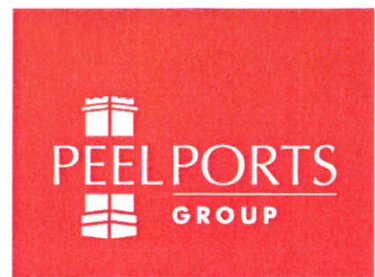


Annex C-12: Application of Manchester Ship Canal Company Ltd (Peel Ports)



27th June 2014

The Secretary of State for Transport
Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

BY e-mail to: Ports@dft.gsi.gov.uk

Dear Sir

**The Manchester Ship Canal Company Limited
Harbours Act 1964 s.40A
Application for powers of harbour direction**

I would like to confirm that The Manchester Ship Canal Company Limited (MSCC), a subsidiary of Peel Ports Group Limited, wishes to apply to become a designated harbour authority for the purposes of s.40A of the Harbours Act 1964.

We note from your guidance document that applications should set out reasons for seeking the new powers. To address that aspect we enclose a copy of the Risk Assessment carried out by MSCC dated 5th March 2014. As you will see, the Risk Assessment considers inter alia the following aspects:

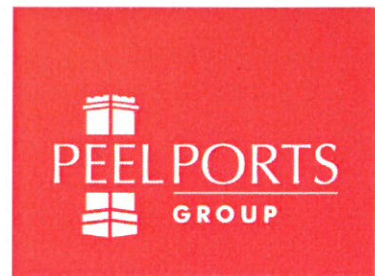
- MSCC's existing suite of byelaws is outdated;
- The PMSC 'Guide to Good Practice' recommends that harbour authorities keep their powers under review and seek to improve these where appropriate;
- The PMSC Audits have noted that existing powers are outdated; and
- Traffic density and the potential for traffic conflicts are increasing.

As you will be aware, MSCC's area of jurisdiction is some 36 miles of Ship Canal waterway and encompasses a wide variety of port uses. If MSCC were to update its byelaws, it would undoubtedly be a lengthy process and a complex document. Proper treatment would require separate "chapters" dealing with the differing demands of QE11 Dock, Eastham, Stanlow, Runcorn, Salford Docks etc. and somehow taking into account everything from chemical / oil and gas vessels, to leisure craft using the upper canal.

Whilst recast byelaws might well anticipate every eventuality, there is always the possibility that new and unusual might not be covered by new byelaws.

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Company Limited**
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It therefore appears to MSCC that the ability to issue harbour directions gives much greater flexibility than would be the case with new byelaws. Equally, from the perspective of harbour users within the Ship Canal and QEII Dock, it is arguable that harbour directions would be much more readily ascertainable and (web) accessible, and give port users a clearer steer on what they may or may not do, than would be the case if port users were expected to trawl through a detailed encyclopaedia of new byelaws to check whether they contained applicable restrictions. Moreover, the ability to issue harbour directions would potentially provide an effective means of implementing any issues flowing from the recently-formed Port Security Authority which the harbour authority might find it appropriate to implement.

MSCC has regularly reviewed its suite of powers pursuant to the PMSC, and has actively examined whether the right way forward might be the promulgation of new byelaws or powers of general direction pursuant to a Harbour Revision Order. However, the possibility of statute providing for harbour direction powers has been under discussion for several years prior to the enactment of the Marine Navigation Act 2013, and it appeared that there was merit in waiting for those powers to arrive on the statute book, rather than proceeding by way of new byelaws or an HRO, for all of the reasons set out above.

As part of an overall review of the Peel Ports` Group byelaws it is the intention to amend and or revoke as appropriate in respect of Manchester, the Harbour and Port of Manchester General Bye-laws 1963 and the Harbour and Port of Manchester Navigation Bye-laws 1982. With regard to the National Direction Panel's non-statutory code of conduct, MSCC is supportive of the code of conduct and is agreeable to abiding by its terms, save only in circumstances where it is not reasonably practicable to do so. For example, if circumstances arose where in MSCC's reasonable opinion the available timescales did not allow for 14 days prior consultation with the Port Users Group (as required by the code of conduct) in addition to the statutory publicity period of 28 days, then it would seem appropriate in such circumstances for the statutory requirements to prevail over the non-statutory requirements, i.e. where adherence to the code of conduct might run the risk of negating the benefits of the proposed harbour direction. We enclose a proposed letter of assurance and look forward to hearing whether its terms are acceptable.

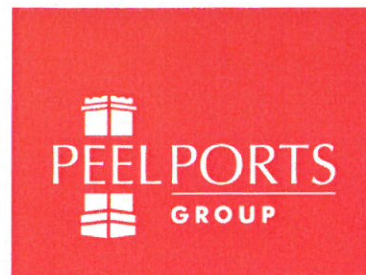
With regard to informal consultation prior to formal public consultation on a proposed designation order, we can confirm that MSCC has consulted on the 21st May 2014, at the meeting of the Ship Canal Users Association, which has representatives from MSCC, the Shipping Agents, terminal operators, pilots and vessel owners. This group has agreed to act as the 'Port User Group' under the Code of Conduct.

The application for powers of harbour direction was on the agenda, and minuted responses will be provided to you when available.

Accordingly, by the end of July 2014 we will have been able to provide you with feedback from a broad spectrum of port users, and trust that the process of applying for harbour direction powers can commence, on the understanding that the prior consultation feedback will shortly follow.

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We note that a draft Designation Order requires to be the subject of a 42 day consultation period, and we would welcome your advice on approximately when you would expect that period of consultation to commence.

