

MARINE MANAGEMENT ORGANISATION
HARBOURS ACT 1964 (AS AMENDED)

PROPOSED SHOREHAM PORT AUTHORITY
HARBOUR REVISION ORDER 201[9]

STATEMENT IN SUPPORT OF APPLICATION

FOR ORDER BY:

SHOREHAM PORT AUTHORITY

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1. INTRODUCTION

- 1.1. This statement relates to the application by Shoreham Port Authority for the proposed Shoreham Port Authority Harbour Revision Order 201[X] ("the HRO"). Shoreham Port Authority ('the Port Authority') is the statutory harbour authority for Shoreham Port.
- 1.2. The application, made in a letter to the Marine Management Organisation ("the MMO") dated 4 December 2018 is accompanied by:
 - (a) A copy of the draft HRO;
 - (b) This statement; and
 - (c) The fee for the application, by BACS, in the sum of £4,000.00; and
 - (d) Copies of the following legislation:
 - (i) Shoreham Harbour Act 1926 ("1926 Act")
 - (ii) Shoreham Harbour Act 1937 ("the 1937 Act")
 - (iii) Shoreham Harbour Act 1949 ("1949 Act")
 - (iv) Shoreham Port Authority Revision Order 1978 ("1978 Order")
- 1.3. The application is for a harbour revision order to be made under the powers conferred on the Secretary State for Transport by section 14 of the Harbours Act 1964 which are delegated to the MMO by the Harbours Act 1964 (Delegation of Functions) Order 2010 (S.I. 2010/674).
- 1.4. The HRO extends the limits of the Port to include those parts of the port premises currently outside the existing limits. It also confers further modernised powers on the Port Authority considered conducive to the efficient and economical operation, maintenance, management and improvement of Shoreham Port. In particular, the HRO would confer modern powers on the Port Authority to give general directions to vessels using Shoreham Port and persons and vehicles using the Port, together with powers exercisable by the harbour master appointed by the Authority to give special directions to vessels. These powers are required to support the effective management of Shoreham Port, as recommended in the Port Marine Safety Code.

2. SHOREHAM STATUTORY HARBOUR AUTHORITY

- 2.1. Shoreham Port ("the Port") is classed by the Department for Transport ("DfT") as a trust port. The Port Authority, as the statutory harbour authority is governed by its own local legislation collectively known as the Shoreham Port Acts and Orders 1926 to 2004. The Authority is responsible for the administration, maintenance and improvement of the Port which is more fully described in section 3 below.
- 2.2. The Authority is also the Competent Harbour Authority under the Pilotage Act 1987.
- 2.3. Within Shoreham Port the Port Authority provides 27 permanent quayside moorings for commercial vessels, 12 additional pontoons across 3 marinas and 30 further moorings.

There are approximately 1,500 visiting vessel nights and 1,800 acts of pilotage per annum. In addition, Shoreham Port handles approximately 2.1 million tonnes of cargo per annum and is home to 20 registered fishing vessels and is used by Belgium, Dutch, Scottish, Southern and Northern Ireland fishing vessels (circa 5,617 tonnes of fish and shellfish are landed annually with an approximate annual value of £11,735,000.00).

- 2.4. In managing the Port, the Port Authority strives to observe industry standards set out in Government guidelines. The Port Authority is committed to complying with the principles of the various codes and reports applying to the ports and harbours industry, except where not relevant to the Authority's constitution.

3. SHOREHAM PORT

- 3.1. The Port is located at Shoreham and stretches from Hove Lagoon westwards for 6 ½ km / 4 miles to the Shoreham Old Toll Bridge, the area of water currently within the jurisdiction of the Port Authority is approximately 51 hectares. The Port's dry 'real estate', which largely consists of 150 tenants, equates to approximately 146 hectares.

4. THE PORT MARINE SAFETY CODE

- 4.1. As the harbour authority for Shoreham Port, the Port Marine Safety Code (November 2016) published by the Department for Transport ("the Code") applies to the Authority as well as to all statutory harbour authorities and other marine facilities, berths and terminals in the UK. The Executive Summary to the Code explains that:

"The Code has been developed to improve safety in the port marine environment and to enable organisations to manage their marine operations to nationally agreed standards. It provides a measure by which organisations can be accountable for discharging their statutory powers and duties to run harbours or facilities safely and effectively. It also provides a standard against which the policies, procedures and performance of organisations can be measured. The Code describes the role of board members, officers and key personnel in relation to safety of navigation and summarises the main statutory duties and powers of harbour authorities. The Code is designed to reduce the risk of incidents occurring within the port marine environment and to clarify the responsibilities of organisations within its scope."

