

Summary of Stranraer HRO pre-application consultation feedback – updated 1 6 23

Number	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achieving all or any of which a harbour revision order (“HRO”) may be made in relation to a harbour include repealing superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour or consolidating any statutory provisions of local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“Act”) is no longer required by Stena, the Minister could be asked to make the HRO and repeal the Act as it has been superseded.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’.	Yes

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3		15 3 23	I note the comment (Ref: JP1) on page iii that DGC's responsibilities for the whole of the Loch will be repealed by implementing the HRO.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intention for Article 42 / Schedule 2 to be used for this purpose	DGC's responsibility for the whole of the loch is not repealed.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.	Yes

Number		Date	Response	Action	Change	Resolved
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.	Yes
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.	
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.	

Number		Date	Response	Action	Change	Resolved
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	

Number		Date	Response	Action	Change	Resolved
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		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		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>	

Number		Date	Response	Action	Change	Resolved
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	

Number	Date	Response	Action	Change	Resolved
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	
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.	Noted	Changed: 'relating to any byelaw (pursuant to this Order)'	Yes

Number		Date	Response	Action	Change	Resolved
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 https://www.legislation.gov.uk/ssi/2021/118/article/24/made). 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:	
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.	Yes

Number	Date	Response	Action	Change	Resolved
22	22 3 23	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 (https://www.legislation.gov.uk/ukxi/2023/35/article/3/made).	Change ‘personal watercraft’ to ‘watercraft’ throughout document. Add definition 3.—(1) Subject to paragraph (2), “watercraft” means any type of craft which— (a) is capable of moving under its own mechanical power, (b) is used, navigated or situated wholly or partly in or on water, and is capable of being used to carry one or more persons. (2) “Watercraft” does not include a ship or fishing vessel within the meanings given in section 313(1) of the 1995 Act.	Changed: Definitions section	Yes
23	23 3 23	Given the nature of the proposal we do not intend to provide site specific comments . 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 Triage Framework . Please consider this to be our response.	None required	None required	Yes

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24	23 3 23	In HRO, Section 35(1)(a)i 'Her' is used when 'His' is used elsewhere in relation to Her / His Majesty	Amended as suggested	Changed	Yes
25	16 5 23	<p>2. <i>Article 10 [now article 8]. 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.</i></p> <p>D&G's response does not justify this proposed provision. The law of delict in Scotland does <i>not</i> impose strict liability for causing damage to property belonging to others. In other words, a person is only liable for causing damage</p>	<p>Appears to be a duplication of the feedback in Number 16 above.</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 (or permits such damage or is the cause of such 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. Indemnification for the use of public sector property is not only usual practice but deemed to be best practice. Otherwise such could be a drain on the public purse which the Council has a duty to mitigate. In situations such as expressed here where a third</p>	No change	

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			<p>if they are at fault. This proposed provision in the order would distort the basic position under Scottish law and make the owner of a vessel liable whether or not they were at fault, which is unreasonable. The RYA's and RYA's concern thus still stands.</p> <p><i>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.</i></p> <p>D&G's response is misconceived. The basic position under Scottish law is that an employer is only vicariously liable for the actions of its employee where that employee is acting in the course of his or her employment. This proposed provision in the order would distort the basic position under Scottish law and make the employer of the owner of a vessel vicariously liable for the owner's actions whether or not the owner was</p>	<p>party is involved, the onus is on the vessel owner to seek independent legal advice at that time.</p>		

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			acting in the course of his or her employment, which is unreasonable. The RYA's and RYA's concern thus still stands.			
26		16 5 23	<p>3. <i>Article 12(a) [now article 10(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.</i></p> <p>The RYA's and RYAS's concern has been addressed.</p>	Noted and addressed	Changed	Yes
27		16 5 23	<p>4. <i>Article 14 [now article 12]. This provision follows the form of the equivalent provision in the Eyemouth HRO, which the RYA and RYAS accept.</i></p> <p>No action required.</p>	Noted	No further change	Yes
28		16 5 23	<p>5. <i>Article 16 [now article 22]. 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</i></p>	As stated above, the PMSC does cover the criteria requested by RYA and as a harbour authority we have a duty to follow the code. Either,	No change	

