

**Summary of Stranraer HRO pre-application consultation feedback – updated 25 4 23**

Number	Consultee (Blank on website)	Date	Response	Action	Change	Resolved
1		21 3 23	Nil return	None required	None required	Yes
2		15 3 23	I would be grateful if you could clarify how you intend to deal with the transfer of our existing SHA powers to the Council. Is it your intention is to use the Repeal provision in section 42 which references Schedule 2 rather than effect a transfer of our existing SHA powers to the Council. If it is your intention to use the repeal provisions what provisions you intend to include in Schedule 2 as subject to repeal so we can fully assess the effect of such repeals, which may be the British Railways Order Confirmation Act 1977 (or sections of it) which established our existing harbour jurisdiction at Stranraer and gave us duties and powers as SHA. If this is your intention it would be helpful for the avoidance of doubt for the HRO to include a specific statement to expressly confirm that the HRO removes/abolishes our existing SHA jurisdiction and powers.	Section 14 (2A) of the Harbours Act 1964 provides that the objects for achieving all or any of which a harbour revision order (“HRO”) may be made in relation to a harbour include repealing superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour or consolidating any statutory provisions of local application affecting the harbour. As the British Railways Order Confirmation Act 1977 (the “Act”) is no longer required by Stena, the Minister could be asked to make the HRO and repeal the Act as it has been superseded. I suggest we make it clear in reference to ‘the extent of the harbour limits’	Changed:  Schedule reference to repeal:  ‘To the extent that the British Railways Order Confirmation Act 1977 extends to the harbour limits and pursuant to this Harbour Revision Order’.	

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3		15 3 23	I note the comment (Ref: JP1) on page iii that DGC's responsibilities for the whole of the Loch will be repealed by implementing the HRO. I could not see an express provision to this effect in the draft HRO so is it again your intention for Article 42 / Schedule 2 to be used for this purpose	DGC's responsibility for the whole of the loch is not repealed. Only Stena's responsibility for the southern half of the loch.  If Stena wishes DGC to repeal its responsibility for the northern part of the loch, Stena would need to present its own HRO over the northern part whereby it accepts responsibility as harbour authority and the DGC responsibility is revoked / renounced.	No change.	
4		15 3 23	Article 2 Definition of "East Pier" – I suggest this definition is amended so that it refers to the pier or any part of it as being owned and managed by Stena Line Ports Limited rather than by reference to the pier or any part of it being "outwith the ownership of the Council".	The definition of East Pier is not necessary as it is excluded by definition of the Harbour Limits, but the definition as is currently defined is what was specifically required by Ian Hampton at STENA, and the proposed definition would not be legally competent. In addition, Ian Hampton asked specifically for it to be identified on the Plan.	Action  DGC agreed to have the reference to East Pier clearly marked on a plan.	

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5		15 3 23	Article 2 – a definition of Ross Pier also needs to be added and shown on the harbour maps as this pier is also in the ownership of Stena Line Ports	Not necessary, as the Ross Pier is out with the harbour limits to which the HRO applies and nothing within the HRO refers to the Ross Pier.	Action  Happy to mark it on the Plan which will demonstrate that it is out with the harbour limits.	
6		15 3 23	Article 2 – another area outwith the ownership of the Council is the area of seabed and foreshore we lease from the Crown Estate Commissioners and we need to consider how this is dealt with in the HRO. This is defined as ‘ an area of former foreshore and seabed and two areas of seabed lying below mean high water springs extending to 1.932 hectares or thereby and which areas are shown delineated and coloured in grey on the plan annexed to this HRO (see attached plan). This could also be identified on the harbour map.	Stena have certain non-exclusive rights under the lease with Crown Estates, which does not affect the DGC powers under the HRO.	No change required. Happy for it to be marked on the Plan that the area shaded [ X ] is the Stena’s lease rights under the lease with the Crown Estates.	
7		15 3 23	Article 2 Definition of “harbour premises” – I suggest that this definition is amended to clarify that it does not include the East and Ross Piers and also possibly the seabed and foreshore leased from the Crown.	Not necessary, as the East and Ross Piers are out with the harbour limits to which the HRO applies and nothing within the HRO refers to the Ross Pier.	No change.	

