-based excavators, depending on accessibility and the contractors' preferred method. The rock stockpile and working area will not restrict practical navigation into the Outer Harbour, and so are not anticipated to provide a real impediment to navigation during construction. It has also been possible to align the revetment so even in its permanent state it also does not limit navigational access to the Outer Harbour.
- 6.8 Given access and quality control considerations, the wave wall at the rear of the rock revetment would be likely to be composed of precast concrete units that would be transported to site by road and then installed. There is the possibility that some or all of the works could be cast *in situ*, including slab foundation works for the seawall elements. The concrete wall would be designed to be stable through its own weight and foundation detail. Although unlikely, there is the possibility that the wave wall could be secured by the use of piled foundations. For the piles to be driven, the revetment would have to be constructed first in order that a secure platform for the piling rig could be provided. This would mean that any piling would be undertaken in the dry and not through the water column.

## 7 **CHANGES TO HARBOUR ARM AND SOUTH QUAY**

- 7.1 As outlined above, the proposals for Folkestone Harbour require the removal of the right to trade along the Harbour Arm and South Quay and to vest powers in the Harbour Company to control which vessels have the power to moor alongside. This formalises the existing condition in which trading including shipping and unshipping of goods and/or a commercial ferry operation no longer takes place from or on the

Harbour Arm or South Quay given the state of the existing facilities, the depth of the water alongside the Harbour Arm and South Quay, local infrastructure and market demand. The Harbour Arm is not currently being used and future commercial use of the Harbour Arm is considered to be unviable.

- 7.2 The Planning Permission which has been granted for the regeneration of Folkestone Seafront requires that the Harbour Arm be made available for public use as required under local planning policy. Condition 15 of the Planning Permission requires detailed design of the public realm improvements to the Harbour Viaduct and Harbour Arm Public Open Space to be provided as part of the reserved matters submission for any land to the east of harbour approach road/phase 5 and provide the scheme as approved prior to occupation of any dwellings in phase 6. Condition 23 requires that, following completion of these works, the Harbour Arm thereafter is made publically accessible. As a requirement of the Planning Permission the Harbour Arm will therefore be dedicated to the public for the first time.
- 7.3 Part E of Schedule 2 of the Section 106 agreement entered into between The District Council of Shepway, and Folkestone Harbour Nominee (1) Limited, Folkestone Harbour Nominee (2) Limited and Folkestone Harbour Holdings Limited dated 29 January 2015 for the Planning Permission contains a number of obligations relating to the public access areas within the Site, which includes the Harbour Arm. These obligations include on-going requirements to keep such areas open to the public and comply with an approved management and maintenance scheme. This secures the ongoing maintenance of the Harbour Arm.
- 7.4 These improvements to the Harbour will be funded through the Development and the HRO will facilitate delivery of the Planning Permission. The HRO is therefore desirable for the Harbour on the basis that it will secure the ongoing maintenance of part of the Harbour which will be funded by the Development. As a result it will secure the improvement and maintenance of part of the Harbour in an efficient and economical manner.
- 7.5 The Harbour Docks Piers and Clauses Act 1847 (the "**1847 Act**") is incorporated by the South Eastern Railway (Various Powers) Act 1885 almost in its entirety including the right to trade under section 33 of that Act ("**section 33**"). Section 33 and consequently the section 33 duty is applicable to the Harbour. Section 33 provides 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*". Section 33 as currently applying is incompatible with the proposed development of South Quay and vision for the Harbour Arm as required under the Planning Permission whereby the Harbour Arm is to be dedicated as public open space.
- 7.6 Limitation of application of section 33 so that it only applies to the Inner and Outer Harbour (the parts of the Harbour east of East Pier), together with reduction in the extent of the harbour premises, is required to enable the Harbour Master to control which boats can moor alongside the Harbour Arm and certain parts of South Quay, and to enable development of South Quay in accordance with the planning permission. Removal of section 33 in relation to the Harbour Arm will also ensure that the use of the Harbour Arm is compatible with being used as publicly accessible space under the Planning Permission. Paragraph 13.7 of the Officers' Report to Committee for the Planning Permission indicates that the provision of the Harbour Arm as public open space is "*essential to the scheme's delivery of a high quality public realm in which to live and to visit*".

- 7.7 As a result of the works undertaken to the Harbour Arm and other works which will be undertaken in the Harbour, it is anticipated that in time there will be increased use of the Harbour by recreational sea-going vessels. There is also an intention to run pleasure trips from the Harbour Arm, while fishing vessels will still be able to shelter alongside the Harbour Arm while waiting for the tide to come in to enter the Inner and Outer Harbours. In the past, the berths on the Harbour Arm have been accessed by large ships; however, this is no longer possible due to depth limitations resulting from siltation. There are no longer any loading or unloading facilities on the Harbour Arm. The development of Folkestone Seafront is expected to significantly increase footfall to the Harbour and as a result it is anticipated that the operation of pleasure craft services will increase as it is more likely to be a viable use.

## 8 **HARBOUR LIMITS**

- 8.1 The existing statutory enactment plans illustrating the extent of the Harbour Limits and relevant text in the Harbour's legislation are unclear as to the extent of land falling within the Harbour Limits. The Folkestone Harbour Act 1807 fixed the Harbour limits as extending from Copt Point to the eastward of the Harbour to Mill Point to the westward of the Harbour. Subsequent acts authorising further works extended the limits to include those works.
- 8.2 The plan attached to Folkestone Byelaws dated 1928 (provided at Appendix 4) shows the limits of the Harbour as extending from the end of the Harbour Arm with arrows towards Copt Point and Mill Point. It is not clear from current legislation for the Harbour precisely what the limits of the Harbour are.
- 8.3 The HRO therefore proposes to define the Harbour limits more precisely including by reference to limits shown on the plan entitled 'Harbour Limits Map' (reference HRO5) and as described more fully in the Schedule to the HRO.
- 8.4 The Harbour limits will also include the extent of Harbour Premises (areas of dry land not shown on the Harbour Limits Map) as defined in the HRO. Some areas of land currently owned by the Harbour Company, including most of South Quay, are not currently used for Harbour purposes. The regeneration of Folkestone Seafront includes some development of these areas. It is therefore proposed that the existing Harbour limits landward will be reduced to release this land no longer required for the operation of the Harbour for redevelopment in accordance with the Planning Permission. Appropriate rights will be reserved when land is disposed of, to enable the Harbour Company and permitted harbour users to access the Harbour Arm and other harbour assets and parts of South Quay remaining within the Harbour Company's jurisdiction.

## 9 **DREDGING OF OUTER HARBOUR**

- 9.1 The Harbour Company proposes to dredge the Outer Harbour and use the spoil as fill for the Development, in order to raise the site level and reduce the risk of flooding. Aside from the benefits to navigation of the dredging, it would be more cost effective and more environmentally acceptable to dredge the Harbour for the material rather than transport several thousands of lorry loads of spoil in from elsewhere.
- 9.2 Dredging of the Harbour without the Development is unviable and there are no funds currently available to finance the dredging if the Development were not to come forward. However, it is economically viable to dredge the Harbour in the context of the proposed Development and the dredging will therefore be financed by the Development.

## 10 **THE HARBOURS ACT 1964**

- 10.1 A harbour authority can apply to the Secretary of State for Transport for a harbour revision order under section 14 of the Act (such powers now devolved to the MMO with effect from 1 April 2010 by the Harbours Act (Delegation of Functions) Order 2010 (S.I. 2010/674)).
- 10.2 Section 14(1) of the Act provides that a harbour revision order may be 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 achieving all or any of the objects in Schedule 2 of the Act.
- 10.3 S14(2)(a) of the Act requires that written application is made by the authority engaged in improving, maintaining or managing the harbour or by a person appearing to the Secretary of State (now MMO) to have a substantial interest 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.
- 10.4 S14(2)(b) of the Act requires that the Secretary of State (now MMO) must be:  
*"satisfied that the making of the order is desirable in the interest of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea going ships"*.
- 10.5 Under section 14(2B) an order which facilitates:  
(a) the closing of part of the harbour; or  
(b) a reduction in the facilities available in the harbour; or  
(c) the disposal of property not required for the purposes of the harbour  
can be justified on grounds other than those specified in section 14(2)(b) set out at paragraph 10.4 above, for example to facilitate the delivery of a wider regeneration/redevelopment which, in this case, is planned for in local policy.
- 10.6 This statement summarises below how the tests in section 14(1), (2)(b) and/or (2B) of the Act are met by the proposed HRO.

