

MARINE MANAGEMENT ORGANISATION  
HARBOURS ACT 1964 (AS AMENDED)

PROPOSED FOWEY HARBOUR REVISION  
ORDER 20[X]

STATEMENT IN SUPPORT OF APPLICATION

FOR ORDER BY:

FOWEY HARBOUR COMMISSIONERS

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## APPENDIX 1: PLANS OF THE CURRENT HARBOUR PREMISES

## 1. INTRODUCTION

- 1.1. This statement relates to the application by Fowey Harbour Commissioners for the proposed Fowey Harbour Revision Order 20[X] ("the HRO"). Fowey Harbour Commissioners ("the Commissioners") are the statutory harbour authority for Fowey Harbour.
- 1.2. The application, made in a letter to the Marine Management Organisation ("the MMO") dated 23 September 2019 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) Fowey Harbour Order 1937 ("the 1937 Order")
    - (ii) Fowey Harbour Order 1960 ("the 1960 Order")
    - (iii) Fowey Harbour Revision Order 1980 ("1980 Order")
    - (iv) Fowey Harbour Revision Order 2001 ("2001 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 clarifies the limits of the harbour to expressly include the harbour premises. It also confers further modernised powers on the Commissioners considered conducive to the efficient and economical operation, maintenance, management and improvement of Fowey Harbour. In particular, the HRO would confer modern powers on the Commissioners to give general directions to vessels using Fowey Harbour and persons and vehicles using the harbour, together with powers exercisable by the Harbour Master appointed by the Commissioners to give special directions to vessels. These powers and the clarification of the harbour limits are required to support the effective management of Fowey Harbour, as recommended in the Port Marine Safety Code.

## 2. FOWEY STATUTORY HARBOUR AUTHORITY

- 2.1. Fowey Harbour ("the Harbour") is classed by the Department for Transport ("DfT") as a Trust Port. The Commissioners, as the Statutory Harbour Authority are governed by their own local legislation collectively known as the Fowey Harbour Orders 1937 to 2001. The Commissioners are responsible for the administration, maintenance and improvement of the Harbour which is more fully described in section 3 below.
- 2.2. The Commissioners are also the Competent Harbour Authority under the Pilotage Act 1987.
- 2.3. Within Fowey Harbour there are 5 permanent quayside moorings for commercial vessels, along with 3 large commercial mooring buoys for lay-by. Cruise ships up to 45,000 gross

tons are regular visitors to the Harbour. The Harbour offers a large number of pontoon berths and approximately 2,000 further moorings. There are approximately 10,000 visiting vessel nights and 400 acts of pilotage per annum. In addition, Fowey Harbour handles approximately 450,000 tonnes of cargo per annum and is home to a small fleet of registered fishing vessels. The Harbour hosts an expanding aquaculture industry specialising in mussels with an approximate annual value of £2,500,000.

- 2.4. In managing the Harbour, the Commissioners strive to observe industry standards set out in Government guidelines. The Commissioners are 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 Commissioners' constitution.

### 3. FOWEY HARBOUR

- 3.1. Fowey Harbour is located in Fowey and below high water comprises the harbour and the river Fowey between a line drawn from Punches Cross to St. Catherine's Point and Lostwithiel Bridge up to the high-water mark of ordinary spring tides. This area encompasses an 11km stretch of river and includes creeks, pills, rivers and inlets tributary to the river Fowey as defined above, up to the high-water mark of ordinary spring tides. The area of water currently within the jurisdiction of the Commissioners is approximately 400 hectares. The harbour's dry 'real estate', which largely consists of boat yards, car parks and woodland equates to approximately 11 hectares.

### 4. THE PORT MARINE SAFETY CODE

- 4.1. As the harbour authority for Fowey Harbour, the Port Marine Safety Code (November 2016) published by the Department for Transport ("the Code") applies to the Commissioners 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 Commissioners are seeking to obtain modern powers of General Direction (covering both vessels and vehicles) to enable it to have a single set of General Directions covering the whole harbour instead of having separate byelaws and directions. Although the Commissioners have been designated with powers of Harbour Direction, Harbour Directions only apply to 'ships' and therefore are of limited use.

