



Lara Moore
Ashfords LLP
(By email only)

Our reference:
HRO/2019/00008

19 June 2023

Dear Ms Lara Moore,

The Harbours Act 1964
The Cornwall Harbours Harbour Revision Order 2023

1. The Marine Management Organisation (“the MMO”) informs you that consideration has been given to the application for the Cornwall Harbours Harbour Order (“the Order”) for which you applied on behalf of Cornwall Council (“the applicant”), under Section 14 of the Harbours Act 1964 (“the Act”) on 8 October 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 would consolidate and modernise existing local statutory harbour legislation in respect of the harbours of Bude, Newquay, Penryn, Penzance, Prince of Wales Pier (Falmouth), St Ives and Truro (“the seven harbours”). The Order confers further modernised powers considered conducive to the efficient and economical operation, maintenance, management and improvement of the seven harbours. The Order defines the harbour limits for each harbour. The Order sets out the funding arrangements for all seven harbours.

Context

4. Cornwall Council is the statutory harbour authority (“SHA”) for all the seven harbours. The applicant is responsible for the maintenance, management and improvement of each of the harbours.
5. The seven harbours are located on the Cornish coast. The main activities for each harbour are shown on the table below:

Harbour	Main activities
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INVESTORS
IN PEOPLE

Bronze



Bude	Leisure, fishing, boat hire and kayak use
Newquay	Leisure and fishing
Port of Penryn	Leisure based with limited use by commercial fisherman and some use by marine civil engineering craft, which may include diving
Penzance	Fishing, limited commercial activity (including a dry dock) and a ferry operating a link to the Isles of Scilly
Prince of Wales Pier in Falmouth	Tourism visits
St Ives	Fishing, leisure, and boat trips
Port of Truro	Fishing, commercial coaster activity, and leisure boating. The King Harry Ferry (a vehicular chain ferry) also operates within the Port of Truro between Feock (Truro side) and Philleigh (St Mawes side)

6. The Order constitutes the Cornwall Harbours Board and sets out how the members of the Board are to be appointed, their terms of office, the procedure for meetings, the voting rights of members, the remuneration and the re-appointment or removal of members.
7. The Order establishes the powers of the applicant for the making of general directions, byelaws, regulation of moorings, and bunkering.
8. The Order allows the applicant to develop or dispose of harbour land and to grant tenancies.
9. The Order establishes a general reserve fund and requires all surplus harbour revenue to be applied to the general improvement of all the seven harbours.
10. The Order seeks to clarify the harbour limits, including the harbour premises within those limits.
11. The Order disapplies the "Open Port Duty" (section 33 of the Harbours Docks and Piers Clauses Act 1847 in respect of Prince of Wales Pier (Falmouth)). The Open Port Duty is disapplied because the Pier is of limited size and the Council only has jurisdiction as a harbour authority for 50 yards seaward of the Pier. It is also to ensure that only vessels which are operating in accordance with the applicant's regulations will be permitted to use the Pier.
12. The Order establishes a separate reserve fund for the Port of Truro and Port of Penryn with respect to their existing reserves. These reserve funds will not be topped up and future surpluses from these Ports will be placed into the general reserve fund.
13. 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

14. On 8 October 2019 an application for the Order was submitted to the MMO by Ashford's LLP on behalf of the applicant.
15. Notice of the application for the Order was advertised in the London Gazette on 7 September 2021 and in the Western Morning News on 6 and 13 September 2021.
16. MMO consulted the following bodies, their responses are summarised below:

Organisation	Response received and actions
British Ports Association	The BPA supports the application.
Chamber of Shipping	No response was received.
Cornwall Council	No response was received.
Department for Transport ("DfT")	DfT advised that applicants who are refused a dredging licence by the Board can appeal to the Secretary of State (SoS) and that there will be no significant changes to the Cornwall Harbours Board Memorandum of Understanding (MoU) without consultation with DfT.
Duchy of Cornwall	No response was received.
Health and Safety Executive	No response was received.
Maritime and Coastguard Agency ("MCA")	<p>The MCA objected to the use of general directions for non-marine related enforcement in a SHA's jurisdiction.</p> <p>The use of general directions for non-marine related enforcement had previously been agreed by DfT and had been included in previous Harbour Orders.</p> <p>Following discussions with DfT and the MCA, policy intent was clarified, and a policy note was issued by DfT in August 2022 setting out the government's position, confirming that general directions can be used for non-marine related enforcement in a SHA's jurisdiction, providing that the MMO is satisfied that the applicant has fully justified the use.</p> <p>The MMO was satisfied with the justification provided by the applicant to use general directions for non-marine enforcement.</p>
Royal Yachting Association ("RYA")	RYA objected to the Order, raising concerns about the use of the term 'personal watercraft' in the draft Order, incorporation of provisions of the 1847 Act, establishment of a board and compositions of the board, removal of vehicles and vessels, special directions, powers to appropriate lands, power to deal with unserviceable vessels, purposes for which byelaws may be made and general observations about the draft Order.

	<p>Following proposed amendments to the draft Order, the RYA initially withdrew their objection.</p> <p>However, further engagement took place with the RYA about the proposed amendments, as the MMO did not consider that the insertion of a defence in article 35(3) of the Order was necessary or appropriate. The RYA no longer consider their objection as withdrawn.</p> <p>Further details concerning the RYA objection are in the 'MMO consideration' section of this letter.</p>
Trinity House ("TH")	TH supports the inclusion of the standard saving provision for Trinity House in Part 6 Article 65 of the draft Order
UK Major Ports Group	No response was received.