## 11 **NEED AND JUSTIFICATION FOR HARBOUR REVISION (WORKS) ORDER**

- 11.1 This application for an HRO under section 14 of the Act meets the conditions set out therein. In particular, the proposed HRO satisfies the requirements of section 14(1) of the Act as it relates 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 achieving certain objects under Schedule 2 of the Act. The Harbour is currently managed and maintained by the Harbour Company under existing statutory powers. The Harbour Company is proposing to undertake certain works to the Harbour and to modernise and extend existing statutory powers to achieve the objects under Schedule 2 of the Act which are outlined below. The summary of objects below should be read in conjunction with the schedule appended to this statement at Appendix 2, which gives an overview of the powers sought under the HRO and specifies which of the objects contained in Schedule 2 of the Act these powers achieve.

## **Objects**

11.2 The HRO is proposed to achieve the following objects from Schedule 2 of the Act:

- (a) Paragraph 3 – *“varying or abolishing duties or powers imposed or conferred on the authority by a statutory provisions of local application affecting the harbour, being duties or powers imposed or conferred for the purpose of –*

*(a) improving, maintaining or managing the harbour;*

*(b) marking or lighting the harbour, raising wrecks therein or otherwise making safe the navigation thereof;*

*(c) regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.”*

- (b) Paragraph 4 – *“imposing or conferring on the authority for the purpose aforesaid, duties or powers (including powers to make byelaws), either in addition to, or in substitution for, duties or powers imposed or conferred as mentioned in paragraph 3 above”.*

The proposed HRO provides the Harbour Company with powers to actively manage the use of the Harbour through the use of General Directions and includes general powers of improvement, maintenance and management. It also includes modern bye-law powers.

- (c) Paragraph 6 – *“settling (either for all purposes or for limited purposes) the limits within which the authority are to have jurisdiction or altering (either for all purposes or for limited purposes) such limits as previously settled”*

The current legislation for the Harbour is unclear on the extent of the seaward harbour limits and therefore in the interests of all users of the Harbour the proposed HRO seeks to clarify these limits by delineating the seaward extent of the Harbour as shown on the Harbour Limits plan and by the description in the proposed HRO. Where there is any discrepancy between the two, the description would take precedence. The HRO also alters the definition of “harbour premises” and removes land from harbour premises and therefore harbour authority jurisdiction which is no longer used or needed for the harbour.

- (d) Paragraph 7B – *“extinguishing public rights of navigation for the purposes of works described in the order or works ancillary to such works, or permitting interference with the enjoyment of such rights for the purposes of such works or for the purposes of works carried out by a person authorised by the authority to carry them out”*

In order to construct the works proposed in the Harbour it will be necessary to interfere with and, in the case of the area over which the rock revetment is to be placed, permanently extinguish public rights of navigation. However this will only be over a small area of the Harbour and, as explained below, the works will nevertheless be desirable in the interests of the management and improvement of the Harbour. The works will facilitate the wider development and regeneration of Folkestone Seafront as planned for in local planning policy.

The proposed development and the parameters plans relating to the permitted development envisage that buildings may be constructed on the western quay of the Inner Harbour cantilevered out and extending above part of the Inner Harbour and on South Quay likewise cantilevered out and extending above part of the Outer Harbour. These buildings may interfere with navigation although the extent of any such interference would be very limited, not least because the railway viaduct already provides a vertical limit on navigation for the Inner Harbour and there is an existing mooring platform extending into the Outer Harbour along the northern quay wall of South Quay at a lower level than the surface level of South Quay.

- (e) Paragraph 8A – *“enabling the authority to close part of the harbour or to reduce facilities available in the harbour”*.

In light of the confirmed closure of the Folkestone Branch line and station and consequently the removal of the railway infrastructure, it is proposed to carry out further works to improve the environment of the Harbour Arm. The Harbour Arm would also be public open space in accordance with the Planning Permission which has been granted for the regeneration of Folkestone Seafront. As a consequence it is proposed that mooring alongside the Harbour Arm will be restricted and the Harbour Master will have authority to direct which vessels are able to moor temporarily alongside. This will also apply to part of South Quay. The disapplication of section 33 of the 1847 Act in relation to parts of the harbour (such that it would only apply to the Inner Harbour and the Outer Harbour) removes the right for vessels to access the Harbour Arm and part of South Quay, thereby potentially reducing the facilities available in part of the Harbour.

- (f) Paragraph 9 – *“empowering the authority to dispose of property vested in them and held for the purposes of the harbour which is no longer required for those purposes.”*

- (g) Paragraph 9A – *“empowering the authority (alone or with others) to develop land not required for the purposes of the Harbour with a view to disposing of the land or of interests in it and to acquire land by agreement for the purpose of developing it together with such land”*.

As explained above the proposed HRO seeks to delineate more clearly the extent of the Harbour limits. This takes into account the Development proposed on the land and the current usage of Harbour properties on the quay. Some areas of what are thought to be existing Harbour land are no longer used for Harbour purposes and therefore it is proposed to remove this land from the Harbour limits.

- (h) Paragraph 9B – *“empowering the authority to delegate the performance of any of the functions of the authority except –*

*(a) a duty imposed on the authority by or under any enactment;*

*(b) the making of byelaws;*

*(c) the levying of ship, passenger and goods dues;*

*(d) the appointment of harbour, dock and pier masters;*

*(e) the nomination of persons to act as constables;*

*(f) functions relating to the laying down of buoys, the erection of lighthouses and the exhibition of lights, beacons and sea-marks, so far as those functions are exercisable for the purposes of the safety of navigation."*

- (i) Paragraph 11 – *"empowering the authority to levy at the harbour charges other than ship, passenger and good dues or varying or abolishing charges (other than aforesaid) levied by them at the harbour."*
- (j) Paragraph 12 – *"securing the efficient collection of charges levied by the authority at the harbour and specifying the times at which and the persons by whom such charges are to be paid."*
- (k) Paragraph 16 – *"extending the time within which anything is required or authorised by a statutory provision of local application affecting the harbour to be done in relation to the harbour by the authority or fixing a time within which anything authorised by the order to be so done must be done."*
- (l) Paragraph 16A – *"imposing or conferring on the authority duties or powers (including powers to make byelaws) for the conservation of the natural beauty of all or any part of the harbour or of any of the fauna, flora or geological or physiographical features in the harbour and all other natural features."*
- (m) Paragraph 17 – *"any object, though not falling within any of the foregoing paragraphs, appears to the appropriate Minister to be one the achievement of which will conduce to the efficient functioning of the harbour"*.

As summarised in the Schedule at Appendix 2 of this Statement additional powers are sought to modernise and extend existing powers vested in the Harbour Company in relation to the management and maintenance of the Harbour in accordance with the Modernising Trust Ports guidance (second edition). These additional powers will assist the Harbour Company in the safe and efficient functioning of the Harbour.

11.3 Once the MMO and Secretary of State are satisfied that the proposed HRO falls within one or more of the objects under Schedule 2 of the Act and provided the application has been made in writing by a person of sufficient standing, the MMO then needs to consider whether the proposed HRO is desirable in accordance with the requirements of section 14(2)(b) and/or section 14(2B) of the Act.

11.4 The objects which apply to the proposed HRO are outlined above and are applied to the HRO provisions in the schedule appended at Appendix 2. The application has been made in writing by the Harbour Company which is the Harbour authority engaged in improving, maintaining or managing the Harbour.

### ***Desirability***

11.5 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 and is in the interests of the recreational use of sea going ships in accordance with section 14(2)(b) of the Harbours Act. Alternatively it is desirable on other grounds for the other purposes referred to in s14(2B).

11.6 The Harbour has ceased to be viable in its present form. As outlined above, commercial shipping (other than fishing) and commercial ferry operations have

ceased. There is a lack of demand for these to be resumed and the technical costs of undertaking works to the Harbour to safely accommodate such commercial operations coupled with the lack of demand for such operations means that the reinstatement of commercial operations in the Harbour is not feasible.

