

MARINE MANAGEMENT ORGANISATION

HARBOURS ACT 1964

PROPOSED ILFRACOMBE HARBOUR REVISION ORDER 2018

**STATEMENT IN SUPPORT OF APPLICATION BY
NORTH DEVON DISTRICT COUNCIL**

INTRODUCTION

1. This statement relates to the application by the North Devon District Council ("**the Council**") for the proposed Ilfracombe Harbour Revision Order ("**the HRO**"). The Council is the statutory harbour authority for Ilfracombe harbour.
2. The application, made in a letter of today's date to the Marine Management Organisation ("**MMO**"), is accompanied by –
 - a) six hard copies of the draft proposed HRO and supporting plan;
 - b) an electronic copy of the draft proposed HRO and supporting plan;
 - c) an electronic copy of this statement of support;
 - d) an electronic copy of article 6 of the Ilfracombe Harbour Order 1900 ("**the 1900 Order**"), which is mentioned in the HRO; and
 - e) the fee for the application, paid to the MMO in advance of this application, in the sum of £6,000.
3. The application is for a harbour revision order to be made under the powers conferred by the Secretary of State for Transport by section 14 of the Harbours Act 1964 ("**the Act**") and delegated to the MMO with effect from 1 April 2010 by the Harbours Act 1964 (Delegation of Functions) Order 2010 (S.I. 2010/674).
4. The HRO would confer powers on the Council to construct and maintain a new harbour wall in Larkstone Cove and a slipway from the new watersports centre in The Strand which will extend into the bed and foreshore of Ilfracombe Harbour. The works to be authorised by the HRO form part of a wider proposal to provide improved conditions for local watersports groups in Ilfracombe.

ILFRACOMBE HARBOUR

5. Ilfracombe is the largest harbour on the North Devon coast and there has been a port there since at least the 12th century. The harbour is overlooked on top of Lantern Hill by St Nicholas Chapel which was built in 1321 and is said to be the oldest working lighthouse in the United Kingdom. While the main use of the harbour is now leisure and tourism, it remains a working harbour with fish and seafood landed daily.
6. Statutory powers for the harbour go back to the reign of King George II when, in 1730, an Act was passed "for repairing and keeping in Repair the Pier and Harbour of Ilfracombe, in the County of Devon". More recently, the Ilfracombe Harbour Revision Order 1996 ("the 1996 Order") was promoted to allow the Council to provide a launchway for the lifeboat from the lifeboat station in The Strand.
7. The harbour is defined in article 6 of the 1900 Order as comprising "... an area defined by an imaginary straight line commencing at the centre of the northern wall of the Britannia Hotel and extending thence to and terminating at a point distant three hundred and thirty yards northward from the said wall and by a second straight line extending due east from the point of termination of the first-mentioned straight line until such second straight line joins the high water line on the western side of Beacon Point and from that point by the high water line in a south-west and westerly direction to a point on the said high water line due south of the

southernmost end of the old inner harbour pier and from the last-mentioned point by an imaginary straight line extending sixty yards or thereabouts south-west to and intersecting the Quayfield Road and thence by the centre of the Quayfield Road the Cove Road Broad Street and the Quay to the point of commencement of the firstly-mentioned straight line at the centre of the northern wall of the Britannia Hotel". That definition was used in the 1996 Order and is relied on in the proposed HRO as well.

THE PLANNING PERMISSION

8. In May 2014 an application for planning permission (planning application number 57487) was made for the erection of a multipurpose watersports centre with boat and equipment storage facilities, showers, changing rooms, teaching space and café at Larkstone Cove, Ilfracombe. In addition to the facilities within the building, the design includes boat storage facilities within a new boatyard and a new slipway access to the water. The slipway access forms part of the works proposed by the HRO.
9. On 9 February 2015 the Council granted planning permission for the application. That permission expired and a new application (planning application number 64472) was made in February 2018. That application was granted planning permission on 11 April 2018.

THE HARBOURS ACT 1964

10. The application for the HRO, which is essentially a works order associated with the planning permission, is made under section 14 of the Act.
11. Section 14 of the Act confers powers which have been devolved to the MMO to make a harbour revision order in relation to a harbour that is being 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 specified in Schedule 2 to the Act.
12. Section 14 of the Act requires that a written application must be made to the MMO by the authority so engaged and that the MMO must be –

“... 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 economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships”.
13. Moreover, in accordance with Schedule 3 to the Act, and as this is an application for a harbour revision order which, directly or indirectly authorises a project (within the meaning of paragraph 1 of Schedule 3 to the Act), prior notification to the MMO under paragraph 3(a) of Schedule 3 to the Act of the Council's intention to apply for a harbour revision order in respect of these works is required.
14. Prior written notification of the Council's intention to apply for a harbour revision order was duly given to the MMO on 13 October 2017 and a screening opinion was requested on that date. The MMO informed the Council, in writing, on 8 February 2018 of its decision that the

proposed application relates to a project which does not require an environmental impact assessment, in accordance with paragraph 5(2) of Schedule 3 to the Act.

