

MARINE MANAGEMENT ORGANISATION  
HARBOURS ACT 1964 (AS AMENDED)

PROPOSED WEYMOUTH HARBOUR  
REVISION ORDER 201[8]

STATEMENT IN SUPPORT OF APPLICATION

FOR ORDER BY:

WEYMOUTH AND PORTLAND BOROUGH COUNCIL

# Contents

1. INTRODUCTION.....	3
2. WEYMOUTH STATUTORY HARBOUR AUTHORITY .....	4
3. WEYMOUTH HARBOUR .....	4
4. THE PORT MARINE SAFETY CODE .....	5
5. THE HARBOURS ACT 1964.....	5
6. NEED AND JUSTIFICATION FOR HRO.....	6
A. GENERAL .....	7
B. ARTICLE 3: PRELIMINARY .....	7
C. ARTICLES 4 – 6: JURISDICTION, HARBOUR LIMITS AND GENERAL FUNCTIONS.....	7
D. Articles 7– 9: FINANCES .....	9
E. Articles 10 – 19: CHARGES.....	10
F. Articles 20 – 27: GENERAL DIRECTIONS, SPECIAL DIRECTIONS AND BYELAWS .....	12
G. Articles 28 - 47: MISCELLANEOUS AND GENERAL POWERS.....	13
7. CONCLUSION .....	19

## 1. INTRODUCTION

1.1. This statement relates to the application by Weymouth and Portland Borough Council for the proposed Weymouth Harbour Revision Order 201[8] ("the HRO"). Weymouth and Portland Borough Council is the statutory harbour authority for Weymouth Harbour.

1.2. The application, made in a letter to the Marine Management Organisation ("the MMO") dated 4 May 2018 is accompanied by:

- (a) A copy of the draft HRO;
- (b) Copies of the two plans to be annexed to the HRO;
- (c) This statement; and
- (d) The fee for the application, by BACS, in the sum of £4,000.00; and
- (e) Copies of the following legislation:
  - (i) An act for repairing or taking down and rebuilding the Bridge within the Borough and Town of Weymouth and Melcombe Regis in the County of Dorset 1 Geo IV (30 June 1820) ("1820 Act")
  - (ii) An Act to amend and enlarge the Powers and Provisions of several Acts relating to the Harbour and Bridge of the Borough and Town of Weymouth and Melcombe Regis in the County of Dorset 6 Geo IV. (10 June 1825) ("1825 Act")
  - (iii) The Weymouth Harbour and Melcombe Regis Markets and Piers Act 1854 ("1854 Act")
  - (iv) The Weymouth and Melcombe Regis Markets and Pier (Amendment) Act 1859 ("1859 Act")
  - (v) Weymouth and Melcombe Regis Bridge Act 1879 ("1879 Act")
  - (vi) Weymouth and Melcombe Regis Corporation Act 1887 ("1887 Act")
  - (vii) Weymouth Harbour Order 1893 ("1893 Order")
  - (viii) Weymouth Harbour Order 1898 ("1898 Order")
  - (ix) Weymouth and Melcombe Regis Corporation Act 1914 ("1914 Act")
  - (x) Weymouth and Melcombe Regis Harbour Order 1925 ("1925 Order")
  - (xi) Weymouth and Melcombe Regis Harbour Order 1930 ("1930 Order")
  - (xii) Weymouth and Portland (Pilotage) Harbour Revision Order 1988 ("1988 Order")
  - (xiii) Weymouth and Portland Harbour Revision Order 1993 ("1993 Order")
  - (xiv) Weymouth and Portland Harbour Revision Order 1996 ("1996 Order")

- 1.3. The application is for a harbour revision order to be made under the powers conferred on the Secretary State for Transport by section 14 of the Harbours Act 1964 which are delegated to the MMO by the Harbours Act 1964 (Delegation of Functions) Order 2010 (S.I. 2010/674)).
- 1.4. The HRO would consolidate and modernise existing local statutory harbour legislation (which is particularly fragmented and complex) and confer further modernised powers on the Council considered conducive to the efficient and economical operation, maintenance, management and improvement of Weymouth Harbour. In addition it clearly defines the harbour limits. In particular, the HRO would confer powers on the Council to give general directions to vessels using Weymouth Harbour, together with powers exercisable by the harbour master appointed by the Council to give special directions. These powers are required to support the effective management of the vessels using Weymouth Harbour, as recommended in the Port Marine Safety Code.