We also note that the general intention appears to be to deal with applications in tranches and it would be useful if you could confirm whether other applications will be receiving consideration in the same tranche as MSCC's.

We await your confirmation of any further information that you may require from us at this stage.

Yours faithfully

A handwritten signature in black ink, appearing to read "S.F. Gallimore".

Captain S.F. Gallimore
Group Harbour Master
Peel Ports Group Limited

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Company Limited
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RISK ASSESSMENT

Name of the Risk to be assessed	Harbour Directions Power
Location	Port of Manchester SHA
Date Considered	5th March 2014
Items Considered	
Whether to apply to Secretary State for Transport for Harbour Directions	

Impact	Severe	3	6	9
	Moderate	2	4	6
	Minor	1	2	3
	LOW		Medium	High
Likelihood				

Unacceptable level of risk
Acceptable level of risk with caution
Acceptable level of risk

Process: Make an assessment of all the risks involved, considering at least the items in the adjacent table and assessing both before and after the proposed change. Having made your assessment enter the appropriate number against each Impact and Likelihood. Use the table above to determine the consequential overall risk.

Title	Name / Signature	Date
Group Harbour Master	 Stephen Gallimore	5/3/14
Port Director	 David Huck	5.3.14

	Overall Impact and Likelihood Assessment	Considered	Record of amplifying comments against consideration number - if required
1	Are existing powers "fit for purpose"	Yes	Existing byelaws are outdated
2	Port Marine Safety Code Guide to good Practice	Yes	Recommendations that SHA seek new powers
3	PMSC Audits	Yes	Observes that existing powers are outdated
4	Traffic density, type, size, draft and speed	Yes	Increasing
5	Traffic patterns to be considered with types of vessels	Yes	Increasing
6	Existing obstructions and developments	Yes	Harbour Directions will assist
7	Planned new obstructions and developments	Yes	Harbour Directions will assist
8	Local knowledge of users including the availability of pilotage	Yes	HD's will assist in Harbour Management
9	Local Port Service	N/A	Assist in managing leisure events
	VTS Information	Yes	
	Notice to Mariners	Yes	

Risk Assessment	Before	After	DECISION
Impact	3	3	Apply to Secretary of State for Transport for the power to make Harbour directions for the management of safety in the Port of Manchester
Likelihood	2	1	
Assessed Risk	6	3	

ASSURANCE

The Manchester Ship Canal Company Limited

I confirm that the following resolutions of The Manchester Ship Canal Company Limited were duly passed at a meeting of The Manchester Ship Canal Company Limited on 29 April 2014.

The harbour authority has had regard to the content of and agrees, save only in circumstances where it is not reasonably practicable to do so, to comply with the code of conduct on harbour directions, in particular:

- a) to maintain a Port User Group and to apply a dispute resolution procedure such as is set out in the code of conduct when required;
and
- b) to have regard to supplementary guidance issued from time to time by the National Directions Panel on the subject of harbour directions.

Mark Whitworth is authorised to apply to the Secretary of State for Transport for The Manchester Ship Canal Company Limited to be designated as a designated harbour authority for the purposes of Section 40A of the Harbours Act 1964.

Name: Mark Whitworth

Signed



Date

29 April 2014

9th September 2014

The Secretary of State for Transport
Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

By e-mail to: Ports@dft.gsi.gov.uk

Dear Caroline

**The Manchester Ship Canal Company Limited and Heysham Port Limited
Harbours Act 1964 s.40A
Application for powers of harbour direction**

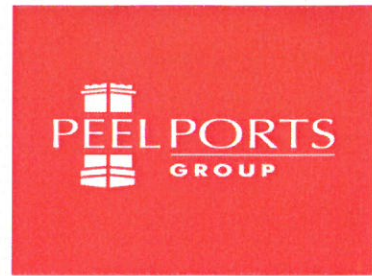
You have asked for us to clarify the statement below which is found in our application letters:-

"With regard to the National Direction Panel's non-statutory code of conduct, MSCC / HPL is supportive of the code of conduct and is agreeable to abiding by its terms, save only in circumstances where it is not reasonably practicable to do so. For example, if circumstances arose where in MSCC's / HPL's reasonable opinion the available timescales did not allow for 14 days prior consultation with the Port Users Group (as required by the code of conduct) in addition to the statutory publicity period of 28 days, then it would seem appropriate in such circumstances for the statutory requirements to prevail over the non-statutory requirements, i.e. where adherence to the code of conduct might run the risk of negating the benefits of the proposed harbour direction."

By way of example I offer that it may be the case that in order to maintain the safety of navigation or in conserving the harbour, in an unforeseen or un-notified circumstance, the movement or navigation of all or certain vessels may need to be regulated or the vessels may need to be excluded from an area or areas of the harbour for a significant period of time requiring a general harbour direction rather than a special direction. The addition of a 14 day consultation period ahead of the 28 day notice period may in the circumstances at the time not be a practical or appropriate in the overall interests of the safety of navigation in the harbour. For instance, where an explosion risk existed from say unexploded ordinance or other explosive source, a possible mitigation of the risk might be to immediately exclude all vessels from a zone in the harbour around the site.

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I trust this clarifies that only where the Code of Conduct does not allow for the statutory duties of the harbour to be fulfilled, should the requirements of the Code of Conduct be relaxed.

Yours sincerely

A handwritten signature in black ink, appearing to read "J.P. Hall".

Captain S.F. Gallimore
Group Harbour Master

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