Public representations

17. Two representations were received on 24 September 2021 and 15 October 2021 within the statutory 42-day period provided for in Schedule 3 to the Act.
18. The representation of 24 September 2021 was in support of the proposed Order.
19. The objection of 15 October 2021 to the proposed Order was based on the potential impact on the King Harry Ferry. Following discussions between the objector and the applicant, the objection was subsequently withdrawn.

MMO consideration

20. Following the MMO's review of the draft Order amendments were made by the applicant to rectify minor errors in the coordinates of the limits of the harbours in Schedule 1. The applicant also updated the coordinates in the plans and the colours in the plans to clarify the harbour limits.
21. Minor amendments were made to the provisions in the Order to be consistent with the wording in more recently laid Orders.
22. As outlined in the 'application procedure' section of this letter, the RYA raised an objection to the proposed order in its consultation response of 5 October 2021. As part of the objection, the RYA requested the inclusion of a defence of "reasonable excuse" to be inserted into Article 35(3) (Failure to comply with directions) ("the additional defence") as a defence for failure to comply with a direction under Article 34 (Special directions).
23. In accordance with due process, it is for the applicant to work with an objector to resolve objections to a proposed order. Following discussions with the RYA, the applicant wrote to advise the MMO that they had amended the proposed order to include the additional defence.

24. In conducting a review of the proposed Order and the inclusion of the additional defence, the MMO requested further justification from the applicant to support its inclusion. The applicant set out the basis for the inclusion of the additional defence in an email dated 26 March 2023, however the MMO considered that it did not provide sufficient legal justification and were unable to conclude that the inclusion was either necessary or appropriate.
25. The MMO engaged directly with the RYA's legal agent in a letter dated 27 April 2023 setting out the MMO's proposed course of action, in that the MMO was minded to reject the insertion of the additional defence and further to exercise its discretion not cause an inquiry or a hearing to be held in relation to this issue, in accordance with paragraph 18 of Schedule 3 of the Harbours Act 1964. The letter afforded the RYA an opportunity to respond. A response was received 25 May 2023, providing further justification for the inclusion.
26. Having considered the points raised in the RYA's letter of 25 May 2023, the MMO was not persuaded to depart from its minded to decision and advised the RYA in a letter of 5 June 2023 that it intended to make the proposed Order without the inclusion of the additional defence. The letter contained full details of the basis for the decision and was also copied to the applicant. No response has been received from either party. The RYA's objection in relation to the additional defence is not considered to be withdrawn.
27. The RYA also raised concerns about the definition of personal watercraft in the draft Order as consulted on. DfT undertook a consultation in September 2021 to propose alterations in legislation to bring recreational and personal watercraft within scope of the Merchant Shipping Act 1995 and the Harbours Act 1964, to ensure safe practices. The Merchant Shipping (Watercraft) Order 2023 was laid before Parliament in January 2023 and came into force on 31 March 2023 and defined the meaning of 'watercraft' This ensures that the parts of the Merchant Shipping Act 1995 designed to keep persons on the water safe now apply to powered watercraft and that it would be possible to prosecute those responsible for accidents or incidents involving powered watercraft.
28. The application originally included definitions for jet bike and personal watercraft. As the Merchant Shipping (Watercraft) Act 2023 had since come into force, the MMO advised the applicant that the draft Order would need to be amended to use the meaning and definition of watercraft in the most recent legislation, and the definitions of jet bike and personal watercraft would also need to be removed. The applicant made the required amendments, and the RYA agreed that the new definition of "watercraft" satisfied their original concerns. The RYA have confirmed they are now content with the definitions.
29. The MMO has considered the application in relation to the South West Inshore and Offshore Marine Plans and is content that the application is in accordance with those marine plans.
30. 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 harbour to exercise their statutory functions.

31. 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.
32. By virtue of section 14(2)(b) a Harbour Revision Order shall not be made in relation to a harbour unless the MMO is satisfied that the making of the order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner, or of facilitating the efficient and economical transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships

MMO's decision

33. The MMO is satisfied that the Order meets the requirements of section 14(1) and 14(2)(a) of the Act.
34. 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.
35. 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

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

Yours Sincerely



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Annex I

Right to challenge decisions

Right to challenge orders made under sections 14 and 16 of the Harbours Act 1964

Any person who desires to question the making of the Order on the ground that there was no power to make the Order or that a requirement of the Harbours Act 1964 was not complied with in relation to the Order, may within 6 weeks from the date on which the Order becomes operative make an application for that 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

1. Reconstituting the harbour authority by whom the harbour is being improved, maintained or managed or altering their constitution, or establishing, as the harbour authority, in lieu of the existing one, an existing body designated in that behalf or a body constituted for the purpose.

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.

5. Transferring from the authority to another or to the authority from another all or any of the property vested in, as the case may be, the authority or that other and held for the purposes of the harbour and, so far as they relate to the transferred property, all or any of the duties and powers imposed and conferred on, as the case may be, the authority or that other by a statutory provision of local application affecting the harbour.

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.

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

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.