

Port of Exeter Harbour Revision Order Informal Stakeholder Consultation

Summary of Responses

Background

Exeter City Council (“**the Council**”) is the statutory harbour authority for the Port of Exeter and Exeter Ship Canal (“**the Port**”). On 12 September 2023, the Council submitted a Harbour Revision Order (“**the HRO**”) application to the Marine Management Organisation (“**the MMO**”) designed to consolidate and modernise the statutory powers and duties applying to the Council.

The Council offered port stakeholders an advanced opportunity to consider the HRO application documents in an informal consultation which ran from **01 February to 14 March 2024**.

The 42-day formal consultation that forms part of the HRO application process under the Harbours Act 1964 is anticipated to take place later in 2024.

Throughout the informal consultation, the draft Harbour Revision Order, Statement in Support, Port Limits Plan and Port Premises Plan were available to download or view on the port website, along with an FAQ document in anticipation of some likely queries.

The Council also hosted 3 drop-in sessions where port stakeholders could discuss their comments in-person. These drop-in sessions took place from 6:00 pm to 7:30 pm as follows:

- Monday 19 February at the Starcross Fishing & Cruising Club, Brunel Tower, The Strand, Starcross, Exeter EX6 8PR.
- Tuesday 20 February at the Exe Sailing Club, Tornado, Shelly Rd, Exmouth, EX8 1EG.
- Wednesday 21 February at the Exe Watersports Association, 62 Haven Rd, Exeter, EX2 8GP.

Each session was held at a different location within the local area to provide port stakeholders an equal opportunity to attend.

Consultees were asked to complete hard copy forms at the drop-in sessions and / or email representations to a dedicated Consultation Inbox by 14 March 2024. The Council has now consolidated and reviewed these representations and produced this summary document.

Outcome of Informal Consultation

The Council is pleased to confirm that the informal consultation was effective with 123 people attending the drop-in sessions and 34 written representations being submitted.

Key themes have been drawn from the responses so that regular and recurring themes can be summarised, including:

1. Harbour Dues and Charges;
2. Clarification of Provisions;
3. Port Regulation;
4. Consultation;
5. Business Plan; and
6. Other.

This is a **summary ‘key themes’ document** and is not designed to respond to very specific / individual questions. Where only one or two consultees have raised a query, those queries are not all included in this summary. However, all responses will be taken into account and the Statement in Support will be updated ahead of the formal consultation to reflect this. The updated Statement in Support will replace

the original and be published as part of the formal HRO consultation (this is normal practice where updates are required before a formal HRO consultation). The Council is also responding separately to a small number of responses not covered in this summary.

1 Harbour Dues and Charges

The focus of consultation responses was generally on how harbour dues and charges would be set in the future and whether they will be in line with local / similar ports. Some asked how 'harbour charges' can be challenged and others said they didn't want costs to increase and felt that non-powered vessels shouldn't pay anything.

The Council considers it is important to the Port's future viability that all its users contribute to the cost of the management and maintenance of it. Although the Council does not currently levy goods dues at the Port or ship dues outside of Exeter Ship Canal, it already has the power to levy such ship, passenger and goods dues as it thinks fit under section 26 of the Harbours Act 1964. Under article 10 of the HRO, there is a modern power to levy the equivalent of ship, passenger and goods dues in relation to vessels which are not 'ships' (such as jet bikes or jack-up barges). Harbour Dues are not chargeable on stationary structures like pontoons used for the mooring of vessels or access to them. They are however chargeable on all vessels within the Port limits.

This provision is consistent with similar powers contained in other HROs, for example the Cornwall Harbours Harbour Revision Order 2023 which applies to 10 different local authority harbours throughout Cornwall. Section 31 of the Harbours Act 1964 contains a statutory right of challenge to the Secretary of State in respect of such dues.

When setting charges in the future, the Council will take into account is the level of charges set by other statutory harbour authorities ("**SHAs**") (it will not always be appropriate to match the charges of other SHAs because they are specific to each port.

As set out in the FAQ, the amount of ship, passenger and goods dues or other charges is a separate future topic (they do not relate to the HRO because it does not set the level of them).

2 Clarification of Provisions

As stated above, where only one or two consultees have raised a query, those queries are not all included in this summary which is designed to be a 'key themes' document. However, the Council will ensure that the Statement in Support is updated for the formal consultation to provide further clarification of the following provisions which are not covered elsewhere in this summary: articles 7 (reserve fund), 27 (boarding of vessels etc.), 33 (power to grant tenancies and to dispose of land), 34 (power to appropriate lands for particular uses, etc.), 35 (other commercial activities) and 39 (offences as to moorings).

