

MARINE MANAGEMENT ORGANISATION  
HARBOURS ACT 1964 (AS AMENDED)

PROPOSED PORTREATH, PORTSCATHO  
AND PORTWRINKLE HARBOUR  
EMPOWERMENT ORDER 20[X]

STATEMENT IN SUPPORT OF APPLICATION

FOR ORDER BY:  
CORNWALL COUNCIL

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ANNEX 1: ASSET REGISTER FOR THE HARBOURS

## 1. INTRODUCTION

- 1.1. This statement relates to the applications by Cornwall Council for the proposed Cornwall Portreath, Portscatho and Portwrinkle Harbour Empowerment Order 20[X]. Cornwall Council owns (but is not currently a statutory harbour authority in respect of) Portreath Harbour, Portscatho Harbour and Portwrinkle Harbour. Portscatho Harbour is a Fishery Harbour under the Sea Fish Industry Act 1951.
- 1.2. In addition, Cornwall Council is the statutory harbour authority for the Port of Truro, Port of Penryn, Newquay Harbour, Bude Harbour, St Ives Harbour, Penzance Harbour and Prince of Wales Pier (Falmouth). St Ives Harbour is also a Fishery Harbour under the Sea Fish Industry Act 1951. The Council has made a separate application for a Harbour Revision Order in respect of those seven statutory harbours, which has been submitted at the same time as this Harbour Empowerment Order application.
- 1.3. This application is made in a letter to the Marine Management Organisation (“the MMO”) dated 1 October 2019 and is accompanied by:
  - (a) A copy of the draft Portreath, Portscatho and Portwrinkle Harbour Empowerment Order 20[X];
  - (b) Copies of the three plans to be deposited with the Harbour Empowerment Order 20[X];
  - (c) This statement; and
  - (d) The fee for the application, by BACS, in the sum of £4,000 for the proposed Order.
- 1.4. It is proposed that the Harbour Empowerment Order (**‘the HEO’**), under which the harbours of Portreath, Portscatho and Portwrinkle would become statutory harbours, would come into effect immediately after the proposed Cornwall Harbours Harbour Revision Order 20[ ] (**‘the HRO’**). As such, the provisions of the HEO simply amend the HRO to add the harbours of Portreath, Portscatho and Portwrinkle to the definition of ‘harbours’ within article 2 of the HRO and their harbour limits to Schedule 1. The provisions of the HRO will then apply to the management of those three harbours as well as the seven existing statutory harbours, increasing efficiency and economy.
- 1.5. For this reason, this Statement of Support sets out some of the specific benefits of the provisions of the HRO to the harbours of Portreath, Portscatho and Portwrinkle under its explanation of why article 5 of the proposed HEO (which amends the HRO to add the three harbours to definition of ‘harbours’ and their harbour limits to Schedule 1 of the HRO) is desirable in the interests of facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships. This is because, the amendments to the HRO contained in article 5 of the proposed HEO have the effect of meaning that the provisions of the HRO will apply to the harbours of Portreath, Portscatho and Portwrinkle.

## 2. CORNWALL COUNCIL HARBOUR MANAGEMENT

- 2.1. Like the seven existing statutory harbours, which are classed by the Department for Transport (“DfT”) as municipal ports, the harbours of Portreath, Portscatho and Portwrinkle would also become statutory municipal ports under the HEO. For ease of reference Cornwall Council, in the exercise of its functions at and management of the harbours, is

referred to as 'the Council' throughout this Statement of Support. Although Portreath, Portscatho and Portwrinkle harbours are currently non-statutory, the Council is responsible for their administration, maintenance and improvement, which is more fully described in section 3 below.

- 2.2. In managing the harbours, the Council is expected to, and strives to comply with, the Port Marine Safety Code (which applies to non-statutory marine facilities, berths and terminals in the UK as well as statutory harbour authorities). In addition, the Council strives to observe industry standards set out in Government guidelines. The Council is 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 Council's constitution.

