



Lara Moore,
Ashfords LLP
(email only)

Our reference:
HRO/2018/00002

14 January 2021

Dear Ms Lara Moore,

The Harbours Act 1964
The Weymouth Harbour Revision Order 2021

1. The Marine Management Organisation (“the MMO”) has considered your application for the Weymouth Harbour Revision Order 2021 (“the Order”) for which you applied on behalf of Weymouth and Portland Borough Council (now known as Dorset Council) (“the applicant”), under Section 14 of the Harbours Act 1964 (“the Act”) on 11 May 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 would consolidate and modernise existing legislation and confer further modernised powers on the applicant. In particular, the powers would be to give general directions to vessels and people using Weymouth Harbour, together with powers exercisable by the Harbour Master appointed by the applicant to give special directions. These powers are required to support the effective management of the vessels using Weymouth Harbour, as recommended in the Port Marine Safety Code (PMSC). The Order also requires that all surplus harbour revenue be applied to the general improvement of harbour undertaking. The Order also clarifies the harbour limits and includes the harbour premises within the harbour limits.

Context

4. At the time of application, the applicant was Weymouth and Portland Borough Council. On the 1 April 2019 the Bournemouth, Dorset and Poole (Structural Changes) Order 2018 established a new Council known as Dorset Council, replacing Weymouth and Portland Borough Council in respect of the borough of Weymouth and Portland (and the Councils from the districts of East Dorset, North Dorset, Purbeck and West Dorset). The statutory harbour authority for Weymouth Harbour (“the Harbour”) is



INVESTORS
IN PEOPLE

Bronze



therefore now Dorset Council. The Harbour operates under Acts and Orders 1820 – 2021.

5. The applicant is responsible for the maintenance, management and improvement of the Harbour.
6. The Harbour is a municipal harbour, located at Weymouth, Dorset. The area of water currently within the jurisdiction of the harbour authority includes Weymouth Bay. The Harbour has limited dry 'real estate', which largely consists of the majority of the Peninsula Quay.
7. The Order seeks to clarify the harbour limits, including the harbour premises within those limits.
8. The Order confers modernised powers of management and control of the Harbour to vest in the Council including provisions relating to general and special powers of direction, the making of byelaws, navigational safety, conservation, moorings, bunkering, levying of charges and use of harbour revenue.
9. The Order confers the power to borrow, establish a reserve fund, to develop or dispose of land, to grant tenancies and to incorporate companies limited by shares or guarantee.
10. The Order establishes an advisory body consisting of Harbour stakeholders with which the applicant is required to consult on material matters, including the giving of general directions.
11. The Order is sought to achieve various objects specified in Schedule 2 to the Act, these are listed in Annex II of this document.

Application Procedure

12. On 11 May 2018 an application for the Order was submitted to the MMO by Ashford's LLP on behalf of the applicant.
13. Notice of the application for the Order was advertised in the *London Gazette* on 21 May and in the *Dorset Echo* on 21 May and 28 May 2018.

Consultee Responses

14. MMO consulted the following bodies, their responses are summarised below:

Organisation	Response received and actions
The Crown Estate	The Crown Estate commented that there was an error in the wording of the Crown Rights clause. The word 'council' should have been 'commissioners'. The applicant has updated this in the final draft of the Order.
Maritime and Coastguard Agency (MCA)	The MCA responded that they had no objection to the proposed Order but would like to remind the harbour authority of their obligations under the Port Marine Safety Code.