15. This application for the proposed HRO under section 14 of the Act meets the conditions set out in that section. In particular, the application meets the requirements of –

a) section 14(1) of the Act because it is made in relation to a harbour which is being improved, maintained and managed by a harbour authority in the exercise and performance of its statutory powers and duties for the purpose of achieving objects falling within Schedule 2 to the Act;

b) section 14(2) of the Act because –

- i. the application is made upon the written application of the authority engaged in improving, maintaining and managing the harbour; and
- ii. the making of the harbour revision order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economic manner.

16. The objects specified in Schedule 2 include, in particular, paragraph 7B which states –

“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”.

17. The works to be authorised by the proposed HRO will interfere with the enjoyment of public rights of navigation.

NEED & JUSTIFICATION FOR THE HRO

18. There is a need in Ilfracombe to provide improved conditions for local watersports groups and one of the aims of the watersports centre is to satisfy that need. The slipway will be key to the operation of the watersports centre since it will provide access to the water. The water will be accessed by the three watersports groups occupying the building and it will also be used by other watersports groups and commercial operators. Groups of schoolchildren will use the slipway as well. The width of the slipway has therefore been designed to allow a gig boat and safety boat to use it in parallel and also to allow safe recovery in the event of an emergency when a gig boat is using the slip. The new seawall is needed to defend the first floor of the boathouse from the impact of extreme waves.

19. As well as summarising each article of the HRO, paragraph 20 below identifies the Act’s provisions which provide that the powers sought under the proposed HRO may be included in a harbour revision order. It also justifies the inclusion of the provisions in the proposed HRO.

EXPLANATION OF THE HARBOUR REVISION ORDER

20. An explanation of each article in the HRO is set out below.

- a) **Article 1** (citation and commencement) is for citation purposes. **Article 2** (interpretation) contains definitions for the HRO, including the meaning of “the harbour”.
- b) **Article 3** (power to construct works) empowers the Council as the harbour authority for Ilfracombe Harbour to construct and maintain a slipway from the new watersports centre in The Strand into the bed and foreshore of Ilfracombe Harbour. It also empowers the Council to construct a new harbour wall.
- c) **Article 4** (power to deviate) allows the Council to deviate laterally from the lines or situations shown on the deposited plan to the extent of the limits of deviation and also to deviate vertically from the levels shown on the deposited sections to any extent not exceeding 1.5 metres upwards or to any extent downwards. This provides a degree of flexibility in the construction of the works.
- d) **Article 5** (subsidiary works) allows the Council to carry out, within the limits of deviation, subsidiary works in respect of the construction, maintenance and use of the authorised works, including navigation marks and lights. In carrying out subsidiary works, **article 5** allows the Council to carry out construction activity and place plant and equipment within the waters adjoining the limits of deviation.
- e) The need and justification for these provisions is given in paragraph 18 of this Statement. These provisions are authorised by paragraph 7B of Schedule 2 to the Act, which is set out in paragraph 16 above.
- f) **Article 6** (period for completion of works) requires the Council to commence the authorised works within 5 years from the date of the HRO coming into force. This time can only be extended by the Secretary of State approving an application by the Council for an extension. This provision ensures that the power to construct works is not without a time limit and will expire if the works are not completed within a certain time, unless that time is extended by the Secretary of State.
- g) The authorising provision of this article is paragraph 16 of Schedule 2 to the Act which provides that one of the objects for whose achievements a harbour revision order may be made is “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”.
- h) **Article 7** (obstruction of works) creates an offence of, without lawful authority, intentionally or recklessly obstructing the carrying out of the works, with a fine on summary conviction not exceeding level 3 on the standard scale.
- i) If a person attempts to obstruct the lawful construction of works this article provides a remedy. The authorising provision of this article is paragraph 17 of Schedule 2 to the Act which provides that “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”.

