



Ms L Moore  
Ashfords LLP  
(by email only)

Our reference:  
HRO/2019/00005

09 February 2021

Dear Ms Moore

**The Harbours Act 1964**  
**THE FOWEY HARBOUR REVISION ORDER 2021**

1. The Marine Management Organisation (“the MMO”) has considered your application for the Fowey Harbour Revision Order 2021 (“the Order”) for which you applied on behalf of Fowey Harbour Commissioners (“the applicant”), under Section 14 of the Harbours Act 1964 (“the Act”) on 23 September 2019.

**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 provides modernised powers of management to the applicant, including provisions relating to general and special powers of direction, notices and licensing of boatmen and vessels. It further clarifies the Fowey Harbour (“the Harbour”) limits to expressly include harbour premises through amendments to articles 3 and 22 of the Fowey Harbour Order 1937 (“the 1937 Order”). The Order provides updates to the constitution of the applicant to reflect current arrangements. The Order also amends the Fowey Harbour Revision Order 2001 (“the 2001 Order”); the 1937 Order, the Fowey Harbour Revision Order 1980 (“the 1980 Order”); and revokes the Pier and Harbour Order (Fowey) Confirmation Act 1960 (“the 1960 Act”).

**Context**

4. The applicant is the statutory harbour authority governed by its own local legislation collectively known as the Fowey Harbour Orders 1937 to 2021. The applicant is responsible for the management, maintenance and improvement of Fowey Harbour. The applicant is also a Competent Harbour Authority under the Pilotage Act 1987.
5. The Harbour is located in Fowey, Cornwall and comprises of 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 400 hectares of river and includes creeks, pills, rivers and inlets tributary to the River Fowey. The harbour's dry 'real estate', which largely consists of boat yards, car parks and woodland equates to approximately 11 hectares.

6. The Harbour is classed by the Department for Transport ("DfT") as a Trust Port. Within the 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 also regular visitors. 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, the 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.
7. The Port Marine Safety Code ("PMSC") (November 2016) published by the DfT applies to the Harbour 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 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 in their harbour waters if they do not have them already".*
9. The applicant has modernised its powers of General Direction, extending the powers of general direction to include vehicles for the safe management of port operations ashore. This will enable them to repeal their existing byelaws in due course and instead have a single set of General Directions covering the whole harbour.
10. The Order achieves the clarification to the harbour limits to expressly include the harbour premises through amendments to articles 3 and 22 of the 1937 Order.
11. The Order further provides provision relating to the licensing of boatmen and vessels. The applicant already licences vessels and boatmen in accordance with the Fowey Harbour Byelaws, which are to be repealed in due course. This provision will not result in any substantive changes to the applicants current licensing system, which has been in place for over 20 years.
12. The order updates the applicant's constitution to remove the requirement for Cornwall Council to appoint Commissioners to reflect current arrangements through the amendment of articles 4, 6 and 8 and Schedule 2 of the 2001 Order.
13. The Order provides further amendments to articles 3 and 4 of the 1937 Order and article 4 of the 1980 Order and the revocation / repeal of the 1960 Act in its entirety and article 5 of the 2001 Order.

14. These amendments achieve all or any of the objects specified in Schedule 2 of the Act. These are detailed within Annex II of this letter.

### Application Procedure

15. On 23 September 2019 an application for the Order was submitted to the MMO by Fowey Harbour Commissioners.
16. Notice of the application for the Order was advertised in the London Gazette on 22 July 2020 and in the Cornish Guardian on 22 and 29 July 2020. There was a 42-day consultation commencing 22 July 2020.
17. 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 and actions
Department for Transport (DfT)	DfT confirmed they had no objection to the application.
Maritime and Coastguard Agency ("MCA")	No response was received.
Trinity House	<p>Trinity House stated:</p> <p><i>'...Accordingly, whilst Trinity House does not object in principle to the above application, it considers that, for reasons of precision, it would be preferable for the harbour limits to be stated by reference to Latitude and Longitude coordinates (WGS84 datum), if this is possible within the above proposed Harbour Revision Order.'</i></p> <p>The MMO forwarded the above point to the applicant who stated they consider that it is practicable to define the harbour limits by reference to Latitude and Longitude coordinates (WGS84 datum) because <i>'It is not sensible to have different definitions of the harbour limits in different pieces of local legislation applying to a statutory harbour authority...'</i> and because <i>'...To define the Fowey Harbour Limits by reference to Latitude and Longitude would be extremely complex and difficult due to the fact that the limits extend inland up all creeks, pills, rivers and inlets tributary to the River Fowey, up to the high-water mark of ordinary spring tides'</i></p> <p>Trinity House were re-consulted and replied <i>'Whilst Trinity House maintains that its representations on the broader principle of using Latitude and Longitude coordinates remain valid - as more fully set out in its letter of 24 August - having taken into account the comments and assessment by the Fowey Harbour Commissioners with to regard to its situation, I would confirm that Trinity House does not intend to make any further submission or comment to this.'</i></p>

