



Gus Lewis  
Dorade Law  
(email only)

Our reference: DC10152

9 February 2021

Dear Mr Gus Lewis,

**The Harbours Act 1964  
The Newport Isle of Wight (IoW) Harbour Revision Order 2021**

1. The Marine Management Organisation (“MMO”) has considered your application for the Newport (IoW) Harbour Revision Order 2021 (“the Order”) which was applied for on behalf of the Isle of Wight Council (“the applicant”), under Section 14 of the Harbours Act 1964 (“the Act”) on 28 February 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 authorises the modernisation of the statutory powers and duties of the applicant in its capacity as the harbour authority for Newport Harbour. This includes the clarification of harbour limits, the giving of general and special directions, the power to grant tenancies within the harbour premises and to enter into commercial activities.

**Context**

4. The Isle of Wight Council is the statutory harbour authority for Newport Harbour (“the Harbour”) and operates under Acts and Orders 1852 to 2021. The applicant is responsible for the maintenance, management and improvement of the Harbour.
5. The Harbour is situated on the River Medina at Newport, Isle of Wight. The harbour handles cargo (for example sand and ballast for construction) and also operates as a recreational harbour.
6. As the harbour authority, the Port Marine Safety Code (PMSC) (November 2016) published by the Department for Transport (DfT) applies to the applicant as well as to all statutory harbour authorities and other marine facilities, berths and terminals in the UK.



INVESTORS  
IN PEOPLE

Bronze



7. 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”.*
8. The Order is sought to make amendments to certain provisions which apply in respect to statutory powers and duties which it is considered would be conducive to the efficient and economical operation, maintenance, management and improvement of the Harbour.
9. The Order seeks to clarify the harbour limits, including the harbour premises within those limits.
10. The Order confers modernised powers of management and control of the harbour to vest in the applicant including provisions relating to general and special powers of direction.
11. The Order confers the power to dispose of land, to grant tenancies and to carry on commercial activities with others.
12. The Order is sought to achieve various objects specified in Schedule 2 to the Act, these are listed in Annex II of this letter.

### Application Procedure

13. On 28 February 2018 an application for the Order was submitted to the MMO by Dorade Law on behalf of the applicant.
14. Notice of the application for the Order was advertised in the London Gazette on 16 March 2018 and in the Isle of Wight County Press 16 March 2018 and 23 March 2018. A 42-day consultation ran from 16 March 2018.

### Consultee Responses

15. The MMO consulted the following bodies. The relevant responses, and MMO consideration, are summarised in the table below:

Organisation	Response received
British Ports Association (“BPA”)	The BPA advised that a port, as the duty holder for safety, should have the ultimate decision over the General Direction making procedure. BPA raised their concern about the independent adjudication measures included in the draft Order. However, they did not wish to object to the draft Order and were content for the application to proceed.

<p>Department for Transport</p>	<p>The DfT commented on Article 11 of the submitted draft Order, which proposed to allow the council to revoke their byelaws without confirmation by the Secretary of State. It is DfT's view that such articles, despite their wording, do not have the power to provide for the revocation of byelaws.</p> <p>DfT were also concerned with the interplay of articles 7 (Special directions as to use of harbour, etc) and 8 (failure to comply with directions). Article 7(a) of the submitted draft Order proposed to give the harbour master power to make a special direction requiring vessels to comply with a byelaw, which if not complied with is subject to a criminal offence (Article 8). DfT highlighted that failure to comply with a byelaw is itself a criminal offence, regardless of whether a direction has been issued so this provision was unnecessary.</p> <p>Both of the above articles have been removed from the Order.</p>
<p>Maritime and Coastguard Agency ("MCA")</p>	<p>MCA advised that they had no objections or comments on the proposal.</p>
<p>Chamber of Shipping</p>	<p>Chamber of Shipping advised they had no comments on the proposal.</p>
<p>Royal Yachting Association ("RYA")</p>	<p>The RYA advised they had no comments on the proposal.</p>
<p>Trinity House</p>	<p>Trinity House advised they had no comments on the proposal.</p>
<p>Newport Parish Council ("NPC")</p>	<p>NPC were supportive of the application on the basis that it will modernise and update the statutory powers of Newport Harbour.</p> <p>However, NPC also advised that although this is not a development Order, they are concerned about the future of the area as a working harbour and the importance of retaining and protecting the waterside frontage for marine related industry, public access and leisure purposes. They would like certain safeguards built into the Order to protect the integrity of the area.</p> <p>The MMO has had regard to NPC's representation and is satisfied that any future harbour development and any decisions made in relation to how the harbour would be managed are the responsibility of the applicant and are not related to the application. This Order is a non-works Order and does not authorise any development.</p>
<p>Isle of Wight Council ("IoWC")</p>	<p>The IoWC planning department was consulted and responded with no objections but commented that any decision that either strengthens or weakens the continued operation of the wharf (known as Blackhouse Quay) should consider the significant strategic importance of this site to the supply of minerals to the Isle of Wight.</p> <p>The MMO notes that this is not in relation to the provisions of the Order and any decision made in relation to the use of the</p>

	wharf would be undertaken by the applicant.
UK Major Ports Group ("UKMPG")	No response was received.

