

# Annex C-8: Application of Fowey Harbour Commissioners

# FOWEY HARBOUR COMMISSIONERS

## HARBOUR OFFICE

Albert Quay, Fowey, Cornwall PL23 1AJ



Ports Governance Branch  
Department for Transport  
Zone 1/22  
Great Minster House  
76 Marsham Street  
LONDON  
SW1P 4DR

Email: [fhc@foweyharbour.co.uk](mailto:fhc@foweyharbour.co.uk)  
Website: [www.foweyharbour.co.uk](http://www.foweyharbour.co.uk)

26 June 2014

### POWERS OF HARBOUR DIRECTION: APPLICATION FOR DESIGNATION FOWEY HARBOUR COMMISSIONERS

Fowey Harbour Commissioners (**'the Commissioners'**) are the Statutory Harbour Authority for Fowey Harbour, Cornwall. In order assist them in managing and running a safe an efficient harbour and in particular discharging their responsibilities relating to the safety of vessels and people within the harbour (including navigational safety) and the protection of the port environment, the Commissioners wish to apply to be designated as a designated harbour authority with the power to make harbour directions.

#### RATIONALE

As required by the Port Marine Safety Code, the Commissioners have recently carried out a review of their existing statutory powers (including local legislation and byelaws) with the assistance of their legal advisors. This review has confirmed the Commissioners' pre-existing understanding, which is that the Commissioners do not have powers of general direction. The Commissioners do have the power to issue Byelaws, they are a Competent Harbour Authority for Pilotage purposes and the Harbour Master may issue special directions under s52 Harbour Docks and Piers Clauses Act 1847.

However the lack of powers for the Commissioners or their harbour master to issue general directions in relation to all ships in the harbour area either in response to a particular occurrence or as a standing instruction to all ships or specified classes of ship, is considered by the Commissioners to hinder them in the fulfilment of their statutory duties. The Port Marine Safety Code advises at paragraph 3.4 that *'Harbour authorities would be well advised to secure powers of general direction to support the effective management of vessels in their harbour waters, if they do not already have them.'*

In order to obtain powers of general direction, the Commissioners would need to make a Harbour Revision Order application, which is a costly and time consuming process. Designation with powers of harbour direction would be an effective substitute for powers of general direction. Therefore the Commissioners seek to be designated as a designated harbour authority with powers of harbour direction in response to the review of their statutory powers recommended by the PMSC.

In addition, whilst numbers of commercial vessels using the port has declined over recent years, the size of commercial vessel is increasing considerably and this can raise new safety issues to address. The use of harbour directions with respect to 'ships' (as defined in Harbours Act 1964) would greatly assist in this area.

The recent announcement of a contract to ship large volumes of secondary aggregate from the port could result in a doubling of the number of ships using the port. Safe de-confliction of this activity from an already busy leisure sector is vital to ensure the safety of all port users. Again the use of harbour directions with respect to 'ships' would greatly assist in this area.

#### **DETAILS OF ANY PROPOSAL AMENDING OR REPEALING ANY STATUTORY PROVISION OF LOCAL APPLICATION**

The byelaws in place at Fowey Harbour have been reviewed as part of the statutory harbour power review carried out by the Commissioners with the assistance of their legal advisors. As recommended by paragraph 4.4 of the Code of Conduct, it is the Commissioners' intention to update these byelaws (including revocation / amendment of any existing byelaws which might otherwise conflict with harbour directions) at the same time as making harbour directions (provided the Commissioners' application to become designated with powers of harbour direction is successful). Compatibility with any harbour directions the Commissioners may wish to introduce can then be ensured.

Therefore the Commissioners are not requesting that any statutory provision of local application be amended or repealed in the Designation Order.

#### **CONSULTATION**

The Fowey Harbour Commissioners carried out a consultation between 19 February and 14 March 2014 which sought the views of harbour users and other interested parties on the Commissioners' intention to apply to be designated with powers of harbour direction.