- 11.7 It is acknowledged that the removal of the right to trade along the Harbour Arm, will effectively close part of the Harbour to commercial shipping, however as outlined above this simply reflects the reality of the current situation and there is no suggestion that such operations would resume if the HRO were not confirmed, given the prohibitive cost of the works to accommodate commercial shipping and the lack of demand for such uses.
- 11.8 The HRO provides for the disapplication of section 33 of the 1847 Act to remove the right to trade alongside the Harbour Arm and part of South Quay. This will effectively close these parts of the Harbour to commercial shipping. Given the absence in recent years of any commercial shipping or ferry operations in Folkestone the change of use of the Harbour Arm to remove the right to trade along it and ship and unship goods reflects the current use of the Harbour and the anticipated future use of the Harbour, particularly now that the railway has been formally closed.
- 11.9 The ability for the Harbour Master to direct who can moor alongside the Harbour Arm and South Quay is compatible with the obligations under the Planning Permission which require that the Harbour Arm be made available for public use and secured as public open space in future. Future maintenance of the Harbour Arm is required as a development obligation under the Section 106 Agreement for the Development. The Development cannot be fully built out without authorisation of the HRO. The HRO thereby facilitates delivery of the Planning Permission. It is intended that the Development under the Planning Permission will fund the maintenance of the Harbour Arm for the lifetime of the Development. The HRO is therefore desirable in the interests of securing the management of the Harbour in an economic and efficient manner on the basis that it will provide for maintenance of the Harbour, including the Harbour Arm, funded by the Development.
- 11.10 The obligations requiring the long term maintenance of the Harbour Arm and the benefits derived from the regeneration of Folkestone Seafront are expected to significantly increase footfall to the Harbour leading to an increase in pleasure craft services run from the Harbour, further funding the improvement, maintenance or management of the Harbour in an efficient and economical manner.
- 11.11 The Harbour continues to lose money year on year, and this is clearly not a sustainable state of affairs. The works proposed by the HRO are unlikely to be income producing, however they will facilitate the regeneration of Folkestone Seafront which in turn is expected to immeasurably improve the facilities in Folkestone in the interests of recreational use of sea going ships.
- 11.12 It is expected that the regeneration proposed will attract a greater footfall to Folkestone Harbour with the corresponding benefits this will bring. There is a real potential to increase demand for private leisure craft and create a vibrant harbour area to the benefit of the fishing fleet. Authorising the HRO will permit the proposed Development to take place which will secure the future use of the Harbour which has declined rapidly in recent years and without such redevelopment will decline further.
- 11.13 Large parts of the Harbour have been subject to siltation making navigation difficult with the Harbour only able to be accessed for two hours before and two hours after every high tide. However there are currently no funds available to undertake

maintenance dredging of the Harbour. The Harbour Company intends to dredge the Outer Harbour and use the dredge arisings as fill for the development. Phase 6 cannot be occupied until the flood protection measures have been constructed. These flood protection measures will interfere with public rights of navigation and therefore require authorisation under the HRO.

- 11.14 The flood defence works will at the same time as providing protection for the Development also provide flood protection for the Harbour where there is assessed to be a risk of flooding from high tide levels and waves overtopping.
- 11.15 As explained above, the HRO may also be justified under S14(2B) in terms of a reduction in facilities in the Harbour on grounds other than those specified under section 14(2)(b). The HRO will facilitate the delivery of the regeneration/redevelopment proposals for Folkestone Seafront and Harbour. Section 5 of this Statement explains the allocation of the Harbour for large scale mixed use development in planning policy and the importance of the works to the Harbour in delivering the vision for Folkestone.
- 11.16 The HRO is necessary for the delivery of the Planning Permission in terms of both the flood defence works without which phase 6 of the Development cannot be occupied and also in terms of reorganisation of the Harbour to release areas of land for redevelopment and to enable the Harbour Arm to be used as envisaged under the Planning Permission. The importance of use of the Harbour Arm is highlighted by the local planning authority in their consideration of the application for the Planning Permission and is reflected in the conditions and obligations on which consent has been granted.

## 12 **CONSULTATION**

- 12.1 With regard to the regeneration and redevelopment of Folkestone Seafront and Harbour including the proposals for the Harbour itself there has been widespread consultation. Public consultation was undertaken in 2010 and then again a year later in 2011. The consultation in 2011 involved a three day exhibition, two public consultation meetings and an online questionnaire/survey. A more detailed summary of the consultation undertaken to date is provided in a report prepared by Canterbury Christ Church University dated 10 February 2012.
- 12.2 Prior to submission of the HRO the following consultation was undertaken in September/October 2015:
- (a) Notices in the local newspapers;
  - (b) Consulting with the Harbour Users Group;
  - (c) Pre-application consultations with the MMO and with other consultees required by MMO;
  - (d) Making available a hard copy for the public to review at the Harbour Exhibition Centre;
  - (e) Documents have been published on the Harbour Company website.
- 12.3 Comments received during the consultation process have been taken on board in the final version of the application for the HRO which has been formally submitted to the MMO for consideration. In response to some of the consultation responses received the Harbour Company have made amendments to the proposed HRO.

## 13 CONCLUSION

13.1 In light of the above, the proposed HRO satisfies the requirements of section 14(1) of the Act as it relates 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 achieving certain objects under Schedule 2 of the Act.

13.2 Specifically the proposed HRO is to:

13.2.1 **authorise works to be undertaken in Folkestone Harbour**, namely the construction of a wave wall and rock revetment in the location shown on the order plans which will act as a flood defence for the redevelopment and regeneration of land along Folkestone Seafront. The works will also require the temporary stock piling of rock and plant for the revetment;

13.2.2 **modernise and extend existing powers vested in the Harbour Company** in relation to the management and maintenance of the Harbour in accordance with the Modernising Trust Ports guidance (second edition) and the Port Marine Safety Code;

13.2.3 **define more precisely the limits of the Harbour** both landward and seaward. The existing Harbour Orders and local acts do not show precisely the limits of the Harbour. It is considered advisable to take the opportunity to clarify for Harbour users precisely which areas fall within and which areas fall outside the Harbour;

13.2.4 **release land which is no longer being used for Harbour purposes** for residential/commercial development thereby reducing the extent of the area of land within the Harbour; and

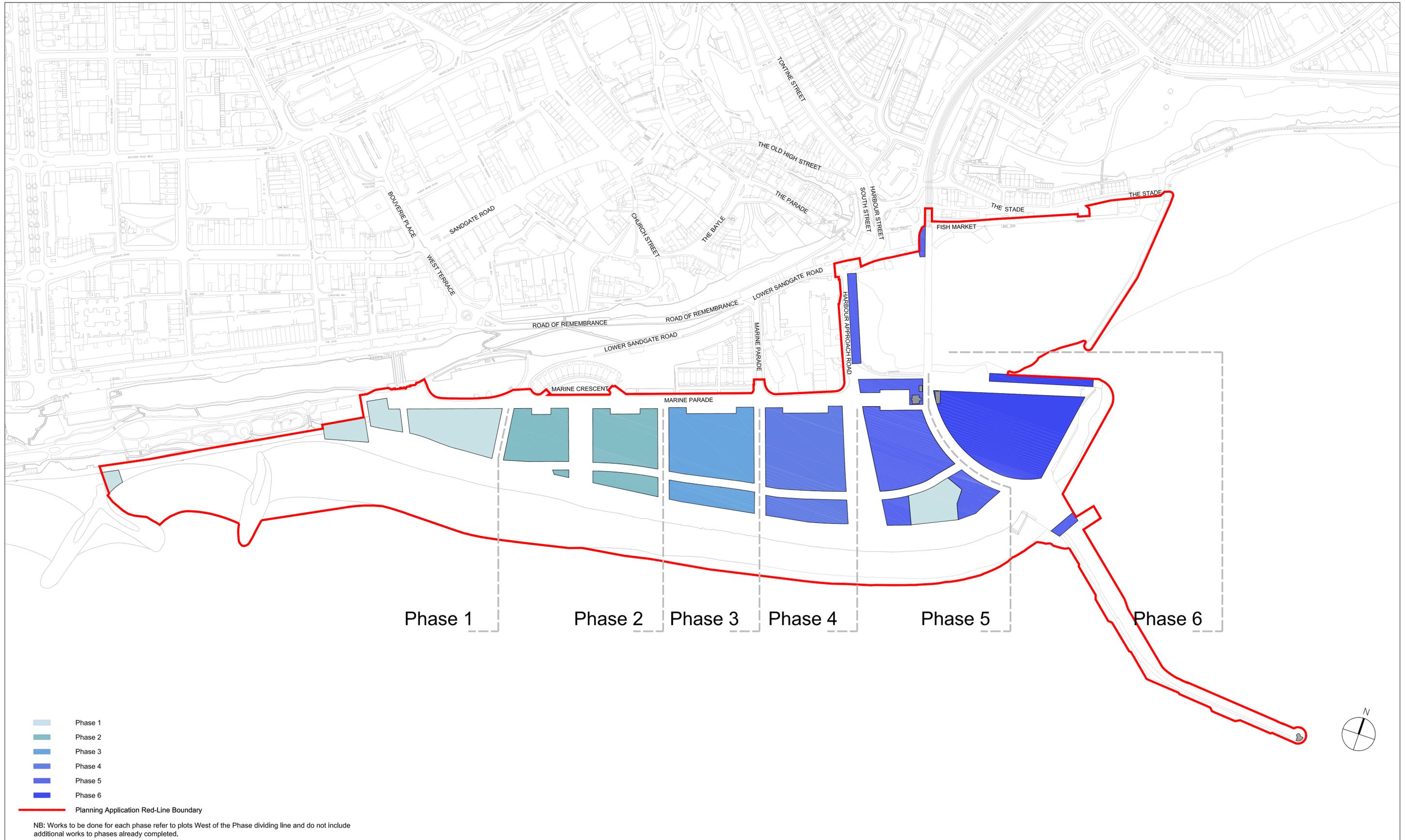
13.2.5 **remove the right to embark and disembark and to load and unload goods along the Harbour Arm and parts of South Quay and vest powers in the Harbour Company to control which vessels may moor alongside them.** This formalises the existing situation in which harbour operations including shipping and unshipping of goods and/or a commercial ferry operation no longer takes place from or on the Harbour Arm and South Quay given the current state of facilities, depth of water, local infrastructure and market demand. The Harbour Arm is intended to form public open space as part of the Development.