### Public Representations and MMO consideration

16. Eighteen public representations were received within the statutory 42-day consultation period provided for in Schedule 3 to the Act.
17. The main themes from the public consultation, the applicant's responses and the MMO's consideration are summarised in the table below.

<b>Area of concern</b>	<p><b>Map not provided with application and existing map 'not accurate' as there are areas of now non-navigable waterway included in the map annexed to the 1988 Order.</b></p> <p>There were concerns that there was no map of the harbour limits provided with the application, with some comments stating that harbour users would not know where the harbour limits are. There were also concerns that the existing map of the harbour limits was not accurate as some areas of the harbour are now no longer navigable (the reasons raised were due to new structures being built or through lack of dredging).</p>
Applicant response	<p>The applicant responded that there was no requirement for a map to be provided with this application as they are not applying to amend the harbour limits. The limits as defined in the 1988 Order remain unchanged but are being clarified with reference to coordinates.</p> <p>The applicant has stated that there is no requirement for the entire jurisdiction of a harbour to be navigable and that there had been some confusion about this requirement.</p>
MMO consideration	<p>The MMO is satisfied that a map was not required with this application. A map is required with an application if a map will be annexed to the Order when it is made. This is set out in Schedule 3, Article 7 of the Act.</p> <p>The MMO notes that the applicant is not applying to alter the limits of the harbour, therefore no map will be annexed to the Order when it is made. To clarify the harbour limits (as set out in the 1988 Order), the applicant is adding coordinates to the description of the existing harbour limits for further clarity. As such, the map annexed to the 1988 Order remains valid.</p> <p>The applicant also proposes to add the 'harbour premises' to the harbour limits. This is not an uncommon provision and appears in existing harbour legislation, such as the Newhaven Harbour Revision Order 2016 <a href="http://www.legislation.gov.uk/uksi/2016/151/article/3/made">http://www.legislation.gov.uk/uksi/2016/151/article/3/made</a></p> <p>The definition of 'harbour premises' can be found in the</p>

'Interpretation' section of the Order and includes quays and buildings owned by the harbour authority which form part of the harbour undertaking. It also applies only to those premises which are adjacent to the delineated limits of the harbour (the limits defined in Article 3) or are separated from these limits by a road or other access. This ensures that the extent of the harbour premises is limited to the area surrounding the existing harbour.

By incorporating the 'harbour premises' into the harbour limits, it allows the authority to acquire and release land. When a building or piece of land which fits the definition of 'harbour premises' is acquired by the harbour authority and used for the harbour undertaking, it will become part of the harbour limits. When a piece of land or building is sold or no longer required for the purposes of the harbour undertaking, it will no longer be part of the limits. The MMO is satisfied that including this provision in the Order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner and is in accordance with 14 (2) (b) of the Act.

The MMO considers that without an illustrative plan of the harbour premises, the harbour limits may be unclear to users if the harbour estate changes. It is important that harbour users are aware of where the harbour's limits are in order to comply with byelaws and directions. A provision has been inserted into the Order to address this. The provision states that a map for illustrative purposes only will be made available within 30 days of the Order coming into force and within 30 days of a change in the harbour estate. This map will be available on the applicant's website and in the harbour office and is for information purposes only.

In relation to the now non-navigable sections of the harbour which appear on the map annexed to the 1988 Order, there have been complaints that the presence of a road bridge has blocked access to the southern end of the harbour and there are calls for the harbour limits to be adjusted to exclude the area south of the bridge. There have also been complaints about parts of the harbour which have not been recently dredged and should also be excluded from the map and harbour limits.

As the applicant has not applied to change their jurisdiction to exclude these areas, the MMO cannot require the applicant to do so. The MMO also considers that a map annexed to a Harbour Order outlines the jurisdiction of a harbour and shows where the harbour authority can exercise its powers. It is not a navigation chart and should not be used as such.

