



Lara Moore
Ashfords LLP
(By email only)

Our reference:
HRO/2019/00006

20 June 2023

Dear Ms Lara Moore,

The Harbours Act 1964
The Portreath, Portscatho and Portwrinkle Harbour Empowerment Order 2023

1. The Marine Management Organisation (“the MMO”) informs you that consideration has been given to the application for the Portreath, Portscatho and Portwrinkle Harbour Empowerment Order 2023 (“the Order”) for which you applied on behalf of Cornwall Council (“the applicant”), under Section 16 of the Harbours Act 1964 (“the Act”) on 1 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 make the applicant the statutory harbour authority (“SHA”) for the harbours of Portreath, Portscatho, and Portwrinkle (“the three harbours”). The Order also amends the Cornwall Harbours Harbour Revision Order 2023 (“the HRO”) to include the three harbours, allowing these harbours to be governed under the HRO. The Order defines the harbour limits for each harbour. The Order sets out the funding arrangements for all seven harbours

Context

- 4. The three harbours are currently non-statutory with the Council being responsible for their administration, maintenance and improvement.
- 5. The three harbours are located on the Cornish coast. The main activities for each harbour are shown on the table below:

Harbour	Main activities
Portreath	Commercial fishing and mooring of non-commercial vessels



INVESTORS
IN PEOPLE

Bronze



Portscatho	Fishery Harbour under the Sea Fish Industry Act 1951. Leisure related, mooring of vessels and commercial fishing
Portwrinkle	Commercial fishing and leisure activities

6. The Order amends the Cornwall Harbours Harbour Revision Order 2023 to add the three harbours to the definition of “harbours” contained in article 2(1) of the HRO. The provisions of the HRO will then apply to the three harbours in addition to the applicant’s seven other statutory harbours, Bude, Newquay Penryn, Penzance, Prince of Wales Pier (Falmouth), St Ives and Truro.
7. The HRO consolidates, modernises and extends the powers of the applicant for the three harbours. This includes the making of general directions, byelaws, regulation of moorings, and bunkering.
8. The HRO constitutes the Cornwall Harbours Board and sets out how the members of the Board are to be appointed, their terms of office, the procedures for meetings, the voting rights of members, the remuneration and the re-appointment or removal of members.
9. The HRO allows the applicant to develop or dispose of harbour land and to grant tenancies.
10. The Order seeks to clarify the harbour limits, including the harbour premises within those limits.
11. The Order ensures that the revenue from the three harbours is ring fenced for the maintenance and economic management of the three harbours.
12. The Order provides access for the three harbours to the general reserve fund established by the HRO for the applicant’s seven other statutory harbours.

Application procedure

13. On 1 October 2019 an application for the Order was submitted to the MMO by Ashford’s LLP on behalf of the applicant.
14. Notice of the application for the Order was advertised in the London Gazette on 6 September 2021 and in the Western Morning News on 6 September 2021 and 13 September 2021.
15. MMO consulted the following bodies, their responses are summarised below:

Organisation	Response received and actions
British Ports Association (“BPA”)	The BPA support the application
Chamber of Shipping	No response was received.
Cornwall Council	No response was received.
Department for	DfT advised they had no comments to make.

Transport (“DfT”)	
Duchy of Cornwall	No response was received.
Health and Safety Executive	No response was received.
Maritime and Coastguard Agency (“MCA”)	<p>The MCA had concerns over the use of General Directions for non-marine related enforcement.</p> <p>Following discussions with DfT, policy intent was clarified, and a policy note was issued by DfT in August 2022 setting out the government’s position on General Directions. The policy note supported the enforcement of non-marine related enforcement.</p>
Royal Yachting Association (“RYA”)	<p>The RYA acknowledges the need for the Council to bring Portreath, Portscatho and Portwrinkle harbours within its jurisdiction as a harbour authority and the RYA has no objection to the proposed order in principle.</p> <p>However, the proposed order would take effect by extending the provisions of the HRO to include Portreath, Portscatho and Portwrinkle harbours. The RYA objected to certain provisions in the HRO, therefore their concerns also apply to this Order. The RYA raised concerns about the use of the term ‘personal watercraft’, incorporation of provisions of 1847 Act, establishment and compositions of the Board, removal of vehicles and vessels, special directions, powers to appropriate land, power to deal with unserviceable vessels, purposes for which byelaws may be made and general observations about the draft order.</p> <p>Following proposed amendments by the applicant, the RYA initially withdrew their objection.</p> <p>However, further engagement took place with the RYA concerning 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”)	<p>TH supported the inclusion of the standard saving provision for Trinity House in Part 6 Article 65 of the draft Order.</p> <p>TH stated that the coordinates for Portscatho on the plan and in the Order were incorrect as two points had been duplicated and these were corrected by the applicant.</p>
UK Major Ports Group	No response was received.

Public representations

- No representations were received within the statutory 42-day period provided for in Schedule 3 to the Act.

MMO consideration

17. During the MMO's review of the draft Order, there were some areas which were identified as requiring further clarification and amendments.
18. Amendments were made by the applicant to 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 make the harbour limits clearer.
19. Amendments were made to Article 50 of the HRO to disapply the exemption for dredging in Section 75 of the Marine and Coastal Access 2009. The three harbours would therefore need to apply for a marine licence for dredging from the MMO (unless exempt under the Marine Licensing (Exempted Activities) Order 2011 (as amended)).
20. As outlined in the 'application procedure' section of this letter, the RYA raised an objection to the HRO in its consultation response of 5 October 2021. As part of the objection, they 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).
21. 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 us that they had amended the HRO to include the additional defence.
22. In conducting a review of the HRO 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.
23. 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.
24. 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.
25. The RYA also raised concerns about the definition of personal watercraft in the HRO. 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.

26. The HRO originally included definitions for jet bikes and personal watercraft. As the Merchant Shipping (Watercraft) Act 2023 has since come into force, the MMO advised the applicant that the draft Order 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 definition.
27. 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.
28. The MMO has reviewed the application in relation to the Port Marine Safety Code (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. Section 16 (1) of the Act provides for an Order to be made under this section ("a harbour empowerment order") in relation to the improvement, maintenance or management of a harbour (not being a fishery harbour) as neither the applicant nor any other person has powers or sufficient powers to secure it and must make a written application to the MMO for the making of an Order conferring the applicant all such powers that are required for that object to be achieved.
30. Section 16 (2) of the Act provides for an order to be made under this section for the ("a harbour empowerment order") in relation to the improvement, maintenance or management of a fishery harbour as neither the applicant nor any other person has powers or sufficient powers to secure it and must make a written application to the MMO for the making of an order conferring the applicant all such powers that are required for that object to be achieved.
31. By virtue of Section 16 (3) a harbour empowerment order shall not be made unless the MMO is satisfied that the making of the order 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.

MMO's decision

32. The MMO is satisfied that the Order meets the requirements of section 16 of the Act.
33. 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 16 of the Act and should be made.

34. 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

35. 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.