- j) **Article 8** (provision against danger to navigation) provides that in the case of injury to, or destruction or decay of, the authorised works, the Council must notify Trinity House, the Maritime Coastal Agency and the United Kingdom Hydrographic Office and then take such steps as Trinity House may direct to prevent danger to navigation. The article makes it an offence to fail to comply with this provision. Paragraph 17 of Schedule 2 to the Act is the relevant authorising provision for this article.
- k) **Article 9** (abatement of works abandoned or decayed) provides for the abatement of works abandoned or decayed and provides that the Secretary of State may require the Council at its own expense either to repair and restore the work or remove it and restore the site. Paragraph 17 of Schedule 2 to the Act is the relevant authorising provision for this article.
- l) **Article 10** (survey of authorised works) provides that the Secretary of State may order a survey and examination of the authorised works or of the site on which they are to be constructed. Paragraph 17 of Schedule 2 to the Act is the relevant authorising provision for this article.
- m) **Article 11** (lights on tidal works during construction, etc.) makes provision for the lighting of the tidal works (as defined in **article 11(3)**) during construction and requires the Council to take such other steps for the prevention of danger to navigation as the Secretary of State may direct. If the Council does not comply with a direction it is guilty of an offence. Paragraph 17 of Schedule 2 to the Act is the relevant authorising provision for this article.
- n) **Article 12** (defence of due diligence) provides that a defence of due diligence is available to the Council in respect of offences under **articles 8 and 11** if it can prove it took all reasonable precautions and exercised all due diligence to avoid committing the offence. Paragraph 17 of Schedule 2 to the Act is the relevant authorising provision for this article.
- o) **Article 13** (Crown rights) provides a saving for the protection of the Crown's interests. Paragraph 17 of Schedule 2 to the Act is the relevant authorising provision for this article.
- p) **Article 14** (saving for Trinity House) provides a saving for the protection of the interests of Trinity House. Paragraph 17 of Schedule 2 to the Act is the relevant authorising provision for this article.

PRE-APPLICATION CONSULTATION

21. During the summer of 2017 the Council carried out a pre-application consultation. Specifically, this involved –

- a) Publishing notices on the harbour noticeboard at the harbour;
- b) Publishing the draft HRO and accompanying cover letter and drawing on the Council's website;
- c) Consulting with the Harbour Forum;

- d) Consulting with other harbour users;
- e) Consulting with Peter Heaton-Jones, the local Member of Parliament, Ilfracombe Town Council and Devon County Council.
- f) Consulting with bodies required or suggested by the MMO.

22. The full list of bodies consulted during the pre-application consultation is set out in the Schedule to this Statement. Each body was provided with a draft HRO and accompanying cover letter and a copy of a drawing showing the proposed slipway and quay wall design, together with the location of the proposed development. Following the end of the pre-application consultation, the Council held meetings with a number of the bodies which had responded to the consultation.

23. Comments received during the pre-application consultation and during the meetings were taken into account by the Council when they finalised the formal application for the proposed HRO.

CONCLUSION

24. In addition to paragraph 7B of Schedule 2 to the Act, paragraph 17 of Schedule 2 provides that a harbour revision order may include provision for –

“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”.

25. For the reasons mentioned above, the Council considers that to the extent that any provision contained in the HRO does not fall specially within any other paragraph of Schedule 2, the provisions of the HRO would be conducive to the efficient functioning of Ilfracombe Harbour and it is therefore within the scope of the Act for them to be included in the HRO.

Sharpe Pritchard LLP for and on behalf of North Devon District Council
30 May 2018

SCHEDULE – LIST OF BODIES CONSULTED DURING PRE-APPLICATION CONSULTATION

1. Natural England
2. Historic England
3. The Harbour Forum which includes:-
 - Commercial fishing boats
 - Passenger boats
 - Angling charter Boats
 - Dive charter Boats
 - Crab/lobster Boats
 - Private independent boat owners
 - RNLI
 - Ilfracombe Yacht Club
 - Ilfracombe Anglers Association
 - Ilfracombe Town Council
 - Ilfracombe and District Tourist Association
 - Y Sail
 - Licencees / Restaurateurs
 - Harbour Traders / Businesses
 - Environmental Management
 - North Devon Sub Aqua Club
 - Residents
 - Residents Lantern Court
 - Ilfracombe Pilot Gig Club
 - Harbour Development Group
 - Harbour Association
4. North Devon UNESCO Biosphere Reserve
5. Lundy Company
6. The Waverley
7. The Balmoral
8. Peter Heaton-Jones MP
9. Ilfracombe Town Council
10. Maritime and Coastal Agency
11. Trinity House
12. Devon County Council
13. South West Coastal Path
14. North Devon Coast Area of Outstanding Natural Beauty
15. Combe Business