

Hayle Harbour Advisory Committee

CREATED BY THE HAYLE HARBOUR ACT, 1989

Role as Stakeholder in a New Harbour Organisation

Background

The Hayle Harbour Advisory Committee (HHAC) was established under Article 59 of the Hayle Harbour Act, 1989:

59.—(1) The Company shall establish and maintain an advisory committee to provide advice to the Company on any question in connection with the discharge of the Company's functions under this Act which the Company may refer to it or on which it considers it should offer its advice.

(2) There shall be not less than 10 members of the advisory committee, of whom not more than two may be members, directors or employees of the Company.

(3) Membership of the advisory committee shall include persons appointed by—
(a) Cornwall County Council, Penwith District Council and Hayle Town Council;

(b) users of the harbour, or bodies representing such users; and

(c) bodies representing environmental interests.

(4) Without prejudice to the generality of section 45 (Power to sell or lease undertaking) of this Act, if any person purchases part of the undertaking or takes a lease of the undertaking or any part thereof under that section, the references to the Company in subsection (1) above shall be construed as references to him and to the Company.

In effect, the HHAC represents all users of the harbour.

Constitution

The current Constitution was adopted in 2009 and specifies the membership as follows:

1. There shall be an Advisory Committee (“the Committee”) consisting of two members appointed by the Hayle Harbour Management Ltd. (“the Company”) and not more than 20 other members.
2. The members of the Committee shall be appointed as follows:
 - a) Harbour Owner’s Representative - 1 member
 - b) Cornwall Council - 2 members
 - c) Hayle Town Council - 2 members
 - d) St. Ives Town Council - 1 member
 - e) Commercial Fishermen using Hayle Harbour or a body representative of such persons - 2 members
 - f) Other Commercial Boat Owners using Hayle Harbour or a body representative of such persons - 1 member
 - g) Hayle Harbour Users Association - 1 member
 - h) South West Regional Sports Council - 1 member
 - i) Royal Society for the Protection of Birds - 1 member
 - j) Cornwall Wildlife Trust - 1 member
 - k) Natural England - 1 member
 - l) South West Water Authority - 1 member
 - m) Ramblers Association - 1 member

- n) Cornwall Sea Fisheries Committee - 1 member
- o) Hayle Chamber of Commerce - 1 member
- p) Environment Agency - 1 member
- q) MCA - 1 member

and the Committee shall have power to co-opt as additional but non-voting members of the Committee up to 2 persons who in the Committee's opinion have special knowledge or expertise which would be of value to the Committee in the discharge of its functions.

Transfer of Harbour to a Trust

As part of its plan for the development of its Hayle Harbour properties, ING Real Estate (UK) Ltd. has proposed to transfer operation of the harbour from Hayle Harbour Authority Ltd. to a not-for-profit trust funded by the creation of a 'World Heritage Site' levy on commercial and residential properties. It is anticipated that this levy would generate in the region of £150k - £200k per annum which should be sufficient to fund the core operations of the harbour. It is anticipated that development of the harbour for commercial and leisure purposes could be assisted by grants from sources such as the European Fisheries Fund, Cornwall Development Company and the LEP.

A trust with fiduciary and staffing responsibilities should follow the guidelines of the Department for Transport and MMO and have trustees with an appropriate skillset rather than appointees or *ex-officio* members from various bodies (see References). Thus trustees will be appointed based on having appropriate skills. The Department for Transport recommends that there be between 8 and 12 trustees. Additionally, it is necessary that a Trust whose objects are to provide benefits to the local community should have a democratic element.

At present, Cornwall Council is investigating a number of possible trust structures. If the Department for Transport model is chosen, a 'stakeholder group' needs to be identified that can represent the interests of harbour users and which also has a democratic element.

Rather than create another entity, it is proposed that the HHAC is the designated stakeholder group. It represents harbour users and also has democratically elected representatives.

A trust has two elements: trustees and members. These correspond to directors and shareholders in a limited liability company. Trustees will have day-to-day responsibility for management and operation of the harbour while members will have powers over the appointment of trustees and other oversight which will be exercised at quarterly meetings of the trust – with every fourth meeting being an AGM. The liability of members of the trust would be limited by guarantee and would typically be limited to £10.

The Proposal

The proposal is that members of the HHAC will be *ex-officio* members of the new trust, thus providing a consistent management and oversight function for the HHAC without the need to create another body. This is consistent with the Hayle Estuary Management Plan produced by the HHAC. The members will be able to add or remove groups from membership at the Annual General Meeting – some changes to the HHAC constitution would be required.

To summarise:

- There will be 8 – 12 trustees, appointed based on their qualifications, who will be charged with the management of the harbour
- Members of the HHAC will become members of the new trust and will have oversight of the trust operations. Members will be limited by guarantee and will have only a nominal liability (usually limited to £10)

Action Now

The action required now is an indication that the HHAC would, in principle, be willing to take on the role of the stakeholder body in a new charitable trust. This will enable Cornwall Council and ING to continue with drafting of appropriate documents which will need further approval at a special meeting of the HHAC.

The resolution to be presented for a vote is:

It is resolved that the Hayle Harbour Advisory Committee agrees in principle with becoming the harbour stakeholder body in a trust or similar body with limited liability created to take over harbour ownership and operations for the benefit of the community.

Conclusion

The HHAC's role as defined by the Hayle Harbour Act is to represent the stakeholders in advising the Hayle Harbour operator. By taking on a formal role in a charitable trust, the HHAC would have more authority in its consultative capacity while having only a minimal potential liability.

References

Marine Management Organisation, *Modernising Trust Ports (Second Edition)*
Dept. of Transport, *Port Marine Safety Code*, Oct 2009
Marine Management Organisation, *A Guide to Good Practice on Port Marine Operations*