

Annex C-5: Application of Dart Harbour and Navigation Authority

Department for Transport
FAO Caroline Wall
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Your Ref:
Our Ref: DH/RG/PJJ

25th June 2014

Dear Caroline

DART HARBOUR & NAVIGATION AUTHORITY (DHNA) – APPLICATION FOR THE POWER TO GIVE HARBOUR DIRECTIONS PURSUANT WITH THE MARINE NAVIGATION ACT (2013)

Please find attached with this letter the DHNA application to gain the powers as set out above. I hope that the document gives sufficient weight to Dart Harbour's application – having not had the powers of direction in this harbour, the Board feels that there is a gap in the legislation for proper and safe management of the river. I understand the Code of Compliance letter has been sent to you separately hard copy (not my intention - apologies!). Please can you confirm that this letter has reached you, and is sufficient?

I do hope the information contained in the attached documents is what you require – if you need more information, or you have any more questions – please do not hesitate to contact me in the first instance. I will place myself at your disposal to give a response as soon as possible. Please can you acknowledge receipt of our application?

I look forward to hearing back from you.

Yours sincerely



Rob Giles BEng M.N.I
Harbour Master

DART HARBOUR AND NAVIGATION AUTHORITY

APPLICATION FOR INCLUSION IN A DEPARTMENT FOR TRANSPORT DESIGNATION ORDER TO PASS HARBOUR DIRECTIONS

1.0 **INTRODUCTION.** Dart Harbour and Navigation Authority (DHNA) is a Trust Port (one of 118 in UK) – an independent statutory body created by a 1975 Act of Parliament ('The Act'). As a Competent Harbour Authority (CHA), DHNA sets a compulsory pilotage requirement for vessels of length greater than 50m. The harbour is a deep water port stretching from Totnes to Dartmouth, some 11.5 miles of navigable water with 5 or 6 towns or villages on its banks. Primarily DHNA is a leisure port, commercial timber trade having died out in the late 1960's but there remains a modest fishing fleet, commercially operated yachts, a host of ferries and passenger boats as well as visiting naval craft and cruise ships. Under The Act, DHNA is the licensing authority for all moorings within harbour limits. There are 1,500 DHNA moorings plus another 1,000 non-DHNA berths. The sea bed (fundus) in harbour is owned by Duchy of Cornwall. DHNA has a 25 year lease and pays the Duchy 17.5% of income relevant to the sea bed, due for renewal in 2031. DHNA's primary responsibility, however, is for safe management of the harbour under the Port Marine Safety Code (declared compliant in 2012). Part of this safety remit includes maintenance of navigational aids (lights & beacons) as a Local Lighthouse Authority (delegated from Trinity House). DHNA also enforces harbour Byelaws, safety driven, and leads on other safety matters, including stakeholder liaison and boat licensing. Annually DHNA hosts the largest standing annual maritime event in the UK outside the Solent, the Port of Dartmouth Royal Regatta. DHNA is totally self-funding and operates vital safety functions at zero cost to central or local government – turnover from port users only is used to fund operations. Turnover is £1.5m p.a. DHNA is a not-for-profit authority with no financial reserves. All DHNA decisions in some way contribute to the overall safety of port users.

2.0 **RATIONALE.** The power to make harbour directions is considered necessary for DHNA the following key reasons:

2.1 **Risk Assessment.** DHNA carries out the risk assessments required by the Port Marine Safety Code (PMSC) and Health and Safety Executive (HSE) legislation for all activities envisaged. The conduct of the Port of Dartmouth Royal Regatta presents particular challenges as many of the events (13 air events over harbour airspace, 2 firework displays over harbour airspace and 5 days of course rowing) require harbour closure or implementation of exclusion zones. The potentially very serious consequences of an exclusion zone violation (the obvious risk example is tall masts and low flying aircraft) would be better addressed by Harbour Directions than by existing byelaws and statutory powers. Some other examples of analysed risks together with the impact if powers of direction are refused, are set out at Annex A in tabular form. It will be noted that Harbour Directions would permit controlled derogation from certain Byelaws for particular activities and not just act restrictively.

2.2 **Adhering to Recommendations set in the PMSC and / or Guide to Good Practice (GTGP).** In responding to the PMSC, DHNA undergoes 2 audits per year, conducted by the Designated Person (DP). The DP, in his last visit, made recommendations which cannot be responded to without powers of general direction.

Furthermore, the harbour board (PMSC Duty Holder) observe the following points from the PMSC:

2.2.1 In accordance with the Summary of the PMSC (page 8), the Duty Holder (harbour board) must "Review and be aware of....existing powers based on local and national legislation". In reviewing the DHNA Safety Management System (SMS) new / changed activity matrix (Annex A), and existing powers, the board have decided that harbour directions are key to enable them to continue to comply with the PMSC.

