



Monica Peto
Eversheds LLP
One Wood Street
London
EC2V 7WS

Our reference:DC9850

9 October 2014

Dear Monica,

**Harbours Act 1964
The Dover Harbour Revision Order 2014**

1. The Marine Management Organisation (“the MMO”) informs you that consideration has been given to the application for the Dover Harbour Revision Order 2014 (“the Order”) for which you applied on behalf of Dover Harbour Board (“the Board”), under Section 14 of the Harbours Act 1964 (“the 1964 Act”) on 3 June 2014.

Summary of Decision

2. The MMO has authorised the making of the Order with amendments and modifications not affecting the character of the Order which it considers necessary and appropriate.
3. The Order would confer further modernising powers on the Board considered conducive to the efficient and economical operation, improvement, maintenance or management of the Port of Dover (“the Port”).
4. The proposed Order does not authorise a project for the purposes of Council Directive 85/337/EEC which is codified by Council Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment and accordingly an environmental statement was not required.

Context

5. The Board is the statutory harbour authority for the Port. It operates under Dover Harbour Acts and Orders 1954 to 2012.
6. The Port receives over 19,000 vessels per year and handles approximately 5 million roll-on/roll-off (RoRo) vehicles per year and over 13 million passengers. It’s annual revenues are circa £60 million. The value of freight traffic through the Port is approximately £89 billion per year. In addition the Port is a major employer in East Kent, supporting approximately 4,000 jobs at the Port and 3,752 within its supply chain.



7. In the past year there has been a 13% increase of RoRo traffic at the Port and the Port is mid-way through an £85 million investment programme in key infrastructure projects. This includes the renewal and enhancement of three berths and traffic management improvement works, which include the creation of a new holding area with capacity for 220 freight vehicles to further improve the resilience of core port infrastructure.
8. The proposed Order would confer further modernising powers on the Board considered conducive to the efficient and economical operation, improvement, maintenance or management of the Port.
9. The additional powers would enable it, building on the Port's strong commercial performance, to unlock the potential to further improve the Port undertaking and to engage in business opportunities led and managed by the Port. Revenue generated from those businesses would be used to improve and develop the Port undertaking which would also deliver tangible local benefits by maintaining and growing employment and other opportunities for the people of Dover.
10. The Port is a hugely important part of the national economy and ranks first as the largest ferry port in the EU. The powers sought are considered by the Board and the Department for Transport ("the DfT") necessary to ensure that the Port will maintain and enhance its position as one of the UK's premier and nationally vital ports.
11. On 9 April 2014 the Shipping and Ports Minister, Stephen Hammond MP, delivered a speech at the Port which laid out the steps he considered were required to ensure the enduring and shared future of the Port and the local community.
12. The steps set out by the Minister are consistent with the purposes for which the Order is sought and encourage the Board to seek modern and flexible financial powers which enable them to improve and expand further maximising the potential of the Port and community and contribute to regeneration.
13. The Order is sought to achieve objects 3, 9, 9A, 9B, 10, 13 and 17 as specified in Schedule 2 to the 1964 Act:

Object 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."

Object 9

“Empowering the authority to dispose of property vested in them and held for the purposes of the harbour which is no longer required for those purposes.”

Object 9A

“Empowering the authority (alone or with others) to develop land not required for the purposes of the harbour with a view to disposing of the land or of interests in it, and to acquire land by agreement for the purpose of developing it together with such land.”

Object 9B

“Empowering the authority to delegate the performance of any functions of the authority except-

(a) a duty imposed on the authority by or under any enactment;

(b) the making of byelaws;

(c) the levying of ship, passenger and goods dues;

(d) the appointment of harbour, dock and pier masters;

(e) the nomination of persons to act as constables;

(f) functions relating to the laying down of buoys, the erection of lighthouses and the exhibition of lights, beacons and sea-marks, so far as those functions are exercisable for the purposes of the safety of navigation.”

Object 10

“Empowering the authority to borrow money, with or without limitation with respect to the amount that may be borrowed or the time or manner in which the power may be exercised.”

Object 13

“Regulating the application of moneys in the nature of revenue received by the authority and securing that the financial affairs of the authority are properly managed.”

Object 17

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

14. In summary, it is the case for the Board that the Order is consistent with relevant policy and is necessary to facilitate the efficient and economical improvement, maintenance and management of the Port.

Application procedure

15. On 3 June 2014 an application for the Order was submitted on behalf of the Board to the MMO.
16. Notice of the application for the Order was advertised in the London Gazette on 5 June 2014 and in the Dover Express on 5 June 2014 and 12 June 2014.
17. The MMO consulted:
 - Department for Transport
 - Marine and Coastguard Agency (“MCA”)
 - Royal Yachting Association (“RYA”)
 - Chamber of Shipping
 - Trinity House (“TH”)
 - Dover District Council (“DDC”)
18. Sixteen supporting representations including a supporting petition signed by 681 people were received during the statutory 42 day period provided for in Schedule 3 to the 1964 Act.
19. In addition the MMO received responses from consultees identified in paragraph 17. MCA and RYA responded to simply confirm they had no objection to the proposal and DfT, TH and DDC provided detailed representations. Copies of those representations can be found appended to this document.