### **3. THE HARBOURS**

#### Portreath Harbour

- 3.1. Portreath Harbour is in Portreath. The area currently proposed to fall within the jurisdiction of the Council when it becomes the Statutory Harbour Authority (under the HEO), includes both water and dry real estate as indicated by the proposed harbour limits on the plan titled Portreath Harbour Limits Plan deposited with the HEO (shaded blue). The Council already owns the majority of the freehold of the harbour shown on the plan, including all of the 'dry' real estate. The ownership of the area of water beyond the lighthouse out to the breakwater is being established. However, the Council has been responsible for the management of the whole of the area shown on the Portreath Harbour Limits Plan regardless of ownership for many years, save for the areas demised to Portreath Harbour Association as described at paragraph 3.3 below. The key assets of the harbour are set out in Annex 1 of this Statement of Support.
- 3.2. The main activities which take place at Portreath Harbour are commercial fishing and mooring of non-commercial vessels. There are approximately 30 moorings available, for vessels up to 24ft, including those that facilitate landing of commercial fishing vessels at the outer harbour area, which is known as 'the Turning Circle'.
- 3.3. The Council (as freehold owner) leases the areas known as the clubhouse, some harbour moorings and a winter boat store, to the Portreath Harbour Association, who manages these areas.
- 3.4. Financially Portreath Harbour currently operates at a small deficit year to year (circa £30,000). However, it is anticipated that additional income will be generated from next year through an additional lease arrangement. In addition, improved facilities for the landing of fish are in the process of being installed at the harbour (including cranes and an ice room and buckets) which will also provide additional annual income and potentially attract new fishing vessels to the harbour. This additional income will improve viability at the harbour. In any event, the management of the harbour as part of the overall group of statutory harbours is more efficient and economic than its ongoing management as a separate entity.

#### Portwrinkle Harbour

- 3.5. Portwrinkle Harbour is in Portwrinkle. The area currently proposed to fall within the jurisdiction of the Council when it becomes the Statutory Harbour Authority (under the HEO), includes both water and dry real estate as indicated by the proposed harbour limits on the plan titled Portwrinkle Harbour Limits deposited with the HEO (shaded blue). The Council

owns the freehold of the harbour as indicated on the said plan and is responsible for the management of the same. The key assets of the harbour are set out in Annex 1 of this Statement of Support.

- 3.6. The harbour has capacity to hold vessels of 16ft maximum length, including 5 wet and 27 dry moorings (in the form of racking). The harbour's dry 'real estate', includes a single landing stage and dry moorings that run alongside the public footpath and a bank.
- 3.7. The main activities which take place at Portwrinkle Harbour are commercial fishing and leisure activities.
- 3.8. Financially Portwrinkle Harbour currently operates at a small deficit year to year (under £10,000). However, the management of the harbour as part of the overall group of statutory harbours is more efficient and economic than its ongoing management as a separate entity.

#### Portscatho Harbour

- 3.9. Portscatho Harbour is in Portscatho. The area currently proposed to fall within the jurisdiction of the Council when it becomes the Statutory Harbour Authority (under the HEO), includes both water and dry real estate as indicated by the proposed harbour limits on the plan titled Portscatho Harbour Limits Plan deposited with the HEO (shaded blue). The Council already owns most of the dry real estate shown on the plan. The ownership of the area of water and a small area of beach is being established. However, the Council has been responsible for the management of the whole of the area shown on the Portscatho Harbour Limits Plan regardless of ownership for many years. The key assets of the harbour are set out in Annex 1 of this Statement of Support.
- 3.10. The harbour has capacity to accommodate 3 resident vessels and 5 visiting vessels, up to a maximum vessel length of 20ft (mainly sea going pleasure craft). The harbour area includes dry 'real estate', which largely consists of the slipway marked as such on the plan. There are 3 slipways in the harbour which the Council manage. The slipway marked on the plan is near the sand and shingle area of The Porth and is considered too steep for public use, despite offering strong potential as access to the water by the public. The Council considers that as a Statutory Harbour Authority it would seek to implement byelaws / directions in respect of the slipway and (subject to obtaining the necessary consents) to undertake works to it, in order to maximise its potential as a safe water access point.
- 3.11. The harbour is a Fishery Harbour under the Sea Fish Industry Act 1951. The main activities taking place at the harbour are leisure related, mooring of vessels and commercial fishing.
- 3.12. Financially Portscatho Harbour currently operates at a small deficit year to year (circa £7,000). However, the management of the harbour as part of the overall group of statutory harbours is more efficient and economic than its ongoing management as a separate entity.