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			<p><i>2021 the power to give general directions for the specified purposes was expressed to be in order to promote or secure conditions conducive to the ease, convenience or safety of navigation or the safety of persons (see https://www.legislation.gov.uk/ssi/2021/118/article/24/made). 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 202.</i></p> <p>D&G's comment demonstrates a basic lack of understanding of the status of the Port Marine Safety Code ("PMSC"). The PMSC itself states that it "It is endorsed by the UK Government, the devolved administrations and representatives from across the maritime sector and, while <u>the Code is not mandatory</u>, these bodies have a strong expectation that all harbour authorities will comply" (emphasis added). Further, the PMSC states that "<u>The Code does not contain any new legal obligations</u> but includes (amongst other things) references to the main legal duties which already exist. <u>Failure to comply is not an offence</u> in itself.</p>	<p>we insert the PMSC provisions into the HRO or we simply refer to it, which is competent under the law. 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 changes that it matches the wording of other harbour orders. However, this HRO is not a duplication of other harbour orders, but does where the context applies, match the wording of other harbour orders. The general directions set out in article 22, are the directions for the purposes required by the Council as harbour authority and as set out in article 22 and therefore they may not match the Eyemouth Order exactly. However, RYA's comments have been noted and should note that they are a compulsory consultee under the HRO, so there should be no prejudice to them.</p>		

Number		Date	Response	Action	Change	Resolved
			<p>However, the Code represents good practice” (emphasis added). Moreover, The PMSC does not set out any specific purposes for which general directions might be given.</p> <p>D&G asserts that “The wording of this article has already been amended to reflect TS required change that it matches the wording of other harbour orders”. There is, however, no Scottish harbour order which contains a power to give general directions in identical terms to those proposed in this order. The RYA’s and RYAS’s proposal that this provision should mirror that of the equivalent provision in the Eyemouth HRO 2021 thus still stands.</p> <p>Alternatively, the RYA’s and RYAS’s concern would be addressed if this provision were to mirror the equivalent provision in the Dumfries and Galloway Council (Kirkcudbright) Harbour Revision Order 2018 (https://www.legislation.gov.uk/ssi/2018/188/article/16/made), albeit broadening the consultation obligation to encompass the Compulsory Consultees.</p>	<p>TS already saw the wording of the Kirkcudbright Order and suggested the change.</p>		

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29	16 5 23	<p>6. <i>There is also reference in article 16(1) [now article 22(1)] to “the compulsory consultees” but this expression isn’t defined. It should instead specifically refer to the RYA (or RYA Scotland) and be consistent with article 16(3).</i></p> <p>The RYA’s and RYAS’s concern has been addressed.</p>	Compulsory Consultees are now defined in article 2.		Yes
30	16 5 23	<p>7. <i>Article 25 [now article 20]. 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 Merchant Shipping (Watercraft) Order 2023</i> (https://www.legislation.gov.uk/uksi/2023/35/article/3/made)</p> <p>The RYA’s and RYAS’s concern has been addressed. However, the reference in article 20(2)(l) to “the vessels referred to in sub-paragraph (i)” should be to “the vessels referred to sub-paragraphs (i) and (j)”.</p>	<p>The definition of watercraft has been changed now see Number 22 above</p> <p>Have inserted the ‘j’ to 20(l)</p>	No action/action to insert the missing ‘j’	Yes

