



Eich cyf / Your ref - 10995/76/PFI
Ein cyf/ Our ref - WGHRO-2020-02

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(email only)

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Dear Mr Walker,

Harbours Act 1964
Swansea (Closure of the Prince of Wales Dock) Harbour Revision Order 2022

1. The Welsh Ministers have considered your application for the Swansea (Closure of the Prince of Wales Dock) Harbour Revision Order 2022 (the “Order”), which you applied for on behalf of Associated British Ports (the “Applicant”) under section 14 of the Harbours Act 1964 (the “HA 1964”) on 2 September 2020.
2. The function of deciding whether or not to make the Order, has been transferred to the Welsh Ministers by virtue of section 29 of the Wales Act 2017. The decision falls under the responsibility of Lee Waters, the Deputy Minister for Climate Change, one of the Welsh Ministers as the appropriate Minister for the purposes of the HA 1964.

Summary of Decision

3. The Deputy Minister for Climate Change has authorised the making of the Order without substantive amendment.
4. The Order provides for the closure of the Prince of Wales Dock (the “Dock”) within the Port of Swansea (the “Port”), including cessation of:
 - a. the Applicant’s statutory responsibilities in relation to the Dock;
 - b. all rights of navigation in relation to the Dock; and
 - c. the obligation to maintain navigational access to the Dock from the rest of the Port.
5. The Welsh Ministers consider that the closure is required to reflect the current circumstances of the Port and is in the interests of securing the management of the Port in an efficient and economical manner for the purpose of section 14(2) (b) of the HA 1964. The Welsh Ministers also consider that the application accords with the Port

Marine Safety Code (the “Code”)¹, which is published by the Department for Transport and endorsed by the devolved administrations. The Code sets out a national standard for every aspect of port marine safety and, whilst not mandatory, the Welsh Government expects all harbour authorities in Wales to comply.

Background

6. The Applicant is the statutory harbour authority for the Port, of which the Dock forms part. The Applicant was reconstituted under the Transport Act 1981 as the statutory successor to the British Transport Docks Board which was created in 1962 on the dissolution of the British Transport Commission (in turn established in 1947 following the nationalisation of ports covered by the railway and canal companies). The harbour undertaking inherited from the British Transport Docks Board includes the powers and duties conferred by local legislation in relation to the Port.
7. The Dock was originally authorised by the Swansea Harbour Act 1874. It was extended by the Swansea Harbour Act 1894 and further responsibilities were conferred by the Swansea Harbour Act 1901. The functions in relation to the Dock originally conferred on the Swansea Harbour Trustees, then passed to the Great Western Railway Company before passing to British Transport Commission as mentioned above.
8. Over its history the Dock has served the export of locally mined minerals such as coal and metals. More recently, and in reflection of the decline in raw material exports from the UK, the Dock had facilitated the import of sea dredged aggregates, but since 2017 this activity has been relocated to other more suitable facilities. In assessing the future of the Dock, the Applicant has considered these factors alongside physical limitations (in particular, the need to access the Dock by navigating through the narrow communication passage), as well as other, more suitable and available port facilities within the rest of the Port and locally. There is currently no use of the Dock for port purposes, and the only current use is for the purposes of water sport activities, a non-port use which is not affected by the closure of the Dock.
9. The Applicant has concluded that it is very unlikely that there would ever be a need for the Dock to be used for port purposes in the future, and therefore the closure of the Dock is desirable in the interest of the efficient and economic management of the Port since it removes the obligation to maintain a facility within the Port for which there is no need.
10. The Code requires harbour authorities to keep their powers and jurisdiction under review and take account of the various mechanisms such as harbour orders which are available to amend statutory powers in an authority’s local legislation. In accordance with this requirement, the Applicant has reviewed its powers in relation to the Port and concluded that it is unnecessary to continue to maintain the Dock for port use. It is therefore considered desirable in the interests of safety to close navigation between the operational Port to a water area which is no longer being maintained for that purpose.
11. Public authorities are required by section 58 of the Marine and Coastal Access Act 2009 to have regard to the UK Marine Policy Statement² and relevant marine plans in

¹ [Port Marine Safety Code \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)

² [UK marine policy statement - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

making decisions or, in this case the Welsh National Marine Plan, the relevant marine plan made for the purpose of section 51 of the Marine and Coastal Access Act 2009. The Welsh Ministers, having considered the requirements of section 58 of the Marine and Coastal Access Act 2009, the UK Marine Policy Statement and the Welsh National Marine Plan, agree with the position of the Applicant that the Order does not authorise any development or directly engage the UK Marine Policy Statement or any of the policies contained in the Welsh National Marine Plan.