Member of the public 1

20. While no objections to the Order were received representation from a member of the public raised a number of concerns about the proposed Order in two letters. A copy of the full representations can be found appended to this document but in summary the concerns relate to:
 - the status of the Port;
 - the community director arrangements;
 - the power to borrow;
 - the potential for third parties involved in project partnerships with the Port to use Port assets to secure funds rather than their own resources;
 - the relevance of financial services legislation; and
 - the Community Fund.
21. The MMO provided a copy of the representation to the DfT and sought comments in respect of the content. On 24 June 2014 the DfT provided comments in respect of the proposed application and took the opportunity to set out their position in respect of three of the specific points raised.
22. The MMO also provided a copy of the representation to the Board for their consideration. The Board responded on 18 July 2014 to provide a response to each of the points raised. A copy of the response can be found appended to this document.

MMO Response

Status

23. The MMO notes and agrees with the comments of both the DfT and the Board describing the status the Port. The Board is a trust port, the legal status of which can be found summarised in 'Modernising Trust Ports [Second Edition]' ("MTP2"):

"Trust ports are independent statutory bodies, each governed by its own, unique, statutes. There are no shareholders or owners. Any surplus is ploughed back into the port for the benefit of the stakeholders of the trust port.

The use of the term "trust" in this document needs to be clear. Trust ports are not trusts in the legal sense, nor are trust port boards trustees in that sense. But we have not found a sensible replacement for the term "trust port", the concept of which is well understood in the sector."

24. Further, although the Chair and four board members are appointed by the Secretary of State they have a duty to act in the interests of the Port and work to deliver its statutory obligations. The Board do not act on behalf of DfT or Government.

25. MTP2 summarises the role and legal duties of a trust board members as follows:

"There is little difference between the duties of a trust port board member and those of the member of a private company port's board. Company port boards are accountable to their shareholders, the trust ports to their stakeholders. Both have a clear and unambiguous duty to these groups and are accountable to the general public for the way in which they exercise the statutory powers and duties devolved onto them by Parliament."

Community Directors

26. The MMO understands that the appointment of a community member to the Board will be made under powers conferred by article 3(2) of the Dover Harbour Revision Order 1975. The MMO notes the Board's intention to apply for a separate harbour revision order setting out new legal provisions they consider necessary in respect of subsequent appointments. The MMO also notes and accepts the view of the DfT that it is unnecessary for the appointments announced in the Minister's speech of the 9 April 2014 to be included in the Order.

Community fund

27. The MMO notes it is one intention of the Board to establish a fund to assist local projects by virtue of powers contained in article 12 of the Order which authorises the Board to pay or make reasonable subscriptions, payments and donations, whether annually or otherwise, to the funds of such association, public institutions or charities as the Board thinks fit.

28. The MMO notes and agrees with the Board's view that the powers granted are subject to the Board's overarching duty to secure the improvement, maintenance and management of the Port in the interests of all stakeholders.
29. Paragraph 1.1.4 of MTP2 describes a trust port as '*a valuable asset presently safeguarded by the existing board, whose duty it is to hand it on in the same or better condition to succeeding generations. This remains the ultimate responsibility of the board, and future generations remain the ultimate stakeholder*'.
30. Consequently the MMO notes and agrees with the view of the Board that it is unnecessary and inappropriate to enshrine in legislation specific details of a particular fund proposed. The MMO considers it is sufficient to provide the Board with powers which may be exercised as the Board see fit and in accordance with their overriding objective.

Power to borrow

31. The MMO notes the DfT support the extended borrowing powers set out in the Order and reject the suggestion that they should act as guarantor of the borrowing of the Board. The MMO recognises that the DfT do not have such a role at present in respect of either the Board or any other trust port, and that such support would represent a significant change in the Government's relationship with trust ports.
32. The MMO also notes and agrees with the DfT that borrowing by trust ports, secured against their assets, is unlikely to lead to privatisation. Trust ports generally require statutory authorisation for the sale of operational port assets and because the Ports Act 1991 is the principle way in which trust ports in England and Wales can be privatised and for which the consent of the Secretary of State is required
33. The MMO is satisfied for the reasons provided that the power to borrow as set out in the Order are necessary and appropriate.

Joint venture

34. The MMO is satisfied article 9 would not enable third parties to raise money on the security of the Board's assets. Article 9 only applies to the Board or a subsidiary of the Board and would enable each to raise money on the security of their own assets only.
35. The powers to enter into joint venture provided by the Order may only be exercised if it is conducive to the improvement or maintenance of the Port in an efficient and economical manner. The MMO is satisfied the drafting of the article and the Board's duty to act in the interests of the Port and work to deliver its statutory obligations is an adequate constraint on the power.
36. The MMO is satisfied the Order does not confer powers on the Board to act as a bank and financial services legislation does not apply.

Member of the public 2

37. On 5 October 2014 the MMO received a late representation from a second member of the public which questioned the conduct of the Board in respect of its recent press announcement and raised concerns about future third party relationships and their desirability. A full copy of the representation is appended to this document.