2.2.2 One of the key measures required for compliance (PMSC page 9, para 2.E.) is stated as to have the correct powers in place as part of the SMS. For the same reason as at para 2.2.1 above, DHNA board wishes to have the power to make harbour directions at its disposal.

2.2.3 General duties and powers for DHNA, outlined on the PMSC page 10 para 4.O., to direct vessels should be available. DHNA does not yet have these powers at its disposal, relying on, among others, the Piers, Docks, Clauses Act (1847). The (DHNA) Act, and DHNA Byelaws. For this reason, the board, as PMSC Duty Holder, wishes to apply for harbour directions.

2.2.4 Under section 2.5 sub-para 4 of the PMSC (page 15) the Duty Holder (DHNA board) role is to ensure that the board "seeks and adopts appropriate powers for effective enforcement". Based upon the evidence supplied to the board by the Harbour Master at Annex A, the board wish to apply for power to issue harbour directions.

2.3 Specific Incidents and / or accidents. Following various shipyard closures in the harbour over a fifteen year period there are now limited facilities within the harbour for slipping or hauling substantial craft. There have been a number of incidents in recent years involving craft in a poor state of repair either entering or departing the harbour in circumstances which posed considerable risk to life and property; in one case the vessel concerned sank on arriving at its destination with the loss of one life (and a very substantial clean-up bill for that harbour authority); in another case in 2012 DHNA was effectively compelled to receive a very tired MFV which was taking on water, which was inexplicably towed in to port by the RNLI and which was subsequently abandoned resulting in significant irrecoverable cost to DHNA to have the vessel removed and scrapped. Proper directions regarding departure from and entry to the port would help to avert such incidents and the entry into port of vessels that require facilities that are not present on the Dart.

2.4 An increase in traffic. DHNA is pushing hard for increased cruise ship visits and the combination of its historic maritime links, the presence of the naval college and the picturesque nature of the Port seem to be well received by the industry. If this is to be successful and because of the size of the vessels concerned it is important that good order can be maintained on the river and this will be more effectively achieved with harbour directions than – as at present – having to rely on MCA intervention and attendance to deal with manning or equipment issues. Currently there is no formal traffic management system within harbour limits, and a substantial leisure community not used to commercial vessel transits. Should a

Vessel Traffic Management System (VTS) or some other similar system be required so as to conform with IMO/SOLAS/IALA regulations and guidance, there is no way of enforcing adherence to a new VTS system other than by a harbour direction.

2.5 Response to harbour users request to protect activities in the port. An example of this is a large amateur rowing club attended stakeholder group meetings and expressed deep concern that wild swimmers are frequenting rowing areas, potentially resulting in serious injury or death to a swimmer by caused by a rower who would not be aware of the presence of the swimmer until struck by an oar blade. There is no legislation in place which permits geographical allocation of navigational space in the areas concerned with the effect that passenger boats, rowers and swimmers are all potentially contending for the same water. By imposing channel management on the passenger boats by way of harbour directions this risk could be ameliorated.

3.0 **AMENDMENTS / REPEAL TO EXISTING BYELAWS.** DHNAs approach will be to ensure harbour directions will be complementary to, rather than conflicting with, with existing Byelaws but will seek to amend Byelaws accordingly should that, on detailed analysis, appear necessary.

4.0 **CONSULTATION.** Under the DHNA Harbour Revision Order (HRO) (2002), and the DHNA Moorings Policy (2010-2015), DHNA has appointed three accredited Stakeholder Groups, one of which is in abeyance (The 'Non-Beneficiaries' Group). The remaining two groups represent the interests of both commercial and leisure users within harbour limits. Both of these groups have been consulted informally on DHNA gaining the power to give harbour directions, and have no objections. The following points were also noted in discussions:

- (a) Neither stakeholder group disputes that the power to issue harbour directions should be granted to DHNA. The groups are content that DHNA has the ability and responsibility to make Harbour Directions in a safe and effective way.
- (b) Examples, such as the activities at Annex A, have been briefed to the stakeholder groups, and they are in agreement with DHNA regarding the appropriateness of the power to issue directions for DHNA. Indeed, both stakeholder groups stated that, together, they wished to form a Port Users Group (PUG), in order to assist DHNA in complying with the Code of Conduct.