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8		15 3 23	Article 4 – do the coordinates in Schedule 1, the harbour maps and Figure 1 of the General Directions exclude the East and Ross Piers and the leased area?	The Harbour Limits Plan shows the extent of the HRO and the East and Ross Piers are excluded. So the General Directions only apply to the harbour limits.  Area as defined on the plan.	No change.	
9		15 3 23	Article 6 – a new provision 6(4) should be added to confirm that the Council cannot extend their general powers and duties set out in Articles 6 (1) and 6(2) in relation to the East and Ross Piers and potentially the leased area.	Not necessary, as the East and Ross Piers are out with the harbour limits to which the HRO applies and nothing within the HRO provides that DGC can extend powers beyond the harbour limits.	No change	
10		15 3 23	Article 7 –a new provision (7 (4)) should be added stating that for the avoidance of doubt that the Council cannot extend their powers set out in Articles 7 (1) and 7 (2) in relation to the East and Ross Piers and potentially the leased area.	Not necessary, as the East and Ross Piers are out with the harbour limits to which the HRO applies and nothing within the HRO refers to the Ross Pier.	No change	

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11		15 3 23	Articles 8 – we have been granted by the Crown Estate Commissioners (CEC) the right to dredge that part of the bed and sea below Mean Low Water Springs between Ross Pier and East Pier which is coloured yellow on the attached plan (scan0287). We can assign this right to the Council with the prior written consent of the Crown. This would depend on whether this the area is included from the Council's SHA.	There is nothing contained within the 1996 lease that confers an automatic and exclusive right to dredge. Stena's right to dredge is subject to consent from the Crown Estates and separate agreement. The HRO will grant DGC the power to dredge, though it will need consent from the Crown Estates for the right.	No change	
12		15 3 23	Article 14 (1) - The avoidance of doubt provision should be extended to Ross Pier and possibly the area leased from Crown to avoid any ambiguity. However this provision should be included as a new article 14(4) rather than added to article 14(1) as it would then apply to the article as a whole.	Not necessary, as the East and Ross Piers are out with the harbour limits to which the HRO applies.	No change	

Number	Consultee (Blank on website)	Date	Response	Action	Change	Resolved
13		15 3 23	Article 16 (1) – The term “compulsory consultees” should be defined. I note that there is a comment (Ref: JP11) that RYA should be included as a consultee. I would be grateful if Stena Line Ports could also be included as a consultee to ensure such directions are compatible with directions etc we issue for the northern areas of Loch Ryan and/or do not impede our ability to operate and maintain our facilities at Loch Ryan.	Changed Inserted definition: “Compulsory Consultees” means Maritime Coastguard Agency, Royal Yachting Association Scotland, Commissioners of Northern Lighthouses and any other harbour users as appropriate from time to time;	Changed	
14		15 3 23	Article 25 – it should be clear that the by-laws do not apply to the areas excluded from the Council’s harbour limits. Also, a provision should be added for Stena Line to be consulted on any proposals for new or amended byelaws for the reasons specified above in relation to article 16 (1)	Not necessary, as the HRO only applies to the harbour limits.	No change	

Number	Consultee (Blank on website)	Date	Response	Action	Change	Resolved
15		15 3 23	<p>Article 39 – we should add an explicit general saving about our land and facilities being exempt. This could be a provision such as "Nothing in this Order applies in relation to the East Pier, the Ross Pier, the areas of the foreshore and seabed leased from the Crown Estate Commissioners or any other land or facilities owned by Stena Line Ports Limited". However rather than adding this provision it may be better to seek to add targeted savings for Stena Line Ports and its interests, such as the piers, against specific powers such as Article 14. This is to avoid a general saving potentially having an unintended consequence in terms of applying provisions of the HRO particularly if provisions are amended or new provisions added. Alternatively If more certainty is obtained, particularly as regards the powers and matters such as the extent of the harbour area and the approach to repeal our existing SHA powers, then it may be suitable to include a general saving provision in the form outlined above.</p>	<p>Not necessary, as the East and Ross Piers are out with the harbour limits to which the HRO applies.</p>	<p>No change</p>	

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16		22 3 23	<p>Article 10. This clause appears to impose strict liability on a vessel owner for any damage caused by their vessel, regardless of whether that owner (or the vessel's master) was at fault. There is a provision which preserves the owner's right to claim from a third party where the damage is actually caused as a result of the actions (or omissions) of that third party but there may well be circumstances in which that third party has disappeared or the damage is caused by no-one's fault (e.g. extreme weather, gear failure, medical emergency). In such circumstances, it is unreasonable for the Council to have the right to recover any outlay from the vessel owner – the Council and the vessel owner should each be insured against the risk of damage being sustained by their own property.</p>	<p>If a vessel causes damage to Council property, then the vessel owner is responsible. This is standard wording designed to provide that any party that causes damage to public property, is responsible and accountable. The protection for vessel owners and masters is to ensure they are appropriately insured in order to indemnify the harbour authority appropriately. The Council as harbour authority will insure itself against claims for its own actions.</p>	No change	