## **4. THE PORT MARINE SAFETY CODE**

- 4.1. The Port Marine Safety Code (November 2016) published by the Department for Transport ("the Code") applies to the Council in relation to the non-statutory harbours of Portreath, Portscatho and Portwrinkle as well as its seven statutory harbours. 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 and other marine operators within the scope of the Code should undertake in order to comply with the Code including reviewing and being aware of existing powers based on local and national legislation. 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 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 Council considers that similar considerations apply to it in relation to the non-statutory harbours of Portwrinkle, Portreath and Portscatho and that if powers are required to meet its obligations to provide safe navigation then it should seek such powers. Accordingly, the Council is doing so through the proposed HEO.

## **5. THE HARBOURS ACT 1964**

5.1. Section 16 of 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 empowerment order) in relation to a harbour where a person wishes to achieve the objective of *‘the improvement, maintenance or management of a harbour (whether natural or artificial) navigated by sea-going ships... or of a port, haven, estuary, tidal or other river or inland waterway so navigated’* or *“the improvement, maintenance or management of a fishery harbour”* but neither he nor any other person has powers, or sufficient powers, to secure it, or to do so effectively. In such circumstances, he may make a written application to the Minister / Secretary of State for the making by him of an order conferring on the applicant, some other designated person or a body to be constituted for the purpose by the order (according as may be specified in the application) all such powers (including, in particular, power to acquire land compulsorily and to levy charges other than ship, passenger and goods dues) as are requisite for enabling that object to be achieved.

5.2. Section 16(5) of the 1964 Act provides that the Minister / Secretary of State shall not make a harbour empowerment order unless satisfied:

*“that the making thereof is desirable in the interests of facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships”*.

5.3. Section 16(6) of the 1964 Act provides that a *“harbour empowerment order may include all such provisions as appear to the Minister of the Crown by whom it is made to be requisite or expedient for giving full effect to any provision included in the order by virtue of the foregoing provisions of this section and any supplementary, consequential or incidental provisions appearing to him to be requisite or expedient for the purposes of, or in connection with, the order.”*

5.4. The application for the HEO under section 16 of the 1964 Act meets the conditions set out

in that section. In particular, the application meets the requirements of section 16(5) of the 1964 Act because the making of the HEO is desirable in the interests of facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships.

## 6. PRE-APPLICATION CONSULTATION

- 6.1 Prior to submission of the HEO application, the Council has carried out extensive pre-application consultation over a number of years. The most recent pre-application public consultation took place between the 17<sup>th</sup> July and 16<sup>th</sup> August 2019.
- 6.2 The consultation was a single combined consultation with the proposed HRO. The draft HEO itself was not circulated as part of the consultation process (as it had not been drafted pending confirmation of the application process). However, throughout the consultation it has been clear that it is proposed that the Portwrinkle, Portscatho and Portreath harbours would become statutory harbours governed under the same provisions as the seven other statutory harbours. Apart from a concern raised in relation to the chain ferry operating in the Port of Truro (which is not relevant to the HEO) all of the consultation responses received were supportive of the proposal and no objections were raised.

## 7. NEED AND JUSTIFICATION FOR HEO

### A. GENERAL

- 7.1 Preparation for the proposed HEO (and the HRO) has been in progress since 2014, following the commissioning of a report by the Council from Fisher Associates, called a 'Review of Local Authority Ports and Harbours in Cornwall' (October 2014) ('**the Fisher Report**'). A copy of the report and the related 'Sustainable Strategy for Ports and Harbours in Local Authority Ownership' have also been provided to the MMO and are published on <https://www.gov.uk/government/collections/harbour-orders-public-register> with this Statement of Support. The report identified the benefits of managing the harbours collectively including the harbours benefiting from economies of scale (savings in the region of 21% were identified), access to a reinvestment pot (reserve fund) suited to lumpy and occasional harbour capital needs and access to higher level management expertise than individual harbours would be able to obtain on their own. This is particularly true of the harbours of Portwrinkle, Portreath and Portscatho which, due to their size and annual turnover, as individual entities would not be able to individually employ an experienced harbour master (or a person with a similar level of expertise).
- 7.2 In addition, the Fisher Report recommended obtaining a harbour order to provide for full ring fencing of harbour funds (providing strong safeguards for the future of the harbours) and modernised statutory harbour powers, including governance arrangements. The HEO and its provisions, which also mean that the provisions of the proposed HRO will apply to the three harbours, will ensure that the revenue from these three harbours is also fully ringfenced. Therefore, ensuring that it will only be used for the benefit of the harbours and provide the three harbours with access to the central reserve fund established under the HRO. This strongly supports the future efficient and economic maintenance and management of the three harbours and their ongoing use by the seagoing ships in connection with commercial fishing, and recreational use. Some of the benefits of surplus funds being ring fenced for the benefit of the undertaking are highlighted in paragraph 4.19 of the Department for Transport's Ports Good Governance Guidance (March 2018).



