



Ashfords LLP
(by email only)

Our reference:
HRO/2018/00004

14 January 2021

Dear Ms Lara Moore,

The Harbours Act 1964
SHOREHAM PORT AUTHORITY HARBOUR REVISION ORDER 2021

1. The Marine Management Organisation (“MMO”) has considered your application for the Shoreham Port Authority Harbour Revision Order 2021 (“the Order”) which you applied for on behalf of Shoreham Port Authority (“the Port Authority”), under Section 14 of the Harbours Act 1964 (“the Act”) on Tuesday 4 December 2018.

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 extends the limits of the port to include those parts of the port premises which are currently outside the existing limits. This will enable the harbour authority to exercise jurisdiction over those extended limits. It also provides the Port Authority with modern powers of General Direction, applying to vessels, persons and vehicles using the Port, together with powers exercisable by the harbour master appointed by the Port 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 (“PMSC”).

Context

4. The applicant is Shoreham Port Authority, the statutory harbour authority governed by its own local legislation collectively known as the Shoreham Port Acts and Orders 1926 to 2004. The Port Authority is responsible for the administration, maintenance and improvement of Shoreham Port.
5. Shoreham Port (“the Port”) is classed by the Department for Transport (“DfT”) as a trust port. Within the Port, the Port Authority provides 27 permanent quayside moorings for commercial vessels, 12 additional pontoons across 3 marinas and 30 further moorings.



INVESTORS
IN PEOPLE

Bronze



6. There are approximately 1,500 visiting vessel nights and 1,800 acts of pilotage per annum. In addition, the Port handles approximately 2.1 million tonnes of cargo per annum. The Port is home to 20 registered fishing vessels and is used by fishing vessels from Belgium, The Netherlands, Scotland, Northern Ireland and the Republic of Ireland (circa 5,617 tonnes of fish and shellfish are landed annually with an approximate annual value of £11,735,000.00).
7. As the harbour authority for the Port, the PMSC (November 2016) published by the DfT applies to the Port Authority as well as to all statutory harbour authorities and other marine facilities, berths and terminals in the UK.
8. The PMSC identifies a number of tasks which harbour authorities should undertake in order to comply with the PMSC including reviewing and being aware of existing powers based on local and national legislation and it 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 PMSC 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*”.
9. The Port Authority has modernised its powers of General Direction, extending the powers of general direction to include vehicles, allowing them to issue general directions to cover speed limits and parking for the safe management of port operations ashore. This enables them to repeal their existing byelaws in due course and instead have a single set of General Directions covering the whole port.
10. The Order is also sought to achieve the clarification and extension of the Port limits to expressly incorporate the port premises that are currently outside the defined limits and to modernise the authority’s powers, for achieving all or any of the objects specified in Schedule 2 of the Act. These are detailed within Annex II of this letter.

Application Procedure

11. On 4 December 2018 an application for the Order was submitted to the MMO by the Port Authority.

First Consultation

12. Notice of the application for the Order was advertised in the London Gazette on Thursday 17 January 2019 and in the Shoreham Herald on Thursday 17 January 2019 and Thursday 24 January 2019, this was a 42 day consultation from the 17 January 2019.
13. The MMO directly consulted with the following bodies (for a period of 42 days). The relevant representations, and MMO actions, are summarised in the table below:

Organisation	Response received
UK Major Ports Group	No response was received.
British Ports Association (BPA)	The BPA responded to the consultation and stated that they were in support of the application.