## 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 a 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. PRE-APPLICATION CONSULTATION

- 6.1 Prior to submission of the HRO application, the Commissioners carried out a 28 day preapplication public consultation on the proposed HRO between the 12<sup>th</sup> August and 8<sup>th</sup> September 2019. During this pre-application consultation, they also held a 'drop in' day between 10am and 5pm on 2<sup>nd</sup> September 2019, where stakeholders were able to attend the harbour office at any time during the day and ask questions about the proposed HRO.
- 6.2 The Commissioners received a good deal of positive and supportive consultation feedback informally during the consultation, with general support for the proposed HRO as drafted. Only two formal written consultation responses were received (one from a parish council and one from a representative of a resident's association). Although both were broadly supportive of the rationale for the proposed HRO, a summary of the following points of additional feedback are set out below.
- (a) The parish council response requested that a representative of the parish council should have a guaranteed place on the board of the Commissioners. **(See paragraph 7.9 below)**
  - (b) It was considered that it was important that there was clarity as to where any 'Powers to make General Directions' would apply on land controlled by FHC so that onshore operations should not be unconstrained. **(See paragraph 7.5 below)**
  - (c) A concern was raised about the definition of 'ashore' and it was considered that the definition should be amended to refer to high water rather than low water due to a concern about aligning with the MMO's marine licensing regime which related to a concern about the exercise of permitted development rights. **(See paragraph 7.5 below)**
  - (d) Both responses requested improved communication with the Commissioners (the focus of the requests being related to future development plans) including whether the current Port User Group was independent, and it was requested that thought be given to the Commissioners holding an AGM. **(See section 8 below)**
  - (e) Finally, a query was raised as to whether the Commissioners currently have in place a formal complaints procedure. **(See section 8 below)**

## 7. NEED AND JUSTIFICATION FOR HRO

### A. GENERAL

- 7.1 The proposed HRO would modernise and extend the powers of the Commissioners considered conducive to the efficient and economical operation, improvement, maintenance or management of the Harbour. In addition, it would clarify the harbour limits to expressly include the harbour premises.
- 7.2 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.

### B. PART 1: PRELIMINARY

- 7.3 Articles 1 and 2 are not dealt with below since they are ancillary to the substantive provisions of the HRO.

## **7.4 Article 3 of the Order – Incorporation of the Harbour Docks and Piers Clauses Act 1847**

- 7.4.1 This article incorporates the said Act except in relation to the sections listed as being excepted. Those sections included predominantly relate to:
- a) Interpretation / General (sections 1-4)
  - b) Rates (sections 27, 29 – 30 and 33).
  - c) Collection of rates (sections 34 – 41 and 43 - 46).
  - d) Harbour, dock and pier master (sections 51 - 65).
  - e) Discharge of cargoes and removal of goods (sections 66 and 68).
  - f) Protection of the harbour, dock and pier (sections 69, 71 - 76).
  - g) Lighthouses, beacons and buoys (sections 77 – 78).
  - h) Harbour and dock police (sections 79 – 80).
  - i) Meters and weighers (sections 81 – 82).
  - j) Byelaws (sections 85 – 90).
  - k) Recovery of damages and penalties (sections 94 – 95).
  - l) Access to special Act (sections 97 – 98).
  - m) Saving of rights (sections 99, 100, 102 and 103).

## **C. PART 2: Articles 4 – 11: GENERAL DIRECTIONS AND SPECIAL DIRECTIONS**

### **7.5 Articles 4 to 11 of the Order – General Power of Direction and Special Directions**

7.5.1 These articles provide the Commissioners with modern powers of General Direction and slightly extend the standard power to cover vehicles and directions given for the ease, convenience or safety of harbour operations ashore and extended powers of Special Direction. They also set out the consequences of failing to comply with a General or Special Direction.

7.5.2 The main purpose of the proposed harbour revision order is to provide the Commissioners with modernised powers of General Direction. The Port Marine Safety Code, advises at paragraph 2.5 of Chapter 2 that:

*“In particular, 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.”*

7.5.3 The Commissioners do have powers of Harbour Direction. However, these powers only apply to ‘Ships’ and as such personal watercraft such as jet skis and other similar craft may not be bound by any Harbour Directions that the Commissioners may bring into force. Harbour Directions also cannot be exercised in an emergency. In addition, it means that the Commissioners would have to keep in place byelaws and harbour directions, which can be confusing for harbour users. The process for keeping General Directions up to date is also far more time and cost efficient than the byelaw making process, and due to the inclusion of the Fowey Harbour Port User Group as a ‘designated consultee’ (see paras 7.5.5 and 7.5.6 below) contains a strong local consultation requirement.

7.5.4 Therefore, in line with the Port Marine Safety Code, the Commissioners are applying for a modernised power of General Direction that will enable the Commissioners to repeal their existing byelaws and instead have in place a single set of General Directions. In line with best practice, article 5 of the proposed order provides a statutory right for ‘designated consultees’ to be consulted about proposed General Directions (see article 5(1)(a) and (b)).