The consultation document at Annex B and the Department for Transport Harbour Direction Guidance document was placed on the Commissioners' website during the consultation period. Copies were also available at the Harbour Office. As the consultation document makes clear, views were sought on both the suitability of the harbour authority to be designated with the power to make harbour directions and an indication given of what harbour directions can cover. In addition:

The consultation was advertised on the 'This is Cornwall' website between 19 February and 14 March 2014.

A public notice appeared in the Cornish Guardian on the 19 February 2014 for one edition (see Annex C).

The Commissioners' application to be designated with powers of harbour direction was an Agenda Item and was discussed at the Fowey Harbour Stakeholder Consultation Group Meeting on 8<sup>th</sup> April 2014.

A full list of member bodies / representative organisations represented in the Fowey Harbour Stakeholder Consultation Group and invited to meetings is included in Annex D.

The Commissioners' application to be designated with powers of harbour direction was discussed at the Fowey Estuary Partnership meeting on 25 June 2014.

A full list of member bodies / representative organisations represented in the Fowey Estuary Partnership and invited to meetings is included in Annex D.

The British Ports Association on 18 and 19 June 2014, the RYA on 20 June 2014 and the NFFO, UK Chamber of Shipping and the British Tugowners Association on 23 June 2014 were informed of the Commissioners' intention to apply to be designated with the powers of harbour direction and provided with their consultation document (Annex B).

### **Consultation Responses**

Below is a summary of the consultation responses received:

The Fowey Harbour Stakeholder Consultation Group gave their full support to the application in the meeting of 8 April 2014.

The British Tugowners Association (which the Commissioners are a member of) confirmed that it had no objections to the application on 23 June 2014.

The Commissioners' consultation document (Annex B) gives examples of the potential scope of harbour directions. In relation to this document the NFFO commented that a harbour direction which specified '*requirements for no deficiency in machinery*' could be unreasonable where a ship need to enter the harbour precisely because it has a defect, which makes it unseaworthy and is thus in need of refuge. The Commissioners responded to confirm that the examples had been taken from the Department for Transport's Guidance document and were not specific examples of a harbour direction which the Commissioners' wished to introduce.

The NFFO responded on 24 June 2014 to say that they would consult with their local members and then revert to the Commissioners. If a further substantive consultation response is received the Commissioners will notify the Department of Transport upon receipt.

The UK Chamber of Shipping confirmed they had no objections and welcomed the application on 24 June 2014.

The Fowey Estuary Partnership gave their full support to the application in the meeting of 25 June 2014.

### **CODE OF CONDUCT STATEMENT**

See signed Statement of Assurance at Annex A.

The Fowey Harbour Stakeholder Consultation Group is the Commissioners' adopted Port User Group.



PG Thomas  
Harbour Master and Chief Executive  
For Fowey Harbour Commissioners

### **Annexes:**

- A. Statement of Assurance
- B. Consultation information
- C. Public Notice
- D. Member bodies / representative groups

# FOWEY HARBOUR COMMISSIONERS

HARBOUR OFFICE

Albert Quay, Fowey, Cornwall PL23 1AJ



Email: [fhc@foweyharbour.co.uk](mailto:fhc@foweyharbour.co.uk)  
Website: [www.foweyharbour.co.uk](http://www.foweyharbour.co.uk)

## ANNEX A

### Signed Statement of Assurance

I confirm that the following resolutions of the Fowey Harbour Commissioners were duly passed at a meeting of the Fowey Harbour Commissioners on 26 June 2014.

The harbour authority has had regard to the content of and agrees to comply with the code of conduct on harbour directions, in particular:

- a) To maintain 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 Chief Executive is authorised to apply to the Secretary of State for Transport for the Fowey Harbour Commissioners to be designated as a designated harbour authority for the purposes of section 40A of the Harbour Act 1964.

