

Management Committee

6th February 2018

Harbour Revision Order

For Recommendation

Portfolio Holder(s)/ Briefholder

Cllr Richard Kosier, Brief Leisure, Tourism and Harbour
Cllr Jeff Cant, Brief Finance and Assets

Senior Leadership Team Contact:

M Hamilton, Strategic Director

Report Author:

D. Brown, Head of Assets and Infrastructure

Statutory Authority

Harbours Act 1964 and various local Acts relating to Weymouth Harbour

Purpose of Report

- 1 To seek authority to prepare and submit a Harbour Revision Order in order to modernise and consolidate the current dated legislation relating to the Harbour operations.

Recommendations

- 2 That Management Committee recommend to Full Council that in so far as they have power so to do they agree and otherwise support:
 - i) An application being made to the Marine Management Organisation (MMO) for a Harbour Revision Order (HRO) to consolidate and modernise the applicable statutory harbour legislation.
 - ii) Delegated authority be given to the Strategic Director with responsibility for the Harbour in consultation with the Briefholder for Finance and Assets, the Briefholder for Leisure, Tourism and Harbour, and the Harbour Management Board, to determine the wording of the Harbour Revision Order for submission to the MMO.

Reason for Decision

- 3 To secure approval for submission of a HRO and thus facilitate improved harbour management and control.
- 4 To facilitate the Peninsula redevelopment scheme by giving the power to be able to dispose of harbour land where this is no longer required for harbour purposes as might be necessary. This legal ability to be able to deal with land issues is time critical to the progression of the comprehensive redevelopment of the peninsula. Without this HRO delays will occur that might otherwise be avoided.
- 5 A Harbour Revision Order is required to modernise and consolidate the current raft of local legislation dating from the 1820's to make the management and governance of Weymouth harbour less complex.
- 6 The advice and support of specialist marine lawyers is required to make the application process as straightforward as possible and a budget is therefore required to obtain this advice. An application fee of £4000 also has to be paid to the Marine Management Organisation when the application is submitted.
- 7 Delegated authority is sought for officers in consultation with the relevant Members to determine the appropriate wording for the HRO based on legal advice in order to be able to progress the application in a timely fashion. The need to seek an HRO will have an impact on the delivery timetable for the Peninsula development and therefore time is of the essence in securing the HRO.

Background and Reason Decision Needed

- 8 A special Harbour Management Board on the 2nd February will consider a report to submit a Harbour Revision Order (HRO), and a copy of that report, which contains more details and reasons for the HRO are attached herewith as Appendix 1.
- 9 A verbal update will be given to the Committee to advise on the recommendation and any comments given by Harbour Management Board.

Implications

Corporate Plan

- A1. Facilitating inward investment to create more better-paid jobs
- A4. Regenerating and supporting vibrant town centres
- A2. Improving infrastructure to enable businesses to grow

Financial

The legal advice and submission costs will be met out of existing property based budgets. The cost of the HRO is likely to be recovered over a relatively short period of time with improvement in income, control and operations for the harbour and property assets.

Equalities

None directly arising from this report.

Environmental

None directly arising from this report.

Economic Development

None directly arising from this report.

Risk Management (including Health & Safety)

The risk of not submitting and obtaining the HRO in a prompt manner could be considerable, specifically with regards to the Peninsula redevelopment scheme. At present it is anticipated that providing agreement to the HRO submission is granted by full Council in February and approval to the HRO is given within the average 6 months then this will not delay the scheme. However beyond that each delay period will delay the delivery of the Peninsula scheme by that same time period as final legal documents, procurement, and detailed planning submissions could not otherwise be easily progressed.

Human Resources

Officer time in supporting the application including undertaking public consultation.

Consultation and Engagement

A consultation exercise will be undertaken as part of the HRO application process

Appendices

Appendix 1- Report to the Harbour Management Board 2nd February 2018

Background Papers

None

Footnote

Issues relating to financial, environmental, economic and equalities implications have been considered and any information relevant to the decision is included within the report.