**January 2016**

**Berwin Leighton Paisner LLP**

**For and on behalf of the Folkestone Harbour Company Limited**

**Appendix 1  
Phasing Plan**



Phase 1

Phase 2

Phase 3

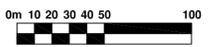
Phase 4

Phase 5

Phase 6

- Phase 1
- Phase 2
- Phase 3
- Phase 4
- Phase 5
- Phase 6
- Planning Application Red-Line Boundary

NB: Works to be done for each phase refer to plots West of the Phase dividing line and do not include additional works to phases already completed.



SCALE 1:2000 @ A1

FOLKESTONE SEAFRONT

FARRELLS



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DWG. <b>Illustrative Plan E</b>	REV. <b>B</b>
DWG. TITLE <b>Indicative Phasing Plan</b>	
DATE. April 2013	

**Appendix 2**  
**Schedule of Powers Sought**

## FOLKESTONE HARBOUR REVISION ORDER: SUMMARY OF PROVISIONS AND REASONS FOR INCLUSION

No.	Provision number	Summary of provision	Precedent provision	Why this provision is required	Object in Schedule 2 to the Harbours Act 1964 which this provision achieves <sup>1</sup>
1.	1	<b>Citation and commencement</b>	N/A	N/A	
2.	2	<b>Interpretation</b>  Outlines the definitions of terms used within the Order.	N/A	N/A	
3.	3	<b>Incorporation of the 1847 Act</b>  Outlines how the Harbour, Docks and Piers Clauses Act 1847 is incorporated into the Order.	<b>Penzance HRO 2009/2325, Article 3</b>	<p>Section 33 of the 1847 Act is incorporated into the legislation relating to Folkestone Harbour under the South Eastern Railway( Various Powers) Act 1885.</p> <p>The proposed use of the Harbour Arm and South Quay under the Development of Folkestone Seafront is not compatible with section 33 of the 1847 Act which requires that the Harbour be open to all persons for the shipping and unshipping of goods and the embarking and landing of passengers.</p>	<p>Paragraph 3, as set out at 11.2(a) of the Statement in Support of this application.</p> <p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p> <p>Paragraph 8A, as set out at 11.2(e) of the Statement in Support of this application.</p>

<sup>1</sup> Paragraphs 4 or 17 apply to each provision to the extent that specific paragraphs referred to may not relate to each provision in its entirety.

No.	Provision number	Summary of provision	Precedent provision	Why this provision is required	Object in Schedule 2 to the Harbours Act 1964 which this provision achieves <sup>1</sup>
				<p>In accordance with the requirement under the Planning Permission that the Harbour Arm be available as public open space, the Harbour Company need to be able to control which vessels can access the Harbour Arm.</p> <p>The rock revetment and wave wall to be authorised by article 4 will not be suitable for shipping and unshipping of goods or embarking and landing of passengers.</p> <p>On this basis the Order includes the disapplication of section 33 to the Harbour Arm and part of South Quay.</p>	
4.	4(1)	<p><b>Power to construct works</b></p> <p>Grants the Company or others acting on its behalf the power to construct and maintain the rock revetment and wave wall, as described in detail within the Order.</p>	<p><b>Penzance HRO 2009/2325, Article 4</b></p> <p>See also Portsmouth (Millennium Waterbus Landing Stages) HRO 2000/2251, Article 4</p>	<p>The rock revetment and wave wall are works of flood defence to protect the Harbour and phase 6 of the proposed Development.</p> <p>The works need to be constructed prior to Occupation of phase 6 of the Development.</p> <p>The works may interfere with navigation and consequently require authorisation under an HRO.</p>	<p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p> <p>Paragraph 7B, as set out at 11.2(d) of the Statement in Support of this application.</p> <p>Paragraph 9B, as set out at 11.2(h) of the Statement in Support of this application.</p>

No.	Provision number	Summary of provision	Precedent provision	Why this provision is required	Object in Schedule 2 to the Harbours Act 1964 which this provision achieves <sup>1</sup>
5.	4(2)	Grants the Company power to demolish and remove any structures lying within the limits of deviation, as well as enclose and reclaim the bed of the sea and the foreshore lying within the limits of deviation, for the purpose of the works.	<b>Penzance HRO 2009/2325, Article 4</b>	These ancillary powers are included to enable construction of the wave wall and rock revetment.	Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.  Paragraph 7B, as set out at 11.2(d) of the Statement in Support of this application.
6.	4(3)	Grants the Company the power from time to time to maintain, reconstruct, extend, renew, alter, add to (etc.) the works within the limits of deviation.	<b>Penzance HRO 2009/2325, Article 4</b>  See also Humber Sea Terminal (Phase III) HRO 2006/2604, article 5	This provision is required to ensure the Harbour Company have the right to maintain, reconstruct etc the works authorised by the HRO.	Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.  Paragraph 7B, as set out at 11.2(d) of the Statement in Support of this application.
7.	4(4)	Authorises construction of buildings cantilevered out over specified quays.		This power enables construction of certain buildings as permitted by the planning permission granted for the Development.	Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.  Paragraph 7B, as set out at 11.2(d) of the Statement in Support of this application.
8.	5(1)(a)	<b>Power to make subsidiary and accommodation works</b>  Grants the Company the power to construct, lay down, place, remove, replace, work, or use and maintain such works, conveniences, appliances and apparatus within the limits of deviation, as necessary for the construction, maintenance and use of the works.	<b>Burry Port HRO 2000/2152, Article 5(1)</b>  See also Portland HRO 2010/703, Article 5(1).	This power to undertake subsidiary and accommodation works is required to ensure that the Harbour Company have all necessary powers to construct the rock revetment and wave wall.	Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.  Paragraph 7B, as set out at 11.2(d) of the Statement in Support of this application.