Name

W. P. MITCHELL

Signed

*W. P. Mitchell*

Date

26 June 2014

## ANNEX B

### Harbour Directions - Consultation

Fowey Harbour Commissioners, as a Statutory Harbour Authority, wish to modernise by seeking to be designated with powers of Harbour Direction. Current byelaws, whilst relevant, are inadequate for the traffic using the port.

#### Harbour Directions

##### What are they?

The Harbours Act 1964, as amended by the Marine Navigation Act 2013, provides a mechanism by which the Secretary of State may by Order designate harbour authorities with a power to make harbour directions to better regulate shipping and improve safety within their harbour area. Such harbour authorities are called "designated harbour authorities".

##### What are they used for?

Harbour directions may be used by a designated harbour authority to regulate ships within their harbour, or entering or leaving their harbour. They may relate to the movement, mooring and unmooring, equipment and manning of ships. For example directions could be used:

- a. to regulate the use of any main navigation channel or fairway;
- b. to prescribe where and how vessels are to moor and move within the harbour;
- c. to ensure ships above a certain size have working radios to allow communication between harbour master and ship;
- d. to specify requirements for no deficiency in machinery; and,
- e. to ensure sufficient people with relevant experience crew specific types of ship.

##### Who will they apply to?

Harbour directions will only apply to ships as defined in the Harbours Act 1964. This Act defines a ship as including every description of vessel used in navigation, seaplanes and hovercraft. The Court of Appeal has held that to be used in navigation, a vessel must be used to make ordered progression from one place to another.

The grant of powers depends on the Commissioners giving assurance that they will maintain

- a) A Port User Group and to apply a dispute resolution procedure such as is set out in the code of contact 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 Fowey Harbour Stakeholder Consultation Group is the adopted Port User Group and the Fowey Harbour Commissioners resolved to offer the required assurance at their board meeting on 30<sup>th</sup> January 2014.

This consultation seeks views, comments and/or observations on the matter, which should be forwarded to the Chairman by 14<sup>th</sup> March 2014.

This consultation is only relevant to the taking of powers. The actual Directions will be the subject of a further consultation once the Powers are granted.

## Annex C

Public notice which appeared in the Cornish Guardian on the 19<sup>th</sup> February 2014

### **FOWEY HARBOUR COMMISSIONERS**

#### CONSULTATION

Views are invited from Harbour Users  
and other Interested Parties on the  
taking up of Powers of Harbour Direction

Further details from  
Fowey Harbour Commissioners  
Harbour Office, Albert Quay, Fowey  
PL23 1AJ Tel: 01726 832471  
[www.foweyharbour.co.uk](http://www.foweyharbour.co.uk)

## Annex D

### Member bodies / representative organisations represented in the Fowey Harbour Stakeholder Consultation Group

1. Golant Quay Users
2. RYA – Position currently vacant
3. Aqua Culture
4. Fowey Town Council
5. Port of Fowey Race Organising Committee
6. Castle Dore Rowing Club
7. Licenced Boatmen
8. Pilot Boatmen
9. Freshwater Fisheries
10. Mixtow Residents
11. Chamber of Commerce
12. Imerys Minerals Ltd
13. National Trust
14. West Country Rivers Trust
15. Rowers and Paddlers
16. Tourist Information
17. Cornwall Council
18. Lanteglos Parish Council
19. Polruan Town Trust
20. Penmarium Quay Users
21. Lostwithiel Town Council

### Member bodies / representative organisations represented in the Fowey Estuary Partnership

1. Cornwall Council – Local Councillor
2. Cornwall Council – Maritime Section
3. Cornwall Council – Natural Environment
4. Environment Agency
5. Natural England
6. Imerys Minerals Ltd
7. National Trust
8. South West Water
9. Cornwall IFCA
10. Cornwall AONB Unit
11. Cornwall Wildlife Trust
12. Friends of the Fowey Estuary