

<b>Title of meeting:</b>	Cabinet
<b>Date of meeting:</b>	22 June 2021
<b>Subject:</b>	Portsmouth International Port Harbour Revision Order
<b>Report by:</b>	Mike Sellers, Port Director
<b>Wards affected:</b>	None
<b>Key decision:</b>	No
<b>Full Council decision:</b>	Yes

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### **1. Purpose of report**

The purpose of this report is to seek approval for an application for a Harbour Revision Order (HRO) for Portsmouth International Port and the Camber. The Order will aim to modernise and consolidate the statutory harbour powers applying in relation to Portsmouth International Port and the Camber, including a new modern power of General Direction.

Part 1 Chapter 4 of the Council's Constitution governs that harbour revision order applications are reserved for the decision of Full Council. The City Solicitor has also suggested that the report goes through Cabinet as although a grey area regarding costing and hence not necessarily a key decision prima facie, this route will support transparency provided that the final decision maker is Full Council.

### **2. Recommendations**

It is hereby recommended that Cabinet agree the following recommendations to be taken to Full Council:

- (a) approves an application being made to the Marine Management Organisation ("MMO") for a Harbour Revision Order ("HRO") for a full consolidation and modernisation of legislative powers; and
- (b) delegates authority to the Port Director in consultation with the Port's Portfolio Holder and the Harbour Master to determine the wording of the HRO based on legal advice and undertake all procedures for the submission of the HRO to the MMO.

### **3. Background**

Presently (and prior to the recommended HRO), there are two main separate statutory undertakings and a number of miscellaneous pieces of local legislation that together form the port known as Portsmouth International Port. In addition, there is a separate statutory undertaking in respect of Camber Docks. Each undertaking is governed by its own local legislation and although the

provisions are similar, they are complex, fragmented and in places unclear (there are over 20 pieces of different historic local legislation applying in relation to the Port's entities). The Council is the statutory harbour authority for all of the undertakings. It is therefore considered conducive to the efficient and economical operation, maintenance, management and improvement of each undertaking and therefore Portsmouth International Port and the Camber as a whole if the majority of the existing statutory harbour legislation is repealed and that Portsmouth International Port and the Camber are managed primarily under the proposed HRO. Therefore the same statutory provisions will apply universally at the Port with a central reserve fund being maintained throughout.

The proposed HRO would also confer a full suite of modernised powers on the Council. The provisions cover a range of matters including advisory bodies, charges and other financial provisions, appropriation, development and disposal of land, dredging, control of repairs and works, byelaws, bunkering, moorings, removal of vessels, vehicles, and wrecks. In particular, the HRO would confer modern powers on the Council to give general directions to vessels, persons and vehicles using Portsmouth International Port and the Camber, together with powers exercisable by the Harbour Master appointed by the Council, to give special directions to vessels. These powers are required to support the effective management of Portsmouth International Port as recommended in the Port Marine Safety Code. A public consultation exercise will be undertaken as part of the HRO process.

#### **4. Reasons for recommendations**

##### General

The HRO would consolidate and modernise existing local statutory harbour legislation in respect of Portsmouth International Port and the Camber and confer further modernised powers on the Council considered conducive to the efficient and economical operation, maintenance, management and improvement of the Port. Nearly all of the current local legislation relating to the current undertakings would be repealed under the proposed HRO, meaning that in the future all areas of the Port will be governed by nearly identical statutory provisions, which will significantly improve the efficient, legal and economic operation and management of the Port. The local statutory provisions that are currently in force and have been deemed necessary to retain going forward will be listed in a Schedule to the HRO.

The HRO will clearly define the port limits on deposited plans, which in respect of some areas of the Port are currently unclear.

##### Port Marine Safety Code

As the harbour authority for the current undertakings, 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.”*

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*”. The Council is seeking through the HRO application to obtain modern powers of General Direction (covering vessels, persons and vehicles) to enable a single set of General Directions covering the whole Port. Currently the Council does not have powers of General Direction or Harbour Direction in respect of the Port.

Although the Code is best practice guidance (rather than a legal requirement), failure to comply can lead to prosecutions under the Health and Safety at Work Act 1974 or other relevant legislation.

#### Harbours Act 1964

Section 14 of the Harbours Act 1964 (“the 1964 Act”) confers powers which have been devolved to the MMO 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.

Section 14(2)(a) of the 1964 Act requires that a 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”.*

It is deemed that the application for the HRO under section 14 of the 1964 Act meets the conditions set out in that section.

#### Other modern HROs

The modernised and additional powers sought by the proposed HRO include powers reflective of those contained in modern HROs. Other HROs which contain some similar provisions include the Shoreham Port Authority Harbour Revision Order 2021, Weymouth Harbour Revision Order 2021, Fowey Harbour Revision Order 2021, Dart Harbour and Navigation Harbour Revision Order 2021, 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 common types of statutory harbour powers, such as the power to borrow, 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.

**5. Integrated impact assessment**

An Integrated Impact Assessment has been undertaken and is attached.

**6. Legal implications**

Comments of the City Solicitor are consistent with the legal narratives set out in this report.

**7. Director of Finance's comments**

There are no direct financial implications as a result of approving the recommendations within this report.

The cost of revising the Harbour Revision Orders is being met from the Port's cash limited budgets.

**8. Summary**

A modernised and streamlined HRO, replacing the existing numerous complex approvals, not only gives clear powers of direction to the Harbour Master, it provides the foundations for the future development of Portsmouth International Port.

It is, therefore, recommended that the Cabinet approves this application for a modern and consolidated Harbour Revision Order.

Signed by:

**Appendices:**

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by ..... on .....

Signed by: