



Marine Management Organisation

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Our reference: DC10164

22 January 2019

Dear Mr Thomas,

The Harbours Act 1964 The Ilfracombe Harbour Revision Order 2019

1. The Marine Management Organisation ("the MMO") informs you that consideration has been given to the application for the Ilfracombe Harbour Revision Order 2019 ("the Order") for which you applied on 24 May 2018 on behalf of North Devon District Council ("the applicant"), under Section 14 of the Harbours Act 1964 ("the Act").

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 authorises the construction and maintenance of 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.
4. The works to be authorised by the Order form part of a wider proposal to provide improved conditions for local watersports groups in Ilfracombe.
5. The MMO determined that the proposed Order would authorise a project. Due to the size and nature of works, it was determined that EIA 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. The MMO issued a Screening Opinion on 8 February 2018. The Screening Opinion stated that the project was screened out as it was not out of scale with the existing environment and was in a reasonably developed area that was not unspoilt land. The proposal put forward was designed to minimise impacts on the environment by using pre-cast sections and minimising plant on the foreshore during the construction phase.



INVESTORS
IN PEOPLE

Bronze



Context

6. The applicant is the statutory harbour authority for Ilfracombe Harbour (“the Harbour”) and operates under Acts and Orders 1870 to 1996.
7. The applicant is responsible for the maintenance, management and improvement of the Harbour.
8. Ilfracombe Harbour is situated in North Devon in the south west of England. It is the largest harbour on the North Devon Coast and a port has been in operation at this location since the 12th century.
9. 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. There will be an extended quayside created by construction of a new sea wall.
10. The slipway access and new sea wall form part of the works proposed by the Order.
11. The Council originally granted planning permission on 9 February 2015. The planning permission expired and a new application was made in February 2018 (planning application number 64472). Permission was granted on 11 April 2018.
12. The Harbour Revision Order (“HRO”) is sought to achieve various objects specified in Schedule 2 to the Act, these are listed in Annex II.
13. The HRO would also confer powers on North Devon District Council to construct and maintain the new slipway and sea wall.

Application Procedure

14. On 24 May 2018 an application for the Order was submitted to the MMO by Sharp Pritchard LLP on behalf of the applicant.
15. Notice of the application for the Order was advertised in the *London Gazette* on 7 June 2018 and in the *North Devon Journal* on 7 and 14 June 2018.
16. The MMO directly consulted with the following bodies. The relevant representations are summarised in the table below:

Organisation	Response received
Natural England (“NE”)	With regard to designated sites, NE stated that based on the information provided, the proposed works were not expected to significantly impact the designated features of the Bideford to Foreland Point Marine Conservation Zone (MCZ) which is within 300m of the works. There are no other designated sites that could be affected by this project. NE recommended that a detailed Construction Environmental Management Plan (CEMP) is provided to

	<p>ensure that any construction impacts on biodiversity are minimised. NE also advised that the Environment Agency's good practice Pollution Prevention Guidelines were followed throughout construction.</p> <p>Based on previous surveys, the project is expected to result in the loss of intertidal habitats (shingle and bedrock) which could not be fully compensated. The report describes a loss of 535 m² of intertidal habitat, of which 52 m² was assessed as of moderate local conservation interest.</p> <p>NE were concerned that there was no detail about mitigation measures or opportunities for ecological enhancement. NE also expressed concerns due to potential dredging given the proximity of the proposals to the MCZ.</p> <p>The applicant responded to NE's concerns and detailed the mitigation and ecological enhancements which have been incorporated into the project design. They have also confirmed that a CEMP will be prepared and that the EA's Pollution Prevention Guidelines will be followed throughout construction.</p> <p>The applicant has also confirmed that dredging will not be required and there is no power to dredge in the Order as dredging is not considered necessary.</p>
Ministry of Defence ("MoD")	The MoD had no comments on the proposal.
Department for Transport ("DfT")	The DfT had no comments on the proposal.
Historic England ("HE")	<p>HE raised concerns that the design of the scheme had not been updated according to their suggestions which had been discussed in previous meetings prior to the HRO consultation. HE expressed concerns that the scheme would cause harm to the Ilfracombe conservation area and recommended against the loss of the Victorian retaining sea wall, the introduction of a new curved topped sea wall, and the creation of a large hard standing around the new building which would introduce an urban quality and make the new structures more obtrusive in respect to the surrounding wooded setting. HE advised that the slipway introduced a prominent man-made structure which would be exposed at low tide.</p> <p>Historic England suggested the introduction of timber sides on the slipway and made recommendations on the colour of the concrete used in the design in order to soften the appearance of the slipway.</p> <p>The applicant confirmed that they had engaged HE previously about the scheme design. The applicant</p>