- 7.3 The provisions of the HRO that are applied to the harbours of Portscatho, Portwrinkle and Portreath, under article 5 of the HEO, apply a modern set of statutory harbour powers to the three harbours which will enable the three harbours to be maintained and managed in an economic and efficient manner. Thereby facilitating the recreational use of seagoing ships and the efficient and economic transport of goods or passengers by sea (in particular fish).
- 7.4 Providing clear harbour limits for each harbour will also significantly assist the efficient management of the harbours from an operational perspective.
- 7.5 The modern powers that will apply to the three harbours (through the amendments made to the proposed HRO under article 5 of the HEO) include powers reflective of those contained in modern HROs. Other HROs which contain some similar provisions include the Weymouth Harbour Revision Order 2021, the Fowey Harbour Revision Order 2021, the Dart Harbour and Navigation Authority Harbour Revision Order 2021, the Portland Harbour Revision Order 1997, the Poole Harbour Revision Order 2012, the Cowes Harbour Revision Order 2012 and the Dover Harbour Revision Order 2014. They include common types of statutory harbour powers, such as the power to borrow, powers to dispose of and develop land, powers associated with charges (including deposits and liens associated with charges) and miscellaneous powers including powers of general direction, a power to dredge, powers related to the removal of wrecks and other obstructions and various powers related to commercial activities.
- 7.6 An explanation of, and the need for, each substantive article in the HEO 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.
- 7.7 Articles 1 and 2 in each respective order are not dealt with below since they are ancillary to the substantive provisions of the HEO.

## **B. ARTICLE 3: PRELIMINARY**

### **7.8. Article 3 of the HEO – Incorporation of the Harbour Docks and Piers Clauses Act 1847**

- 7.8.1. This article incorporates the said Act except in relation to the sections listed as being excepted. Those sections included predominantly relate to:
- a) Interpretation (sections 1-5).
  - b) Rates (sections 27, 29 – 30, 32 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) Power to erect lighthouses and lay down buoys, with the consent of Trinity House (section 77)
  - h) Lighthouses, beacons and buoys (section 78).
  - i) Harbour and dock police (sections 79 – 80).
  - j) Meters and weighers (sections 81 – 82).
  - k) Byelaws (section 83).
  - l) Recovery of damages and penalties (sections 94 – 95).
  - m) Access to special Act (sections 97 – 98).
  - n) Saving of rights (sections 99, 100, 102 and 103).

- 7.8.2 Importantly, for the three harbours, section 31 of the Harbours Docks and Piers Clauses Act 1847 (**‘the 1847 Act’**) is incorporated under article 3. Section 31 of the 1847 Act requires



that a harbour to which it applies is open for the shipping and unshipping of goods and passengers on payment of rates. This duty, known as the 'Open Port Duty', underpins the operation of nearly all statutory harbour authorities. Its application to the three harbours will safeguard and facilitate a future statutory right for harbour stakeholders to use the three harbours. In particular, although the harbours are small, commercial fishing vessels use all three harbours and Portscatho is a Fishery Harbour under the Sea Fish Act 1951. Once the harbours are statutory, the Council as the statutory harbour authority will be under a common law duty to maintain them sufficiently to ensure that the Open Port Duty is complied with and that they can be navigated safely.

## **C. ARTICLES 4 – 5: HARBOURS JURISDICTION AND AMENDMENT OF THE HARBOUR REVISION ORDER**

### **7.9. Article 4 of the HEO and Schedule 1 – Harbours Jurisdiction**

7.9.1. Article 4 provides that the Council shall exercise jurisdiction as a harbour authority, and the powers of the harbour master shall be exercisable within the harbour limits. The harbour limits for each of the statutory harbours are described in Schedule 1. Once the HEO is granted, the Council will be able to exercise its enforcement powers as an SHA (as contained in the HRO) over all of the land included within the harbour limits.

7.9.2. In the case of each harbour, the harbour limits reflect the same area of land that the Council currently considers forms part of each harbour for management purposes. However, providing clear statutory limits for each harbour will also significantly assist the efficient and economical management of the harbours from an operational and financial perspective.