## **2. WEYMOUTH STATUTORY HARBOUR AUTHORITY**

- 2.1. Weymouth Harbour ("the Harbour") is classed by the Department for Transport ("DfT") as a municipal port. For ease of reference Weymouth and Portland Borough Council, in the exercise of the SHA function at Weymouth Harbour, is referred to as 'the Council' throughout this Statement of Support. The Council, as the statutory harbour authority is governed by its own local legislation collectively known as the Weymouth Harbour Acts and Orders 1820 to 1996. The Council is responsible for the administration, maintenance and improvement of the Harbour which is more fully described in section 3 below.
- 2.2. The Council is also the Competent Harbour Authority under the Pilotage Act 1987 and is the Local Lighthouse Authority for the Harbour and surrounding area.
- 2.3. Within Weymouth Harbour the Council provides 104 permanent quayside moorings for commercial vessels, 409 additional pontoons across 2 marinas and 51 further moorings. There are approximately 5,100 visiting vessel nights and 20 acts of pilotage per annum. There are a further 275 berths at privately operated marina within the harbour. In addition, Weymouth Harbour is home to 43 registered fishing vessels (circa 1800 tonnes of fish and shellfish are landed annually at Weymouth Harbour with an approximate annual value of £3.8 million) and the UK's largest sea angling charter fleet (25 vessels).
- 2.4. In managing the Harbour, 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. WEYMOUTH HARBOUR**

- 3.1. The Harbour is located at Weymouth and the area of water currently within the jurisdiction of the Harbour Authority includes Weymouth Bay. The Harbour has limited dry 'real estate', which largely consists of the majority of the Peninsula Quay.
- 3.2. The proposed harbour limits under the HRO are set out in the plans annexed to the HRO. This Harbour Limits plan encompasses all of the land, including land covered by water, currently within the harbour limits (as defined by s.8 1887 Act (as amended by Article 3 of the 1993 Order). In addition, the Harbour Premises plan identifies additional areas which

currently form part of the harbour undertaking. Some of these areas (such as the Peninsula Quay (excluding the Pavilion and location of the old ice skating rink and winter gardens) have formed part of the harbour undertaking for many years. The current harbour premises shown on the Harbour Premises Plan also contains some additional land necessary for operational harbour purposes.

## 4. THE PORT MARINE SAFETY CODE

- 4.1. As the harbour authority for Weymouth Harbour the Port Marine Safety Code (November 2016) published by the Department for Transport (“the Code”) applies to the Council as well as to all statutory harbour authorities and other marine facilities, berths and terminals in the UK. 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 should undertake in order to comply with the Code 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 vessels in their harbour waters if they do not have them already”*.

## 5. THE HARBOURS ACT 1964

- 5.1. Section 14 of the Harbours Act 1964 (“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 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 specified in Schedule 2 of the 1964 Act.
- 5.2. Section 14(2)(a) of the 1964 Act requires that written application be made to the MMO by the authority engaged in improving, maintaining or managing the harbour in question and section 14(2)(b) provides that the MMO must be:

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

The matters set out in Schedule 2 to the 1964 Act include, in particular, at 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”.*

And, at 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”.*

- 5.3. Because this is not an application for a harbour revision order which, directly or indirectly, authorises a project (within the meaning of paragraph 1 of Schedule 3 to the 1964 Act), prior notification to the MMO under paragraph 3(a) of Schedule 3 to the 1964 Act is not required.
- 5.4. The application for the HRO under section 14 of the 1964 Act meets the conditions set out in that section. In particular, the application meets the requirements of:
- (a) section 14(1) of the 1964 Act because it is made in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of its statutory powers and duties for the purpose of achieving objects falling within Schedule 2 to the Act.
  - (b) section 14(2) of the 1964 Act because:
    - (i) The application is made upon the written application of a harbour authority engaged in improving, maintaining or managing the harbour; and
    - (ii) The making of the HRO is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner.

## **6. NEED AND JUSTIFICATION FOR HRO**

### **A. GENERAL**

- 6.1 The proposed HRO would consolidate, modernise and extend the powers of the SHA considered conducive to the efficient and economical operation, improvement, maintenance or management of the Harbour. In addition, it would clarify the harbour limits (including harbour premises) and requires that all surplus harbour revenue to be applied to the general improvement of the harbour undertaking. Some of the benefits of surplus funds being ring fenced for the benefit of the harbour undertaking are highlighted in paragraph 4.19 of the Department for Transport's newly published Ports Good Governance Guidance (March 2018).
- 6.2 The clarified harbour limits would be conducive to the efficient management of the harbour. In addition a small amount of additional land necessary for operational harbour purposes would be included.
- 6.3 It is considered that it is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner that the Municipal Port is provided with a set of modern flexible statutory powers contained within the proposed HRO and that the majority of current local statutory harbour legislation is repealed due to the

fact that the relevant provisions are fragmented, complex and in some cases no longer fit for purpose.