Adur & Worthing Councils	No response was received.
Maritime and Coastguard Agency ("MCA")	<p>The MCA provided the following response: <i>"Thank you for the opportunity to comment on the Shoreham Harbour Revision Order by the local Port Authority. Based on the information provided, the MCA have no objections to make.</i></p> <p><i>We note that Shoreham is a Port Marine Safety Code compliant port and has declared as such for 2018. We note that the Harbour Authority will be required to maintain appropriate navigation markings for the range and size of the vessels expected to operate at the facility in line with the Code and it's Guide to Good Practice. The Port's Safety Management System should be updated by the Duty Holder where appropriate."</i></p> <p>The MMO forwarded the above advice to the applicant, no further action was required.</p>
Chamber of Shipping	The Chamber of Shipping responded to the consultation request to state that they had no comments to make on the application.
Highways England	<p>Highways England provided the following response: <i>"Thank you for your e-mail dated 10 January 2018 regarding the Consultation on the Shoreham Port Authority Harbour Revision Order, which indicated a response was required by 21 February 2019.</i></p> <p><i>Highways England has been appointed by the Secretary of State for Transport as strategic highway company under the provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the strategic road network (SRN). The SRN is a critical national asset and as such Highways England works to ensure that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity.</i></p> <p><i>Highways England will be concerned with proposals that have the potential to impact on the safe and efficient operation of the Strategic Road Network (SRN). In this case the A27.</i></p> <p><i>Having reviewed the Statement of Support Shoreham Harbour Revision Order (HRO) and draft Shoreham HRO we understand that the proposals will not result in intensification of port related activity and therefore will not generate additional road traffic on the A27. We therefore consider that the HRO will not materially affect the safety, reliability and / or operation of the SRN (the tests set out in DfT C2/13, particularly para's 9 & 10, and DCLG NPPF, particularly para 109) and accordingly we have no comments on the consultation."</i></p>

	There was MMO no action required as a result of these comments.
Royal Yachting Association ("RYA")	The RYA acknowledged the application and had no comments to make on the application.
Trinity House	<p>Trinity House provided the following response: <i>"Thank you for your email dated 22 February and your previous correspondence relating the Consultation on the Shoreham Port Harbour Revision Order (HRO). Accordingly, I can confirm that Trinity House has examined the consultation and had no adverse comments to make regarding the proposed HRO, as currently drafted.</i></p> <p><i>We noted that this draft HRO included a standard Saving provision for Trinity House at Article 14 to which we are grateful. For good order I would confirm that Trinity House considers that this Saving provision remains entirely appropriate and necessary in the HRO and presume that that no comments have been received to the contrary from any other consultee."</i></p> <p>There was MMO no action required as a result of these comments.</p>
Crown Estate	The Crown Estate acknowledged the application and had no comments to make on the application.
DfT	The DfT acknowledged the application and had no comments to make on the application.

Public Representations

14. No public representations were received within the statutory 42 day period provided for in Schedule 3 to the Act.

Second Consultation

15. Following amendments to the draft Order and supporting information it was agreed that the Port Authority would undertake a second consultation. This ran from Friday 17 April 2020 to Thursday 7 May 2020, this was a reduced 21 day consultation with the Shoreham Port User Group via email, and members of the public, via public notices. Copies of the updated draft order and statement in support were also available on the MMO's public register. The rationale behind this second consultation is detailed within paragraph 25 of this decision document.
16. Three representations were sent directly to the Port. These were then forwarded to the MMO. The relevant representations, and MMO actions, are summarised in the table below:

Representation	Response received
Day Group Ltd (Port User Group)	Day Group Ltd provided the following response: <i>"I am in receipt of the documentation in relation to the Shoreham Port Harbour Revision Order application and</i>

	<p><i>confirm that Day Group, as the operator of Britannia Wharf, has no objection."</i></p> <p>There was no MMO action required as a result of these comments.</p>
Chandlers Building Supplies (Port User Group)	<p>Chandlers Building Supplies provided the following response: <i>"Chandlers Building Supplies fully supports this HRO application. As owners, occupiers and operators of land adjacent to the Port we have the highest regard for the Shoreham Port Authority's record in all areas, particularly land management, and believe that this HRO will prove to be beneficial to all stakeholders in the area."</i></p> <p>There was no MMO action required as a result of these comments.</p>
Tarmac (Port User Group)	<p>Tarmac Supplies provided the following response: <i>"having reviewed the documents and having attended the Port user group meeting on the 23rd April I confirm that on behalf of Tarmac Limited, as occupier of land at ARC Wharf, and importing marine dredged sand and gravel into the Port, we have no objection to the proposed Shoreham Port Revision Order."</i></p> <p>There was no MMO action required as a result of these comments.</p>
Public representation	<p>There were no public representations received during this second consultation.</p>