MMO Response

38. The representation appears to refer to a recent announcement in respect of the Board's decision to go to formal tender on the first phase of the Dover Western Docks Revival Project ("the project"). The MMO understands the first phase of the project amounts to an overall investment by the Board of about £120m which will be funded by current cash holdings, further cash generation over the next three years and a small amount of unsecured borrowings under the Board's existing powers.

39. The powers in the Order are not required to enable the Board to progress the first phase of the project.

40. The powers in the Order to secure borrowings and to enter into joint ventures will be required to enable the Board to proceed with later phases of the project. As set out in paragraph 35 the MMO is satisfied drafting of the order and the Board's duty to act in the interests of the Port and work to deliver its statutory obligations is an adequate constraint on the powers.

MMO consideration

41. Section 14 (1) of the 1964 Act provides for an order to be made under this section ("a harbour revision order") 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 1964 Act.

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

43. By virtue of section 14(2)(b) a harbour revision order shall not be made in relation to a harbour unless the MMO is 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.

MMO's decision

44. The MMO is satisfied that the Order meets the requirements of section 14(1) and 14(2)(a) of the 1964 Act.

45. The MMO is satisfied for the reasons set out by the Board in their statement of support and summarised above that the making of the Order is desirable for the purposes of section 14(2)(b) of the 1964 Act and should be made.

46. The MMO authorises the making of the Order with amendments and modifications which it considers necessary and appropriate but not substantially affecting the character of the Order.

Challenge to decisions

47. Information on the right to challenge this decision is set out in the Annex to this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Kirby', written over a horizontal line.

Mark Kirby
Inshore Licensing Team

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Annex I

Right to challenge decisions

Right to challenge orders made under sections 14 and 16 of the Harbours Act 1964

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 Harbours Act 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 or the Court of Session, as the case may be.

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.



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Councillor P A Watkins
Leader of the Council

Direct Line: (01304) 872090
Our Ref: TI/PAW/DJD
Your Ref: DC9850
Date: 9 June 2014

Dear Sirs

**HARBOURS ACT 1964 (AS AMENDED)
PROPOSED DOVER HARBOUR REVISION ORDER
NOTICE OF APPLICATION FOR A HARBOUR REVISION ORDER**

I refer to the above application published on 5 June 2014.

As you will no doubt be aware the Shipping and Ports Minister, Stephen Hammond, in his speech on 9 April set out his ambitions for the port and town working together through consultation and engagement with the community to achieve a thriving port and thriving town.

The Minister indicated, among other matters, that:

"... My plan will provide this.

Dover is a port town and the port and town must thrive together.

The improved focus on wider regeneration through the new division will allow for engagement of appropriate expertise in this area. This along with the new financial powers will mean the port can realise better the opportunities it can deliver as well as acting as a catalyst for wider regeneration of the town. ..."

While the decision on the future direction for the port, town and community has taken some time to achieve, I believe the proposals set-out in the proposed Harbour Revision Order (HRO) will provide the framework to deliver the ambitions identified by the Minister. For my part I am, therefore, pleased to be able to support the proposed HRO.

The Minister also set-out his views that the legislation, the subject of the proposed HRO, can swiftly be put in place. Again, I welcome this approach. It is imperative that an early decision is achieved to capture the significant employment opportunity now evident as part of the revival of the western docks. An early decision will also help colleagues at the Department of Transport support the bid for funding that DHB and DDC have made through the South East Local Enterprise Partnership.

Please do not hesitate to contact me if you require any further information.

Yours faithfully

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by 'A' and 'Watkins' written in a cursive style.

P A Watkins
Leader of the Council



Trinity House

Mark Kirby
Inshore Licencing Team
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16 July 2014

Dear Mr Kirby

PROPOSED DOVER HARBOUR REVISION ORDER

Thank you for your letter of 5 June 2014 and for the opportunity comment on the Dover Harbour Revision Order.

We note that the draft Order includes Article 3 which provides for the Dover Harbour Board's general functions and powers in respect of the harbour. Article 3(2)(a) of the draft Order provides that the Board may "mark and light the harbour". Therefore that standard savings provision for Trinity House should be included in the Order, as follows:

Saving for Trinity House

Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of Trinity House.

The savings provision is necessary to preserve Trinity House's position as General Lighthouse Authority for England and Wales in respect of the requirement to obtain sanction from us to establish, discontinue, etc. any aids to navigation and also our general powers contained in the Merchant Shipping Act 1995 in respect of local aids to navigation.

The following standard definition should also be added to Article 2 (Interpretation):

"Trinity House" means the Corporation of Trinity House of Deptford Strond;

Please contact me if you have any queries.

Yours sincerely

Anna Gibb
Legal Advisor

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E-Mail: anna.gibb@thls.org

The Corporation of Trinity House is a Registered Charity



Watson, Andrew (MMO)

From: [REDACTED]
Sent: 26 June 2014 15:51
To: Harbourorders (MMO)
Subject: Harbour Revision Order ~ Port of Dover ~ DC9850

24 June 2014

Inshore Marine Licensing Team,
Marine Management Organisation,
Lancaster House,
Hampshire Court,
Newcastle Upon Tyne,
NE4 7YH

Dear Sir

Your Ref DC9850
Harbour Revision Order ~ Port of Dover

I would like to offer the following comments and highlight areas within this application I believe require scrutiny and clarification before the HRO be granted.