6.4 The modernised and additional powers include powers reflective of those contained in modern HROs. Other HROs which contain some similar provisions include 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 standard statutory harbour powers, such as the power to borrow, reserve fund powers, powers to dispose of and develop land, powers associated with charges (including deposits and liens associated with charges) and miscellaneous powers including a power of general direction, a power to dredge, powers related to the removal of wrecks and other obstructions and various powers related to commercial activities.

6.5 An explanation of, and the need for, each substantive article in the HRO 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.

6.6 Articles 1 and 2 are not dealt with below since they are ancillary to the substantive provisions of the HRO.

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

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

6.7.1. This article incorporates the said Act except in relation to the sections listed as being excepted. Those sections included predominantly relate to:

- a) Rates (sections 27, 29 – 30 and 33).
- b) Collection of rates (sections 34 – 41 and 43 - 46).
- c) Harbour, dock and pier master (sections 51 - 65).
- d) Discharge of cargoes and removal of goods (sections 66 and 68).
- e) Protection of the harbour, dock and pier (sections 69, 71 - 76).
- f) Lighthouses, beacons and buoys (sections 77 – 78).
- g) Harbour and dock police (sections 79 – 80).
- h) Meters and weighers (sections 81 – 82).
- i) Byelaws (sections 85 – 90).
- j) Recovery of damages and penalties (sections 94 – 95).
- k) Access to special Act (sections 97 – 98).
- l) Saving of rights (sections 99, 100, 102 and 103).

## **C. ARTICLES 4 – 6: JURISDICTION, HARBOUR LIMITS AND GENERAL FUNCTIONS**

### **6.8. Article 4 of the Order – Jurisdiction**

6.8.1. 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.

6.8.2. Due to the proposed repeal of the majority of current statutory harbour legislation it is important that the Council's jurisdiction as statutory harbour authority is clearly set out in

this Article.

#### **6.9. Article 5 of the Order – General Functions**

- 6.9.1. This article provides that Council may take such steps as they may consider necessary or desirable from time to time for the operation, maintenance, management and improvement of the harbour, its approaches and facilities.
- 6.9.2. For those purposes article 5 authorises the Council to improve maintain, regulate, manage, mark and light the harbour and provide harbour facilities; carry out various activities related to works, structures and equipment at the harbour (including the harbour premises) and do all other things which in their opinion are expedient to facilitate the proper operation, improvement or development of the harbour.
- 6.9.3. The definition of harbour facilities highlights the importance of the fishing, leisure, recreational and tourism industries to the future viability of Weymouth Harbour, which faces tough competition from neighbouring statutory harbour authorities in respect of commercial passenger and goods vessel traffic, resulting in the loss of the Condor Ferry service from Weymouth Harbour in 2015.
- 6.9.4. Article 5 is authorised by paragraph 3 of Schedule 2: "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"
- 6.9.5. Unlike many SHAs, the current local legislation relating to the Harbour does not include a general statement of the Council's statutory functions. In addition the majority of this legislation will be repealed under the provisions of the HRO and it is considered that in the interests of clarity it is desirable that the Council's powers to carry out the matters set out in article 5 should be set out expressly, rather than relying on implied powers.

#### **6.10. Article 6 of the Order – Harbour Limits**

- 6.10.1. This article clarifies the limits of the harbour. Although the seaward limits are relatively easy to identify from current statutory harbour legislation, the clarified harbour limits consolidate the current seaward harbour limits within one Order (rather than spread across two) and provide additional landward reference points to remove any remaining uncertainty.
- 6.10.2. The harbour premises that forms part of the harbour are less easy to identify. For this reason a plan has been deposited with the harbour revision order to provide further clarity of the current harbour premises.
- 6.10.3. In addition several small areas of land which have historically been treated as part of the harbour undertaking, but are not readily identifiable as such from current harbour legislation are also included as part of the current harbour premises and shown on the deposited plan.
- 6.10.4. The clarified harbour limits are important to secure the management of the harbour in

an efficient and economical manor because they remove the uncertainty over which land (including land covered by water) forms part of the current harbour undertaking.

## **D. Articles 7 – 9: FINANCES**

### **6.11. Article 7 of the Order – Application of finances**

6.11.1. This article provides that the Council shall apply the harbour revenue in manner following and not otherwise- (a) first in payment of the working and establishment expenses and costs of maintenance of the harbour; (b) secondly in payment of the interest on any moneys borrowed by the Council for the harbour under any statutory borrowing power; (c) thirdly in payment of all other expenses properly chargeable to harbour revenue; (d) fourthly to an account established as a reserve fund for the harbour.