- 7.5.5 The Fowey Harbour Port User Group which is established in line with the requirements of article 16 of the Fowey Harbour Revision Order 2001 will be a 'designated consultee' and in response to pre-application consultation feedback, the Commissioners have included a reference to the Fowey Harbour Port User Group within article 5(1)(a) alongside the Chamber of Shipping and the Royal Yachting Association.
- 7.5.6 The proposed harbour revision order itself, only grants the power to make General Directions. Any future exercise of this power will be exercised in accordance with article 5. This means that representations received from the Fowey Harbour Port User Group and other designated consultees will be taken into account by the Commissioners and if they object to proposed General Directions and those concerns are unable to be resolved, there is a statutory adjudication process contained in article 5. 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.
- 7.5.7 In terms of the precise scope of General Directions, it will be seen that article 4(1) would allow the Commissioners 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 harbour 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.
- 7.5.8 Two preapplication consultation responses were received relevant to these provisions.
- (a) One of the responses considered that it was important that there was clarity as to where any 'Powers to make General Directions' would apply on land controlled by FHC so that onshore operations should not be unconstrained. This clarity is provided by the proposed amendments to article 3 and article 22 of the Fowey Harbour Order 1937 (**'the 1937 Order'**) to expressly include the harbour premises within the definition of harbour limits and by the requirement to keep a plan on display at the Commissioner's office and on their website showing the current harbour premises (**see paragraph 7.8 below**). The harbour limits below high water are already clearly defined under the 1937 Order. In addition, article 5(1) of the proposed Order requires a plan showing the area to which General Directions would apply to be provided to designated consultees as part of the consultation process on any new General Directions. The powers of General Direction will be exercisable over the whole harbour, including the harbour premises. – **see Appendix 1 for plans of the current harbour premises**
- (b) A concern was raised about the definition of 'ashore' and it was considered that the definition should be amended to refer to high water rather than low water due to a concern about aligning the definition with the MMO's marine licensing regime and a related concern about the exercise of permitted development rights. This consultation response has slightly confused two separate regimes. The only place the definition of 'ashore' is used within the proposed HRO is in article 4 (Power to make General Directions). i.e. it only relates to the power to make General Directions and not to either marine licensing or the exercise of permitted development rights. In the context of General Directions, it is correct that the definition of 'ashore' refers to low water, because for periods of each day, the foreshore is exposed and above the level of land covered by water. In order for the Commissioners to be able to repeal their existing byelaws as proposed it is important that they can exercise the power to make General Directions for the ease, safety and convenience of port operations ashore over the foreshore area. It is important to note that the inclusion of 'low-water' instead of high-



water in the definition of ashore does not extend the Commissioners powers, it is simply a change of procedure that applies to the introduction, amendment and repeal of enforcement provisions over this area. This is because all of the foreshore around the banks of the harbour and river of Fowey is already included within the existing harbour limits under the current definition in article 22 of the 1937 Order (which applies up to the level of high water ordinary tides).

## **D. PART 3: Articles 12 - 19: Miscellaneous and General Powers**

### **7.6 Article 12 of the Order – Licensing of boatmen and vessels**

7.6.1 This article provides the Commissioners with powers to licence vessels for hire and vessels carrying no more than 12 passengers that are present in the harbour. The Commissioners already licence vessels and boatmen in accordance with the Fowey Harbour Byelaws 1996 (Part VII and Part VIII). However, as stated above, it is proposed that these byelaws will be repealed in their entirety when new General Directions are brought into force (following a positive determination of the proposed HRO). For this reason, an express vessel and boatmen licensing power has been included in the proposed HRO.

7.6.2 The level of fine in article 13(6) of the proposed HRO, is the same as level of fine already contained in byelaw 104 (i.e. there is no increase in, or change to the level of penalty for failure to comply. They are both level 3 fines).

7.6.3 Article 13 was not included in the proposed HRO when it was released for public consultation, as at the time of that consultation, the connection between the anticipated repeal of the current byelaws and the ongoing need to licence vessels and boatmen within the harbour had not been considered. However, the provision, will not result in any substantive changes to the Commissioners' current licensing system, which has been in place for over 20 years.

### **7.7 Article 13 of the Order - Amendment of the Order of 1937 to clarify the harbour limits**

7.7.1 This article provides for the amendment of articles 3 and 22 of the Fowey Harbour Order 1937 (**"the 1937 Order"**) from the date of the HRO to clarify the definition of the harbour limits to expressly include the harbour premises.

7.7.2 The clarification is required, because the main definitions of harbour, harbour undertaking and harbour limits that apply to the Commissioners under their local Orders are contained in the 1937 Order. Although the *'land, buildings, works, plant property and conveniences'* of the Commissioners are included within the definition of the 'harbour' in article 3 of the 1937 Order and form part of the 'harbour undertaking' as defined in article 3, article 22 of the 1937 Order which defines the 'harbour limits' does not expressly refer to the *"land, buildings, works, plant property and conveniences"*. This creates uncertainty in relation to the exercise of the Commissioners' enforcement powers over those parts of the harbour situated above the high water mark of ordinary spring tides (below high water, the Commissioners already have clear express powers). Clarity is therefore required, and the proposed amendments have been included in the harbour revision order to provide this clarity, making it clear that enforcement powers can be exercised over the whole harbour, including the harbour premises. Plans of the harbour premises (above high water)

currently forming part of the harbour undertaking are included in **Appendix 1** of this Statement of Support.