### **7.10. Article 5 of the HEO – Amendment of the HRO**

7.10.1. This article amends the proposed Cornwall Harbours Harbour Revision Order 20[ ] ('the HRO') to add the three harbours to the definition of "harbours" contained in article 2(1) of the HRO and to add their harbour limits to Schedule 1 of the HRO. It also adds the HEO to the list of Orders contained in Schedule 5 of the HRO. The effect of these amendments is that the provisions of the HRO will apply to the three harbours in addition to Cornwall Council's seven other statutory harbours (Bude, St Ives, Penryn, Penzance, Prince of Wales Pier (Falmouth), Newquay and Truro). The only amendment to how the provisions of the HRO apply is that article 50 of the HRO will not have the effect of meaning that the dredging exemption contained in section 75 of the Marine and Coastal Access Act 2009 will apply to Portreath, Portwrinkle or Portscatho Harbour. As such the Council will need to obtain a dredging licence from the MMO prior to dredging in these harbours (unless exempt under the Marine Licensing (Exempted Activities) Order 2011 (as amended)).

7.10.2. By applying the provisions of the HRO to the three harbours, article 5 and the Harbour Empowerment Order which will enable the three harbours to be maintained and managed in an economic and efficient manner through the modern statutory provisions contained in the HRO. Thereby facilitating the recreational use of seagoing ships and the efficient and economic transport of goods or passengers by sea (in particular fish).

7.10.3. The following provisions of the HRO (applied by article 5 of the Harbour Empowerment Order and therefore explained in this Statement of Support will be particularly beneficial to the three harbours:

a) Article 5 HRO: Article 5 of the HRO clearly sets out the Council's functions in respect

of the harbours and authorises the Council to improve maintain, regulate, manage, mark and light the harbours and provide harbour facilities; carry out various activities related to works, structures and equipment at the harbours (including the harbour premises) and do all other things which in its opinion are expedient to facilitate the proper operation, improvement or development of the harbours undertaking.

The definition of harbour facilities highlights the importance of the fishing, leisure, recreational and tourism industries to the future viability of the harbours.

- b) Articles 6 to 12 and Schedule 2 of the HRO: These articles constitute the Cornwall Harbours Board and broadly reflect the current practices of the Council in respect to its well-regarded and established Harbours Board, with amendments to the current practices where required to reflect government guidance. They deal with establishment of the board, composition, terms of office, casual vacancies, disqualification and meetings. The role of the Board will be set out in a Memorandum of Understanding between the Board and the Council. The Memorandum will be approved and signed once the new Board has been constituted. As stated in the HRO statement of support, the governance arrangements set out in these articles comply with the Ports Good Governance Guidance.

Since 2015 the three harbours of Portwrinkle, Portreath and Portscatho have been under the management of the Cornwall Harbours Board. However, including them as statutory harbours governed by the same statutory regime as the other seven current statutory harbours will enable their efficient and economic management.

- c) Article 13 of the HRO – Advisory bodies: Article 13 of the HRO covers the establishment of an external advisory body with an independent chairperson. Importantly it also requires the Council to consult the advisory group on all matters substantially affecting the management, maintenance, improvement, conservation, protection or regulation of the harbours and their navigation. This is desirable in respect of the harbours of Portreath, Portwrinkle and Portscatho as the representatives of stakeholders of those harbours in the advisory body(ies) will have a safeguarded statutory right to be consulted.

- d) Articles 14 to 18 – Finances: The Fisher Report and resulting Sustainable Strategy identified the benefits of the revenue of the harbours being fully ringfenced and the holding of surpluses in a central reserve fund that each harbour could call upon when needed. The report identified that this system would be suitable to the 'lumpy and occasional capital needs' of ports and harbours. This recommendation is implemented through articles 14 to 18 of the HRO, which fully ringfence the revenue of the harbours (article 14) and establish a single central general reserve fund for the harbours (article 17). The Ports Good Governance Guidance (March 2018) also highlights the benefits of the ringfencing harbour funds in paragraph 4.19.

As set out in paragraphs 3.4, 3.8 and 3.12 above, each of the three harbours currently operates at a small deficit year to year. However, the management of the harbours as part of the overall group of statutory harbours is more efficient and economic than their ongoing management as separate entities.