12. It is considered that the Order achieves various objects specified in Schedule 2 of the HA 1964, these are detailed within Annex I of this letter. These include objects identified by the Applicant and further objects considered by officials to be applicable.

Application Procedure

13. On 2 September 2020 an application for the Order was submitted to the Welsh Government by Winckworth Sherwood LLP on behalf of the Applicant.
14. Notice of the application for the Order was advertised in the London Gazette on 4 September 2020 and the South Wales Evening Post on 4 and 11 September 2020. A 42-day consultation ran from 04 September 2020 to 16 October 2020.

Consultation

15. In September 2020 the Welsh Government notified the list on consultees within Annex A of the **Procedural Harbour Order Guidance for Wales 2018**.³ Comments received are summarised in the table below:

Organisation	Response received
Natural Resources Wales (“NRW”)	NRW raised no objection, however they did raise a number of matters relating to the future operation and management of the Dock area.
Maritime and Coastguard Agency (the “MCA”)	The MCA raised no objections or concerns, but stressed that any future management of the Dock in relation to recreational activity should adhere to the Code and its guide to good practice.

NRW

16. NRW raised no objections to the Order and advised that the removal of the statutory responsibilities in relation to the Dock will not affect any European or National Protected Sites within or adjacent to the related area. However, they made a number of comments concerning the future management of the Dock, including:

(a) the increased social amenity value of the Dock;

³ Procedural harbour order guidance for Wales 2018 (gov.wales)

- (b) the importance of maintaining water transfer to and from the Dock to maintain salinity and water quality;
- (c) the need for any future change of use to account for potential biosecurity issues; and
- (d) the importance of protecting the route to reconnect the Tennant Canal to the River Tawe via the Docks.

17. In response, the Applicant advised that the purpose of this Order is not to authorise any development but simply to change the legal status of the Dock and to remove the Applicant's statutory duties and powers in relation to the Dock. Any concerns relating to potential future development, or change of use that would require consent under the planning regime would allow NRW to comment at the time of such an application. The Applicant also confirmed that it intends to maintain the ability to transfer water and to maintain water quality to and from the Dock, and that the Order would not prevent the reconnection of the Tennant Canal.

MCA

18. The MCA confirmed that they had no objections to raise with regard to the Order on the understanding that the proposals are to be carried out in accordance with the Code and supplementary Guide to Good Practice on Port Marine Operations⁴. The MCA did however question who would take ownership of the management of the Dock and oversee its safe operation following its closure.

19. In their response, the Applicant confirmed that the works required to operationally close the Dock would require planning permission under the Town and Country Planning Act 1990, and would also be subject to the requirements of the Marine and Coastal Access Act 2009, which would consider the application of the Code. They also confirmed that the recreational activities that are currently undertaken on the Dock are done so under an agreement with the Applicant that is in line with the requirements of the Code. The Applicant's intention is that this licence to operate (and associated obligations) would be transferred to the new owner at the point of sale of the Dock.

20. No public representations were received within the statutory 42-day period provided for in Schedule 3 to the HA 1964.

Welsh Ministers' Consideration

21. The Welsh Ministers note that an order may be made under section 14 of the HA 1964 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 set out in Schedule 2 to the HA 1964.

22. By virtue of section 14(2)(a) of the HA 1964, a harbour revision order may not be made in relation to a harbour unless the Welsh Ministers are satisfied that an appropriate written application has been made by the authority engaged in improving, maintaining

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854521/MCA-Port Marine Guide to Good Practice NEW-links.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854521/MCA-Port_Marine_Guide_to_Good_Practice_NEW-links.pdf)

or managing it, or by a person appearing to it to have a substantial interest or body representative of persons appearing to it to have such an interest.