- 7.7.3 These amendments are necessary as part of the process of modernisation of the Commissioners' powers as a statutory harbour authority and to support their compliance with the Port Marine Safety Code.

## **7.8 Article 14 – Amendment of Order of 2001 to update the constitution of the Commissioners**

- 7.8.1 This article amends article 4, 6, 8 and Schedule 2 of the Fowey Harbour Order 2001, to modernise the constitution of the Commissioners to bring it in line with both the Ports Good Governance Guidance and the current arrangements relating to appointments to the board of the Commissioners.

- 7.8.2 The current provisions (article 4 of the 2001 Order) provide that the Commissioners shall be made up of 6 persons appointed by the Commissioners, 3 persons appointed by Restormel Borough Council and the Chief Executive of the Commissioners. The proposed amendments remove the requirement for Restormel Borough Council (now Cornwall Council) to appoint 3 Commissioners and instead provides for 9 (rather than 6) to be appointed by the Commissioners directly. All appointments are made on a skills basis (see article 4(2) of the 2001 Order). This accords with both the Ports Good Governance Guidance and the current arrangements between the Commissioners and Cornwall Council (who do not currently make any representative appointments to the Board, but are a member of the appointments panel set up by the Commissioners (which consists of 2 Commissioners, the Maritime Manager for Cornwall Council and a key stakeholder)).

- 7.8.3 In its pre-application consultation response, a parish council asked for a representative position on the board of the Commissioners in place of one of the Cornwall Council appointees. However, to specifically grant a position on the board of the Commissioners to a representative of the parish council under the statutory provisions of the proposed HRO would not accord with the Ports Good Governance Guidance (see Part B: Section 1: Corporate Governance) and as such would not receive the support of the Department for Transport. For this reason, the proposed HRO has not been amended to include a guaranteed seat for a representative from the parish council as a Commissioner.

- 7.8.4 However, when vacancies for new Commissioners are advertised, a member of the relevant parish council is welcome to apply for a position as a Commissioner and that application will be considered alongside other applications, the requirements of article 4 of the 2001 Order (which includes knowledge of community issues) and the Ports Good Governance Guidance. It is important to remember that all Commissioners are required to act in the best interests of Fowey Harbour (as a whole) once appointed and not as representatives of any particular group. Representative views are properly expressed through stakeholder forum such as the Fowey Harbour Port User Group on which all 6 Parish Councils who abut the Harbour are represented.

## **7.9 Articles 15 and 16 of the Order – Savings**

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

## **7.10 Article 18 – Notices**

7.10.1 This article has been included at the request of the Marine Management Organisation. It sets out how notices required under the Order are served.

## **7.11 Article 19 - Further amendments to the Order of 1937 and the Order of 1980**

7.11.1 The definition of "Vessel" in the 1937 Order has been amended to replace it with the definition of vessel contained in article 2(1) the proposed harbour revision order. This is to ensure that a consistent, modern definition of vessel (that covers personal watercraft such as jet bikes) applies to the Commissioners' powers and to aid the Commissioners in complying with the Port Marine Safety Code.

7.11.2 The deletion of article 4(1)(c) of the 1937 Order (incorporation of the Harbour Docks and Piers Clauses Act 1847) is again required to ensure consistency between the Orders. The provisions of article 3 of the proposed HRO apply instead.

7.11.3 The level of fine in Article 4 of the Fowey Harbour Order 1980 (obstruction of moorings) has been updated to increase it to a level 3 fine. This level of fine is required firstly to ensure that there is a sufficient level of deterrent (moorings in the River Fowey are sought after and can be used to generate income. The level of fine needs to be in excess of likely income generation) and secondly, a mooring obstructing safe navigation in the harbour will constitute a navigational hazard and can interfere with the operation of the Open Port Duty. As such it is considered that a level 3 fine is justified.

## **7.12 Article 19 and Schedule 1– Revocation / Repeals**

7.12.1 Article 19 and Schedule 1 repeals the remaining provisions of the Pier and Harbour Order (Fowey) Confirmation Act, 1960. The operative provisions in the Schedule have already been repealed by section 17 and Schedule 3 of the Fowey Harbour Order 2001. As such this Act is obsolete. Hence its repeal in its entirety.

7.12.2 Article 5 of the Fowey Harbour Order 2001 is also obsolete and therefore being repealed (it related to the terms of office of the first Commissioners appointed under the 2001 Order).

## **8. REMAINING PRE-APPLICATION CONSULTATION RESPONSES**

8.1. There were two further points raised during the pre-application consultation, which do not relate to provisions of the proposed HRO. Nevertheless, for sake of completeness a brief summary of the Commissioners' consideration of the points is included here. However, any actions will be taken forwards outside the HRO application process.

