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Andrew Hignett
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Our reference:DC9684

25 April 2014

Dear Mr Hignett,

**Harbours Act 1964
The Lymington Harbour Revision Order 2014**

1. The Marine Management Organisation ("the MMO") informs you that consideration has been given to the application for The Lymington Harbour Revision Order 2014 ("the Order") for which you applied on behalf of Lymington Harbour Commissioners ("the Applicant"), under Section 14 of the Harbours Act 1964 ("the Act") on 18 June 2013.

Summary of Decision

2. The MMO has authorised the making of the Order with amendments and modifications not affecting the character of the Order which it considers necessary and appropriate.
3. The Order modernises and extends the existing powers vested in the Applicant, in particular, it defines the limits of Lymington Harbour in modern terms, confers powers on the Applicant to give general directions to vessels and provides other powers considered necessary to ensure the efficient and economical management of the harbour.
4. The proposed Order does not constitute or authorise a project for the purposes of Council Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment does not apply to the proposal, and accordingly an environmental statement was not required.

Context

5. The Applicant is the statutory harbour authority for Lymington Harbour.
6. The harbour accommodates 1,530 permanent berths for private vessels and approximately 15,000 boats visit the harbour each year.



**INVESTORS
IN PEOPLE**

7. There is a small commercial fishing fleet.
8. Lymington is the mainland terminal for a strategically important ferry service to Yarmouth on the Isle of Wight.
9. The sheltered waters of the harbour are extensively used for recreation by the local community.
10. The Port Marine Safety Code ("the code") published by the Department for Transport in October 2009 applies to the Applicant.
11. The code explains that it *"establishes the principle of a national standard for every aspect of port marine safety, and aims to enhance safety for those who use or work in ports, their ships, passengers and the environment. It applies to port marine operations the well-established principles of risk assessment and safety management systems. It provides a measure by which harbour authorities can be accountable for the legal powers and duties which they have to run their harbours safely and help to discharge their obligations effectively"*.
12. The code identifies a number of matters which harbour authorities must do in order to comply with the code. These matters include reviewing and being aware of their existing powers under local and national legislation, and the code advises that harbour authorities should seek additional powers if the existing powers are insufficient to meet their obligations to provide safe navigation. In particular, paragraph 3.4 of the code states *"Harbour Authorities would be well advised to secure powers of general direction to support the effective management of vessels in their harbour waters, if they do not have them already"*.
13. The Order is sought to achieve object 4 as specified in Schedule 2 to the Act:

'Imposing or conferring on the authority, for the purpose aforesaid, duties or powers (including powers to make bylaws), either in addition to, or in substitution for, duties or powers imposed or conferred as mentioned in paragraph 3 above'
14. In summary, it is the case for the Applicant that the Order is in line with relevant policy and is necessary to facilitate the efficient and economical management of the harbour.

Application procedure

15. On 18 June 2013 an application for the Order was submitted on behalf of the Applicant to the MMO.
16. Notice of the application for the Order was advertised in the London Gazette on Friday 21 June 2013 and in The Lymington Times on 22 and 29 June 2013.

17. In addition, the MMO directed the Applicant to serve the application and supporting documentation under paragraph 14 of Schedule 3 to the Act. Those served include:

- The Crown Estate
- Lymington Harbour Advisory Group
- Wightlink Ltd
- Lymington and Pennington Town Council
- UK ANPA
- New Forest District Council
- MCA
- Department for Transport
- Trinity House
- RYA
- The chamber of Shipping
- The Yarmouth (Isle of Wight) Harbour
- UK Major Ports Group
- British Ports Association
- Defence Infrastructure Organisation

18. A number of representations were received during the statutory 42 day period provided for in schedule 3 to the Act. Representations are summarised as follows:

Wightlink Ltd

Wightlink Ltd objected to the Order on the grounds that:

- a) the description of the harbour limits within the Order did not set out that Wightlink Ltd were the harbour authority for Lymington Pier.
- b) the Order afforded the Applicant a wide power to prohibit the entry into the Harbour of vessels which exceed the specified dimensions. The dimensions proposed were smaller than those of existing 'W' Class ferries operated by Wightlink. The power to issue general directions is on the grounds of safety of navigation and persons and the protection of property. The existing 'W' class ferries operate safely within the Harbour and consequently Wightlink requested the dimensions be amended to reflect the existing 'W' class dimensions.
- c) the adjudication process was unfair on the basis that parties involved could be liable for some of the costs of adjudication decisions that the Applicant ultimately decides not to follow.
- d) the power to issue a special direction for the removal of a vessel or the regulation of the use of a vessel within the harbour should not apply to "exempt vessels" as defined under the Order. Otherwise the Applicant would be able to restrict the operation of a vessel in the harbour under a special direction where they are not able to do so by virtue of a general direction.

MMO Response

The MMO notes that new drafting has been proposed to resolve the concerns raised. Wightlink are satisfied with the modifications and withdraw their objection subject to the changes appearing in the final Order. The MMO is satisfied that the drafting as amended is appropriate.

RYA

19. The RYA requested several minor drafting modifications relating to grammatical errors and wording in several articles.

MMO Response

The MMO notes the Applicant has accepted the request of RYA for amendment and the modifications form part of the final Order. The MMO is satisfied that the drafting in its current form is appropriate.

Trinity House

20. Trinity house did not raise an objection to the Order and recorded their satisfaction at the inclusion of a saving provision for Trinity House.

MMO Response

The MMO notes the response.

MMO consideration

21. Section 14 (1) of the Act provides for an order to be made under this section (“a harbour revision order”) in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties for achieving all or any of the objects set out in schedule 2 to the Act.
22. By virtue of section 14 (2)(a) a harbour revision order may not be made in relation to a harbour unless the MMO is satisfied that an appropriate written application has been made by the authority engaged in improving, maintaining or managing it or by a person appearing to it to have a substantial interest or body representative of persons appearing to it to have such an interest.
23. By virtue of section 14(2)(b) a harbour revision order shall not be made in relation to a harbour unless the MMO is satisfied that the making of the order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner, or of facilitating the efficient and economical transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships.

MMO's decision

24. The MMO is satisfied that the Order meets the requirements of section 14(1) and 14(2)(a) of the Act.

25. The MMO is satisfied for the reasons set out by the Applicant in their statement of support and summarised above that the making of the Order is desirable for the purposes of section 14(2)(b) of the Act and should be made.

26. The MMO authorises the making of the Order with amendments and modifications which it considers necessary and appropriate but not substantially affecting the character of the Order.

Challenge to decisions

27. Information on the right to challenge this decision is set out in the Annex to this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Kirby', written over a horizontal line.

Mark Kirby
Inshore Licensing Team

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Annex

Right to challenge decisions

Right to challenge orders made under sections 14 and 16 of the Harbours Act 1964

Any person who desires to question the making of the Order on the ground that there was no power to make the Order or that a requirement of the Harbours Act 1964 was not complied with in relation to the Order, may within 6 weeks from the date on which the Order becomes operative make an application for the purpose to the High Court or the Court of Session, as the case may be.

A person who thinks they may have grounds for challenging the decision to make the Order is advised to seek legal advice before taking any action.