6.11.2. Any surplus revenue from the undertaking in any year and the income of the reserve fund so long as that fund amounts to a sum equivalent to at least the gross revenue of the Council in connection with the harbour undertaking in the immediately preceding financial year shall be applied to the improvement of the harbour undertaking. As stated above, some of the benefits of surplus funds being ring fenced for the benefit of the harbour undertaking are highlighted in paragraph 4.19 of the Department for Transport's newly published Ports Good Governance Guidance (March 2018).

6.11.3. Article 7 is authorised by paragraph 13 of Schedule 2:

*“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.”*

### **6.12. Article 8 of the Order - Reserve fund**

6.12.1. This article provides that the Council shall establish and maintain reserve funds and carry to such a fund any part of their receipts on revenue account as is available for the purpose (revenue account relates to harbour revenue).

6.12.2. Article 8 is authorised by paragraph 13 of Schedule 2:

*“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.”*

6.12.3. It is an essential part of prudent financial management that the Council should have the power to maintain reserve funds to enable the Council to plan for future expenditure.

### **6.13. Article 9 of the Order - Borrowing Powers**

6.13.1. This article provides that the Council may borrow such sums of money as they think necessary for the purpose of meeting their obligations in carrying out their functions and that they may secure such borrowing against their assets and or revenues.

6.13.2. The article reflects modern statutory harbour borrowing powers as can be seen in the

powers conferred by article 9 of the Dover Harbour Revision Order 2014.

- 6.13.3. There is no need to place a limit on the amount of money which can be borrowed by the Council, because, in reality their borrowings will be limited by the amount a lender is prepared to loan them. In addition the unlimited borrowing power will avoid the requirement for an HRO at a future date to extend the borrowing powers as the value of money decreased as a result of inflation.

## **E. Articles 10 – 19: CHARGES**

- 6.14. The articles contained within Part 4 of the HRO (Charges) set out the Council's powers with respect to charges it may levy. They are reflective of modern statutory harbour powers relating to charges and conducive to the improvement, maintenance or management of the harbour in an efficient and economical manner. A similar suite of powers conferred by Articles 11 - 19 has been conferred on the Poole Harbour Commissioners in articles 29 - 37 of the Poole Harbour Revision Order 2012.

### **6.15. Article 10 of the Order - Charges other than ship, passenger and goods dues**

- 6.15.1. This article provides that in addition to ship, passenger and goods dues under section 26 1964 Act, the Council may demand, take and recover reasonable charges in respect of all vessels. It also expressly states that charges may be made in respect of a variety of other floating platforms etc. so that no dispute will arise as to whether such structures fall within the definition of vessel contained within the Order.
- 6.15.2. In a relatively small harbour such as Weymouth, it is important to future viability that all users of the harbour contribute to the cost of the management and maintenance of the harbour. It would be detrimental to the improvement, maintenance or management of the harbour in an efficient and economical manner if charging powers did not to exist in respect of one type of vessel or floating structure using the harbour (exemptions are provided in Article 17). This provision is particularly important because the Order provides for the existing charging provisions in current local statutory harbour legislation to be repealed.

### **6.16. Article 11 of the Order – Charges for services or facilities**

- 6.16.1. This article provides that in addition to ship, passenger and goods dues under section 26 1964 Act, the Council may demand, take and recover reasonable charges for services provide by them.

### **6.17. Article 12 of the Order – Payment of charges**

- 6.17.1. This article provides that charges are payable before the vessel or goods against which they are payable are removed from the harbour or harbour premises. It also sets out who charges are payable by and who they can be recovered from and when.

### **6.18. Article 13 of the Order – Compounding arrangements and rebates**

- 6.18.1. This article provides the Council with a power to confer exemptions from dues, allow

rebates or make compositions with any person with respect to charges. In addition it provides that the Council does not have to include on its list of ship, passenger and goods dues kept at the harbour office, charges which have been reduced by a rebate or a compounding arrangement in respect of a due included on the list.

**6.19. Article 14 of the Order – Deposits for charges**

6.19.1. This article provides that the Council may require from a person who incurs or is about to incur a charge with them, a reasonable deposit or guarantee. It also provides the Council with the power to detain a relevant vessel or goods until the deposit has been paid or the required guarantee made.

**6.20. Article 15 of the Order – Liens for charges**

6.20.1. This article provides for a right of lien over goods in the possession or custody respectively of a person collecting charges on behalf of the Council or, a wharfinger or carrier, who has paid or given security for charges on those goods.

**6.21. Article 16 of the Order – Refusal to pay charges for landing place**

6.21.1. This articles provides that a vessel may be prevented from using a landing place supplied by the Council, if the master of the vessel refuses to pay the related charges.

**6.22. Article 17 of the Order – Exemption from Harbour Dues**

6.22.1. This article is similar to other modern provisions providing for an exemption for harbour dues for certain vessels, persons and government departments (or their current equivalent) whilst in the exercise of their core duties.