A number of consultees raised concerns about articles 37 (power to lay moorings) and 38 (licensing of moorings), particularly in relation to the licensing of moorings on third party land. The Council is considering these concerns and intends to discuss the approach to mooring licensing in the Port further with the main mooring licensing providers.

3 Port Regulation

Various points were raised in relation to the existing and future regulation of the Port.

- **Consultees queried what future regulations would be implemented and commented on existing / future speed limits, vessel registration, insurance etc.**

The HRO is not designed to provide (or alter) specific regulations, such as byelaws, or speed limits, vessel registration, insurance etc. In the future, the Council anticipates developing a set of general directions to cover the majority of the Port's regulation (following consultation with local stakeholders including the Port Advisory Group being established under the HRO). The content of any future General Directions (or byelaws) is a separate topic and would be subject to future

consultation. As such speculation on what they should / should not include is not related to the HRO application (which simply gives the power to make General Directions and set out the process by which they are made).

The definition of “vessel” in the HRO will permit general directions to be made in relation to a wide range of craft, including powered craft (like jet bikes) and non-powered craft (like paddleboards, kayaks etc.). General directions could apply to different types of vessel and could apply over all or parts of the Port.

- **Consultees queried why an HRO would assist with compliance with the Port Marine Safety Code and how it will be an improvement on current powers.**

As set out in the FAQ, a key driver for the HRO is the Council’s ongoing commitment to complying with the Port Marine Safety Code (November 2016) published by the Department for Transport (“the Code”).

There is a strong expectation the Council will comply with the Code. The Code identifies a number of tasks which harbour authorities should undertake to comply with it 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.

Although the Council does have powers to make byelaws and harbour directions, it does not have the power to make general directions. The process for keeping general directions up to date is far more time and cost efficient than the byelaw making process. They can also be made in relation to a wider range of craft when compared to harbour directions.

The Council considers it desirable for securing the improvement, maintenance and management of the Port to obtain a modern general direction power amongst other powers included in the HRO (and for the majority of the current local harbour legislation to be repealed). Each provision is separately justified in the Statement in Support.

The powers included in the HRO are reflective of those included in other recent local authority HROs, such as the Cornwall Harbours Harbour Revision Order 2023. It is important to remember that powers such as special directions, general directions and byelaws are all regulatory in nature i.e., they are designed to regulate the use of the Port rather than to prohibit activities. There are no reasons, subject to risk assessment, that activities which currently take place at the Port cannot continue.

4 Consultation

Consultees commented on the language used in the HRO documents and had comments on the consultation carried out so far, the formal public consultation and future consultation under the HRO.

- **Consultees queried the complex language used in the application documents and some made suggestions to make them clearer.**

The HRO is a legal instrument requiring certain language to be used for legal purposes. The Statement in Support is intended to be written in plain English where appropriate. The Council will take these concerns on board and, where appropriate, revise the Statement in Support to make it easier to understand.

- **Consultees asked when the formal consultation will take place.**

It is anticipated that the formal consultation will not commence until at least the summer of 2024 – the start date needs to be agreed / decided by the MMO.

There are notice requirements which will be complied with. These include publishing a public notice for two consecutive weeks in a newspaper circulating locally to the Port and once in the London Gazette. The Council will also place site notices in several places around the Port for extra visibility (although it is not a statutory requirement). The application documents will be publicly available

throughout the formal consultation at the Harbour Patrol Office and Exeter Canal Office and online on the [Harbour Orders Public Register](#).

- **Existing Consultation.**

Some consultees felt there hasn't been sufficient consultation.

Considerable effort has been put in by the Council in ensuring port stakeholders have had the opportunity to be heard. This includes:

- the informal consultation (lasting 6 weeks);
- publishing the FAQ;
- hosting 3 drop-in sessions;
- publishing this summary of responses.

All representations made to the Council will be taken into account for the formal consultation (which will provide an opportunity to make representations to the MMO).

- **Future Consultation with Stakeholders.**

Some consultees felt there wouldn't be sufficient consultation in relation to future decisions taken by the Council in relation to the Port.

The HRO recognises the importance of keeping local stakeholders fully informed and the benefit of consultation. As set out in the FAQ, the HRO provides for significant input from local stakeholders, as follows:

- **The Port Advisory Group**

The Port already has a well-established Port User Group. Article 31 of the HRO puts this user group (or any other additional or replacement stakeholder group) on a statutory basis (constituted as set out in article 31), meaning that the Council is required to continue to have a Port User Group (or groups). They are defined under the HRO as the 'Port Advisory Group'.