No.	Provision number	Summary of provision	Precedent provision	Why this provision is required	Object in Schedule 2 to the Harbours Act 1964 which this provision achieves <sup>1</sup>
9.	5(1)(b)	Grants the Company the power to construct, lay down, place, remove, replace, work, or use and maintain such works for the accommodation or convenience of vessels as it thinks fit (including pontoons, quays, jetties etc)	<b>Burry Port HRO 2000/2152, Article 5(1)</b>	This provision gives the Company more modern general powers to construct or place works in the harbour for the accommodation or convenience of vessel .	Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.  Paragraph 7B, as set out at 11.2(d) of the Statement in Support of this application.
10.	5(2)	Gives the Company power to carry out construction activities including the temporary placing or storage of plant, equipment and rock within the limits of deviation and the revetment working area.	<b>Portland HRO 2010/703, Article 5(2)</b>	This provision authorises construction activity including temporary storage of plant, equipment and rock within the limits of deviation and the revetment working area, as required for the construction of the works.	Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.  Paragraph 7B, as set out at 11.2(d) of the Statement in Support of this application.
11.	6	<p><b>Period for commencement of works</b></p> <p>States that if the works are not substantially commenced within 10 years from the coming into force of the Order, the powers granted to the Company for making and maintaining the works shall cease (except the works as are then substantially commenced).</p> <p>This limitation:</p> <ul style="list-style-type: none"> <li>• is subject to the ability of the Company to apply to the Secretary of State for an extension; and</li> <li>• does not apply to the powers granted to the Company under</li> </ul>	<p><b>Fraserburgh Harbour Revision Order 2011/447, Article 6</b> and <b>Caledonian Maritime Assets (Brodict) Harbour Revision Order 2015/6, Article 18</b></p> <p>See also Lymington Harbour (Works) Revision Order 2014/17, Article 6</p> <p>See also Poole Harbour (Works) Revision Order 2015/1390, Article 6</p>	The wave wall and rock revetment works are required for development of phase 6 of the Planning Permission. Consequently a period of 10 years for commencement of the works will be required, together with the possibility of the Company applying to the Secretary of State for an extension of time should that be required.	Paragraph 16, as set out at 11.2(k) of the Statement in Support of this application.

No.	Provision number	Summary of provision	Precedent provision	Why this provision is required	Object in Schedule 2 to the Harbours Act 1964 which this provision achieves <sup>1</sup>
		Article 4(3) (maintenance, alteration, reconstruction etc of the works), or Article 5 (power to make subsidiary and accommodation works).			
12.	7	<p><b>Works to be within district of Shepway</b></p> <p>Provides for works beyond mean low water to be deemed to be within the district of Shepway, the local justice area of East Kent and the Folkestone Harbour ward.</p>	<b>Humber Sea Terminal (Phase III HRO 2006/2604), Article 9</b>	This provision is to bring works beyond mean low water within the relevant local authority and local justice areas.	Paragraph 17, as set out at 11.2(m) of the Statement in Support of this application.
13.	8	<p><b>Power to deviate</b></p> <p>Grants the Company the power to deviate from the deposited plans in carrying out the works authorised by article 4 (power to construct works):</p> <ul style="list-style-type: none"> <li>• laterally to any extent not exceeding the limits of deviation; and</li> <li>• vertically to any extent not exceeding 3 metres upwards or to any extent downwards as may be found necessary or convenient.</li> </ul>	<b>Lymington Harbour (Works Revision) Order 2014 Article 4</b>	The power to deviate is a standard provision to enable the works to be constructed with minor variations to the precise location of the works to the extent shown on the plans and with minor alterations in height, to accord with detailed design. The proposed wording for limits of deviation both lateral and vertical is the same as used in many Harbour Orders.	<p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p> <p>Paragraph 7B, as set out at 11.2(d) of the Statement in Support of this application.</p> <p>Paragraph 17, as set out at 11.2(m) of the Statement in Support of this application.</p>
14.	9(1)	<p><b>Power to dredge</b></p> <p>Grants the Company the power to deepen, widen, dredge (etc.) the bed of the sea and foreshore of the harbour and approaches for the purposes of constructing and maintaining</p>	<b>Penzance HRO 2009/2325, Article 7</b>	This provision provides a modern dredging power to update the powers for dredging included in the harbour's existing legislation.	<p>Paragraph 3, as set out at 11.2(a) of the Statement in Support of this application.</p> <p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this</p>

No.	Provision number	Summary of provision	Precedent provision	Why this provision is required	Object in Schedule 2 to the Harbours Act 1964 which this provision achieves <sup>1</sup>
		the works, and otherwise for the improvement of the harbour.			application.
15.	9(2) and (3)	Materials dredged or removed by the Company under para (1) shall be the property of the Company, and may be used, sold or disposed of as the Company may think fit (but not in contravention of any enactment relating to the disposal of waste).	<b>Penzance HRO 2009/2325, Article 7</b>  See also Associated British Ports (Fisher Fleet Quay) HRO 2014/2933, Article 3.	Same as above	Paragraph 3, as set out at 11.2(a) of the Statement in Support of this application.  Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.
16.	10	<b>Fine for obstructing works</b>  Sets out the offence of intentionally obstructing any person acting under the authority of the Company in constructing the works.  A person guilty of such an offence shall be liable on summary conviction to <ul style="list-style-type: none"> <li>• a fine not exceeding level 3 on the standard scale); and</li> <li>• repay the Company as a debt any expenses incurred by them in making good any damage resulting from such obstructions.</li> </ul>	<b>Penzance HRO 2009/2325, Article 8</b>  See also Whitehaven HRO 1996/1627, Article 7	This provision reflects the modern provisions on fines for obstruction to ensure that the works can be carried out unhindered by the Harbour Company.	Paragraph 11, as set out at 11.2(i) of the Statement in Support of this application.  Paragraph 17, as set out at 11.2(m) of the Statement in Support of this application.
17.	11	<b>Works to be deemed part of undertaking</b>  The works shall be deemed for all purposes to be part of the undertaking.	<b>Penzance HRO 2009/2325, Article 9</b>	This ensures that the works are part of the harbour undertaking.	Paragraph 17, as set out at 11.2(m) of the Statement in Support of this application.

No.	Provision number	Summary of provision	Precedent provision	Why this provision is required	Object in Schedule 2 to the Harbours Act 1964 which this provision achieves <sup>1</sup>
18.	12	<p><b>Survey of tidal works</b></p> <p>Grants the Secretary of State power to order a survey and examination of a tidal work or of the site upon which it is proposed to construct the work. Any expense incurred by the Secretary of State in doing so shall be recoverable as a debt from the Company.</p>	<p><b>Penzance HRO 2009/2325, Article 11</b></p>	<p>Standard tidal works provision</p>	<p>Paragraph 17, as set out at 11.2(m) of the Statement in Support of this application.</p>
19.	13	<p><b>Provision against danger to navigation</b></p> <p>Obliges the Company to notify Trinity House in the case of injury to a tidal work and take steps to prevent danger to navigation as Trinity House may direct.</p> <p>If the Company fails to do so, it shall be guilty of an offence and liable on a summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.</p>	<p><b>Associated British Ports (Fisher Fleet Quay) HRO 2014/2933, Article 8</b></p>	<p>Standard tidal works provision</p>	<p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p> <p>Paragraph 17, as set out at 11.2(m) of the Statement in Support of this application.</p>
20.	14	<p><b>Abatement of works abandoned or decayed</b></p> <p>Where a tidal work is abandoned or falls into decay, the Secretary of State may by written notice require the Company to repair, restore or remove the work. This notice may include works above the level of high water, where these works form part of a tidal work and their condition may interfere with public rights over the foreshore.</p>	<p><b>Maryport HRO 2007/3463, Article 42</b></p>	<p>Standard tidal works provision</p>	<p>Paragraph 17, as set out at 11.2(m) of the Statement in Support of this application.</p>

No.	Provision number	Summary of provision	Precedent provision	Why this provision is required	Object in Schedule 2 to the Harbours Act 1964 which this provision achieves <sup>1</sup>
		If the Company fails to comply with the notice within 30 days, the Secretary of State may execute the repair works itself, at the expense of the Company.			
21.	15	<p><b>Permanent lights on tidal works</b></p> <p>Obliges the Company to exhibit lights at the outer extremity of every tidal work from sunset to sunrise, and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct. If the Company fails to do so, it will be liable on summary conviction to a fine not exceeding level 3 on the standard scale and on conviction on indictment to a fine.</p>	<b>Maryport HRO 2007/3463, Article 44</b>	Standard tidal works provision	Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.
22.	16	<p><b>Lights on tidal works during construction</b></p> <p>During the whole time of a tidal work's construction, the Company shall, at or near the tidal work, exhibit from sunset to sunrise such lights, and take such other steps for the prevention of danger to navigation as the Secretary of State shall direct. If the Company fails to do so, it will be liable to a fine.</p>	<b>Maryport HRO 2007/3463, Article 40</b>	Standard tidal works provision	Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.
23.	17	<p><b>Temporary closure of area of works</b></p> <p>Grants the Company the power to temporarily close harbour areas for the purpose of carrying out the works. Such closure shall not be for a continuous period of longer than 2 years.</p>	<b>Fraserburgh HRO 2011/44, Article 18</b>	The temporary closure of the area for the construction of the works is required for health and safety reasons and to ensure that the works can be constructed in as short amount of time as possible to ensure that interference with any rights of	<p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p> <p>Paragraph 7B, as set out at 11.2(d) of the Statement in Support of this application.</p>

