



James O'Connor
Eversheds Sutherland
By email only

Our reference:
HRO/2021/00006

27 June 2022

Dear Mr O'Connor,

The Harbours Act 1964
The Dover Harbour Revision Order 2022

1. The Marine Management Organisation (“the MMO”) informs you that consideration has been given to the application for The Dover Harbour Revision Order 2022 (“the Order”) for which you applied on behalf of Dover Harbour Board (“the applicant”), under Section 14 of the Harbours Act 1964 (“the Act”) on 20 October 2021.

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 construction of a wave wall within the Port of Dover (“the Port”). The wave wall will protect a marina which was authorised under the Dover Harbour Revision Order 2012 and as part of the Dover Western Docks Revival (“DWDR”) project.
4. The MMO determined that the Order would authorise a project. In accordance with Schedule 3 to the Act, the MMO concluded that the project did not require an Environmental Impact Assessment (“EIA”) due to the size and nature of works. The MMO issued a Screening Opinion on 12 October 2021 which concluded that the project was screened out of EIA as the piling works would take around four weeks to complete, that the applicant as the local navigation authority would be able to reduce navigational risk through their powers to manage and restrict vessel access and that potential noise impacts would be of a short duration and mitigated through the use of vibro-piling.

Context

5. The applicant is the statutory harbour authority for the Port and operates under the Dover Harbour Acts and Orders 1954 to 2022.



INVESTORS
IN PEOPLE

Bronze



6. The applicant is responsible for the maintenance, management, and improvement of the Port.
7. The Port is situated in South Kent in the southeast of England. The Port is a key gateway to and from the European mainland. In addition to freight and passenger traffic handled by the Port's ferry, cruise and cargo businesses, the Port also provides facilities for resident and visiting recreational craft and for small commercial vessels in three existing marinas with a combined capacity of 400 berths. Due to its location, Dover is one of the first ports of call for recreational vessels arriving from Europe and one of the last ports for vessels transiting to Europe. The marina also provides a base for the RNLI's offshore lifeboat which covers the adjacent section of the English Channel.
8. Following completion of the construction of the marina as part of the DWDR Scheme, it was identified that wave heights within the new marina under south westerly storm conditions, in combination with high water, were leading to unacceptable movement of the floating pontoons within the new marina. This movement causes serious safety concerns, and the new marina cannot open until the problem is rectified. The wave wall authorised by this Order is proposed to address the safety concerns.
9. The Order is sought to achieve various objects specified in Schedule 2 to the Act, these are listed in Annex II.

Application procedure

10. On 20 October 2021 an application for the Order was submitted to the MMO by Eversheds Sutherland on behalf of the applicant.
11. Notice of the application for the Order was advertised in the London Gazette on 9 December 2021 and in the Dover Express on 9 and 16 December 2021.
12. MMO consulted the following bodies, their responses are summarised below:

Organisation	Response received and actions
Department for Transport ("DfT")	DfT advised they had no comments on the proposal.
Maritime and Coastguard Agency ("MCA")	MCA advised that they had no concerns and supported the proposal, on the understanding that the proposals are carried out in accordance with the Port Marine Safety Code and its Guide to Good Practice. The comments were passed to the applicant, however, compliance with the Code and its Guide to Good Practice during the day-to-day operation of the harbour is not relevant to the Order.
Trinity House ("TH")	TH notes and supports the saving provision for TH and has no objections to the Order.
Kent County Council ("KCC")	No response was received from KCC.
Royal Yachting Association ("RYA")	No response was received from RYA.
UK Major Ports Group ("UKMPG")	No response was received from the UKMPG.

Chamber of Shipping (“CoS”)	The CoS responded that they had no comments on the application.
Natural England (“NE”)	<p>NE responded that with regard to designated sites, if works are carried out in accordance with the application details, it can be considered that the application will not have a significant effect on any SAC, SPA or Ramsar site, either individually or in combination with other plans or projects.</p> <p>NE recommended that no working is undertaken between November and May to limit noise disturbance to migratory salmon, as they considered that piling could impact the species.</p> <p>The applicant responded to NE’s concerns by providing clarification on the potential noise impacts of the works and suggesting that timing restrictions were not needed.</p> <p>Following the applicant’s further clarification, NE had no further comments . Timing restrictions were not considered necessary for these works given the piling technique to be adopted.</p>
Kent and Essex Inshore Fisheries and Conservation Authority (“K&EIFCA”)	No response was received from K&EIFCA
The Crown Estate (“TCE”)	TCE stated that landowner’s consent was required and that they were already in contact with the applicant about this. Subject to landowner’s consent being granted, TCE had no objection to the proposal.
Centre for Environment, Fisheries and Aquaculture Science (“Cefas”)	<p>Cefas requested clarification regarding the noise impacts of the piling, and potential changes to sedimentation and scour. They also suggested consideration was given to mitigation to protect migratory fish.</p> <p>The applicant provided further clarification. Cefas confirmed they were satisfied that sedimentation and scour would not be a major issue and were satisfied with the applicant’s noise clarifications but requested that only one pile is driven at any time. Cefas agreed with the restricted working hours and soft start piling mitigation measures proposed by the applicant.</p>