8.2. Both responses requested improved consultation with the Commissioners. The focus of the requests being related to future development plans. Included within these responses were queries about whether the current Port User Group (established under article 16 of the 2001 Fowey Harbour Order) was independent and whether the Commissioners should hold an Annual Public Meeting as per the recommendation in paragraph 3.37 of the Ports Good Governance Guidance.

8.3. In respect of the queries the Commissioners would respond as follows:

- (a) The Commissioners have noted the concern from the resident's association and one of the parish council's about consultation over future development plans (there are no current development plans). In response to these concerns the Commissioners have invited the parish council to attend a meeting with the Commissioners to more fully explore their concerns and to discuss the best way for the Commissioners to conduct future consultation in advance of undertaking future development work.
- (b) Until 2005 the Commissioners did hold an annual public meeting however, with attendance in low single figures it fell into abeyance. Therefore in 2014 following feedback from stakeholders, including the Fowey Harbour Port User Group, it was agreed that a better method of engagement was to hold an annual open day instead. A selection of Harbour vessels such as tugs, dredgers and pilot vessels are opened to the public with all staff on hand to answer questions and explain the role of the Harbour Authority. The Commissioners' future plans are displayed on a stand at each open day and the Chief Executive and at least two other Commissioners are available to answer questions throughout the day. The open day serves the same purpose as the annual public meeting but has resulted in much better overall attendance (circa 400 people per year) and is a format supported by the Fowey Harbour Port User Group. The Department for Transport are aware of the Fowey Harbour Commissioners' move to an open day and have been supportive of this alternative route to engagement. The last open day was the 19<sup>th</sup> September 2019.
- (c) The current Fowey Harbour Port User Group is an independent group that aligns with the Ports Good Governance Guidance and the proposed HRO does not amend the provisions of article 16 of the 2001 Order. The provisions contained in article 16 are reflective of other harbour revision orders including The Dover Harbour Revision (Constitution) Order 2015 and the Cowes Harbour Revision Order 2012 and . and complies with the requirements of the Department for Transport.

8.4. Finally, a query was raised as to whether the Commissioners have a formal complaints procedure in place as recommended by paragraphs 2.29 and 3.46 to 3.48 of the Ports Good Governance Guidance. The Commissioners can confirm that a summary of their complaint's procedure can be found on pages 4 and 5 of their Charter Document which is available online.

## **9. COMPLIANCE WITH UK MARINE POLICY STATEMENT AND DRAFT SOUTH WEST MARINE PLAN**

9.1 Fowey Harbour is situated within the draft South West Marine Plan inshore area. The latest iteration of the draft South West Inshore and South West Offshore Marine Plan was published for consultation in January 2020. Once published as a Consultation Draft, Marine Plans become a material consideration and as such, although the draft South West Inshore and South West Offshore Marine Plan is not yet adopted, it is considered in this Statement of Support in addition to the UK Marine Policy Statement.

9.2 The proposed HRO is a relatively short, non-works HRO (i.e. it does not authorise a plan or project). Its provisions are focused on modernising the Commissioners' existing statutory powers to support the efficient and economical operation, maintenance, management and improvement of Fowey Harbour. Predominantly this modernisation of powers relates to the Commissioners' enforcement activities. The modernisation, amends the process by which such enforcement provisions can be made, amended and repealed (General Directions instead of byelaws). The Commissioners also already have powers to licence boats and boatmen under their existing byelaws, so these are not new powers.

9.3 The proposed HRO also clarifies the existing harbour limits to expressly include the

harbour premises removing uncertainty over the exercise of the Commissioners' enforcement powers above high water. The other provisions of the proposed HRO are predominantly administrative (updating the constitutional provisions and relating to repayment of charges). As such it is expected that the effects of the proposed HRO on the South West Inshore Marine Plan area will be very limited and that any effects will be positive as the proposed HRO supports the economic and efficient management of Fowey Harbour (including with respect to environmental considerations). A brief summary of compliance is nevertheless set out below.

#### 9.4 Compliance with UK Marine Policy Statement

9.4.1 The UK Marine Policy Statement ('MPS') sets out (in section 2.1) that the UK vision for the marine environment is for '*clean, healthy, safe, productive and biologically diverse oceans and seas*'. The core purpose of the proposed HRO is to modernise the Commissioners' enforcement powers enabling them to keep their enforcement provisions under review and to update, amend and repeal them in a more timely and efficient manner than through byelaws. This will support the Commissioners in ensuring they meet, both their environmental duties under s48A of the Harbours Act 1964 and compliance with the Port Marine Safety Code. Both of which will support the vision of ensuring that the marine environment in around Fowey Harbour is kept '*clean, healthy, safe, productive and biologically diverse*'. The provisions of the proposed HRO also support the following high level objectives contained in the MPS:

- (a) **Achieving a sustainable marine economy:** Marine businesses are acting in a way which respects environmental limits and is socially responsible.
- (b) **Ensuring a strong, healthy and just society:** The coast, seas, oceans and their resources are safe to use.
- (c) **Living within environmental limits:** Biodiversity is protected, conserved and where appropriate recovered and loss has been halted.
- (d) **Promoting Good Governance:** Marine businesses are subject to clear, timely, proportionate and, where appropriate, plan-led regulation.