No.	Provision number	Summary of provision	Precedent provision	Why this provision is required	Object in Schedule 2 to the Harbours Act 1964 which this provision achieves <sup>1</sup>
				navigation are kept to a minimum.	Paragraph 8A, as set out at 11.2(e) of the Statement in Support of this application.
24.	18(1) and (2)	<p><b>Removal of vessels from area of works</b></p> <p>Prior to closure of an area under Article 17, the Company is obliged to:</p> <ul style="list-style-type: none"> <li>• publish a notice of the intended closure in London Gazette and once in each of two successive weeks in a local Shepway newspaper;</li> <li>• display a copy of the notice in the harbour; and</li> <li>• notify the Secretary of State of the intended closure.</li> </ul> <p>Each notice shall specify a date by which all vessels must be removed from the area.</p>	<b>Fraserburgh HRO 2011/44, Article 19</b>	This provision is to ensure the Harbour Company are required to provide notice of any temporary closure for the works.	<p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p> <p>Paragraph 8A, as set out at 11.2(e) of the Statement in Support of this application.</p> <p>Paragraph 17, as set out at 11.2(m) of the Statement in Support of this application.</p>
25.	18(3)	If the master of any vessel within the area of the works does not remove the vessel by the required date, the harbour master may remove the vessel and moor or lay it in any other place. Any costs incurred by the Company in removing that vessel will be recoverable from the master of the vessel.	<b>Fraserburgh HRO 2011/44, Article 19</b>	Provision required for health and safety reasons to enable the works to be undertaken.	<p>Paragraph 3, as set out at 11.2(a) of the Statement in Support of this application.</p> <p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p> <p>Paragraph 8A, as set out at 11.2(e) of the Statement in Support of this</p>

No.	Provision number	Summary of provision	Precedent provision	Why this provision is required	Object in Schedule 2 to the Harbours Act 1964 which this provision achieves <sup>1</sup>
					application.  Paragraph 11, as set out at 11.2(i) of the Statement in Support of this application.
26.	19	<p><b>Vessels entering the area of works after date of closure</b></p> <p>If any vessel enters the closed area after the date of closure, the harbour master may direct the master of the vessel immediately to remove the vessel from the area. If the master of the vessel does not comply with this direction, article 18(3) and (4) will apply as if the vessel had been within the area before the date of closure.</p>	<b>Fraserburgh HRO 2011/44, Article 20</b>	Same as above.	<p>Paragraph 3, as set out at 11.2(a) of the Statement in Support of this application.</p> <p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p> <p>Paragraph 8A, as set out at 11.2(e) of the Statement in Support of this application.</p>
27.	20	<p><b>General powers in respect of harbour</b></p> <p>Grants the Company the power to take such steps as it considers necessary or desirable for the improvement, maintenance and management of the harbour. Such steps include to:</p> <ul style="list-style-type: none"> <li>• improve, maintain, regulate and manage the harbour and provide services and facilities therein;</li> <li>• construct and demolish structures and works in the harbour; and</li> </ul>	<p><b>Maryport HRO 2007/3463, Article 16</b></p> <p>See also Poole HRO 2012/1777, Article 5</p> <p>See also Dover HRO 2014/2720, Article 3</p>	This provision provides general powers of improvement, maintenance and management of the Harbour. These provisions are sought to update the existing Harbour powers to ensure the efficient functioning of the Harbour in accordance with the requirements in the Guidance on modernising Trust Ports (second edition). They are also sought to facilitate the proposed Development.	<p>Paragraph 3, as set out at 11.2(a) of the Statement in Support of this application.</p> <p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p>

No.	Provision number	Summary of provision	Precedent provision	Why this provision is required	Object in Schedule 2 to the Harbours Act 1964 which this provision achieves <sup>1</sup>
		<ul style="list-style-type: none"> <li>alter the levels of beaches and improve the foreshore.</li> </ul>			
28.	21	<p><b>Limits of harbour</b></p> <p>Outlines the limits of the harbour within which the Company shall exercise jurisdiction as a harbour authority and the harbour master shall exercise his powers, with reference to the Harbour Limits plan and a detailed description of the seaward limits in the Schedule to the Order and also includes specified harbour premises within the limits.</p>	<p><b>Penzance HRO 2009/232, Article 18</b></p> <p>See also Poole HRO 2012/1777, Article 4.</p>	<p>The seaward limits of the Harbour are clarified in the HRO by reference to a plan and description. The current harbour legislation is unclear as to the precise extent of the Harbour Limits.</p> <p>The specification of harbour premises reduces the extent of the landward limit of the Harbour. Some of the current harbour land is no longer required for harbour purposes and has been identified for redevelopment under the Planning Permission. The harbour premises definition specifies the harbour land which will still be within the harbour limits.</p>	<p>Paragraph 6, as set out at 11.2(c) of the Statement in Support of this application.</p>
29.	22	<p><b>As to use of harbour</b></p> <p>Grants the Company power to set apart any part of the harbour for the exclusive use of any particular trade, activity, person, vessel or class of vessels, or goods, subject such terms and conditions as the Company may think fit. No person or vessel shall make any use of any such part of the harbour, other than in accordance with the setting apart, without the consent of the harbour master, and a person or vessel without this consent may be ordered to leave.</p> <p>Outlines that 58 of the Harbours, Docks, and</p>	<p><b>Maryport HRO 2007/3463, Article 19</b></p> <p>See also Poole HRO 2012/1777, Article 8.</p>	<p>This is a useful common provision enabling harbour authorities to manage the use of particular parts of their harbours.</p>	<p>Paragraph 3, as set out at 11.2(a) of the Statement in Support of this application.</p> <p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p> <p>Paragraph 11, as set out at 11.2(i) of the Statement in Support of this application.</p>

No.	Provision number	Summary of provision	Precedent provision	Why this provision is required	Object in Schedule 2 to the Harbours Act 1964 which this provision achieves <sup>1</sup>
		<p>Piers Clauses Act 1847 shall apply with necessary modifications.</p> <p>Provides that this power does not authorise prohibition of navigation or interference with public rights of way.</p>			
30.	23	<p><b>Removal of vehicles, etc.</b></p> <p>Grants the Company the power to remove vehicles or vessels if left without permission:</p> <p>(a) in any place where it is likely to obstruct or interfere with the use of the harbour; or</p> <p>(b) in any part of the harbour where parking is prohibited by notice erected by the Company.</p>	<b>Penzance HRO 2009/232, Article 21</b>	This provision is required for good order and management of the Harbour. Provision is the same as included in consented HROs - for example Penzance HRO 2009/232, Article 21.	Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.
31.	24	<p><b>Removal of obstructions other than vessels</b></p> <p>Grants the Company the power to remove anything other than a vessel, in, or on the land adjoining, the waters of the harbour or its approaches:</p> <p>(a) which is causing or likely to cause, an obstruction to, or interference with, navigation;</p> <p>(b) which is causing, or likely to cause, interference with or damage to the operation of any works of the Company; or</p> <p>(c) which is in the harbour without lawful</p>	<b>Burry Port HRO 2000/2152, Article 36</b>  See also Poole HRO 2012/1777, Article 22.	This provision is required for health and safety of operations in the Harbour. Comparable provision is included in consented HRO - for example Burry Port HRO 2000/2152, article 22 and Poole HRO, article 22.	Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.  Paragraph 17, as set out at 11.2(m) of the Statement in Support of this application.