Article 31 requires the Council to consult the 'Port Advisory Group' on all matters substantially affecting the management, maintenance, improvement, conservation, protection or regulation of the Port and its navigation (except in an emergency).

- **Consultation for General Directions**

The Council is applying for a modern power of General Direction (article 20). There is a right for 'designated consultees' to be consulted about proposed general directions (article 21). The 'designated consultees' include the Royal Yachting Association, the Chamber of Shipping, the Port Advisory Group and "*such other persons or organisations as it [the Council] considers appropriate for the purposes of the application of this provision*". In addition, under article 21 there will be a 6 week public consultation about any proposed general directions where the Council will be under a statutory duty to have regard to any consultation responses received during that period. If the Council's decision to proceed with a proposed general direction is disputed, there is a statutory adjudication process in article 21.

- **Inspection of Key Documents**

The HRO requires:

- the "illustrative plan" in article 4(d) showing the port limits and the port premises;
- the Port Business Plan in article 5(3); and
- the register of all in force general directions in article 20(4),

to be kept publicly available online at www.exeter.gov.uk/leisure-and-culture/sport-and-leisure/exeter-port-authority/ and at the Harbour Patrol Office and Exeter Canal Office.

5 Business Plan

Some consultees said a business plan is required and wanted sight of a budget. Others wanted to understand what the costs of the port undertaking were, mainly so they could ascertain the likely rates of any future harbour dues (in response to this, see the Council's response above in relation to Harbour Dues). Others queried why money needed to be spent on the HRO.

The HRO imposes an obligation for the Council to formulate and maintain a 'Port Business Plan' in relation to the maintenance, conservation, operation, management and improvement of the Port (article 5(3)). It will be publicly available.

The Council has not provided its budget because SHAs set their budgets each year depending on yearly costs, so it is not something being consulted on as part of the HRO process and is not related to the HRO application.

The reason the Council is investing in obtaining an HRO is because it would consolidate, modernise and extend the powers of the Council. The Council considers this conducive to the efficient and economical operation, improvement, maintenance or management of the Port. Because the Council is already the SHA for the Canal and the wider port, it is cost effective and efficient for both to be governed by the same HRO (otherwise, a separate application would need to be made resulting in increased costs). Recent harbour legislation has applied to both 'parts' of the undertaking. The need for each specific provision in the HRO is justified in the Statement in Support.

6 Other

Some of other queries raised are discussed below.

- **Consultees queried how article 21 includes the 'Port Advisory Group' as a designated consultee, but article 31 doesn't specifically include 'the Port Advisory Group' as an advisory body.**

Any advisory group established under article 31 is a 'designated consultee' for the purposes of general directions (article 21). Article 31 does not use the term "Port Advisory Group" because that term is already defined in article 2(1) as '*... means the body or bodies established in accordance with article 31 (advisory bodies)*'. This is standard drafting practice in modern HROs.

- **Consultees wanted clarification on why 'port stakeholder' isn't it defined.**

This is a general term used throughout the industry. The term 'stakeholder' is not used in the proposed HRO, so it does not require a definition. It does appear once in the Explanatory Note (which does not have legal effect or form part of the HRO).

- **Consultees queried whether the HRO gives the Council powers to erect wind farms.**

The proposed HRO is a non-works HRO. It does not authorise any works or projects and is incapable of doing so.

- **Consultees asked whether the HRO could make a compulsory purchase or affect existing leases.**

The HRO includes no power to make a compulsory purchase. It is also unable to terminate or alter any leases currently in place.

- **Consultees noted that copies of the local legislation would be useful.**

All local legislation submitted as part of the HRO application will be made available on the [HRO Public Register](#) from the date of the formal public consultation which is anticipated to take place later in 2024.

- **Consultees asked whether the Council has subscribed to the Code of Practice on Harbour Directions.**

The Council has subscribed to the [Code of Practice](#) associated with its existing power to make Harbour Directions. The Code of Practice only relates to harbour directions (which are completely separate to special directions, general directions or byelaws).

Final Comment

The Council is pleased to have received wide engagement from the local community.

All consultees will have another opportunity to make representations to the MMO during the 42-day formal consultation. Any representations made will be provided to the Council to consider and the Council will respond directly to each consultee where necessary (instead of providing a summary) to resolve any specific concerns.