Organisation	Response received and actions
Cornwall Council	Cornwall Council advised:  <i>‘Cornwall Council would welcome assurance that the MMO and the applicant continue to utilise the best available evidence in order to determine potential impacts on the existing flora and fauna and mud flats within the river. This proposal is to revise the existing Harbour Order, and Cornwall Council has No Objection to this proposal.’</i>
Royal Yachting Association (“RYA”)	The RYA provided the following response:  <i>‘With reference to the Fowey Harbour Revision Order HRO/2019/00005 Consultation, the RYA takes no issue with this proposed HRO, as drafted.’</i>
UK Major Ports Group	No response was received.
British Ports Association (BPA)	The BPA provided the following response;  <i>‘Many thanks for this notice. To confirm we very much support this HRO application and wish the applicant, Fowey Harbour, every success.’</i>
Chamber of Shipping	No response was received.
Duchy of Cornwall	No response was received.

## Public Representations

18. One representation was received on 28 August 2020 within the statutory 42-day period provided for in Schedule 3 to the Act.
19. Lanteglos-by-Fowey Parish Council provided a representation. The comments from the Lanteglos-by-Fowey Parish Council related to the workings of the Harbour Authority, and not to the HRO itself. The MMO is satisfied that the applicant has adequately addressed the comments.

## MMO Consideration

20. During the MMO’s review of the draft Order, there were articles which required further clarity and amendments.
21. Regarding Article 2, the MMO requested clarification as the definitions of ‘harbour limits’ ‘the harbour’ and ‘the harbour premises’ as they appeared to overlap, raising a question over the limits within which the applicant can exercise their jurisdiction. Clarification was further sought for reasons behind including the harbours ‘dry estate’ in the definition of ‘harbour premises’, this particularly related to the inclusion of car parks. The applicant clarified that as a statutory body, they are required to reinvest all monies into the harbour. As such all the land they own has been purchased under their powers as a harbour authority, using money belonging to the harbour undertaking. All of their land therefore forms part of the harbour undertaking. Car parks form an integral part of the harbour premises and provides income for the harbour.

22. Regarding Article 11, the MMO requested clarification on the reference to the applicant already having a power to give special directions and where this power was derived from. In addition, the MMO requested clarification as to whether the harbour is 'designated' under Section 40A to 40D of the Harbours Act 1964 to give harbour directions. The applicant confirmed that they are designated with Powers of Harbour Direction (the designation is contained in the Harbour Directions (Designation of Harbour Authorities) Order 2015 (SI 2015/573). The power to give special directions is contained in article 52 of the Harbours Docks and Piers Clauses Act 1847 provision, that has been incorporated into the applicant's local legislation by section 4(1)(c) of the Order of 1937.
23. Regarding Article 12, the timeframe set out in the proposed Order was "*24 months*", however the statutory period within which someone can claim a repayment is set in the Limitation Act 1980 as "*six years*". The MMO highlighted that primary legislation cannot be amended through a Harbour Revision Order application alone. The applicant removed this part of the article.
24. Following the amendments to the proposed HRO and Statement in Support the MMO was content with the proposed Order.
25. The MMO has considered the application in relation to the South West Marine Plan and is content that the application is in accordance with those marine plans.
26. 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.
27. 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 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.
28. 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.
29. 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**

30. The MMO is satisfied that the Order meets the requirements of section 14(1) and 14(2)(a) of the Act.

31. The MMO is satisfied that there are no objections to the application for the Order.
32. 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.
33. 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

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



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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.