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31	16 5 23	<p>Section 45 (1) (a) is incorrect as insofar as the management of the Scottish Crown Estate is concerned, I would suggest the following:</p> <p>“belonging to His Majesty in right of the Crown and which forms part of the Scottish Crown Estate without the consent in writing of the person managing the land”.</p> <p>Section 45 (1) (b) should also probably refer to the ‘Scottish Crown Estate’.</p> <p>The relevant legislation for the management of the Scottish Crown Estate is here: https://www.legislation.gov.uk/asp/2019/1/contents/enacted</p>	<p>The definition of the Crown Estate in Scotland has now changed.</p> <p>The ‘Crown Estate Scotland’ is the organisation that manages the Scottish Crown Estate, of which the assets form part.</p> <p>‘forming’ not ‘which forms’ is the standard Scots Law terminology when referring to heritable land and property.</p>	Changed to ‘Scottish Crown Estate’	Yes
32	26 5 23	It states consultation with RYA and other harbour users. We would also expect to see The Loch Ryan Statutory Harbour Authorities Committee to be listed as vessels have to travel through their patch on entry and departure.	Will change definition to include the Loch Ryan Statutory Harbour Authority Committee to compulsory consultees	Change	Yes
33	26 5 23	Compulsory consultees are defined as “ <i>Maritime and Coastguard Agency, Royal Yachting Association Scotland, Commissioners of Northern Lighthouses and any other harbour users as appropriate from time to time;</i> ”. We would recommend considering whether there should be others included to represent commercial shipping i.e. UK Chamber of Shipping.	<p>Not necessary as such contains reference to ‘any other harbour users as appropriate from time to time’</p> <p>Have added Loch Ryan Statutory Harbour Authority and UK Chamber of Shipping.</p>	Have amended	Yes

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34		26 5 23	<p>The Order contains all the aspects I would expect to see apart from:</p> <ul style="list-style-type: none"> a. The provision for life-saving craft and appliances. For the purpose of saving life, they can provide and maintain in or in the vicinity of the harbour— (a) boats or other vessels together with all necessary apparatus and equipment and buildings, structures, slipways and moorings for their operation, maintenance or accommodation; and (b) lifebuoys, lifelines and other life-saving appliances together with structures for their storage and safekeeping. They may enter into arrangements with any person for the provision and maintenance of any of the facilities authorised. b. There is provision to revoke or amend general directions but not much detail on the procedure i.e. consultees, timescales, how objections would handled, published etc. 	<p>I think this should be in the feedback proposed for the general directions not the feedback for the HRO</p>	<p>Action – moved to general directions feedback form</p>	Yes

Number	Date	Response	Action	Change	Resolved
35	26 5 23	<p>We note that you have defined “watercraft” and are aware of the new regulations which have come into law through the Merchant Shipping (Watercraft) Order 2023. The implications of this should be considered in the General Directions including consideration of the application of each general direction to Watercraft.</p> <p>https://www.gov.uk/government/news/warning-for-powered-watercraft-users-as-new-legislation-comes-into-force</p>	I think this should be in the feedback proposed for the general directions not the feedback for the HRO	Action – moved to general directions feedback form	Yes
36	1 6 23	<p>Comment No.2 –Thank you for confirming that the Council intends to use the HRO to repeal our existing SHA powers as are derived from the British Railways Order Confirmation Act 1977 by using Article 46 / the Schedule. I note that the term “<i>harbour limits</i>” is defined by the written description in Article 2 of the HRO which also references this area being delineated red on the attached harbour limits plan. We are content in general for the powers of the 1977 Act to be repealed to the extent that they extend to the harbour limits so long as that term excludes from its description the areas comprising the East Pier, Ross Pier and potentially the area of leased sea bed (see below) so that our powers under the 1977 Act remain in operation over those areas. Whilst the two piers are shown on the harbour limits plan as outside the red area the HRO at Article 4(3) provides that in the event of any discrepancy between the area of</p>	<p>The definition of ‘harbour limits’ by virtue of the red line exclusion of the East Pier and Ross Pier, both are actually excluded so will not be pursuant to this HRO. However reference is made to the East Pier specifically in article 14, which is why the East Pier requires to be defined. If we were to specifically exclude something that is already excluded, it creates an ambiguity.</p> <p>In respect of the Leased area, the HRO does not affect Stena’s rights under its lease, but the area is still subject to the control of the Harbour Authority so should not be</p>	<p>No change</p> <p>Back letter proposed to Stena</p>	