**6.23. Article 18 of the Order – Recovery of charges**

6.23.1. This articles provides that in addition to any other powers of recovery available to it, the Council may recover any charges payable to it as a debt in Court.

**6.24. Article 19 of the Order – Harbour Master may prevent sailing of vessels**

6.24.1. This article provides that the Harbour Master may prevent the removal or sailing from the harbour of any vessel until evidence is produced that any charges payable in respect of the vessel, its passengers or goods have been paid.

## **F. Articles 20 – 27: GENERAL DIRECTIONS, SPECIAL DIRECTIONS AND BYELAWS**

### **6.25. Article 20 of the Order – General byelaws**

6.25.1. This article provides the Council with the power to make Byelaws in a range of circumstances. The power incorporates the purposes in s83 of the Harbour, Docks and Piers Clauses Act 1847 and is in line with the modern practice of setting out a wide range of matters upon which the Council will have the power to make Byelaws.

6.25.2. The alternative practice is to set out a more general range of byelaw making powers and rely on the width of the wording of the provision to cover the full range of matters set out in Article 20. However, setting out the detail in this way reduces the scope for challenging any prosecution on the basis that the byelaw in question is outside the range of matters for which the statutory harbour authority has the power to make byelaws. This leads to increased costs and delays in prosecutions and therefore the more modern approach is to set out expressly a wider range of byelaw making powers.

6.25.3. Similar provisions can be found in article 15 of the Portland Harbour Revision Order 1997.

6.25.4. Historically, there has been little need to initiate any prosecutions at the harbour for breach of byelaws as harbour users have complied with the instructions of the harbour master. Nevertheless, to comply with the Port Marine Safety Code (PMSC) and to meet its other duties (including navigational safety), it is important that the Council have modern and comprehensive byelaw making powers. It is anticipated that the harbour's current byelaws will be reviewed and updated by the Council alongside a set of General Directions.

### **6.26. Articles 21 to 27 of the Order – General Power of Direction and Special Directions**

6.26.1. These articles provide the Council with a power of General Direction and extended powers of Special Direction. They also set out the consequences of failing to comply with a General or Special Direction.

6.26.2. To assist in the management of the harbour in compliance with the Port Marine Safety Code (PMSC), the Council is seeking the power to issue general directions, and to update the harbour master's powers to issue special directions, as recommended by the Code. These powers are required in the interests of providing safe navigation for a wide variety of vessels within a busy harbour.

6.26.3. The Council considers it necessary to obtain powers of general direction in order to achieve the purposes set out in section 14(b) of the 1964 Act. Such powers are well now relatively common in harbour legislation and similar powers have been granted in article 12 of the Poole Harbour Revision Order 2012 and article 11 of the Cowes Harbour Revision Order 2012.

6.26.4. The Council has decided to adopt an adjudication process, and the process contained

in article 22 is likely to be acceptable to the Royal Yachting Association as a similar adjudication process is contained within the Cowes Harbour Revision Order 2012.

6.26.5. In terms of the precise scope of general directions, it will be seen that article 21(1) would allow the Council to give or amend directions "...for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation, the safety of persons and the protection of property, flora and fauna in the harbour". Such a scope is consistent with the environmental duties placed on harbour authorities by virtue of section 48A of the 1964 Act and paragraph 16A of Schedule 2 to that Act, which enables a harbour revision order to confer powers for environmental conservation within the harbour.

6.26.6. This approach has been approved by the Secretary of State in the Poole Harbour Revision Order 2012.

## **G. Articles 28 - 47: Miscellaneous and General Powers**

### **6.27. Article 28 of the Order – Advisory Bodies**

6.27.1. This article covers the establishment of an external advisory body with an independent chairman. There is a Harbour Users Group (the Weymouth Harbour Consultative Group) already established. However they have no statutory right to be consulted, so Article 27 puts on a statutory basis, the establishment and continuance of a new advisory group and their administration. It also requires the Council to consult the advisory group.

### **6.28. Article 29 of the Order – Development of Land**

6.28.1. This article provides that the Council may use or develop for any purpose, and deal with, any land within or in the vicinity of the harbour; or form invest in and promote, or join with another person in forming, investing in and promoting a company for using or developing for any purpose, and dealing with, any land within or in the vicinity of the harbour.

6.28.2. Article 29(2) provides that a company established under paragraph 29(1)(b) may have powers to do anything necessary for the purposes of the objects for which it has been established notwithstanding that the Council would not themselves have the power to do that thing.

6.28.3. Article 29, as far as applying to land not required for the harbour, is authorised by paragraph 9A of Schedule 2 of the 1964 Act: "Empowering the authority (alone or with others) to develop land not required for the purposes of the harbour with a view to disposing of the land or of interests in it, and to acquire land by agreement for the purpose of developing it together with such land". So far as relating to harbour land, it is considered that Article 29 is authorised by paragraph 17 of Schedule 2 which enables a provision to be included in a harbour revision order if the object of the provision appears to the MMO to be one the achievement of which will conduce to the efficient functioning of the harbour. The case for this is set out below as an integral justification for Article 29.

6.28.4. The purpose of article 29 is to give the Council the flexibility, subject to obtaining the necessary rights in or over land, to exploit opportunities to develop land (including harbour land) to maximise the efficient utilisation, expansion and regeneration of the

harbour. The profits and revenues derived by the harbour undertaking from the development of any land under article 29 would be used to improve and develop the harbour and provide increased financial security.

6.28.5. It should be noted that the powers in article 29 can only be exercised if "it conduces to the improvement, maintenance or management of the harbour in an efficient and economical manner". This limitation brings article 29 within the powers of section 14(2)(b) of the 1964 Act.

6.28.6. Similar powers to those in article 29 were conferred on the Poole Harbour Commissioners by article 53 of the Poole Harbour Revision Order 2012 and the Dover Harbour Board by article 4 of the Dover Harbour Revision Order 2014.

#### **6.29. Article 30 of the Order – Power to grant tenancies and to dispose of land**

6.29.1. Article 30(1) gives power to the Council, for the purposes of or in connection with the carrying on of the undertaking, to grant leases and other rights or interests over their land or other property forming part of the harbour.

6.29.2. Article 30(2) provides that the Council may also dispose of, or grant the use or occupation for any purpose of, land or property if they consider that the property is surplus to harbour requirements; or it would conduce to the improvement, maintenance or management of the harbour in an efficient and economical manner for the property to be held by a person other than the Council.

6.29.3. Article 30(1), which is needed to manage the harbour, is authorised by paragraph 3(a) of Schedule 2 which relates to powers conferred for the purposes of "improving maintaining or managing the harbour".

6.29.4. Article 30 (2)(a) is authorised by paragraph 9 of Schedule 2: "Empowering the authority to dispose of property vested in them and held for the purposes of the harbour which is no longer required for those purposes."

6.29.5. It is considered that Article 30(2)(b) is authorised by paragraph 17 of Schedule 2 which enables a provision to be included in a harbour revision order if the object of the provision appears to the MMO to be one the achievement of which will conduce to the efficient functioning of the harbour. The case for this is set out as an integral part of the need for article 30.

6.29.6. Article 30(1) and 30(2)(a) are needed to enable the Council to manage the Harbour undertaking effectively. These powers are similar to the powers conferred on Poole Harbour Commissioners by article 54 of the Poole Harbour Revision Order 2012 and the Dover Harbour Board by article 6 of the Dover Harbour Revision Order 2014.

6.29.7. Article 30(2)(b) would enable the Council to grant leases or transfer land or property to a subsidiary or other body. This power is needed to enable the Council to have sufficient flexibility in how to structure the harbour undertaking in the future. The power in article 30(2)(b) is only exercisable if "it would conduce to the improvement, maintenance or management of the harbour in an efficient and economical manner".

This limitation brings article 29(2)(b) within the powers of section 14(2)(b) of the 1964 Act (set out in paragraph 5.2 above).

**6.30. Article 31 of the Order – Power to appropriate lands and works for particular uses etc.**

6.30.1. This article provides that the Council may from time to time for the purpose of or in connection with the management of the harbour set apart and appropriate any part of the harbour for the exclusive, partial or preferential use and accommodation of any particular trade, person, vessel or class of vessels, or goods, subject to the payment of such charges and subject to such terms, conditions and regulations as the Council may think fit.

**6.31. Article 32 of the Order – Other commercial activities**

6.31.1. Article 32(1)(a) provides that the Council may carry on at any place a trade or business of any kind including a trade or business carried on in conjunction with another person. Article 32(1)(b) enables the Council to form, invest in and promote, or join with another person in forming, investing in and promoting, a company for carrying on any part of the undertaking or carrying on at any place a trade or business of any kind. Article 32(2) provides that a company established under paragraph 32(1)(b) may have powers to do anything necessary or expedient for the purposes of the objects for which it has been established notwithstanding that the Council would not itself (as harbour authority) have the power to do that thing.

6.31.2. It is considered that Article 32 is authorised by paragraph 17 of Schedule 2 which enables a provision to be included in a Harbour Revision Order if the object of the provision appears to the MMO to be one the achievement of which will conduce to the efficient functioning of the harbour. The case for this is set out below as an integral part of the need for article 31.