Royal Yachting Association (RYA)	<p>The RYA responded and made a number of observations on the draft Order.</p> <ul style="list-style-type: none"> - The definition of 'Jet Ski' should be made more generic as it is a trademark owned by Kawasaki. The applicant has changed this definition to 'jet bike'. - The RYA stated that the definition of "vessel" is too wide. After discussion between the applicant and RYA, it has been agreed that this definition can remain unchanged. - The RYA commented on Article 5 (1). This provision would authorise the applicant to take steps for the maintenance, operation, management and improvement of the "harbour" and the "harbour approaches". <p>The RYA have stated that the applicant's jurisdiction as harbour authority is confined to the "harbour" as stated in Definitions and Article 6. The expression "harbour approaches" may reference an area which is already inside the "harbour" jurisdiction or describe an area outside of the "harbour", it is outside of the jurisdiction. Either way, the RYA commented that reference to "approaches" should not be included. The applicant agreed to remove this from the Order.</p> <ul style="list-style-type: none"> - The RYA objected to the inclusion of Article 31(1) as they believed that the current drafting of the clause provision would introduce "zoning" in the harbour. After discussion with the applicant, the RYA has agreed that the clause can stay as it is currently drafted.
Trinity House (TH)	TH reviewed the draft Order and noted the Saving Clause for Trinity House. They had no further comments.
Department for Transport (DfT)	<p>In relation to Article 20 (6), DfT queried why the applicant was using the provisions of the Harbours, Docks and Piers Clauses Act 1847 ("the 1847 Act) rather than those contained in section 236 of the Local Government Act 1972.</p> <p>The applicant has agreed the amendment and section 236 of the Local Government Act 1972 is now referenced in Article 20(6) instead of sections 85-90 of the 1847 Act. For consistency, section 238 of the Local Government Act 1972 regarding evidence of byelaws is also referenced.</p>
Chamber of Shipping	No response received.
UK Major Ports Group	No response received.
British Ports Association	No response received.
Local Planning Authority	No response received.

Public Representations

15. The MMO received three objections within the statutory 42 day consultation period provided for in Schedule 3 to the Act. One objection received twenty letters 'deeming' their support (which were not considered by the MMO as individual objections). The MMO sent these three objections to the applicant for their consideration.
16. One representation was received the day after the statutory 42 day consultation period. The MMO also sent this representation to the applicant for their consideration.
17. Following the expiry of the period for objections set out in the Act, the applicant engaged with those who submitted an objection. This included engagement with the person who submitted the objection after the expiry of the deadline. Three of the objections (including the objection with 'deemed' support of others) were fully withdrawn and the MMO has received correspondence confirming this.
18. The one remaining objection, received after the expiry of the consultation period, has been withdrawn in part. The remaining objection is in relation to Article 13 of the Order:

Compounding arrangements and rebates

13.— (1) The Council may confer total or partial exemptions from, allow rebates to or make compositions with any person with respect to charges, and may vary or extinguish any such exemption or composition.

(2) Nothing in section 30 of the Harbours Act 1964 shall require the Council to include in the list of ship, passenger and goods dues kept at the harbour office, as required by subsection (1) of that section, charges reduced by a rebate allowed on, or subject to a compounding arrangement in respect of, a due included in the said list.

19. The applicant has provided information to MMO regarding this objection and requested that MMO make a determination.
20. The consideration of the response which was not withdrawn is summarised in the table below.

Organisation	Response received and actions
Public	The remaining part of the objection was in relation to Article 13 – Compounding arrangements and rebates. It is proposed that the applicant no longer has to include on its published fees and charges those which have been reduced by rebate or a compounding arrangement in respect of a due included on the list. The objecting body has always been included on the council's scale of charges as a "special category" since it is a riparian owner having its own private pontoon moorings extending not more than 18.3 metres from the harbour wall. As such, they are entitled to 35% off the charge per metre for pontoon berths for crafts owned by residents of the borough. The member of the public objected to the inclusion of Article 13 on this basis.

	<p>The objector stated that they were willing to withdraw this part of their objection if the applicant would provide a letter stating that they will continue to receive the discount currently enjoyed from the lowest actual charges imposed by the applicant. The concern is that if the Harbour is sold in the future, the benefits may be lost.</p>
Applicant	<p>The applicant responded that the compounding and rebate arrangements are different to the published charges. Article 13 permits commercial agreements to be reached on an individual basis and these may deviate from the published charges. The objector's concerns relate to an already published class of charge rather than an individual arrangement which deviates from the published charges.</p> <p>The objection does not relate to Article 13 of the Harbour Revision Order and the applicant's powers to alter the category of charge into which the objector falls, already exist and are not affected by the Harbour Revision Order.</p> <p>The applicant has stated that due to the statutory duties placed on it as harbour authority, it is not in a position to issue a letter to the objector. The applicant believes that it may constitute a breach of its statutory duties by changing its discretion in respect of charges if it did. It would also not be in line with government guidance which requires statutory harbour authorities to set harbour dues and charges at a level which allows sufficient revenue to meet its responsibilities for the safe and efficient operation of the harbour. The applicant is unable to predict future costs associated with the harbour. It is therefore not able to fetter its discretion to alter the class of charge into which anyone falls, if it needs to do so to meet its responsibilities in the future.</p> <p>The applicant therefore requests that the MMO now proceeds to its determination in respect of the Harbour Revision Order application.</p>
MMO	<p>MMO has considered the objection and the information provided by the applicant in response.</p> <p>It is the opinion of the MMO that this objection relates to an already published class of charges which the applicant already has the power to amend, therefore does not relate to Article 13 or any other part of the Order, the MMO therefore considers the outstanding objection is frivolous as it is not in relation to the Order.</p>