23. Section 14(2)(b) of the HA 1964 provides that a harbour revision order shall not be made in relation to a harbour unless the Welsh Ministers are 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 of facilitating the efficient and economical transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships.
24. Section 14(3) of the HA 1964 provides that a harbour revision order may include all such provisions as appear to the Welsh Ministers to be requisite or expedient for rendering of full effect any other provision of the order and any supplementary, consequential or incidental provisions appearing to him to be requisite or expedient for the purposes of, or in connection with, the order.
25. The Welsh Ministers recognise that there is no current or future predicted use of the Dock for port purposes. Furthermore, the only current activity associated with the Dock is for the purposes of water sport activities, a non-port use which is not affected by the closure of the Dock. The Welsh Ministers therefore consider that the closure of the Dock is required to reflect the circumstances of the Port, is desirable in the interests of securing the improvement, maintenance or management of the Port in an efficient and economical manner for the purpose of section 14(2) (b) of the HA 1964, and is in accordance with the Code.
26. The Welsh Ministers have also considered the substantive comments raised by NRW and MCA, and are satisfied that the response provided by the Applicant adequately addresses the concerns raised.

Welsh Ministers' Decision

27. The Welsh Ministers are satisfied that the Order meets the requirements of section 14(1) and sections 14(2)(a) and 14(2)(b) of the HA 1964. The Welsh Ministers are also satisfied that the statutory procedural requirements have been complied with.
28. The Welsh Ministers are satisfied that there are no objections to the application for the Order.
29. The Welsh Ministers are satisfied for the reasons set out by the Applicant in their statement of support, and summarised above, that the making of the Order (and each provision of the Order) is desirable for the purposes of section 14(2)(a) and (b) of the HA 1964 and should be made. The Welsh Ministers also consider some supplementary, consequential and incidental provisions of the Order to be requisite and expedient for rendering full effect to the Order pursuant to section 14(3) of the HA 1964.
30. The Welsh Ministers therefore authorise the making of the Order, with no substantive amendments.
31. The Welsh Ministers note that the Order is not subject to any procedure and therefore is not required to be laid before the Senedd.

Conveyance of Decision

32. As soon as possible after the Order has been made, the Applicant is required to publish a notice by Gazette and local advertisement stating that the Order has been made and specifying a place where a copy of the Order and any map may be inspected at all reasonable hours, in accordance with the provisions of the HA 1964.

Right of Challenge

33. Any person who desires to question the making of the Order on the ground that there was no power to make the Order or that a requirement of the HA 1964 was not complied with in relation to the Order, may within 6 weeks from the date on which the Order becomes operative make an application for the purpose to the High Court.
34. **A person who thinks they may have grounds for challenging the decision to make the Order is advised to seek legal advice before taking any action.**

Yours sincerely,

Carolyn Hughes

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Governance & Legislation Manager | Rheolwr Llywodraethu a Deddfwriaeth
National & International Connectivity | Cysylltedd Cenedlaethol a Rhyngwladol
Welsh Government | Llywodraeth Cymru

Annex I

Applicable Objects for whose achievement Harbour Revision Orders may be made within the Harbours Act 1964, Schedule 2

Paragraph 3:

“Varying or abolishing duties or powers imposed or conferred on the authority by a statutory provision of local application affecting the harbour, being duties or powers imposed or conferred for the purpose of—

- a) improving, maintaining or managing the harbour;*
- b) marking or lighting the harbour, raising wrecks therein or otherwise making safe the navigation thereof; or*
- c) regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.”*

Paragraph 6:

“Settling (either for all purposes or for limited purposes) the limits within which the authority are to have jurisdiction or altering (either for all purposes or for limited purposes) such limits as previously settled.”

Paragraph 8A:

“Enabling the authority to close part of the harbour or to reduce the facilities available in the harbour.”

Paragraph 17:

“Any object which, though not falling within any of the foregoing paragraphs, appears to the appropriate Minister to be one the achievement of which will conduce to the efficient functioning of the harbour.”