I [REDACTED] have taken a deal of interest over the last two decades with regard to the ports management and development strategy. [REDACTED]
[REDACTED]

In general I support the aspirations of the current management team to bring port and town closer. However I find this application somewhat open, vague and lacking specifics which you would expect to find in a document so critical to both the future of port and town for decades to come.

1/ My first concern is the actual status of the port which has major implications for potential borrowing capacity in relation to this HRO.

The Port of Dover is described by the Minister and DfT as an Independent Statutory Body. Port managers refer to themselves as a Trust Port. I suppose the true reality is a combination, an Independent Statutory Trust Port. However, this raises one immediate issue, a Trust has to have Trustees who can be held to personal account for decisions. This is no longer the case for the Port of Dover.

So, if Dover is operating as a Trust Port, as it appears to be, with all surpluses being reinvested in the port, can we assume the current directors are acting on behalf of the ultimate Trustees, the DfT or Government? I believe this should be clarified given the potential amounts of borrowing the port managers currently envisage and ultimate liability for same.

2/ In 2.1 of the Statement in Support (SIS) mentions most directors are appointed by the DfT. Community Directors are due to join the Board shortly, with the first scheduled to be in place almost certainly before the HRO is granted. I believe this should be acknowledged by inclusion and enshrined within the HRO as such directors should ultimately form the majority of Board members.

3/ The Port are currently working to establish a Community Fund to assist local projects external to the port. The method by which this will be secured, percentage of port profits or possible local toll, along with the Fund's actual remit is still to be decided but again could be instituted before the HRO is completed. This is an item of such potential importance it will influence the port's future long term borrowing requirements and the decided method should be included in the HRO.

4/ Power to borrow ~ HRO ~ 9-(1) & (2)

a) The Board are asking for unlimited powers to borrow against revenues and assets. Given the potentially confused issue of accountability detailed in 1/, I would suggest total borrowings be limited to 50% of asset value ~ to be established on the date the HRO is activated and held for 5 years ~ with any borrowings over this amount requiring approval by DfT or Government who will also act as guarantor of last resort.

The reason for suggesting this is to enable tight control on management borrowing which appears not to be policed in any other way. We must avoid in future years the prospect of the port becoming financially compromised where borrowing exceeds asset security. This could ultimately require its sale to satisfy debt and would be regarded as Privatization by the back door which as a community we have fought against over the past decade.

b) It seems unclear, should the Port enter into Project Partnerships, with third party interests requiring development borrowings and a joint application be made, whether the third party would have the potential to use port assets to secure funds rather than their own resources. Uncompromising clarification is needed.

The HRO is not definitive but very vague; leaving it open to several interpretations if any related issue later is contentious. It is a statement of general intent and does not provide any mechanism by which it can be regulated and controlled. As a 'handbook of practice' it is inadequate in most respects.

From its existing format it could be interpreted the Board would have the ability to enter into joint projects and supply all funding for both parties. Effectively they will take on the responsibilities of a bank. If this occurs then it should be stated unequivocally whether they are operating under financial services legislation and if not, why not. I believe the port should be limited to a maximum financial stake, say 50 %, of any joint project it finances as a partnership and loans to third parties be fully secured by a reputable merchant bank.

I would be grateful if you would confirm receipt of the above either electronically or by post and the above will be processed accordingly.

Yours sincerely







Department for Transport

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22 July 2014

Andrew Watson
Marine Management Organization
Lancaster House
Hampshire Court
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NE4 7YH

Dear Andrew

PROPOSED DOVER HARBOUR REVISION ORDER 2014

This letter is the Department for Transport's response to the proposed Dover Harbour Revision Order (HRO) 2014 applied for by the Port of Dover on 3 June 2014.

The Department fully supports the proposed HRO. As the Statement in Support of the application notes, a number of the provisions of the proposed HRO would allow the Port to implement measures set out in the then Minister for Shipping and Ports' speech on the future of the port of Dover on 9 April 2014. In particular, the provisions in the proposed HRO would provide the port with the up-to-date borrowing powers and the ability to enter joint ventures to allow it to invest to make the most of its commercial potential as well as acting as a catalyst for the wider regeneration of Dover. The proposed HRO would also allow the Port to establish a community fund for the benefit of the local community. More generally, the proposed HRO is consistent with the Government's good governance guidance for Trust Ports in England and Wales as set out in 'Modernising Trust Ports 2' published in 2009.

The Department wishes to comment on three of the specific points raised in the representation dated 24 June 2014 by [REDACTED], which MMO forwarded to the Department on 1 July.

In his first point, [REDACTED] questions the status of Dover Harbour Board (DHB) as a trust port suggesting there is some lack of clarity about this. There is however no inconsistency between describing the Port as an 'independent statutory body' and a 'trust port'. A trust port is an independent statutory body with a legal duty to maintain, manage and improve a harbour which is neither a company limited by share capital nor a municipal port.

The use of the term 'trust port' is discussed in the Department's guidance 'Modernising Trust Ports 2'. To quote from it:

The use of the term 'trust' in this document needs to be clear. Trust ports are not trusts in the legal sense, nor are trust port boards trustees in that sense. But we have not found a sensible replacement for the term 'trust port', the concept of which is well understood in the sector.

DHB is a trust port but is not a 'trust' in the legal sense of that word and its Board members are not therefore 'trustees'. Although the Chair and four other board members are appointed by the Secretary of State for Transport, they have a duty to act in the interests of the port and to work to deliver its statutory obligations. The Chair and these four board members do not act on behalf of DfT or the Government.

██████████ second point proposes that the intention to appoint Community Directors to the Board of DHB announced in the Minister's speech on 9 April should be included in the proposed HRO. The Department does not believe this is necessary. A recruitment process for a Community Director, established by DHB working with community elected representatives and other stakeholders, is expected to commence later in the Summer. The successful candidate will be appointed by DHB under its existing powers set out in SI 1975 No 568. For subsequent Community Director appointments, the intention is for the necessary new legal provisions - drawing on the recruitment process established with community elected representatives and other stakeholders - to be included in a separate HRO.

As regards ██████████ fourth point, the Department supports the extended borrowing powers set out in article 9 of the proposed HRO which will provide the Port the flexibility for it to borrow against its assets and/or its revenues as it sees fit. These powers are similar to the borrowing powers of other large trust ports including Poole (as set out in SI 2012 No 1777) and the Port of Tyne (as set out in SI 2008 No 1817).

The Department does not support the suggestion by ██████████ that it should act as guarantor of borrowing by DHB. It does not have this role at present in relation to DHB or any other trust port. Such support would represent a significant change in Government's relationship with these ports for which there is no clear case.

The Department does not consider that borrowing by trust ports secured against their assets could lead to privatisation if banks or other financial institutions sought to require the sale of assets against which their lending was secured. This is because trust ports generally require statutory authorisation to dispose of operational port assets. Further, the Ports Act 1991 is the principle way in which trust ports in England and Wales can be privatised and for which the Secretary of State for Transport's consent is required.

Please do get in touch if you wish to discuss any points above further

Yours sincerely,

Tom Oscroft
Maritime Commerce and Infrastructure Division

Mark Kirby BSc (Hons), MRes
Inshore Licencing Team
Marine Management Organisation
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Date 18 July 2014
Your ref
Our ref PETOM/161218-000012
Direct dial 0845 497 4717
monicapeto@eversheds.com

By Email Only

Dear Mr Kirby

Dover Harbour Revision Order ("the HRO")

Thank you for your email of 1 July forwarding a letter dated 24 June 2014 sent to you by ■■■■■.

As requested in your email, I am setting out below the Board's observations on the points raised in the letter.

Paragraph 1 of the letter: Status of the Port of Dover and the Dover Harbour Board

1. The Port of Dover ("the Port") is owned and managed by the Dover Harbour Board ("the Board"), a body constituted under the Dover Harbour Acts and Orders 1954 to 2012 which replaced earlier enactments. As such, the Port is "a trust port". The legal status of trust ports and the Boards constituted to run them are summarised in *Modernising Trust Ports* [Second Edition] issued by the Department for Transport following a review of the status of trust ports in the context of a general review of ports policy in 2006/2007.
2. As explained in *Modernising Trust Ports* –

"Trust ports are independent statutory bodies, each governed by its own, unique, statutes. There are no shareholders or owners. Any surplus is ploughed back into the port for the benefit of the stakeholders of the trust port.

The use of the term "trust" in this document needs to be clear. Trust ports are not trusts in the legal sense, nor are trust port boards trustees in that sense. But we have not found a sensible replacement for the term "trust port", the concept of which is well understood in the sector." (See paragraph (ii) at page 2).
3. The letter states "*this raises one immediate issue, a Trust has to have Trustees who can be held to personal account for decisions. This is no longer the case for the Port of Dover.*" This appears to suggest that the Port of Dover was at one point managed by Trustees in the strict legal sense. This is not the case. The Port of Dover has since 1954, and many years earlier, been managed by persons forming a body constituted by statute which, though not trustees, have duties which are analogous to those of directors of companies under the Companies Act.

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4. The role and legal duties of a trust board member are summarised in paragraphs 3.7.1 of *Modernising Trust Ports* –

"There is little difference between the duties of a trust port board member and those of the member of a private company port's board. Company port boards are accountable to their shareholders, the trust ports to their stakeholders. Both have a clear and unambiguous duty to those groups and are accountable to the general public for the way in which they exercise the statutory powers and duties devolved onto them by Parliament."

Paragraphs 3.7.2, 3.8 and 3.9 of *Modernising Trust Ports* then set out more specifically the duties of trust port members.

5. The members of the Dover Harbour Board are in the same position as are the members of the boards of other trust ports. Their position is analogous to that of the directors of a company and they have similar fiduciary duties. Like the directors of the boards of other trust ports the duty of the members of the Dover Harbour Board is to carry on the operation of the port undertaking for the benefit of their stakeholders.
6. Paragraph 1.1.4 of *Modernising Trust Ports* states –

"Modernising Trust Ports [First Edition] described a trust port as 'a valuable asset presently safeguarded by the existing board whose duty it is to hand it on in the same or better condition to succeeding generations. This remains the ultimate responsibility of the board, and future generations remain the ultimate stakeholder'. Through the running and maintenance of this asset, though, others stand to benefit. Although not an exhaustive list, the following may all be considered stakeholders or 'beneficiaries' of a trust port:-

- Port Users
- The local community
- Local and regional economies and authorities
- Port employees
- Related interest groups
- The national economy and Central Government
- Local and regional businesses

1.1.5 as stakeholders, or 'beneficiaries' in the port, the interests of these groups must at all times be the guide by which trust port boards direct the port. There are bound to be conflicts of interest from time to time between – and some cases within – the various stakeholder groups. It is the duty of the boards, at all times, to strike a balance that fully respects the interest of all stakeholders, not just one group, in the light of objectives of the port, including commercial considerations, and what constitutes the 'common good' for all stakeholders (current and future) and the port itself."

7. No further clarification in the HRO of these principles is necessary or appropriate, particularly given the necessarily open ended category of stakeholders. The Board have a continuing duty to strike a balance between those stakeholders which must be kept under review in the light of changing circumstances.

Paragraph 2 of the letter: Community Directors

8. The Board have announced their decision to appoint a community member to the Board. The appointment will be made by the Board under the power conferred by article 3(2) of the Dover Harbour Revision Order 1975 which enables the members of the Board appointed under article 3(1)(a) and (b) (i.e. the members of the Board

appointed by the Secretary of State and the Chief Executive and Deputy Chief Executive of the Board, who are ex officio members of the Board) to –

“appoint as an additional member of the Board any person, not being a full-time employee of the Board, who in their opinion has knowledge or experience which would be of value to the Board in the discharge of their functions”.

9. On Friday 27 June 2014 representatives of the Dover Harbour Board Nomination Committee met with elected representatives of the community and the independently chaired Port and Community Forum and Port Users’ Group to debate the process for appointing the first community member of the Board. The workshop discussed a draft person specification, criteria for eligibility and the timetable for appointment with all parties confirming their desire to establish a process that was transparent, open and accountable. It was agreed that the recruitment process would commence in the summer with the aim of securing an appointment in the late autumn of 2014.
10. Accordingly, the recruitment process for the first Community Director is well under way and no further powers are needed to secure the appointment.
11. In addition, the Board are reviewing their constitution more generally following the Secretary of State’s speech of 9 April 2014 (appended to the statement in support of the application for the HRO). They are embarking on a consultative process on what changes would be appropriate. Once the proposals are sufficiently developed, they will be the subject of an application for a further harbour revision order.

Paragraph 3 of the letter: Community fund

12. The Board confirms their intention to establish a fund to assist local projects external to the Port. Powers to establish such a fund are sought by article 12 of the proposed HRO and one of the purposes of the proposed HRO is to provide powers to assist local projects consistently with, and subject to, the Board’s overarching duty to secure the improvement, maintenance and management of the Port in the interests of all the stakeholders.
13. It would not be necessary or appropriate to enshrine in legislation details of the arrangements for the fund, including the method by which it will be secured. As mentioned at paragraph 12 above, the power to set up the fund must be exercised by the Board consistently with their overarching duties to all stakeholders. Accordingly, arrangements must be reviewed periodically by the Board and in the light of all current circumstances; and to set out the details in legislation would not enable this to be done in a timely and efficient manner.

Paragraph 4 (a) of the letter: Power to borrow

14. Paragraph 4(a) suggests that the Board’s powers to borrow should be subject to the restrictions specified in the letter. As explained in paragraph 5.8.4 of the statement in support of the application, the Board already have unrestricted powers to borrow under section 19 of the Dover Harbour Revision Order 2006 and to borrow on the security of their revenues. They also have a power to charge all or any part of their assets as security for any overdraft or temporary loan. The purpose of article 9 of the proposed HRO is to fill a gap in article 19 of the 2006 Order so as to enable the Board to charge all or any part of their assets as security for a long term loan.

15. The suggestion that Government act as a guarantor of last resort would be a matter for Government rather than DHB. It would therefore be inappropriate to include such a requirement in the proposed HRO.
16. The power to borrow against assets is necessary to enable the Board to raise funds from commercial sources to invest in capital projects to improve the Port in line with Government policy as set out in the Secretary of State's speech of 9 April 2014 (appended to the statement in support).
17. In exercising both their current powers to borrow and the proposed power to secure assets, members of the Board are in an analogous position to the directors of companies and, as such, are subject to the overarching fiduciary duties referred to in paragraphs 4 to 6 above.
18. In similar cases it has been recognised that it is appropriate for unrestricted powers to borrow upon the security of assets to be conferred on trust ports. For example, such powers have recently been conferred on the Port of Tyne Authority under article 2 of the Port of Tyne Harbour Revision Order 2008 and on the Poole Harbour Commissioners under article 39 of the Poole Harbour Revision Order 2012.

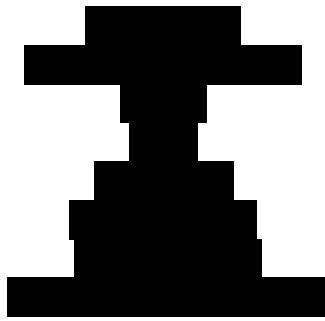
Paragraph 4(b) of the letter: Exercise of power to secure Port assets to fund joint ventures

19. Paragraph 4(b) of the letter raises a concern that a third party under a joint venture with the Board would have the power to raise funds on the security of Port assets. It is clear that the power under article 9 of the HRO only applies to the Board or to a subsidiary of the Board. That power would enable the Board to raise money on the security of assets held by the Board. Similarly, the power would enable a subsidiary of the Board to raise money on the security of assets held by the subsidiary. Article 9 would not enable a third party to raise money on the security of the Board's assets or revenues.
20. The Board are seeking powers under articles 4(1)(b) and 5(1)(b) of the HRO to enter into joint ventures. It would be possible for the Board to raise money on the security of its assets as a contribution to fund such a joint venture. However, the HRO provides that the proposed powers to enter into joint ventures are subject to the overriding restriction that they can only be exercised "*if it is conducive to the improvement, maintenance or management of the Harbour in an efficient and economical manner*". In addition, as explained in paragraphs 4 to 6 above, the members of the Board are in analogous position to directors of a company and are accountable for the exercise of their powers. It follows that the Board would share in the profits and revenues derived from such a joint venture and those profits and revenues would be used to improve and develop the Port and provide increased financial security.
21. The HRO does not confer powers on the Board to act as a bank and the financial services legislation is therefore not relevant.

Yours sincerely



Monica Peto
Partner
For Eversheds LLP



30 September 2014

Rt. Hon Patrick McLoughlin MP
Secretary of State for Transport
Department for Transport,
Great Westminster House,
33 Horseferry Road,
London
SW1P 4DR

Dear Sir

Port of Dover ~ Proposed Dover Community Fund (DCF)

On Monday ~ 22 Sept ~ I attended the most recent 'workshop' organised by the Dover Harbour Board regarding the establishing of a Community Fund for the town.

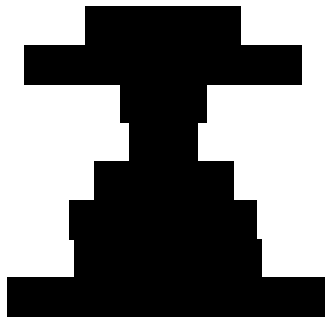
The two bright spots of the evening were the Announcements that George Jenkins has had his term of Office as Chairman extended for at least another year and that the Rev. Trevor Willmott ~ the Bishop of Dover ~ will also carry on his involvement with the proposed fund for the foreseeable future at least.

In addition before starting our deliberations it was announced that, subject to the current Harbour Revision Order (HRO) being approved, the Port proposed to contribute 1% of its pre tax profits to the fund.

Estimates on the evening were this would generate in the region of £100K per annum which could be further reduced in value if administration costs have to be paid by the fund itself.

It was suggested this could be supplemented by approaching other donors in the area. Given the current economic state of the district I do not see many, if any, local companies having the financial capacity to make commitments that would be required for the fund to have a meaningful long term future.

The workshop consisted of some 10 tables each with 8 to 12 local residents and other interested parties to discuss and agenda seemingly prepared by the Port. Each discussion unit had a Port employee to act as its spokesperson when their ideas and thoughts were eventually correlated and put to the meeting.



During this round table discussion I questioned if the amount now proposed was actually of any practical long term use and suggested another method more beneficial to the town and was told by the Port representative it was not on the agenda and could not be discussed.

On reflection later I could not recall when the method and amount of Port contribution to the town had ever been the subject of open discussion or whether we are just expected to accept what 'others' deem as suitable and appropriate for us?

Earlier this year a comparison was made to the system currently adopted by the Port of Tyne authority who makes a similar contribution to their local Council, this suggested the town could expect around £400K per annum.

In truth if either amount becomes reality they will not have the capacity to make any real impact locally as the neglect of our town is so ongoing it has now reached almost epidemic proportions.

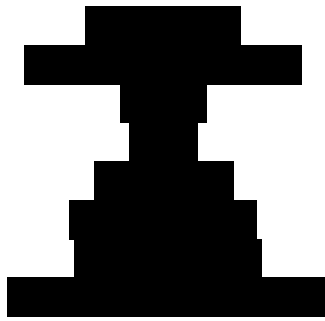
One of several, and many locally say it is the major reason the 'state' our town now finds itself in, is being separated from what is probably its only major asset, the seafront, by the A20 dual carriage which serves the port and has certainly financially benefited both Harbour Authority and ferry companies for several generations.

All we are asking for is for a fair share of the financial benefits enjoyed by others to help kick start and then maintain local community and commercial regeneration.

I have personally always advocated a local toll on movements through the port. A charge of 10p for every truck/coach/car/passenger and based on 2013 figures would generate some £1.7M which, if figures of future throughput suggested by port managers are correct, could exceed £2M in a few years time.