MMO Consideration

17. During the MMO's review of the draft Order, there were two provisions that were identified as requiring further clarity and amendments. These concerned the proposed extension of port limits to widen the scope of the authority's enforcement powers over 'port premises' and the extension of general directions to cover vehicles (including speed limits and parking).
18. Firstly, amendments were made to Article 3 concerning the definition and description of the port limits and premises to ensure that it is clear where the port premises over which the Port Authority can exercise jurisdiction are located.
19. The MMO proposed an alternative definition of "port premises" to bring it within the intended purpose of the statutory definition of "harbour land" in the Harbours Act 1964. The definition was amended to reflect this. In addition, the MMO added a new provision concerning the production of an illustrative plan, as a safeguard to protect the interests of port users and any other interested parties to show the port limits and port premises over which the Port Authority can exercise their jurisdiction.
20. The illustrative plan is to be made available at the Port Authority's main office and electronically on the Port Authority's website within the period of 30 days beginning

with the day on which the order comes into force. The illustrative plan must be updated to reflect any alterations to the extent of port premises and shall be made available at the Port Authority's main office and electronically on the Port Authority's website within the period of 30 days beginning with the day on which the alterations are made. This allows port users and any other interested parties to readily identify where those premises are located, and the area over which the Port Authority may exercise jurisdiction. This is especially important as the powers of general direction are to be extended to apply to vehicles. The order creates an offence to fail to comply with a general direction, the penalty for which is a fine on summary conviction not exceeding level 4 on the standard scale thereby it must be clear where Port Authority powers apply.

21. Secondly, Article 4 extends the powers of general direction to cover vehicles, to allow for those powers to become applicable speed limits and car parking on port premises. The power of general direction, as set out in the PMSC enable a harbour authority, after due consultation, to lay down general rules for navigation (subject to certain constraints) and regulate the berthing and movement of ships ⁽¹⁾
22. The premise of general directions applying to vehicles (for speed limits and car parking matters) was considered to be novel, as previously a general direction did not specifically cover vehicles. The MMO considered that this would require an update to the PMSC by DfT (as DfT remain responsible for ports policy in England).
23. The MMO consulted with DfT, who were able to confirm on Thursday 30 January 2020 that they were content with general directions being used to regulate vehicles in a harbour, they also confirmed that they intend to update accompanying guidance to the PMSC to clarify the application of general directions.
24. Information was provided by the applicant outlining a number of clearly signposted private roads which demonstrated that they were intended for use by the Port Authority only. This further supported that the Article enables the Port Authority to efficiently manage its harbour area. The MMO also requested that the use of this provision for parking be clarified within the Statement in Support ahead of the second consultation on the application for the Order.
25. Following the amendments to the proposed HRO and Statement in Support, the Port Authority agreed to undertake a second (non statutory) consultation, to ensure that those who may be impacted by the clarified proposals had the opportunity to fully review them. It was agreed that a reduced consultation could be undertaken, this was for a period of 21 days. The scope of the second consultation would be to the Shoreham Port Users Group and advertised to the public in the form of public notices placed in prominent locations around the Port, as the MMO considered these groups were those that appeared to be most likely affected by the clarified proposals. See paragraph 16 of this decision document for the result of the second consultation.
26. 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

⁽¹⁾ paragraph 1.9.1' A Guide to Good Practice on Port Marine Operations prepared in conjunction with the Port Marine Safety Code 2016' published February 2018
<https://www.gov.uk/government/publications/a-guide-to-good-practice-on-port-marine-operations>

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.

27. By virtue of section 14(2)(a) a HRO 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.
28. By virtue of section 14(2)(b) a HRO 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

29. The MMO is satisfied that the Order meets the requirements of section 14(1) and 14(2)(a) of the Act.
30. The MMO is satisfied that there are no objections to the application for the Order.
31. 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 (and each provision of the Order) is desirable for the purposes of section 14(2)(a) and (b) of the Act and should be made.
32. 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.

Challenges to Decisions

33. Information on the right to challenge this decision is set out in Annex I 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.

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 HROs may be made within the Harbours Act 1964, Schedule 2, that apply to this Order

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.

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.

Paragraph 16A: Imposing or conferring on the authority duties or powers (including powers to make byelaws) for the conservation of the natural beauty of all or any part of the harbour or of any of the fauna, flora or geological or physiographical features in the harbour and all other natural features.

Paragraph 17: Any object which, though not falling within any of the foregoing paragraphs, appears to the appropriate Minister (MMO) to be one the achievement of which will conduce to the efficient functioning of the harbour.