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17		22 3 23	Also, there is a provision in article 10(2) which would enable the Council to recover the cost of any damage from the vessel owner's employers, even if the incident has nothing to do with the vessel owner's employment. As drafted, this provision is unreasonable. If this provision is to remain at all, it should apply only where the damage to the Council's property is caused while the vessel owner is acting in the course of their employment.	This is standard wording, as by definition an employee is a person who is under employment contract with an employer and therefore covered through insurance under vicarious liability. If the objection relates to an employee who may be undertaking a private matter, that could create an ambiguity because the relevant employee may only have access to the harbour limits by virtue of the employment contract. As such, there is a rebuttable presumption that the employer will be responsible for its employees unless it is proved otherwise in any specific case.	No change	

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18		22 3 23	Article 12(a). The Council's power to board to enforce any enactment or byelaw relating to the Council should be limited to such enactments or byelaws that relate to the harbour undertaking. It would be unreasonable for the Council to have the power as harbour authority to board vessels to enforce enactments or byelaws that are entirely unrelated to the harbour.		Changed: 'relating to any byelaw (pursuant to this Order)'	
19		22 3 23	Article 14. This provision follows the form of the equivalent provision in the Eyemouth HRO, which the RYA and RYAS accepted.	No issues.	No change	
20		22 3 23	Article 16. This provision follows the form of the equivalent provision in the Eyemouth HRO, which the RYA and RYAS accepted, with one caveat. In the Eyemouth HRO 2021 the power to give general directions for the specified purposes was expressed to be <i>in order to promote or secure conditions conducive to the ease, convenience or safety of navigation or the safety of persons</i> (see <a href="https://www.legislation.gov.uk/ssi/2021/118/article/24/made">https://www.legislation.gov.uk/ssi/2021/118/article/24/made</a> ). The reference in this provision to the Port Marine Safety Code is too vague. It would be preferable if the wording of this provision were to mirror that of the equivalent provision in the Eyemouth HRO 2021.	The PMSC does cover the criteria requested by RYA and as a harbour authority we have a duty to follow the code. Therefore the change is not necessary, and reference to the code allows changes to general directions in future in order to comply with the code. The wording of this article has already been amended to reflect TS required change that it matches the wording of other harbour orders.	No change:	

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21		22 3 23	There is also reference in article 16(1) to “the compulsory consultees” but this expression is not defined. It should instead specifically refer to the RYA (or RYA Scotland) and be consistent with article 16(3).	Eyemouth HRO has “UK Chamber of Shipping, the Commissioners of Northern Lighthouses, the Royal Yachting Association Scotland” We prefer Compulsory Consultees (non specific). TS to define consultees for GDs? TS have referred to Eyemouth text for other issues.	Changed.  Now included in the definition of compulsory consultees to include Commissioners of Northern Lighthouses and the Royal Yachting Association Scotland and Maritime and Coastguard Agency.	

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22		22 3 23	<p>Article 25. In article 25(3), it would be preferable if instead of the definition of “personal watercraft” this order were to incorporate the definition of “watercraft” to be found in the recent Merchant Shipping (Watercraft) Order 2023 (<a href="https://www.legislation.gov.uk/uksi/2023/35/article/3/made">https://www.legislation.gov.uk/uksi/2023/35/article/3/made</a>).</p>	<p>Change ‘personal watercraft’ to ‘watercraft’ throughout document.</p> <p>Add definition 3.—(1) Subject to paragraph (2), “watercraft” means any type of craft which—</p> <p>(a) is capable of moving under its own mechanical power,</p> <p>(b) is used, navigated or situated wholly or partly in or on water, and</p> <p>(c) is capable of being used to carry one or more persons.</p> <p>(2) “Watercraft” does not include a ship or fishing vessel within the meanings given in section 313(1) of the 1995 Act.</p>	<p>Changed:</p> <p>Definitions section</p>	
23		23 3 23	<p>Given the nature of the proposal we <b>do not intend to provide site specific comments</b>. On the basis that this proposal related to management arrangements, for navigation conservancy powers, and will not alter any infrastructure or impact the environment it does not meet any of the triggers for consultation set out in our <a href="#">Triage Framework</a>. Please consider this to be our response.</p>	None required	None required	Yes

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24		23 3 23	In HRO, Section 35(1)(a) 'Her' is used when 'His' is used elsewhere in relation to Her / His Majesty	Amended as suggested	Changed	Yes