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			<p>harbour limits shown on the plan and that described in the HRO then the definition of harbour limits in the HRO will prevail. However, currently the harbour limits description in the HRO <u>does not</u> expressly exclude the East and Ross Pier. Therefore to avoid any ambiguity as to whether the 1977 Act still applies to those areas (i.e. that they are not within the area defined by the HRO as comprising the “<i>harbour limits</i>”) then due to Article 4(3) an express exclusion of the East and Ross Piers should be added to the definition of “<i>harbour limits</i>” in Article 2.</p> <p>The leased area of sea bed is not currently shown by the harbour limits plan as being outside the area shown red, nor is this area described in the HRO as being excluded from the area within the “<i>harbour limits</i>”. We do need consider what impact the lease has on the harbour limits. Have you had any discussions with the Crown Estate Commissioners on this?</p>	<p>excluded. The Council is happy to enter into any agreement with Stena to guarantee its lease rights and maintain its existing rights of access and other rights.</p>		
37		1 6 23	<p>Comment No.4 – Firstly I note that the definition of “<i>East Pier</i>” remains in the HRO despite the comments saying it is not necessary. For the reasons set out in my response to Comment No. 2 this definition should be retained. I do not understand why the definition proposed by us is unacceptable.</p>	<p>The definition is there because Stena strongly requested a specific exclusion of rights to appropriate covered in article 14. It is clear, that the East Pier is excluded by virtue of not being included in the red line boundary, but at the</p>	No change	

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				meeting with Stena executives and Council Director, it was agreed in this specific article to include reference to the East Pier for comfort.		
38		1 6 23	Comment No.5 – For the reasons set out in my response to Comment No. 2 a definition of “ <i>Ross Pier</i> ” should be added to the HRO.	As above	No change	
39		1 6 23	Comment No.6 – As set out in my response to Comment No. 2, a definition of the leased area of sea bed may need to be added to the HRO	As above	No change	
40		1 6 23	<p>Comment No.8 – For the reasons outlined in my response to Comment No. 2, amendments need to be made to the HRO to exclude the defined areas of the East and Ross Piers from the definition of “<i>harbour limits</i>” in Article 2 to ensure, due to Article 4(3), that these areas are not included in the new harbour area for which the Council will be SHA.</p> <p>As also outlined in response to Comment No. 2 further changes may also be required if the leased area of sea bed is also excluded.</p> <p>Article 4 has been amended in the attached draft to include within the Council’s SHA jurisdiction the area described by new Article 4(1)(b). This</p>	As above	No change	
				SHA area shows the harbour limits and the harbour premises plan shows the premises on the shoreline and the areas have clear coloured	We don’t propose to change the plans, nor the descriptions which have been drawn up in line with TS comments	

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			<p>area is described as the area currently delineated in red on the attached harbour premises plan. However this written description does not tally with what is shown on the harbour premises plan as it describes the "SHA Area" as being shown edged red and shaded blue, being an area that does not include the two piers. If the plan is correct than new Article 4(1)(b) should be amended to refer to "... <i>the area shown delineated edged red and shaded blue on the harbour premises plan</i>".</p>	<p>boundary lines. There is no need to say it is also shaded in blue as it is clear.</p>		
41		1 6 23	<p>Comment No. 9 - As Article 6 should not apply to the 2 piers then in the interest of clear drafting and to confirm the intended application of Article 6 the HRO should be amended to provide an explicit saving to confirm the extent of its application. Accordingly, a new Article 6(4) should be added which states "<i>This article does not apply to the East Pier or the Ross Pier of any parts thereof</i>". It is noted that the same saving is still included in what is now Article 12(1), see Comment No. 12 below.</p> <p>This saving may also need to be extended to the defined leased area of sea bed.</p>	<p>Not necessary for the reasons given above</p>	<p>No change</p>	

Number	Date	Response	Action	Change	Resolved
42	1 6 23	<p>Comment No. 10 – As Article 15 should not apply to the 2 piers then in the interest of clear drafting and to confirm the intended application of Article 15 the HRO should be amended to provide an explicit saving to confirm the extent of its application. Accordingly, a new Article 15(3) should be added which states <i>“This article does not apply to the East Pier or the Ross Pier of any parts thereof”</i>. It is noted that the same saving is still included in what is now Article 12(1), see Comment No. 12 below. This saving may also need to be extended to the defined leased area of sea bed.</p>	Not necessary for the reasons given above	No change	
43	1 6 23	<p>Comment No. 12 - As Article 12 does not apply to the 2 piers then in the interest of clear drafting and to confirm the intended application of Article 12 the HRO should be amended to provide an explicit saving to confirm the extent of its application. Therefore the existing saving included in Article 12(1), which currently only applies to the East Pier, should first be extended to include the Ross Pier and should then be provided as a new Article 12(4) so as to apply to the whole article as intended. Accordingly, a new Article 12(4) should be added which states <i>“This article does not apply to the East Pier or the Ross Pier of any parts thereof”</i>. This saving may also need be extended to the defined leased area of sea bed.</p>	Not necessary for the reasons given above	No change	