- e) Articles 19 to 26 – Harbour Regulation: These articles provide for a range of works powers including article 19 (aids to navigation) which is an important and useful power in terms of any necessary maintaining of navigation aids at each of the three harbours. Repair of landing places (article 20) is important in assisting the Council in meeting its duties with regard to navigational safety and the safety of harbour

users.

Articles 21-26 contain further powers related to licensing of works and dredging within the Harbour (including offences, licensing and appeals). These articles provide the Council with modern powers regarding works and dredging carried out by third parties within the harbour limits. The provisions include requirements to obtain a licence from the Council prior to the undertaking of any works or dredging within the harbours. The provisions are important to enable the Council to ensure navigational safety and therefore facilitate the use of the harbours by seagoing ships (including recreational use).

- f) Articles 27 to 38: These provisions provide a useful range of powers which will facilitate the future efficient and economic maintenance and management of the three harbours and their ongoing use by the seagoing ships in connection with commercial fishing and recreational use. In particular, Articles 27 and 28 (parking places and related facilities and removal of vessels / vehicles) will assist with the control of vehicles and vessels at the harbours within the clearly defined harbour limits, which will assist with maintaining safe access for people to the ships within the harbours and for those craft navigating it.

Articles 29 to 38 are also very important to the management of all three harbours. They provide powers in relation to byelaws, special directions and general directions. The Council (in its general capacity) does have limited byelaw making powers which can partially assist with management of the harbours. However, as the three harbours are not statutory harbours yet, it does not have powers of special direction and therefore cannot provide special directions to vessels using the harbours. Such directions can be given orally or in writing in immediate response to specific circumstances arising. Designation with powers of special direction in respect of each of the three harbours, would significantly assist the Council in its compliance with the Port Marine Safety Code ('PMSC') and in ensuring safety of navigation within the harbours.

In addition, its designation with powers of General Direction in respect of the three harbours would provide a more efficient and economic process for introducing new enforcement powers (following risk assessment) than making byelaws. Additionally, because General Directions can be exercised in an emergency, it will also provide better assistance to the Council in complying with the PMSC than byelaw making powers. It would also enable the three harbours to be governed by similar provisions to the seven other statutory harbours which will lead to further efficiencies for the harbours board in management of the harbours. It will also benefit the stakeholders of all ten of the harbours as (so far as is appropriate following risk assessment of each harbour), a standard set of enforcement provisions can be brought into force at all ten harbours (following the statutory consultation process), significantly simplifying and standardising the position across all of the harbours.

Articles 39 to 49 – Charges: The articles contained within Part 5 of the HRO (Charges) set out a modern set of statutory harbour powers relating to charges conducive to the improvement, maintenance or management of the harbours in an efficient and economical manner, thereby facilitating their use by sea going ships. They are also important in the context of the Open Port Duty. In order to ensure that each harbour strives for the viability, article 41 (setting of charges) requires that the Council's rationale behind the setting of charges must be underpinned by regard for overall viability of the harbours as a whole, but also imposes a corresponding duty on the Council to try and raise sufficient revenue at each harbour to meet its outgoings, therefore ensuring that in respect of each individual harbour there is also

a duty to ensure (so far as reasonably practicable) viability.

- g) Articles 50 to 67: Miscellaneous and General: These articles contain a range of modern powers, all of which are important for the efficient and economic management of statutory harbours. They include articles 50 to 52 related to the provision, maintenance and licensing of moorings (the Council already grants licences in respect of the laying of new moorings within Portscatho and Portwrinkle harbours as an important part of its management of them) and article 54 (powers to grant tenancies and dispose of land), article 55 (power to appropriate lands and works for particular uses), article 56 (other commercial activities), article 57 (power to delegate functions), article 58 (bunkering) and article 62 (boarding of vessels). In addition, article 59 (power with respect to disposal of wrecks), article 60 (power to deal with unserviceable vessels) and article 61 (removal of obstructions other than vessels) are particularly important in facilitating the use of the three harbours by seagoing ships. These powers (which the Council does not currently hold in respect of the three harbours) would significantly assist in ensuring that seagoing ships are able to access the harbours and that obstructions interfering with navigation of the harbour can be removed. As stated above, article 50 (dredging) as amended by the Harbour Empowerment Order will not have the effect of applying the dredging exemption in section 75 of the Marine and Coastal Access Act 2009 to the three harbours. Limited dredging currently takes place at Portwrinkle harbour under a marine licence (current licence L/2018/00468/1). It is proposed that this will continue after determination of the Harbour Empowerment Order.