MMO Consideration

21. During the MMO's review of the draft Order, there were some areas which were identified as requiring further clarify and amendments.
22. Amendments were made to Article 6 concerning the definition and description of the harbour limits and premises to ensure that it is clear where the harbour premises over which the harbour authority can exercise jurisdiction are located. The MMO proposed an alternative definition of "harbour premises" to bring it within the intended purpose of the definition of "harbour land" in the Act. The definition of "harbour premises" was amended to reflect this. In addition, the MMO added a new provision concerning the production of an illustrative map to show where the harbour authority can exercise their jurisdiction, to protect the interests of harbour users and any other interested parties.
23. The illustrative map is to be made available at the harbour authority's main office and electronically on the harbour authority's website within the period of 30 days beginning with the day on which the Order comes into force. In addition, whenever the harbour premises are amended, the illustrative map must be updated to reflect those changes within the period of 30 days beginning with the day on which the changes are made. This allows harbour users and any other interested parties to readily identify where those premises may be located, and as such to know where the harbour authority may exercise jurisdiction.
24. The MMO also discussed other provisions with the applicant such as the amendments and repeal of existing local legislation, the procedure for giving, amending or revoking general directions and the application of general directions to persons.
25. In relation to general directions, the MMO has inserted further safeguards to the procedure set out in the Order. This includes consulting the newly established harbour advisory group when the applicant proposes to give, amend or revoke a general direction. The applicant is also required to place notices around the harbour and on the harbour's website to ensure that harbour users are aware of any changes relating to general directions.
26. The MMO has considered the application in relation to the South Inshore and Offshore Marine Plans and is content that the application is in accordance with those marine plans.
27. The MMO has reviewed the application in relation to the PMSC and concludes that the powers conferred by the Order aid the applicant to comply with their duties as set out by the PMSC.
28. Section 14 (1) of the Act provides for an Order to be made under this section 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, by the appropriate Minister for achieving all or any of the objects specified in Schedule 2 to this Act.
29. 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.

30. 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.

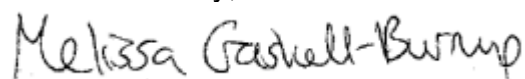
MMO's Decision

31. The MMO is satisfied that the Order meets the requirements of section 14(1), 14(2)(a) and section 14(2)(b) of the Act.
32. The MMO has taken into account the information supplied by the applicant during the application and other information submitted throughout the process, including all consultation responses, objections and representations.
33. The MMO is satisfied 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.
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.

Challenges to Decisions

35. 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 harbour revision Orders may be made which have been considered for this application

3. Varying or abolishing duties or powers imposed or conferred on the authority by a statutory provision of local application affecting the harbour, being duties or powers imposed or conferred for the purpose of—

(a)improving, maintaining or managing the harbour;

(b)marking or lighting the harbour, raising wrecks therein or otherwise making safe the navigation thereof; or

(c)regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.

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.

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.

9. Empowering the authority to dispose of property vested in them and held for the purposes of the harbour which is no longer required for those purposes.

9A. Empowering the authority (alone or with others) to develop land not required for the purposes of the harbour with a view to disposing of the land or of interests in it, and to acquire land by agreement for the purpose of developing it together with such land.

9B. Empowering the authority to delegate the performance of any of the functions of the authority except—

(a)a duty imposed on the authority by or under any enactment;

(b)the making of byelaws;

(c)the levying of ship, passenger and goods dues;

(d)the appointment of harbour, dock and pier masters;

(e)the nomination of persons to act as constables;

(f)functions relating to the laying down of buoys, the erection of lighthouses and the exhibition of lights, beacons and sea-marks, so far as those functions are exercisable for the purposes of the safety of navigation.

13. Regulating the application of moneys in the nature of revenue received by the authority and securing that the financial affairs of the authority are properly managed.

16 A. 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

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.