	<p>Finally, the MMO does not consider that all areas of water within a harbour authority's jurisdiction must be navigable.</p>
<b>Area of concern</b>	<p><b>Objection of powers in Articles 14 (power to grant tenancies and dispose of land) and 15 (commercial activities) of the submitted draft order.</b></p> <p><b>(These are now Articles 13 and 14 in the made Order as Article 11 has been removed)</b></p> <p><b>Lack of safeguards to protect historic working harbour</b></p> <p>There were concerns raised about the development of the harbour and a lack of safeguards to protect the future of the harbour as a working harbour. It has been stated that there have been a number of non-marine businesses which have been set up in the area and concerns were raised about the future development of the harbour having a negative impact on commercial operators in the area, and the future of the harbour as a working harbour. This also relates to concerns submitted about the powers in Articles 13 and 14 (originally Articles 14 and 15).</p> <p>Concerns were raised about the powers in what was initially Article 14 – Power to grant tenancies and to dispose of land. This is now Article 13 due to the deletion of Article 11.</p> <p>Article 13 allows the council to grant tenancies in excess of three years. It also allows the council to dispose of land which is no longer required for the purposes of the harbour undertaking.</p> <p>Objections were received to was initially Article 15 – Commercial businesses. This is now Article 14 due to the deletion of Article 11. Article 14 allows the council to carry on trades and businesses which conduce to the efficient and economical management of the harbour and allows the council to enter into trades and businesses with another person.</p> <p>These concerns were in relation to these powers being used to allow non-marine businesses to be developed in the harbour.</p>
Applicant response	<p>The applicant stated that the Order does not contain development powers as it is not a 'works' Order, any development would require application for further planning permission. The applicant has also highlighted that a three-year restriction on leases has led to a lack of investment in the harbour.</p>
MMO consideration	<p>The MMO considers that the Order is not a 'works' Order and does not contain any powers for specific development.</p> <p>The MMO considers the function of granting tenancies in excess of three years to be in the interest of securing the</p>

	improvement, maintenance or management of the harbour.  Any proposed future development decisions in the harbour would need to be made in accordance with relevant legislation and authorised by the relevant permission and consents.
<b>Area of concern</b>	<b>Complaints about consultation process not being open and failing to engage stakeholders</b>
Applicant response	The applicant responded that the pre-application stakeholder consultation was extensive.
MMO consideration	There is no statutory requirement to engage with stakeholders prior to submission of an application for a Harbour Revision Order (HRO). The statutory requirements for advertising and consulting this application have been complied with and are described fully in this decision letter.
<b>Area of concern</b>	<b>Concerns were raised that the council was not a fit body to run the harbour and lacked expertise.</b>
Applicant response	The applicant has responded with how they believe the IoW council is a suitable harbour authority.
MMO consideration	This does not relate to the application for the Order.
<b>Area of concern</b>	<b>Some representations submitted stated that the application did not include reference that the harbour may become a trust port in the future.</b>
Applicant response	The applicant has responded that this is not relevant to the application.
MMO consideration	This does not relate to the application for the Order.

18. The applicant responded to those who submitted an objection in writing to address their concerns. The applicant also invited those who submitted an objection to a meeting to discuss their concerns in person. One objection has been subsequently withdrawn.
19. The MMO notes that the applicant has been in continued discussion with another member of the public who submitted an objection during the 42-day period. The objection has not been withdrawn.
20. A public inquiry was requested in some of the objections submitted. The MMO did not deem a public inquiry necessary in relation to this application. Issues raised in the objections have either been addressed to the MMO's satisfaction or are not of relevance to an HRO application. The MMO is not involved in discussions about the day to day management actions of a harbour and specific decisions which may be made by a harbour authority. These discussions are not relevant to an application for a HRO and the MMO has no remit to comment on the actions of a harbour authority. The harbour authority must make decisions in accordance with their own legislation.
21. There are 17 objections which have not been withdrawn and the applicant has requested that the MMO make a determination on this application. The consideration of each area identified in the objections has been covered in the table above.

## MMO Consideration

22. During the MMO's review of the draft Order, there were some areas which were identified as requiring further clarification and amendments.
23. Amendments were made to Article 3 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 accordingly. In addition, the MMO added a new provision concerning the publication 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.
24. The illustrative map is to be made available at the applicant's main office and electronically on the applicant'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.
25. 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.
26. In relation to general directions, the MMO has inserted further safeguards to the procedure set out in the Order. The applicant is 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.
27. 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.
28. 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.
29. Paragraph 19 of Schedule 3 of the Act provides that the MMO shall consider the result of any consultations, any opinion under paragraph 16(5) any objections made and not withdrawn and any representations received.
22. Section 14(1) of the Act provides for an HRO to be made under this in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties for achieving all or any of the objects set out in Schedule 2 to the Act.
23. By virtue of section 14(2) (a) an 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.

24. By virtue of section 14(2)(b) an 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.

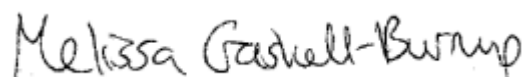
### **MMO's Decision**

25. The MMO is satisfied that the Order meets the requirements of section 14(1) and 14(2)(a) of the Act.
26. 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.
27. 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 Decision**

28. Information on the right to challenge this decision is set out 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 within the Harbours Act 1964, Schedule 2**

Paragraph 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.

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 for 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 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.

Paragraph 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.

Paragraph 12: Securing the efficient collection of charges levied by the authority at the harbour and specifying the times at which and the persons by whom such charges are to be paid.

Paragraph 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.