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Date: 18/01/18

Harbour Management Board

2nd February 2018

Weymouth Harbour Revision Order

For Recommendation

Briefholders

Cllr Richard Kosier, Brief Leisure, Tourism and Harbour

Senior Leadership Team Contact:

M Hamilton, Strategic Director

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Purpose of Report

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Recommendations

- 2 That Harbour Management Board recommend to Management Committee and Full Council that in so far as they have power so to do they agree and otherwise support:
 - iii) An application being made to the Marine Management Organisation (MMO) for a Harbour Revision Order (HRO) to consolidate and modernise the applicable statutory harbour legislation.
 - iv) Delegated authority be given to the Strategic Director with responsibility for the Harbour in consultation with the Briefholder for Finance and Assets, the Briefholder for Leisure, Tourism and Harbour, and the Harbour Management Board, to determine the wording of the Harbour Revision Order for submission to the MMO.

Reason for Decision

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- 4 To facilitate the Peninsula redevelopment scheme by giving the power to be able to dispose of harbour land where this is no longer required for harbour purposes as might be necessary. This legal ability to be able to deal with land issues is time critical to the progression of the comprehensive redevelopment of the peninsula. Without this HRO delays will occur that might otherwise be avoided.
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- 7 Delegated authority is sought for officers in consultation with the relevant Members to determine the appropriate wording for the HRO based on legal advice in order to be able to progress the application in a timely fashion. The need to seek an HRO will have an impact on the delivery timetable for the Peninsula development and therefore time is of the essence in securing the HRO.

Background and Reason Decision Needed

- 8 In accordance with the recommendations of the Port Marine Safety Code Guide to Good Practice, Ashfords Solicitors have recently carried out a review of the statutory harbour legislation applying at Weymouth Harbour. Following this review, Ashfords are recommending that a Harbour Revision Order application is made to consolidate and modernise the applicable statutory harbour legislation.
- 9 This approach is recommended for three main reasons. Firstly the statutory harbour legislation that currently applies is particularly complex and fragmented. Applicable Local Acts date from the 1820's, with the last extant Harbour Revision Order being obtained in 1996 (the 2012 HRO was a temporary Order sought in connection with the Olympics). The complexity and fragmentation causes difficulties in relation understanding and correctly exercising / complying with the relevant powers and duties.
- 10 Secondly there are no powers of General or Harbour Direction in force at Weymouth Harbour and the Port Marine Safety Code Guide to Good

Practice (in particular section 1.9) recommends that where neither of these powers is held, Harbour Authorities would be well advised to secure these powers to support the effective management of vessels in their harbour. (Obtaining powers of General Direction requires a Harbour Revision Order).

- 11 The HRO will give the power to make General Directions which will provide for the detailed management of the harbour, and will replace the current Bye Laws relating to the harbour. A separate process will need to be undertaken to put these in place.
- 12 Thirdly there are a range of additional common statutory harbour powers (examples set out in Appendix 1) which are not held by the Council as statutory harbour authority that would assist in the efficient management and running of the harbour.
- 13 Weymouth and Portland Borough Council is the Statutory Harbour Authority but in acting as the SHA the Council, is governed by specific legislation relating to marine and harbour operations.
- 14 In order to properly control, manage and charge for the provision and use of the Weymouth harbour facilities updated legislation is needed. The details above and as set out in Appendix 1 give the current shortcomings of the existing legislation. There is for example currently limited powers to enforce and manage jet skis, which had not been contemplated as an issue in earlier Orders.
- 15 There is also a need to have the ability to grant tenancies and dispose of land forming part of the harbour undertaking (which is no longer required for harbour purposes) which the SHA does not currently have. The SHA has previously had to apply for a specific Harbour Revision Order in order to be able to grant a long lease (to Dean and Reddyhoff) but that HRO did not give the general power to dispose of harbour land in relevant circumstances. The Peninsula development scheme could require the inclusion of assets held by the Statutory Harbour Authority and power would be needed to dispose of those assets. Any disposal/Transfer would need to be in the interests of the harbour and therefore it is expected that any such disposal/transfer would take place for value.

Implications

Corporate Plan

- A1. Facilitating inward investment to create more better-paid jobs
- A4. Regenerating and supporting vibrant town centres
- A2. Improving infrastructure to enable businesses to grow

Financial

The legal advice and submission costs will be met out of existing property based budgets. The cost of the HRO is likely to be recovered over a relatively short period of time with improvement in income, control and operations for the harbour and property assets.