6.31.3. Article 32(1)(a) would assist the Council to maximise the potential of the harbour undertaking by enabling them to carry on any business which could conveniently be carried on with the harbour undertaking. For example, the Council could utilise and develop the skill and experience of its staff by providing services to other harbour undertakings or to carry out business activities which are incidental to running a harbour.

6.31.4. Article 32(1)(b) would enable the Council to carry on such a business as part of a joint venture with another person or persons, for example enabling the Council to contribute land and/or harbour related expertise to the venture while the other party contributes complementary specialist business expertise.

6.31.5. The profits and revenues derived from the business ventures under article 32 would be used to improve and develop the harbour and ensure increased financial security.

6.31.6. It should be noted that the powers in article 32 can only be exercised if “it conduces to the improvement, maintenance or management of the harbour in an efficient and

economical manner". This limitation brings article 5 within the powers of section 14(2)(b) of the 1964 Act (set out in paragraph 4.2 above).

6.31.7. Similar powers were conferred the Dover Harbour Board by article 5 of the Dover Harbour Revision Order 2014.

6.31.8. It is considered that Article 32 is authorised by paragraph 17 of Schedule 2 which enables a provision to be included in a harbour revision order if the object of the provision appears to the MMO to be one the achievement of which will conduce to the efficient functioning of the harbour. The case for this is set out as an integral part of the justification for article.

### 6.32. **Article 33 of the Order – Power to delegate functions**

6.32.1. This article provides that the Council may delegate the performance of any of their functions to be carried out by any such company as referred to in article 32(1)(b).

6.32.2. Article 33 is authorised by paragraph 9B of Schedule 2: "Empowering the authority to delegate the performance of any functions of the authority except- (a) a duty imposed on the authority by or under any enactment; (b) the making of byelaws; (c) the levying of ships, passenger and goods dues; (d) the appointment of harbour, dock and pier masters; (e) the nomination of persons to act as constables; (f) functions relating to the laying down of buoys, the erection of lighthouses and the exhibition of lights, beacons and seamarks, so far as those functions are exercisable for the purposes of the safety of navigation."

6.33. The power to delegate functions is needed to enable the Council to carry out day to day activities through a subsidiary or joint venture company. The power does not apply to the key functions which cannot be delegated under paragraph 9B of Schedule 2 to the 1964 Act.

### 6.34. **Article 34 of the Order – Moorings**

6.34.1. This article provides the Council with powers related to the provision, maintenance and licensing of moorings within the harbour. The Council already licences moorings within the harbour as an important part of its management of the harbour and charges a licence fee.

### 6.35. **Article 35 of the Order - Bunkering**

6.35.1. This article provides the Council with powers in relation to licensing those persons carrying out commercial refuelling activities related to vessels in the harbour. To comply with the environmental duties contained in s48A of the Harbours Act 1964, the Council considers that it is important that it has express powers to licence such activities so that proper risk assessments can be carried out and persons carrying out such activities can be required to comply with terms and conditions, designed to mitigate against risks associated with such activities (including environmental).

**6.36. Article 36 of the Order - Aids to navigation**

6.36.1. This article provides that the Council may, with the approval of Trinity House, erect, place, alter, discontinue or remove any aids to navigation in any place adjacent to the harbour (subject to obtaining the necessary interest in or over land). This power is important for enabling the Council to meet their navigational safety duties.

**6.37. Article 37 of the Order – Power to Dredge**

6.37.1. This article provides the Council with a power to Dredge. The power to dredge is a standard statutory harbour power and under 1925 Order the Council already has the power to dredge with respect to the bed channel and foreshore of the harbour and its approaches.

6.37.2. Historically dredging has been carried out at the harbour on an irregular basis. It is anticipated that this will continue in the future. It is therefore important that the Council is provided with the power so that they are able to dredge if and when required.

6.37.3. If dredging is carried out at the harbour under the provision in the future, then in line with section 75 of the Marine and Coastal Access Act 2009, the Council will not need to obtain a marine licence for the dredging activity. However, dredged material has historically been disposed of primarily to sea at a disposal site outside the harbour. If disposal to sea is required in the future then a marine licence will be required for this disposal.

**6.38. Article 38 of the Order – Repair of landing places etc.**

6.38.1. This article provides that the Council may by notice require the owner or occupier of any landing place, jetty, embankment or structure or other work in the harbour or on land immediately joining the waters of the harbour to repair it, within a reasonable time, to their reasonable satisfaction, if it is a danger to persons or vessels using the harbour or a hindrance to navigation of the harbour. The provision provides for a level 3 fine for non-compliance (on summary conviction) and a power for the Council to carry out the works and recover the cost from the person on whom the notice was served. There is right of appeal to the Secretary of State.