#### 9.5 Compliance with draft South West Inshore and South West Offshore Marine Plan

9.5.1 As stated above, until its adoption, the draft South West Inshore and South West Offshore Marine Plan ('SW Marine Plan') is a material consideration. Through its modernisation of the Commissioners' statutory powers the proposed HRO will support the following objectives contained in the SW Marine Plan:

- (a) **Achieving a sustainable marine economy:** Marine businesses are taking long-term strategic decisions and managing risks effectively. They are competitive and operating efficiently.
- (b) **Ensuring a strong, healthy and just society:** The coast, seas, oceans and their resources are safe to use.
- (c) **Living within environmental limits:** Biodiversity is protected, conserved and where appropriate recovered and loss has been halted.

9.5.2 In addition, the proposed HRO is supported by policy SW-PS-1, which expressly supports competitive and efficient port and shipping operations, recognising '*that Ports*

*and harbours are essential to realise economic and social benefits for the south west marine plan areas and makes sure proposals do not restrict current port and harbour activity or future growth, enabling long-term strategic decisions, and supporting competitive and efficient port and shipping operations.'*

## 10 CONCLUSION

10.1 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.”*

10.2 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 Fowey Harbour and it is therefore within the scope of the 1964 Act for them to be included in the HRO.

Dated 29 May 2020

**Ashfords LLP**  
Ashford House  
Grenadier Road  
Exeter  
EX1 3LH

Solicitors on behalf Fowey Harbour Commissioners.

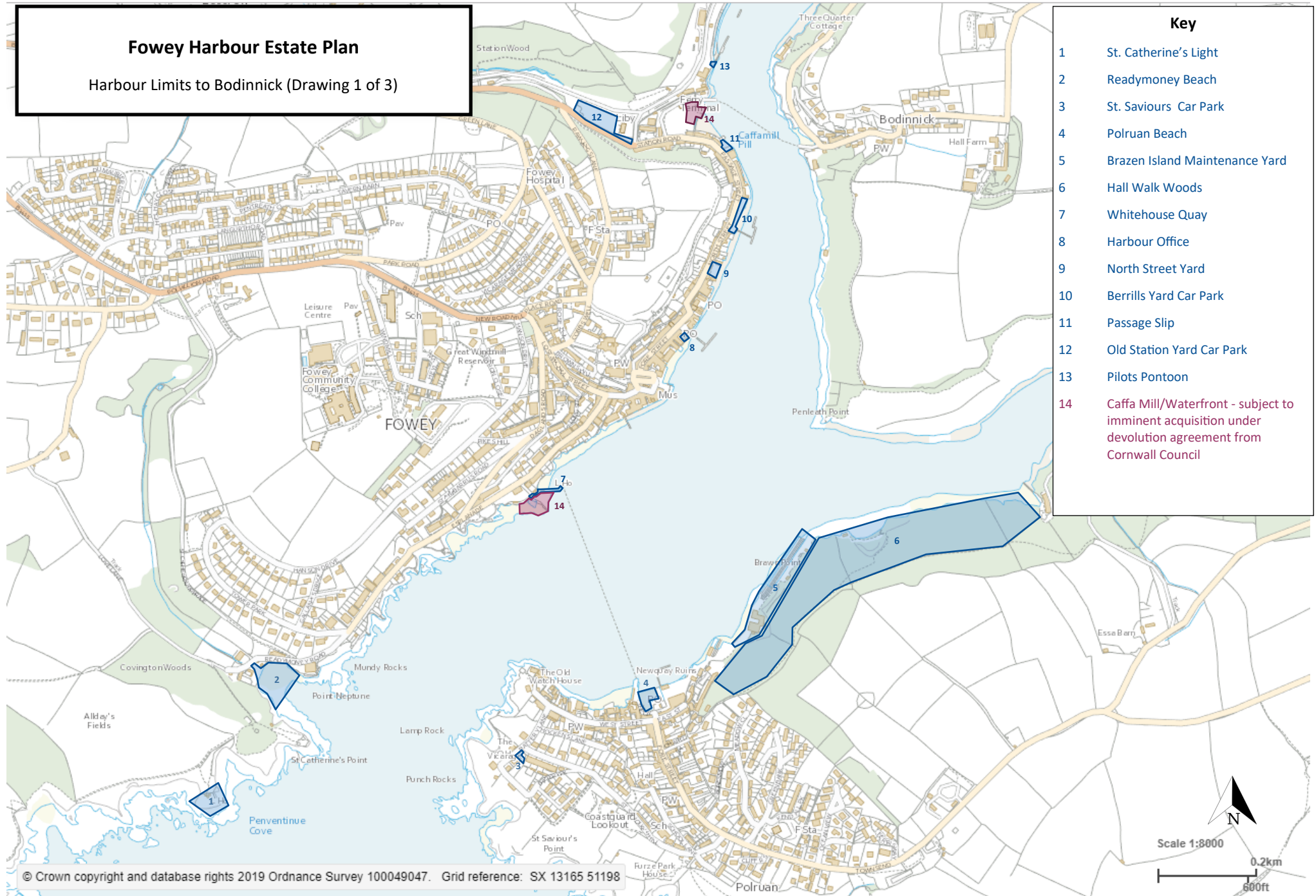
**Appendix 1 – Plans of the current Harbour Premises**