Number	Date	Response	Action	Change	Resolved
44	1 6 23	<p>Comment No. 13 - I note that a new definition of “Compulsory Consultees” has been added for the purpose of defining who the Council should consult with before making general directions. However, the new definition does not address the original response as it does not expressly include Stena Line as a consultee in its role as SHA for Loch Ryan Port. To ensure that directions issued by the Council are compatible with those issued by Stena Line then Stena Line should be a named consultee alongside the MCA, the RYA and the Commissioners of Northern Lighthouses.</p>	<p>Will be changing definition of compulsory consultees to include:</p> <p>UK Chamber of Shipping and the Loch Ryan Statutory Harbour Authorities Committee Stena will not be the Harbour Authority once the HRO is enacted but will be a major user so their rights to consultation will be captured in the harbour user provisions. Note that Stena are also a member participant of the Loch Ryan Statutory Harbour Authorities Committee so will be consulted as compulsory consultee by default by virtue of being a member participant of the Loch Ryan Statutory Harbour Authorities Committee</p>	Change	
45	1 6 23	<p>Comment No. 14 – See my response to Comment No. 2 regarding the amendments required to exclude the 2 piers (and possible the leased area of sea bed) from the harbour area that would be subject to bylaws made under Article 20. However, as Stena Line will retain interests in areas such as the 2 piers which are in close proximity to areas that would be within the harbour area then provision should be added to this article to provide for</p>	As explained above	No change	

Number		Date	Response	Action	Change	Resolved
			the Council to consult with Stena Line on any byelaws it makes to ensure these do not adversely impede Stena Line's use of its retained assets.			
46		1 6 23	Comment No. 15 –On the basis that the amendments referred to in my response to Comment No. 2 and the savings referred to in my responses to Comment Nos. 9, 10 and 12 are included in the HRO then such a general saving may not be required.	Not necessary for reasons given above	No change	
47		1 6 23	<ul style="list-style-type: none"> If we are to relinquish our SHA powers over the the leased area it could impede our ability to comply with our obligations in the lease particular those in Clause 4 of the lease, for example the ability to comply with the repair obligations in Clause 4.7 if the leased areas and/or adjacent areas are subject to a new SHA's control and regulation. Therefore we would need right of access to the leased area. 	<p>As above</p> <p>The Council is happy to enter into any agreement with Stena to guarantee its lease rights and maintain its existing rights of access and other rights.</p>	No change	
48		1 6 23	<ul style="list-style-type: none"> Clause 4.6.2 contains an obligation to inform the Commissioners of any regulations etc to made by another Harbour Authority or other statutory or Government authority affecting the 	If the obligation under the Lease is for the tenant to advise the Commissioners, then this obligation sits with Stena to perform not the		

Number		Date	Response	Action	Change	Resolved
			leased areas. It is therefore essential that contact is made with the Commissioners to advise them of the HRO proposed to be made and its effect.	Council. However, note the Crown Estates have been included in the pre application consultation. In being consulted, this does not waive Stena's obligations under its own lease duties so strongly recommend Stena seeks advice of its own solicitors		
49		1 6 23	<ul style="list-style-type: none"> Clause 4.6.2 also requires us to inform the body making such regulations of the Commissioners interest in the leased areas and advise them that such regulations should include a saving for the Commissioners. We have in our comments on the draft HRO made you aware of the Commissioners interests by informing you of our lease from them. Whilst we have not explicitly informed you of the need for a Crown saving in the HRO such a saving is already provided for in article 45 of the draft HRO. 	Noted	No Change	Yes
50		1 6 23	No reference to autonomous vessel / watercraft	Requires adding	Inserted new addition to definition of Water Craft to include 'autonomous'	Yes