Public Representations

13. Two representations were received within the statutory 42 day period provided for in Schedule 3 to the Act. No objections were received.
14. The first representation requested clarifications regarding the plans for the application, the hydrodynamic modelling undertaken for the application and details of any beach nourishment proposals.

15. The second representation made comments about previous developments in Dover impacting on recreational activities and indicated that they considered that the proposed development was unlikely to resolve existing swell issues within Dover.
16. Following the expiry of the consultation period for objections set out in the Act, the applicant engaged with the members of the public who provided the representations.
17. Following the applicant's engagement, the first public respondent confirmed they were satisfied with the applicant's clarifications. The second public respondent did not provide any further response.

MMO Consideration

18. The MMO has considered the application in relation to the South East Inshore Marine Plan and is content that the application is in accordance with that marine plan.
19. The MMO has considered the application in relation to the National Policy Statement for Ports, in particular the importance of ports for recreation and tourism. The MMO concludes that the proposed wave wall will provide the necessary infrastructure to allow the newly created marina to function at optimum capacity and to provide enhanced facilities for recreational vessels.
20. Paragraph 19 of Schedule 3 to 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.
21. 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. The Order contains provision for maintenance and construction as part of the harbour development to enable the authority to manage the Port to exercise their statutory functions.
22. 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.
23. 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.

Consideration of Designated Sites and the environment

24. It has been determined that the project, either alone or in combination with any other plans or projects, is not likely to have a significant effect on any sites in the National Site Network or any other Marine Protected Area or hinder the conservation objectives of such designated sites.
25. The MMO has considered the application and supporting information in relation to any impacts to the environment and biodiversity. The following sites were identified for consideration:
 - a. Dover to Kingsdown Cliffs Special Area of Conservation (SAC)
 - b. Dover to Kingsdown Cliffs Site of Special Scientific Interest (SSSI)
 - c. Dover to Folkestone Marine Conservation Zone (MCZ)
 - d. Dover to Deal (MCZ)
26. The Dover to Kingsdown Cliffs SAC and SSSI sites are approximately 1.4km from the proposed works site and are notified for geological features. MMO carried out a Habitats Regulations Assessment (HRA) and concluded that due to the nature of the works, no pathways were identified that were considered to have the potential to lead to any impact on the SAC/SSSI sites. Natural England did not have any concerns about impacts to these sites. The MMO's HRA is available on the MMO's public register.
27. The Dover to Folkestone MCZ is ca. 0.8km from the proposed works site. MMO carried out a MCZ screening exercise and concluded that the works are not likely to hinder the conservation objectives of the MCZ. Natural England also concluded that the works were not likely to hinder the conservation objectives of the MCZ. The screening report is available on MMO's public register.
28. The Dover to Deal MCZ is ca. 2km from the proposed works site. MMO carried out a MCZ screening exercise and concluded that the works are not likely to hinder the conservation objectives of the MCZ. Natural England also concluded that the works were not likely to hinder the conservation objectives of the MCZ. The screening report is available on MMO's public register.
29. The MMO has considered the application and supporting information in relation to impacts on migratory fish including Atlantic salmon (*Salmo salar*), sea trout (*Salmo trutta*) and European eel (*Anguilla anguilla*). Following consultation with Cefas and Natural England, the MMO concluded that it was not likely there would be adverse impacts on migratory fish species.

MMO 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 were no objections to the application of the Order and that the applicant responded to all representations submitted.

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 is desirable for the purposes of section 14(2)(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.
34. An application for a marine licence was also submitted to MMO on 19 October 2021 as the works are licensable activities under the Marine and Coastal Access Act 2009.

Challenges to decisions

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

Yours Sincerely



David Morris
Marine Licensing Case Officer

D +44 (0)208 026 5175

E david.morris@marinemanagement.org.uk

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

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.

7B. Extinguishing public rights of navigation for the purposes of works described in the order or works ancillary to such works or permitting interference with the enjoyment of such rights for the purposes of such works carried out by a person authorised by the authority to carry them out.

16. Extending the time within which anything is required or authorised by a statutory provision of local application affecting the harbour to be done in relation to the harbour by the authority or fixing a time within which anything authorised by the order to be so done must be done.

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.