# Fowey Harbour Estate Plan

Harbour Limits to Bodinnick (Drawing 1 of 3)

## Key

- 1 St. Catherine's Light
- 2 Readymoney Beach
- 3 St. Saviours Car Park
- 4 Polruan Beach
- 5 Brazen Island Maintenance Yard
- 6 Hall Walk Woods
- 7 Whitehouse Quay
- 8 Harbour Office
- 9 North Street Yard
- 10 Berrills Yard Car Park
- 11 Passage Slip
- 12 Old Station Yard Car Park
- 13 Pilots Pontoon
- 14 Caffa Mill/Waterfront - subject to imminent acquisition under devolution agreement from Cornwall Council



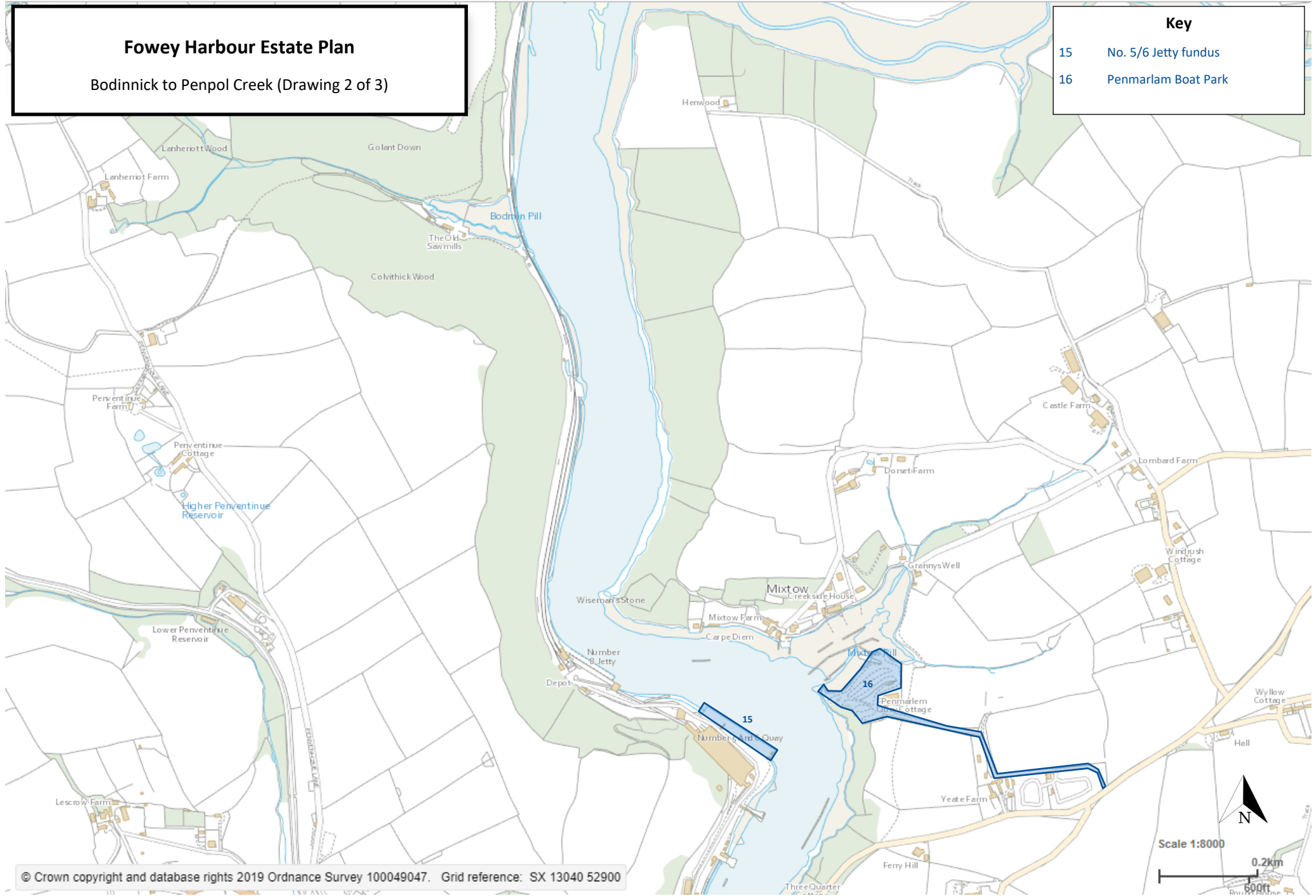


# Fowey Harbour Estate Plan

Bodinnick to Penpol Creek (Drawing 2 of 3)