Some might say such a toll in Dover as suggested is not legal.

I would suggest the arrangement at Tyne negates this argument. The proposed Toll is exactly the same in principle only the method of calculation is different being related to the core activities of the port.



The Port of Tyne has a much different and varied business base with a substantial bulk cargo business supported by only moderate volumes of Ro/Ro and Cruise. This makes the decision to base contributions on overall financial return for them a more realistic proposition.

With the Port of Dover's primary businesses being Ro/Ro and Cruise based it makes sense to draw local funding from these core businesses and against units that form part of the ports own base statistics which ultimately makes the whole transaction totally transparent.

I would suggest, if agreed, the toll is collected as part of the ticket by the ferry/cruise companies and then transferred directly into the Port Community Fund account. The alternative would be for the charge to be raised by the Port of Dover as part of the schedules of Port Dues which all vessels using the port are subject to.

The reason I propose this system over % of gross profit is in the main to protect the town and port by guaranteeing future income to the PCF which I will discuss further in the following paragraphs.

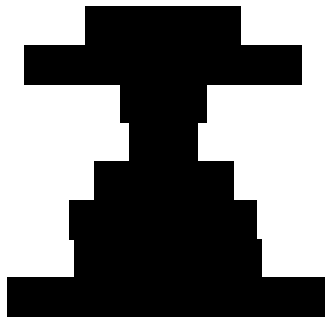
The Port, under the proposed new HRO, is asking for unlimited borrowing against its assets. It is possible over the years with this level of borrowing the Port's financial performance might not be as sound as it is today. Under the proposed system this would result in a reduced contribution to the PCF.

Should future Management teams prove not as prudent as we have today, or arrive with a different agenda, as we have experienced in the recent past, given the amount of development proposed with its related costs and consequential potential borrowing required, it is easy to see how the prospect of privatisation could rear its ugly head again as the only way to resolve such a financial crisis.

I believe using the Toll is system will be of benefit to all because,

1/ any contribution direct from the Port's own revenue stream to the town will no doubt have to be replaced by extra borrowing on their behalf which adds to their costs. This is removed as the Toll would be collected at source

2/ it will annually generate an amount to the town which is meaningful and can actually make a difference.



3/ should the Ports financial situation decline the Toll system would then provide sufficient ongoing funds to maintain regeneration projects already under way and guarantee future funding.

4/ if privatisation should ever appear on the horizon again, the Toll covered by its own separate HRO specific to the town, though I would prefer it to be in statute, guaranteeing ongoing contributions will enable continued uninterrupted funding to the DCF whoever may own or run the port.

5/ to support the above I believe it is essential the 3 'Community Elected' Directors to the Port's Board promised are appointed by next spring at the latest.

As you will see from the above my observations and proposals have no political element and I believe are in the best interest of our Town, Port and its Stakeholders. I would also suggest to avoid any delay to the Western Docks development reference to the Community Fund be withdrawn from the current HRO and be dealt with in the near future when the issue of funding has been properly considered, debated and resolved.

These are not only interesting but changing and challenging times not only for the Port but also the town of Dover.

Yours sincerely

A black rectangular redaction box covering the signature area.

Electronic cc:
Charlie Epticke MP
DfT ~ Tom Oscroft ~ for information only
Inshore Marine Licensing Team ~ Your Ref DC9850
Dover Express
Dover Mercury

Watson, Andrew (MMO)

From: SH - MFA Marine Consents (MMO)
Sent: 06 October 2014 11:46
To: Watson, Andrew (MMO)
Subject: FW: HRO proposed Dover Harbour Board

From: [REDACTED]
Sent: 05 October 2014 18:43
To: SH - MMO Info (MMO)
Cc: patrick.mcloughlin.mp@parliament.uk
Subject: HRO proposed Dover Harbour Board

Please forward within MMO as a matter of urgency—

To -
Marine Management Org.

Attention. The Acting Chief Executive - Andrew Beatie
Chairman - Sir Bill Callaghan

Copied to Right Hon Patrick Macloughlin MP. Sec. State Dept for Transport
Charlie Elphicke MP Dover and Deal

Sirs

As is public knowledge, you are considering amending status of DHB to allow the to associate with other private corporate bodies and generally raise unlimited funds for their proposed redevelopment.

They are now purporting to (implicitly) act as if it has already been granted and I question if this as correct procedure - doing so through local media.

Furthermore - they have indicated an immediate access to a facility of £120m - which if injudiciously distributed on an as yet proven commercial model - this will leave them (DHB) open to infiltration and control by whomsoever holds the "paper". So it is warranted that such individual be known and their motives be more rigorously scrutinised.

There is reasonable evidence of these parties, and that such may show such individuals as undesirable.

Therefore, before an irrevocable decision be effected - it may be wise that, you, as the responsible authorities - you effect further investigation, before such HRO be approved.

This matter will be central to the Dover and Deal General Election. UKIP have interest in East Kent and have already expressed concern.

It is because of the sensitive political nature in this outcome; that the Sect of State, Mr Macloughlin, is being kept informed

Yours etc

[REDACTED]