In consulting with the public, Dart Harbour has openly displayed the intention to apply for the power to make Harbour Directions through the harbour website, and contacted 3,500 separate email addresses, namely the database of all harbour users, stating the intention to apply for the power to make Harbour Directions. To date, no objections have been received. This method of communication has focussed and concentrated the consultation on port users, so as to generate informed responses (if any). Full formal response from the stakeholders is awaited, and will be supplied to the National Directions Panel (NDP), if requested.

5.0 **CODE OF CONDUCT STATEMENT.** DHNA has signed up to the Code of Conduct. The signed statement is at Annex B.

6.0 **SUMMARY.** DHNA is a small deep water port supporting safe conduct of a large number of mixed use activities in a constrained waterway, with extremely limited resources. It is therefore assessed as imperative that the power to issue harbour directions is granted in the first tranche of ports, in order to manage the water space so as to minimise the risk of an avoidable accident and to permit a sound basis for sensible derogation from existing Byelaws where that is appropriate. There is something of a gap in DHNA's ability to do this, as the only power it has to give directions is to be found at Section 52 of the 1847 Act (which is extended in the normal way in the Act by permitting the Harbourmaster to prohibit mooring in specific areas) which is not really an appropriate suite of powers in respect of a harbour of such extent and diversity. The Designated Person advises, and the board has concluded that it is essential for DHNA to have powers of harbour direction granted so as to continue to declare the harbour complaint with the PMSC in May 2015.



Capt R K Giles BEng MNI
Harbour Master / CEO
Dart Harbour and Navigation Authority
25 June 2014

ANNEX A – DART HARBOUR AND NAVIGATION AUTHORITY – ACTIVITIES WARRANTING POSSIBLE HARBOUR DIRECTION CONTROL

Activity	Description	Harbour Direction Required?	Rationale	Possible outcome if powers of harbour direction not granted to DHNA
Port of Dartmouth Royal Regatta	5 Days of course rowing, 2 firework displays, 13 Air displays over the harbour all requiring river closure / exclusion zone direction.	Yes	Violation of exclusion zone is not directly covered in an event specific manner - 1847 Act plus harbour Byelaw 94 (Obstruction of Officers) are nearest fit.	DHNA unable to enforce exclusion zones on multiple occasions, leading to mass violation of zones, followed by multiple accidents that could result in multiple damage, serious injuries, death.
Wild swimming in areas used for rowing	Ad hoc wild swimmer with no safety cover struck by oar from un-alerted rowing skiff or pleasure craft.	Yes	Geographic management of river space during swimming events not provided under existing legislation.	Swimmer struck by vessel / oars resulting in serious injury / death of swimmer, and trauma to oarsman / woman.
Use of Blue Light Vessels in harbour limits	RNLI / MCA / DHNA Vessels all carry blue lights and may exceed the 6 knot speed limit (Byelaws) to attend incidents, journey as far as 10nm.	Yes	Direction to exceed the speed limit not covered under any local orders / legislation.	Emergency vessels not permitted to exceed the speed limit, resulting in loss of life in SAR or other incident.
Annual Try-A-Boat Free! Event – speeding lane.	Vessels involved in this event, aimed at getting the public interested in safe boating, to exceed the speed limit set as above within harbour limits.	Yes	Power to exceed the speed limit not covered under any local orders / legislation.	Loss of the event and business to the harbour community.
Britannia Royal Naval College (BRNC) Speeding Lane	BRNC vessels currently informally permitted to speed in secluded area of the harbour to train military cadets and test boats. Not open to other users.	Yes	Power to exceed the speed limit not covered under any local orders / legislation.	Loss of vital training delivery to Royal Navy officer cadets, if informal permission revoked.

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FAO Caroline Wall
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Your Ref:
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18th June 2014

Dear Ms Wall

**DART HARBOUR & NAVIGATION AUTHORITY
APPLICATION FOR HARBOUR DIRECTIONS**

I confirm that Dart Harbour & Navigation Authority (DHNA) resolved at a meeting of the DHNA Board on 12th May 2014 to apply for the power to issue Harbour Directions, pursuant to the Marine Navigation Act (2013).

The Harbour Authority has had regard to the content of and agreed to comply with the code of conduct on harbour directions where practicable, in particular:-

- a) To liaise with a Port User Group and to apply a dispute resolution procedure such as is set out in the code of conduct when required; and,
- b) To have regard to supplementary guidance issued from time to time by the National Directions Panel on the subject of harbour directions.

The Harbour Master/CEO is authorised to apply to the Secretary of State for Transport for Dart Harbour & Navigation Authority to be designated as a designated harbour authority for the purposes of section 40A of the Harbour Act 1964.

Yours sincerely



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Neil Hockaday
Chairman