No.	Provision number	Summary of provision	Precedent provision	Why this provision is required	Object in Schedule 2 to the Harbours Act 1964 which this provision achieves <sup>1</sup>
		<p>authority.</p> <p>If the Company can identify the owner of the object removed, it must, within 28 days, give written notice to that person.</p>			
32.	25	<p><b>Byelaws</b></p> <p>Grants the Company the power to make byelaws for a variety of different purposes, listed in detail in the Order.</p>	<p><b>Penzance HRO 2009/2325, Article 22</b></p> <p>See also Poole HRO 2012/1777, Article 27</p> <p>See also Caledonian Maritime Assets (Brodick) HRO 2015/6, Article 32</p>	<p>These provisions are sought to update the existing Harbour byelaw powers to ensure the efficient functioning of the Harbour in accordance with the requirements in the Guidance on modernising Trust Ports (second edition).</p>	<p>Paragraph 3, as set out at 11.2(a) of the Statement in Support of this application.</p> <p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p> <p>Paragraph 16A, as set out at 11.2(l) of the Statement in Support of this application.</p> <p>Paragraph 17, as set out at 11.2(m) of the Statement in Support of this application.</p>
33.	26	<p><b>Confirmation of byelaws</b></p> <p>Sets out the procedure for confirmation by the Secretary of State of byelaws made by the Company</p>	<p><b>Caledonian Maritime Assets (Brodick) HRO 2015/6, Article 33</b></p>	<p>As above</p>	<p>Paragraph 17, as set out at 11.2(m) of the Statement in Support of this application.</p>
34.	27	<p><b>Application of byelaws of the Company</b></p> <p>States that any existing byelaws made in relation to the Harbour shall apply to the works and within the revised harbour limits and may be enforced by the Company.</p>	<p><b>Penzance HRO 2009/2325, Article 9</b></p>	<p>This provision ensures that existing byelaws have effect in the Harbour as altered by the HRO</p>	<p>Paragraph 3, as set out at 11.2(a) of the Statement in Support of this application.</p> <p>Paragraph 17, as set out at 11.2(m) of the Statement in Support of this</p>

No.	Provision number	Summary of provision	Precedent provision	Why this provision is required	Object in Schedule 2 to the Harbours Act 1964 which this provision achieves <sup>1</sup>
					application.
35.	28	<p><b>Power to give general direction as to use of the harbour, etc.</b></p> <p>Grants the Company the power to give directions for the ease, convenience or safety of navigation, the safety of persons and the protection of property, flora or fauna in the harbour.</p> <p>Every direction given shall specify the extent of its application in relation to the class of vessel to which it applies, or persons designated in the direction, the part of the harbour to which it applies and the times during which it applies.</p>	<p><b>Littlehampton HRO 2015/1387, Article 4</b></p> <p>See also Lymington HRO 2014/1076, articles 4-7. We have used Littlehampton HRO equivalent provisions as requested by the RYA to meet their concerns.</p>	<p>These provisions are sought to update the existing Harbour powers to ensure the efficient functioning of the Harbour in accordance with the requirements in the Guidance on modernising Trust Ports (second edition).</p> <p>Harbour Authorities are advised to secure powers of general direction to support effective management of vessels under the Port Marine Safety Code 2012.</p> <p>The provisions are sought to comply with the requirements of the Code.</p>	<p>Paragraph 3, as set out at 11.2(a) of the Statement in Support of this application.</p> <p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p>
36.	29	<p><b>Procedure for giving, amending or revoking general directions</b></p> <p>Sets out the procedure to be followed if the Company proposes to give, amend or revoke a general direction. This includes giving notice to and consulting with designated consultees including the Chamber of Shipping and the Royal Yachting Association. If a designated consultee maintains an objection the matter is referred to an independent adjudicator.</p>	<p><b>Littlehampton HRO 2015/1387, Article 5</b></p>	<p>As above</p>	<p>Paragraph 3, as set out at 11.2(a) of the Statement in Support of this application.</p> <p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p>
37.	30	<p><b>Publication of general directions</b></p> <p>States that except in case of emergency notice of the giving of a general direction must be</p>	<p><b>Littlehampton HRO 2015/1386, Article 6</b></p>	<p>As above</p>	<p>Paragraph 3, as set out at 11.2(a) of the Statement in Support of this application.</p>

No.	Provision number	Summary of provision	Precedent provision	Why this provision is required	Object in Schedule 2 to the Harbours Act 1964 which this provision achieves <sup>1</sup>
		published by the Company in a local newspaper, and must state a place at which copies of the direction, amendment or revocation may be inspected.			Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.
38.	31	<p><b>Special directions as to use of the harbour, etc.</b></p> <p>Grants the harbour master the power to give special directions, including requiring compliance with requirements in general directions, byelaws or other provisions applying to the harbour, regulating mooring or movement of a vessel, requiring the removal of a vessel in specified circumstances, regulating the loading and discharging of a vessel's cargo, fuel, water or stores, regulating the speed of a vessel, and as the use of ballast.</p>	<p><b>Littlehampton HRO 2015/1387, Article 7</b></p> <p>See also Penzance HRO 2009/2325, Article 27</p>	As above	<p>Paragraph 3, as set out at 11.2(a) of the Statement in Support of this application.</p> <p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p>
39.	32	<p><b>Failure to comply with directions</b></p> <p>States that a person who fails to comply with a general or special direction shall be guilty of an offence.</p> <p>It is a defence to for the person to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.</p>	<p><b>Littlehampton HRO 2015/1387, Article 8</b></p>	As above	<p>Paragraph 3, as set out at 11.2(a) of the Statement in Support of this application.</p> <p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p>
40.	33	<p><b>Enforcement of directions</b></p> <p>If a special direction is not complied with within a reasonable time, grants the harbour master power to put persons on board the</p>	<p><b>Port of Babcock Rosyth HEO 2009/27, Article 26</b></p>	As above	<p>Paragraph 3, as set out at 11.2(a) of the Statement in Support of this application.</p> <p>Paragraph 4, as set out at 11.2(b) of</p>

No.	Provision number	Summary of provision	Precedent provision	Why this provision is required	Object in Schedule 2 to the Harbours Act 1964 which this provision achieves <sup>1</sup>
		vessel to carry out the direction, or otherwise cause the vessel to be handled in accordance with the direction.			the Statement in Support of this application.  Paragraph 11, as set out at 11.2(i) of the Statement in Support of this application.
41.	34	<p><b>Master's responsibility in relation to directions</b></p> <p>States that the giving of a general or special direction shall not diminish or in any other way affect the responsibility of the master of the vessel to which the direction is given in relation to that vessel, to persons on board the vessel, to the cargo or to any other person or property.</p>	<b>Port of Babcock Rosyth HEO 2009/2, Article 27</b>	As above	<p>Paragraph 3, as set out at 11.2(a) of the Statement in Support of this application.</p> <p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p> <p>Paragraph 17, as set out at 11.2(m) of the Statement in Support of this application.</p>
42.	35	<p><b>Obstruction of officers</b></p> <p>States that a person is guilty of an offence if he:</p> <p>(a) intentionally obstructs an officer of the Company acting in pursuance of any statutory provision of local application relating to the harbour; or</p> <p>(b) without reasonable excuse fails to comply with a requirement properly made by such an officer; or</p> <p>(c) without reasonable excuse fails to give such an officer any information which he may</p>	<b>Cowes HRO 2012/3080, Article 25</b>	As above	<p>Paragraph 3, as set out at 11.2(a) of the Statement in Support of this application.</p> <p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p> <p>Paragraph 17, as set out at 11.2(m) of the Statement in Support of this application.</p>

No.	Provision number	Summary of provision	Precedent provision	Why this provision is required	Object in Schedule 2 to the Harbours Act 1964 which this provision achieves <sup>1</sup>
		require for the purpose of performance of his functions.			
43.	36	<p><b>General rules for navigation</b></p> <p>States that a master who navigates a vessel in the harbour without due care and attention or in a manner liable to injure or endanger other vessels or persons shall be guilty on an offence.</p>	<b>Burry Port HRO 2000/2152, Article 39</b>	As above	<p>Paragraph 3, as set out at 11.2(a) of the Statement in Support of this application.</p> <p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p> <p>Paragraph 17, as set out at 11.2(m) of the Statement in Support of this application.</p>
44.	37	<p><b>Vessels adrift</b></p> <p>States that the owner or master of a vessel adrift in the harbour shall be guilty of an offence.</p> <p>It is a defence for the owner/master to prove that the vessel did not become adrift as the result of neglect or default on his part.</p>	<b>Burry Port HRO 2000/2152, Article 40</b>	As above	<p>Paragraph 3, as set out at 11.2(a) of the Statement in Support of this application.</p> <p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p> <p>Paragraph 17, as set out at 11.2(m) of the Statement in Support of this application.</p>
45.	38	<p><b>Power to deal with unseviceable vessels</b></p> <p>Grants the Company the power to remove, sell, destroy or dispose of any vessel laid by or neglected as unseviceable in the water of the harbour.</p>	<b>Maryport HRO 2007/34635, Article 27</b>	As above	<p>Paragraph 3, as set out at 11.2(a) of the Statement in Support of this application.</p> <p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p>