6.38.2. This power is important in assisting the Council in meeting its duties with regard to navigational safety and the safety of harbour users. Similar provisions can be found in article 11 of the Portland Harbour Revision Order 1997.

**6.39. Article 39 of the Order - Power with respect to disposal of wrecks**

6.39.1. This article extends the powers of the Council under section 252 Merchant Shipping Act 1995. In particular it extends the circumstance in which the Council may recover expenses reasonably incurred by them in exercising said power from the owner of any such vessel. The provision includes notice requirements to the owner of the vessel and

a period in which the vessel owner may dispose of the vessel itself.

6.39.2. This extension of the power in s252 Merchant Shipping Act is common and important if the harbour is to be run in an efficient and economic manner. Similar provisions can be found in article 24 of the Portland Harbour Revision Order 1997.

6.40. **Article 40 of the Order – Power to deal with unseaworthy vessels**

6.40.1. This article provides that the Council may sell, break up or otherwise dispose of any vessel which is unseaworthy and had been laid by or neglected in the harbour or on land immediately adjoining the harbour.

6.41. **Article 41 of the Order – Removal of obstructions other than vessels**

6.41.1. This article provides that the Council may remove anything other than a vessel which is causing or likely to become an obstruction to, or cause interference with navigation in any part of the harbour or its approaches. The provision deals with the recovery of costs by the Council of reasonable expenses incurred by them in relation to the exercise of the power and sale of the item(s) recovered.

6.41.2. This power is important in assisting the Council in meeting their duties with regard to navigational safety and the safety of harbour users, and important if the harbour is to be run in an efficient and economic manner. Similar provisions can be found in article 8 of the Portland Harbour Revision Order 1997.

6.42. **Article 42 of the Order – Boarding of Vessels**

6.42.1. This article provides that a duly authorised officer of the Council may, on producing if so required his authority, enter and inspect a vessel in the harbour for the purposes of any enactment relating to the harbour (including any enactment so relating contained in subordinate legislation) or of any byelaw or general direction of the Council relating to the harbour, including the enforcement of any such enactment, byelaw or general direction.

6.43. **Article 43 of the Order – Saving for Trinity House**

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

6.44. **Article 44 of the Order – Crown Rights**

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

6.45. **Article 45 of the Order – Saving for existing Byelaws etc.**

6.45.1. This article provides for the saving of existing Byelaws, regulations, licences, leases etc. notwithstanding the amendments and revocations of historic the Acts and Orders by virtue of articles 46, 47 and Schedule 1 of the HRO.

**6.46. Article 46 of the Order – Amendment of the Act of 1854, Act of 1879, Act of 1887, Act of 1914 and Order of 1988**

6.46.1. This article provides for the amendment of the Act of 1854, Act of 1879, Act of 1887, Act of 1914 and Order of 1988 from the date of the HRO. The amendments are necessary to complete the process of modernisation of the Council's powers as a statutory harbour authority in conjunction with the provisions of the HRO and the revocations contained in Article 47 and Schedule 1 of the HRO.

**6.47. Article 47 of the Order – Revocation**

6.47.1. This article provides for the revocation of the local legislation listed in Schedule 1 from the date of the HRO. These Acts and Orders (in so far as they are revoked) either are or will become obsolete once the HRO is fully in force.

## **7. CONCLUSION**

7. In addition to the specific provisions of Schedule 2 to the 1964 Act, paragraph 17 of Schedule 2 provides that a Harbour Revision Order may include provision for:

*“Any object which, though not falling within any of the foregoing paragraphs, appears to the [MMO] to be one the achievement of which will conduce to the efficient functioning of the harbour.”*

7.1 For the reasons mentioned above, it is considered that to the extent that any provision contained in the HRO does not fall specifically within any other paragraph of Schedule 2, the provisions of the HRO would be conducive to the efficient functioning of Weymouth Harbour and it is therefore within the scope of the 1964 Act for them to be included in the HRO.

Dated 4 May 2018

**Ashfords LLP**  
Ashford House  
Grenadier Road  
Exeter  
EX1 3LH

Solicitors on behalf of Weymouth and Portland Borough Council.

MARINE MANAGEMENT ORGANISATION  
HARBOURS ACT 1964 (AS AMENDED)

PROPOSED WEYMOUTH HARBOUR  
REVISION ORDER 201[8]

STATEMENT IN SUPPORT OF APPLICATION  
FOR ORDER BY:

WEYMOUTH AND PORTLAND BOROUGH COUNCIL



Ashford House  
Grenadier Road  
Exeter EX1 3LH  
DX 150000 Exeter 24  
Tel: 01392 333861  
Fax: 01392 336861