## **D. ARTICLES 6 - 7: MISCELLANEOUS**

### **7.11. Article 6 of the Order – Crown rights**

7.11.1. This article provides the standard saving provision for Crown Rights.

### **7.12. Article 7 of the Order – Saving for Trinity House**

7.12.1. This article provides the standard saving provision for the rights of Trinity House.

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

8.1. The three harbours are situated within the South West Marine Plan inshore area. The South West Inshore and South West Offshore Marine is considered in this Statement of Support in addition to the UK Marine Policy Statement.

8.2. The proposed HEO is a non-works HEO (i.e. it does not authorise a plan or project). Its provisions make the Council the statutory harbour authority for the three harbours and apply a set of modern statutory powers to them through the HRO, facilitating the efficient and economic transport of goods or passengers by sea and the interests of the recreational use of sea-going ships, securing the long term maintenance of the harbours. The application of modern enforcement provisions and clear harbour limits supports their management. The other provisions of the proposed HRO are predominantly administrative (updating the constitutional provisions, payment of charges, licensing etc). As such, it is expected that the effects of the proposed HEO on the South West Inshore Marine Plan area will be very limited and that any effects will be positive as the proposed HEO supports the economic and efficient management of the harbours (including with respect to environmental considerations) and therefore facilitates the efficient and economic transport of goods or passengers by sea and the interests of the recreational use of sea-going ships. A brief summary of compliance is

nevertheless set out below.

### 8.3. Compliance with UK Marine Policy Statement

8.3.1. 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 HEO is to make the Council the statutory harbour authority for the three harbours and to apply modern statutory provisions to them. This will support the Council in compliance with the Port Marine Safety Code and protecting the environment. Both of which will support the vision of ensuring that the marine environment in and around the harbours is kept '*clean, healthy, safe, productive and biologically diverse.*' The provisions of the proposed HEO also support the following high level objective 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.

### 8.4. Compliance with the South West Inshore and South West Offshore Marine Plan

8.4.1. The South West Inshore and South West Offshore Marine Plan ('SW Marine Plan') is a material consideration. The proposed HEO 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.

8.4.2. In addition, the proposed HEO 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 realising economic and social benefits for the south west marine plan areas and the UK. SW-PS-1 makes sure that 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.*"

8.2.1. We are not aware of any marine planning policies that the proposed HEO does not accord with.

## 9. CONCLUSION

9.1. Section 16(5) of the 1964 Act provides that the Minister / Secretary of State shall not make a harbour empowerment order unless:

*“the making thereof is desirable in the interests of facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships”.*

9.2. Section 16(6) of the 1964 Act provides that a *“harbour empowerment order may include all such provisions as appear to the Minister of the Crown by whom it is made to be requisite or expedient for giving full effect to any provision included in the order by virtue of the foregoing provisions of this section and any supplementary, consequential or incidental provisions appearing to him to be requisite or expedient for the purposes of, or in connection with, the order.”*

9.3. This application for the HEO under section 16 of the 1964 Act meets the conditions set out in that section. In particular, the application meets the requirements of section 16(5) of the 1964 Act because the making of the HEO is desirable in the interests of facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships at the harbours.

Dated 16 September 2020 (updated August 2021)

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Solicitors on behalf of Cornwall Council.

## **Annex 1: Asset Register for the harbours**

### **Portreath**

Portreath Harbour including:

Inner and Outer Harbour  
Turning Area  
Finger Pier Eastern Breakwater  
Huts (2)  
Wave Breaker  
HMCG Building  
Portreath Harbour Association Building & Ice Room  
Open area adjacent to Finger Pier  
Mooring Chains

### **Portwrinkle**

Portwrinkle Harbour including:

Landing Stage  
The Quay  
Dinghy Racks and Storage Areas  
Slipway  
Kayak Rack

### **Portscatho**

Portscatho Harbour including:

Breakwater and Landing Stage  
The Porth and Shelter  
The Lugger Slipway  
Fishermen's Shelter and Winch House  
Telephone Box  
Slipway (Harbour Court)  
Shelter  
Navigation Mark and Signage  
Mooring Chains



PROPOSED PORTREATH, PORTSCATHO AND  
PORTWRINKLE HARBOUR EMPOWERMENT  
ORDER 20[X]

STATEMENT IN SUPPORT OF APPLICATION

FOR ORDER BY:

CORNWALL COUNCIL

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