Legal Issues

HROs are used to change legislation governing the management/operation of a harbour. An application is made to the MMO and the HRO must be desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner. A public notice has to be placed advising that an application has been submitted and anyone can write to the MMO with any objections or representations within the 42 day timescale. Public consultation on HRO will be undertaken with local interest groups, harbour users and so on. Such an application may take a minimum of 6 to 9 months to conclude assuming there are no technical issues or other objections raised which cannot be overcome and result in a public inquiry being required. If a public inquiry is needed the process will take considerably longer, however the content of the HRO being suggested is very similar to most modern harbour operations and does not contain any unusual items. Once an HRO is made a further notice has to be placed and the Order made available for public inspection, thereafter a six week challenge period applies.

Equalities

27 None directly arising from this report.

Environmental

28 None directly arising from this report.

Economic Development

29 None directly arising from this report.

Risk Management (including Health & Safety)

30 The risk of not submitting and obtaining the HRO in a prompt manner could be considerable, specifically with regards to the Peninsula redevelopment scheme. At present it is anticipated that providing agreement to the HRO submission is granted by full Council in February and approval to the HRO is given within the average 6 months then this will not delay the scheme. However beyond that each delay period will delay the delivery of the Peninsula scheme by that same time period as final legal documents, procurement, and detailed planning submissions could not otherwise be easily progressed.

Human Resources

31 Officer time in supporting the application including undertaking public consultation.

Consultation and Engagement

- 32 A consultation exercise will be undertaken as part of the HRO application process.

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Appendix 1

Common Statutory Harbour Powers not held by the Council as SHA

Common Statutory Harbour Powers not held by the Council as SHA include:

1. **A wide definition of "vessel"** that enables byelaws to be made and enforced confidently against leisure craft such as jet skis. An example of a modern definition can be found in s2 of the Portland Harbour Revision Order 1997:

"vessel" means a ship, boat, raft or water craft of any description, however propelled or moved, and includes non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily

2. **A wide general functions power.** An example is s5 of the Poole Harbour Revision Order 2005:

5. General functions in respect of harbour

(1) The Commissioners must take such steps as they may consider necessary or desirable from time to time for the conservancy, protection, regulation, maintenance, operation, management and improvement of—

- (a) The harbour and its approaches; and*
- (b) The harbour facilities.*

(2) For those purposes, and without prejudice to the generality of the foregoing, the Commissioners may—

- (a) Improve, maintain, regulate, manage, mark and light the harbour and provide harbour facilities;*
- (b) Acquire any undertaking or part of an undertaking;*
- (c) Turn their resources to account;*
- (d) Do all other things which in their opinion are expedient to facilitate the proper carrying on or development of the harbour; and*
- (e) subject to obtaining the necessary right in or over land—*

(i) Place, execute, operate, maintain, renew, alter, remove and reconstruct structures and works and equipment in the harbour; and

(ii) Provide, maintain and operate railways and related works and facilities on the harbour premises;

(3) This article is without prejudice to the powers of the Commissioners under or by virtue of any other enactment.

4. A wide general power to levy charges which are not ship, passenger or good dues. An example is s22 Portland Harbour Revision Order 1993:

"Charges for services or facilities

22. In addition to their power to demand ship, passenger and goods dues under section 26 of the Harbours Act 1964, the Company may demand, take and recover such reasonable charges for services and facilities provided by them at the harbour and the harbour premises as they may from time to time determine."

5. A wide power to grant tenancies and dispose of land forming part of the harbour undertaking. An example is s43 Portland Harbour Revision Order 1993:

"Power to grant tenancies and to dispose of land

43.—(1) The Company may, for the purposes of or in connection with the management of the harbour undertaking, lease or grant the use or occupation of, or any right or interest in or over, any lands, works, buildings, machinery, equipment or other property forming part of the harbour premises for such period, at such rents and other considerations and on such terms and conditions as shall be agreed between the Company and the person taking the same.

(2) The Company may also dispose of, or grant the use or occupation of, any property held by them for the purpose of the harbour undertaking, which they consider to be surplus to that required by them for the purposes of the harbour undertaking."

6. Wide powers related to the development of land forming part of the harbour undertaking. An example is s45 Portland Harbour Revision Order 1993:

"Development, etc., of land

45. The Company may form and promote, or join with any other person in forming and promoting, a company for using or developing for any purpose, or carrying on any trade or business on, any land within the harbour premises."