



Marine  
Management  
Organisation

Marine Management  
Organisation  
Lancaster House  
Hampshire Court  
Newcastle Upon Tyne  
NE4 7YH

T 0191 376 2563  
[www.marinemanagement.org.uk](http://www.marinemanagement.org.uk)

Andrew Hignett  
Keystone Law  
53 Davies Street  
London  
W1K 5JH

Our reference:DC9903

5 February 2016

Dear Mr Hignett,

**The Harbours Act 1964**  
**The Newhaven Harbour Revision Order 2015**

1. The Marine Management Organisation (“the MMO”) informs you that consideration has been given to the application for The Newhaven Harbour Revision Order 2015 (“the Order”) for which you applied on behalf of Newhaven Port and Properties Limited (“the applicant”), under Section 14 of the Harbours Act 1964 (“the Act”) on 17 April 2015.

**Summary of Decision**

2. The MMO has authorised the making of the Order with amendments and modifications which it considers necessary and appropriate.
3. The Order would modernise and extend existing powers vested in the applicant and provide powers considered necessary to facilitate the effective management of the Newhaven Harbour (“the harbour”).
4. In particular, the Order would;
  - clarify the jurisdiction of the harbour in modern terms and extend its limits;
  - confer power to regulate the operation of commercial workboats operating from the harbour;
  - give directions to vessels using the harbour;
  - amend borrowing powers; and
  - confer other powers considered desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner.
5. The proposed Order does not authorise a project for the purposes of Council Directive 85/337/EEC which is codified by 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.



INVESTORS  
IN PEOPLE

## Context

6. The applicant is the statutory harbour authority for Newhaven harbour.
7. The harbour is sited at the mouth of the River Ouse in East Sussex. It is an important South Coast harbour providing cross channel connections to the continent for both private passengers and commercial vehicles.
8. The harbour also acts as home port for a medium fishing fleet of around 30 vessels and hosts significant leisure sailing vessels.
9. The present harbour limits have been in existence since 1878, with the southern boundary 100m south of the harbour entrance. It is considered that the harbour limits would be more accurately defined by the use of coordinates to seaward and to modern points of reference to landward and that there is a need to extend the limits to afford the harbour authority more control over approaches to the harbour and vessel anchorage in the interests of maritime safety.
10. The Port has been selected as the Eon Rampion Windfarm Construction Project Management Base and the Operations & Maintenance Base which will create an increase in vessel traffic over the life of the windfarm, particularly during the construction phase.
11. The proposed licensing of workboats would ensure that all operators of commercial workboats operating from the harbour would have to attain minimum safety standards for vessels used and the competency of their crews. Without a licensing system it would be difficult for the Harbour master to check whether those minimum safety standards had been achieved.
12. Paragraph 10.2.3 of 'A guide to good practice on port marine operations' which supplements the Port Marine Safety Code ("the Code") states "*Local legislation may empower harbour authorities to register, inspect and licence commercially operated port craft. Where this is not the case, the authority's risk assessments should show some form of agreement with commercial operators about the maintenance and proper use of those vessel. It may be appropriate for the authority to consider seeking those powers.*"
13. In addition to the power to regulate commercial workboats using the harbour the Order also confers power to issue directions to vessels within its limits. These powers are considered necessary to facilitate the effective and efficient management of the harbour. The Code encourages harbour authorities to seek such powers.
14. The Code which was published by the Department for Transport in October 2009, applies to the applicant.
15. The Code "*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”.*

16. The Code identifies a number of matters which harbour authorities must do in order to comply with the Code including reviewing existing powers and advises that harbour authorities should seek additional powers if the existing powers are insufficient to meet their obligations to provide safe navigation.
17. 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*”.
18. The Order gives the applicant additional financial powers considered necessary to allow them to borrow (both long and short term) and create a charge over its property in order to raise finances, thus enabling it to continue to invest and develop without undue constraint ensuring it is positioned to maximise opportunity to grow the Port business.
19. The Order is sought to achieve the following objects specified in Schedule 2 to the Act:

Object 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”.*

Object 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.”*

Object 10:

*“Empowering the authority to borrow money, with or without limitation with respect to the amount that may be borrowed or the time or manner in which the power may be exercised.”*

Object 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.”*

Object 15:

*“Securing the welfare of the authority’s officers and servants and empowering the authority to provide, or secure the provisions of, pensions, gratuities and other like benefits for or in respect their officers and servants.*

Object 17:

*“Any object which, 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.”*

20. In summary, it is the case for the applicant that the Order is consistent with relevant policy and is necessary to facilitate the efficient and economical management of the harbour.

### Application procedure

21. On 17 April 2015 an application for the Order was submitted to the MMO.

22. Notice of the application for the Order was published in the London Gazette on 24 April 2015 and in the Sussex Express on the 24 April 2015 and 1 May 2015.

23. In addition the MMO consulted directly with:

- British Ports Association
- Chamber of Shipping
- Royal Yachting Association
- Trinity House
- Department for Transport
- Natural England
- Newhaven Town Council
- Marine and Coastguard Agency
- Historic England

A number of representations were received during the statutory 42 day period provided for in schedule 3 to the Act. One objection was received from the Royal Yachting Association (RYA). Responses to consultation can be summarised as follows:

#### RYA

24. The RYA requested minor drafting changes to several articles and requested that Article 7 (Special directions as to use of the harbour, etc.) be substituted.

#### MMO Response

25. The applicant agreed to the proposed drafting modifications and the RYA withdrew their objection. The MMO is satisfied that the drafting in its current form is appropriate.

#### Trinity House (TH)

26. TH requested that sections 28, 77 and 78 of the Harbours, Docks, and Piers Clauses Act 1847 be incorporated. Section 28 exempts vessels in the service of Her Majesty from rates or dues. Section 77 gives the applicant powers to lay down

buoys for the guidance of vessels when instructed by TH. Section 78 covers lights, beacons, or sea-marks not to be exhibited or altered without sanction of TH.

#### MMO Response

27. The applicant agreed to the proposed drafting modifications. The MMO is satisfied that the drafting in its current form is appropriate.

#### Department for Transport (DfT)

28. The DfT responded to indicate they had no specific comments on this Order.

#### MMO Response

29. The MMO notes the position of DfT.

#### Historic England (HE)

30. HE indicated in their response that they had no comment to offer regarding the provisions of the Order but took the opportunity to direct the MMO's attention to the potential programme of works referred to in the statement of support and the potential for those works to encounter previously unknown archaeological remains.

#### MMO Response

31. The Order does not authorise any works and reference to development contained in the statement of support is intended to provide context to the application for additional management powers. Impacts arising from the development referred to and the need for mitigation will be assessed at the appropriate time by the MMO upon receipt of an application for necessary consents.

#### The Crown Estate (TCE)

32. TCE confirmed they had no comments to make save to note the Order contained the standard Crown savings clause.

#### MMO Response

33. The MMO notes the position of TCE.

### **MMO consideration**

34. 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.

35. 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.

36. 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**

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

38. 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.

39. The MMO authorises the making of the Order with amendments and modifications which it considers necessary and appropriate.

### **Challenge to decisions**

40. 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

D 0191 376 2563

E [mark.kirby@marinemanagement.org.uk](mailto:mark.kirby@marinemanagement.org.uk)

## **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.**