No.	Provision number	Summary of provision	Precedent provision	Why this provision is required	Object in Schedule 2 to the Harbours Act 1964 which this provision achieves <sup>1</sup>
		The Company may retain expenses incurred in respect of the vessel out of the proceeds of the sale of any such vessel. If such proceeds are insufficient to reimburse the Company (or there is no sale) the Company may recover the expenses from the owner as a simple contract debt.			Paragraph 11, as set out at 11.2(i) of the Statement in Support of this application.  Paragraph 12, as set out at 11.2(j) of the Statement in Support of this application.
46.	39	<b>Charges for services and facilities</b>  Grants the Company the power to demand and recover such reasonable charges for the services and facilities requested by any party and provided by the Company at the harbour as they may determine.	<b>Cowes HRO 2012/3080, Article 4</b>	This provision is required to update the existing harbour powers and ensure the Harbour can be operated in an efficient and economical manner.	Paragraph 11, as set out at 11.2(i) of the Statement in Support of this application.  Paragraph 12, as set out at 11.2(j) of the Statement in Support of this application.
47.	40	<b>Charges for services not otherwise provided for</b>  Grants the Company the power to demand and recover such reasonable charges in respect of any services rendered by it in connection with the harbour.	<b>Penzance HRO 2009/2325, Article 36</b>	As above	Paragraph 11, as set out at 11.2(i) of the Statement in Support of this application.  Paragraph 12, as set out at 11.2(j) of the Statement in Support of this application.
48.	41	<b>Payment of charges</b>  Charges under article 39 shall be payable before the removal from the harbour of any vessel or goods in respect to which they are payable.	<b>Cowes HRO 2012/3080, Article 5</b>	As above	Paragraph 12, as set out at 11.2(j) of the Statement in Support of this application.
49.	42	<b>Deposit for charges</b>	<b>Cowes HRO 2012/3080, Article 6</b>	As above	Paragraph 12, as set out at 11.2(j) of the Statement in Support of this

No.	Provision number	Summary of provision	Precedent provision	Why this provision is required	Object in Schedule 2 to the Harbours Act 1964 which this provision achieves <sup>1</sup>
		<p>Grants the Company the power to require a person to deposit with it, or guarantee such sum of money as is reasonable having regard to the amount of the charge.</p> <p>Where such a person fails to do so, the Company may detain at the harbour the vessel or goods in respect of which the charge has been or will be incurred until the charge has been paid.</p>			application.
50.	43	<p><b>Refusal to pay for landing place</b></p> <p>Grants an officer of the Company power to prevent a vessel from using a landing place if the master of the vessel refuses to pay the charges for such use.</p>	<b>Maryport HRO 2007/3463, Article 52</b>	As above	<p>Paragraph 3, as set out at 11.2(a) of the Statement in Support of this application.</p> <p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p> <p>Paragraph 12, as set out at 11.2(j) of the Statement in Support of this application.</p>
51.	44	<p><b>Recovery of charges</b></p> <p>Grants the Company power to recover any charges payable to it as a debt in any court of competent jurisdiction.</p>	<b>Cowes HRO 2012, Article 9</b>	As above	Paragraph 12, as set out at 11.2(j) of the Statement in Support of this application.
52.	45	<p><b>Harbour master may prevent sailing of vessels</b></p> <p>Grants the harbour master power to prevent the sailing/removal from the harbour of any</p>	<b>Cowes HRO 2012/3080, Article 10</b>	As above	Paragraph 12, as set out at 11.2(j) of the Statement in Support of this application.

No.	Provision number	Summary of provision	Precedent provision	Why this provision is required	Object in Schedule 2 to the Harbours Act 1964 which this provision achieves <sup>1</sup>
		vessel until evidence has been produced of the payment of any charges payable in respect of the vessel or passengers thereon or of goods exported/imported therein.			
53.	46	<p><b>Power to grant tenancies and dispose of land</b></p> <p>Grants the Company the power to grant licences, tenancies and leases within the harbour, as well as dispose of any interest in land within the harbour.</p>	<b>Maryport HRO 2007/3463, Article 67</b>	As above	<p>Paragraph 4, as set out at 11.2(b) of the Statement in Support of this application.</p> <p>Paragraph 9, as set out at 11.2(f) of the Statement in Support of this application.</p>
54.	47(1)	<p><b>Development of land etc</b></p> <p>Grants the Company the power to form and promote a company for the using or developing for any purpose any harbour land.</p>	<b>Maryport HRO 2007/3463, Article 68</b>	<p>As above. Also this provision provides further powers which may assist in enabling the development of land not required for the Harbour undertaking in accordance with Section 14(2B) of the Harbours Act 2014 (the "Act") and paragraph 9 of Schedule 2 of the Act.</p> <p>The HRO would remove some areas of land from the Harbour Limits to be redeveloped under the Planning Permission for Folkestone Seafront.</p>	<p>Paragraph 9A, as set out at 11.2(g) of the Statement in Support of this application.</p> <p>Paragraph 17, as set out at 11.2(m) of the Statement in Support of this application.</p>
55.	47(2)	Grants the Company the power to develop land not required for the undertaking with a view to disposing of the land.	<b>Maryport HRO 2007/3463, Article 68</b>	As above	Paragraph 9A, as set out at 11.2(g) of the Statement in Support of this application.
56.	48	<p><b>Saving for Trinity House</b></p> <p>States that nothing in the Order shall prejudice or derogate from any of the rights, duties or</p>	<b>Cowes HRO 2012/3080, Article 29</b>	Standard provision required in Harbour Revision Orders.	Paragraph 17, as set out at 11.2(m) of the Statement in Support of this application.

No.	Provision number	Summary of provision	Precedent provision	Why this provision is required	Object in Schedule 2 to the Harbours Act 1964 which this provision achieves <sup>1</sup>
		privileges of Trinity House.			
57.	49	<p><b>Defence of due diligence</b></p> <p>For the offences listed under articles 13 (provision against danger to navigation),15 (permanent lights on tidal works) and 16 (lights on tidal works during construction), it is defence for the Company to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.</p>	<p><b>Poole Harbour (Works) Revision Order 2015/1390, article 15</b></p>	Standard provision relating to the tidal works provisions.	Paragraph 17, as set out at 11.2(m) of the Statement in Support of this application.
58.	50	<p><b>Crown rights</b></p> <p>States that nothing in the Order affects prejudicially any estate, right, power (etc.) of the Crown.</p>	<p><b>Maryport HRO 2007/3463, Article 78</b></p>	Standard provision.	Paragraph 17, as set out at 11.2(m) of the Statement in Support of this application.

**Appendix 3**  
**Letter from Folkestone Harbour Authority Supporting Promotion of HRO**

Folkestone Harbour Authority  
Harbour House  
Folkestone Harbour  
Folkestone  
Kent CT20 1QH

Ms. Helen Kemp,  
Berwin Leighton Paisner LLP  
Adelaide House  
London Bridge  
London EC4R9HA

11<sup>th</sup> June 2015

ref.: Folkestone HRO

Dear Ms. Kemp,

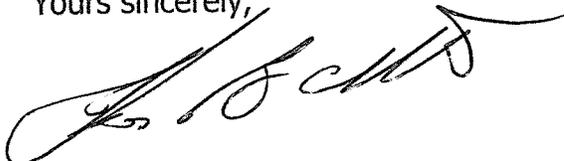
With regard to the upcoming Folkestone HRO promoted by Folkestone Harbour Company, I wish to confirm the support of Folkestone Harbour Authority for this undertaking.

Folkestone Harbour Authority (FHA) is a properly constituted, non-statutory, body which was created by Folkestone Harbour Company (FHC) to provide oversight of marine safety at Folkestone Harbour, to perform the role of Duty Holder under the Port Marine Safety Code, and to enable compliance with the Code more generally.

FHA supports the promotion by FHC of the proposed Folkestone Harbour Revision Order which includes powers which will assist marine safety at Folkestone Harbour and will enable effective performance of port safety obligations.

I trust that you find this helpful and, if I can be of any further assistance in this matter, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'T.B. Miller', written in a cursive style.

Captain T.B. Miller  
Chairman/Duty Holder, Folkestone Harbour Authority

**Appendix 4**  
**Plan attached to Folkestone Byelaws of 1928**

### SCHEDULE.

Plan showing by red lines the limits of the Folkestone Harbour Undertaking referred to in the foregoing bye-laws.