	confirmed that they would retain the design changes previously agreed with HE and their further suggestions detailed above.
Environment Agency	The Environment Agency had no objection to the HRO. They were content that they had received sufficient information about the proposed scheme.
Maritime and Coastguard Agency ("MCA")	<p>Based on the information provided, the MCA had no objections.</p> <p>The MCA added that it wished to remind the Harbour Authority of their obligations under the Port Marine Safety Code and Guide to Good Practice, and requested that the changes brought about in the HRO are risk assessed in line with the Code. The Harbour Authority will also be required to maintain appropriate navigation markings for the range and size of vessel expected to operate in the harbour area.</p>
Trinity House	Trinity House reviewed the draft Order and noted the Saving Clause for Trinity House. They provided no further comments.
Crown Estate	Crown Estate noted that the Order contains the Crown rights Saving Clause and had no further comment to make.
MMO Coastal Office – South Western Marine Area	The local MMO office commented that provided there remains a facility for fishing vessels to be able to land their catch, there should be no negative impact from the proposal on the harbour or local area.
Royal Yachting Association ("RYA")	The RYA had no objection or comments on the proposal.
Devon and Severn Inshore Fisheries and Conservation Authority ("Devon and Severn IFCA")	No response was received from the IFCA.
Local Planning Authority – North Devon District Council ("NDC")	<p>NDC is both the applicant and the local planning authority. MMO consult the local planning authority on a works Harbour Order application as a matter of process.</p> <p>NDC had no objections to the HRO.</p> <p>NDC requested that the correct version of drawings are used to inform the application. The applicant confirmed that the updated design, which corresponds to the one in the planning application, will be used.</p> <p>MMO considers that the change in drawing from the original submitted with the HRO application was appropriate and did not require further consultation. This is because it did not alter the footprint of the slipway but reflected an appearance which is more in-keeping with the</p>

	existing environment.
Highways England	Highways England were satisfied that the proposed works were unlikely to impact on their network and therefore had no comments to make.
Chamber of Shipping	No response was received.
UK Major Ports Group	No response was received.
British Ports Association	No response was received.
Network Rail	No response was received.

Public Representations

17. One representation was received on 17 June 2018 within the statutory 42 day period provided for in Schedule 3 to the Act. The representation was an objection to the application on the grounds of the proposed project damaging the ancient coastline, wildlife and marine-life.
18. Following the expiry of the consultation period for objections set out in the Act, the applicant engaged with the member of the public who provided the representation.
19. Following this meeting, the member of the public withdrew the objection on 24 July 2018. MMO has received written confirmation that the objection of 17 June 2018 was withdrawn.

MMO Consideration

20. Paragraph 19 of Schedule 3 to the Act provides that the MMO shall consider the result of any consultations, any opinion under paragraph 16(5) any objections made and not withdrawn and any representations received.
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. The Order contains provision for maintenance and construction as part of the harbour development to enable the authority to manage the Harbour to exercise their statutory functions.
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.

Consideration of Designated Sites

24. It has been determined that the project, either alone or in combination with any other plans or projects, is not likely to have a significant effect on any European Site or any other Marine Protected area or hinder the conservation objectives of such designated sites.
25. The MMO has considered the application and supporting information in relation to any impacts to the environment and biodiversity. The following sites were identified for consideration:
26.
 - a. Hele, Samson's and Combe Martin Bays SSSI
 - b. North Devon AONB
 - c. North Devon Biosphere Reserve
 - d. Bideford to Foreland Point Marine Conservation Zone (MCZ)
27. The Hele, Samson's and Combe Martin Bays SSSI is approximately 1km from the proposed works site and is notified for geological features. Due to the nature of the works, no pathways were identified that were considered to have the potential to lead to any impact on the SSSI. Natural England did not have any concerns about impacts to this site.
28. The applicant has incorporated design changes to ensure that there is a limited visual impact. No concerns were raised during consultation regarding the North Devon AONB or Biosphere Reserve.
29. The Bideford to Foreland Point MCZ is approximately 300m away from the proposed works site. MMO carried out a MCZ screening exercise and concluded that the works are not likely to hinder the conservation objectives of the MCZ. In their consultation response, Natural England also concluded that the works were not likely to hinder the conservation objectives of the MCZ. The screening report is available on MMO's public register.
30. No European Sites were identified within 5km of the proposed project and given the nature of the activity, this was considered to be an appropriate buffer due to the nature of the works. It was therefore not necessary to carry out a Habitats Regulations Assessment.

MMO Decision

31. The MMO is satisfied that the Order meets the requirements of section 14(1) and 14(2)(a) of the Act.
32. The MMO is satisfied that no objections remain to the application of the Order.
33. 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.

34. 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.
35. An application for a marine licence was also submitted to MMO on 28 June 2017 as the applicant has acknowledged that these works are licensable activities under the Marine and Coastal Access Act 2009.

Challenges to Decisions

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

Yours Sincerely



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Annex I

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.

Annex II

Objects for whose achievement harbour revision orders may be made

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 carried out by a person authorised by the authority to carry them out.

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.

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.