- 4.2. The Code identifies a number of tasks which harbour authorities should undertake in order to comply with the Code including reviewing and being aware of existing powers based on local and national legislation and 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 2.5 of the Code states "... *harbour authorities would be well advised to secure powers of general direction or harbour direction to support the effective management of vessels in their harbour waters if they do not have them already*". The Port Authority is seeking to modernise its powers of General Direction to enable it to repeal its existing byelaws and instead have a single set of General Directions covering the whole port including the entirety of the port premises.

5. THE HARBOURS ACT 1964

5.1. Section 14 of the Harbours Act 1964 (“the 1964 Act”) confers powers which have been devolved to the MMO (see paragraph 1.3 above) to make an order under that section (known as 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 specified in Schedule 2 of the 1964 Act.

5.2. Section 14(2)(a) of the 1964 Act requires that written application be made to the MMO by the authority engaged in improving, maintaining or managing the harbour in question and section 14(2)(b) provides 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 facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships”.

The matters set out in Schedule 2 to the 1964 Act include, in particular, at paragraph 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”.

And, at paragraph 6:

“Settling (either for all purposes or limited purposes) the limits within which the authority are to have jurisdiction or altering (either for all purposes or for limited purposes) such limits as previously settled”.

5.3. Because this is not 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 1964 Act), prior notification to the MMO under paragraph 3(a) of Schedule 3 to the 1964 Act is not required.

5.4. The application for the HRO under section 14 of the 1964 Act meets the conditions set out in that section. In particular, the application meets the requirements of:

(a) section 14(1) of the 1964 Act because it is made in relation to a harbour which is being improved, maintained or 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 1964 Act because:

(i) The application is made upon the written application of a harbour authority engaged in improving, maintaining or managing the harbour; and

(ii) The making of the HRO is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner.

6. NEED AND JUSTIFICATION FOR HRO

A. GENERAL

- 6.1 The proposed HRO would modernise and extend the powers of the Port Authority considered conducive to the efficient and economical operation, improvement, maintenance or management of the Port. In addition, it would extend the port limits to expressly include the port premises.
- 6.2 An explanation of, and the need for, each substantive article in the HRO is set out below. Some examples of how the powers may be exercised are described below. These examples are not intended to be exhaustive of the ways in which the powers may lawfully be exercised.
- 6.3 Articles 1 and 2 are not dealt with below since they are ancillary to the substantive provisions of the HRO.

B. PART 2: Article 3: PORT LIMITS

6.4. Article 3 of the Order – Port Limits

- 6.4.1. This article clarifies the limits of the port and expressly incorporates the port premises. This is necessary to ensure that all land the Port Authority owns or is used or intended to be used from time to time in connection with the port undertaking falls within the port limits. The areas additional areas of land which would become part of the statutory port premises once the proposed HRO is in force are shown on the plan in Annex 1. All of this land is owned by the Port Authority and has been treated as part of the port for many years.
- 6.4.2. The clarified port limits are necessary to secure the management of the harbour in an efficient and economical manner because they remove the uncertainty over which land (including land covered by water) forms part of the current port undertaking.

C. PART 3: Articles 4 – 11: GENERAL DIRECTIONS AND SPECIAL DIRECTIONS

6.5. Articles 4 to 11 of the Order – General Power of Direction and Special Directions

- 6.5.1. These articles provide the Port Authority with modern powers of General Direction and slightly extend them to cover vehicles (including speed limits and parking) and directions given for the ease, convenience or safety of port operations ashore and extended powers of Special Direction. They also set out the consequences of failing to comply with a General or Special Direction.
- 6.5.2. To assist in the management of the port in compliance with the Port Marine Safety Code (PMSC), the Port Authority is seeking the extended and modernised power to issue general directions, and to update the harbour master's powers to issue special directions, as recommended by the Code. The slight extension to the powers of General Direction will mean that in future, the Port Authority will be able to repeal its existing byelaws and instead have a single set of General Directions covering the

whole port, including the entirety of the port premises as extended by the proposed HRO (see Annex 1).

- 6.5.3. The Port Authority has decided to adopt an adjudication process, and the process contained in article 5 is likely to be acceptable to the Royal Yachting Association as a similar adjudication process is contained within the Cowes Harbour Revision Order 2012.
- 6.5.4. In terms of the precise scope of General Directions, it will be seen that article 4(1) would allow the Authority to give or amend directions "...for the purpose of promoting or securing directions conducive to the ease, convenience or safety of navigation, the safety of persons, the protection of property, flora and fauna and the ease, convenience and safety of port operations ashore in the harbour". Such a scope is consistent with the environmental duties placed on harbour authorities by virtue of section 48A of the 1964 Act and paragraph 16A of Schedule 2 to that Act, which enables a harbour revision order to confer powers for environmental conservation within the harbour.