## Key

- 15 No. 5/6 Jetty fundus
- 16 Penmarlam Boat Park

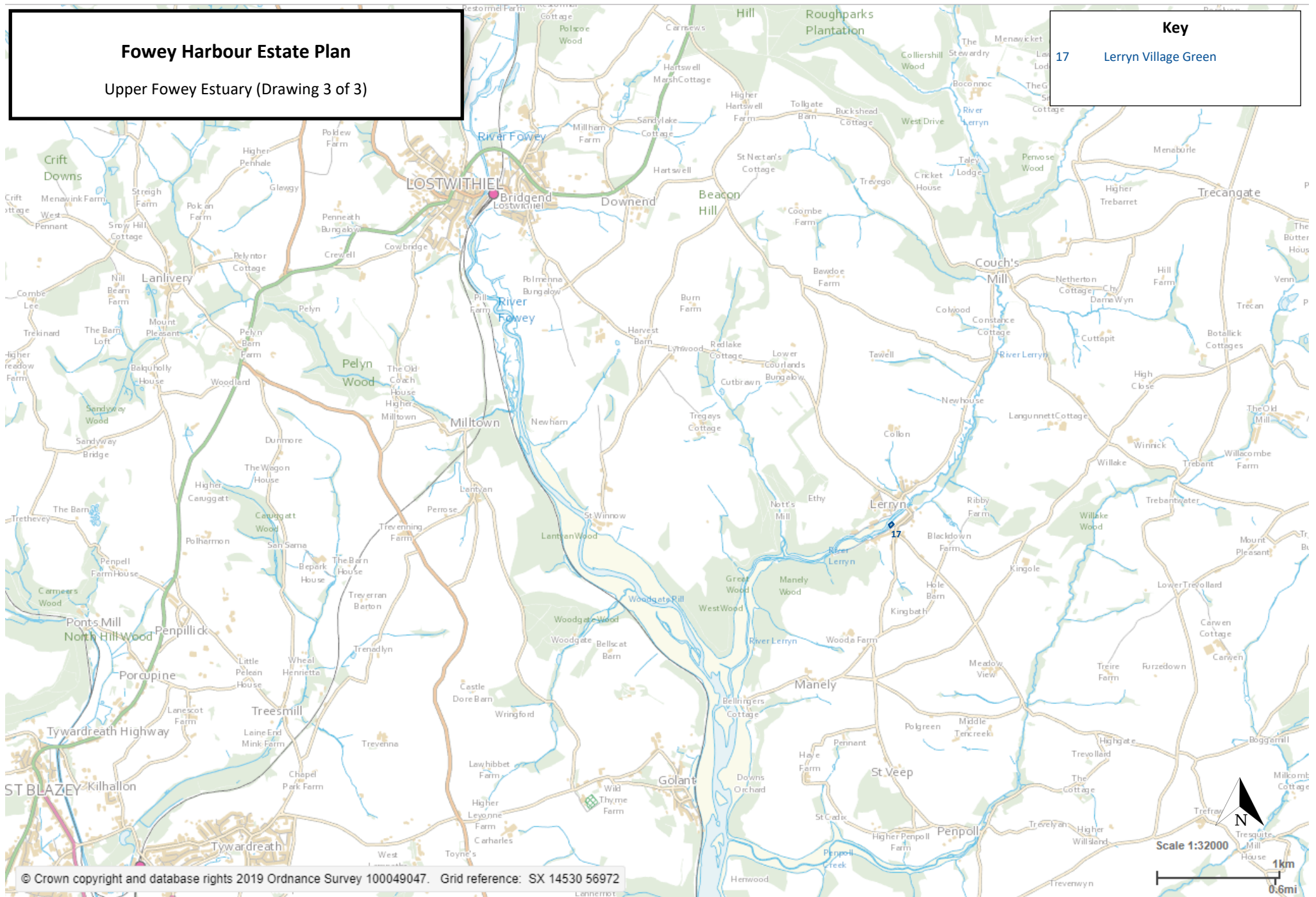


# Fowey Harbour Estate Plan

Upper Fowey Estuary (Drawing 3 of 3)

## Key

17 Lerryn Village Green



MARINE MANAGEMENT ORGANISATION  
HARBOURS ACT 1964 (AS AMENDED)

PROPOSED FOWEY HARBOUR REVISION  
ORDER 20[X]

STATEMENT IN SUPPORT OF APPLICATION  
FOR ORDER BY:  
FOWEY HARBOUR COMMISSIONERS

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