D. PART 4: Articles 12 - 14: Miscellaneous and General Powers

6.6. Article 12 of the Order – Amendment of the Act of 1937 and the Order of 1978

- 6.6.1. This article provides for the amendment of Section 5 of the Act of 1978 from the date of the HRO to modernise the level of fine for failure to obtain a licence from the Port Authority to work as a huffler within the Port.
- 6.6.2. It also amends articles 5, 9 and 21 of the Order of 1978 from the date of the HRO to modernise the level of fine for failure to comply with the requirements of those articles in relation to dredging, works and moorings licences and general directions.
- 6.6.3. These amendments are necessary as part of the process of modernisation of the Port Authority's powers as a statutory harbour authority.

6.7. Articles 13 and 14 of the Order – Savings

- 6.7.1. These articles contain standard saving provisions for Trinity House and the Crown.

7. CONCLUSION

7. In addition to the specific provisions of Schedule 2 to the 1964 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 [MMO] to be one the achievement of which will conduce to the efficient functioning of the harbour."

- 7.1 For the reasons mentioned above, it is considered that to the extent that any provision

contained in the HRO does not fall specifically within any other paragraph of Schedule 2, the provisions of the HRO would be conducive to the efficient functioning of Shoreham Port and it is therefore within the scope of the 1964 Act for them to be included in the HRO.

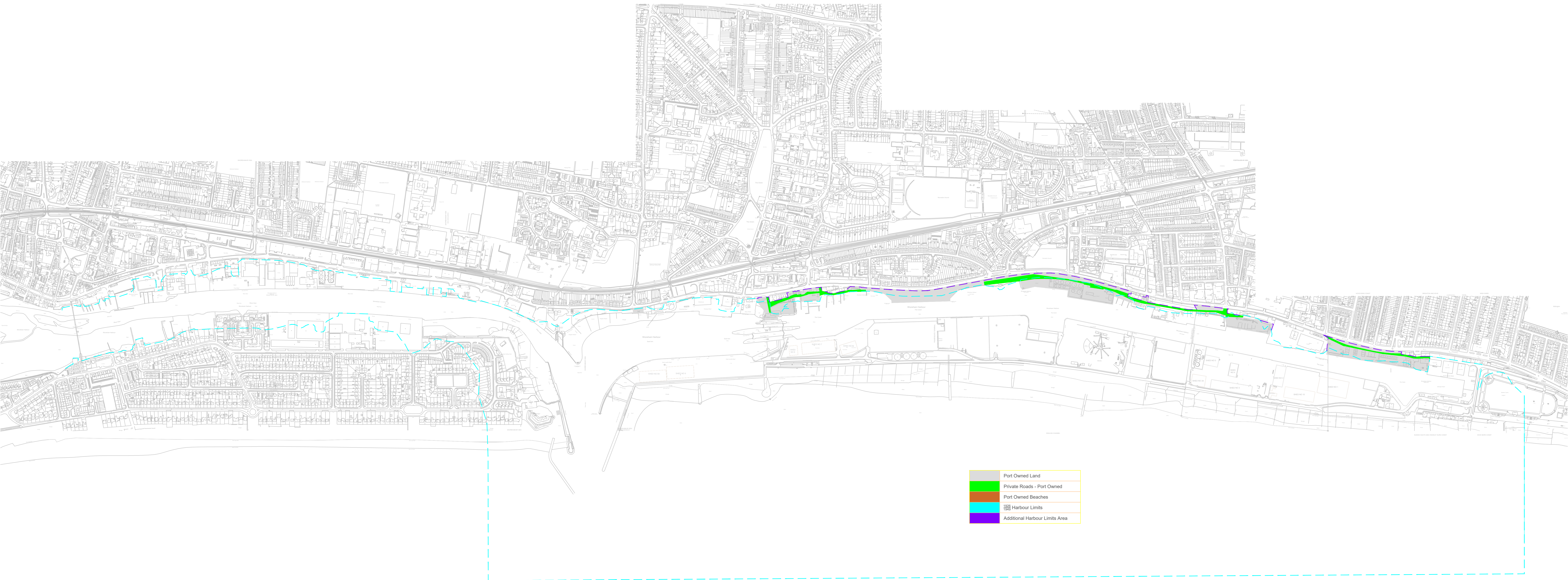
Dated 26 March 2020

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Annex 1: Plan of additional port premises area



Port Owned Land
Private Roads - Port Owned
Port Owned Beaches
Harbour Limits
Additional Harbour Limits Area

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