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Graham Allison
Great Yarmouth Port Authority
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Our reference: DC9892

12 June 2015

Dear Mr Allison,

**The Harbours Act 1964
The Great Yarmouth Port Authority (Constitution) Harbour Revision Order 2015**

1. The Marine Management Organisation (“MMO”) informs you that consideration has been given to the application for the Great Yarmouth Port Authority (Constitution) Harbour Revision Order 2015 (“the Order”) for which you applied on behalf of the Great Yarmouth Port Authority (“the applicant”), under Section 14 of the Harbours Act 1964 (“the 1964 Act”).

Summary of Decision

2. The MMO has authorised the making of the Order with amendments and modifications which it considers necessary and appropriate.
3. The Order would amend the constitution of the applicant. It would reduce the number of board members required to 7 and create a new appointment process in line with best practice detailed in Modernising Trust Ports [Second Edition] (“MTP2”).
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 applicant is the statutory harbour authority for the Port of Great Yarmouth (“the Port”). It operates under Acts and Orders 1866 to 2005.
6. The Great Yarmouth Port Authority Harbour Revision Order 1989 (“the 1989 Order”) provides that the applicant shall consist of 10 members and a Chief Executive. The members being appointed by various bodies specified in the 1989 Order.



**INVESTORS
IN PEOPLE**

7. The Port is situated in the County of Norfolk on the eastern seaboard of the United Kingdom with the closest sea routes to the northern European coastal ports.
8. The history of the Port has been diverse and in the 20th century the port developed from a major fishing port to a North Sea Gas support base with interests in general, bulk and project cargoes.
9. In the early 1980's the applicant concluded that the future sustainability of the Port could be guaranteed by having the ability to accept longer and deeper drafted vessels. Following extensive modelling and research the applicant embarked on a project to fund and build an outer harbour to supplement and enhance the facilities available in the River Port. The applicant subsequently promoted the Great Yarmouth Outer Harbour Act 1986 ("the 1986 Act").
10. In 2004 the applicant, in partnership with Norfolk County Council and Great Yarmouth Borough Council formed a joint procurement company (Eastport Great Yarmouth Ltd) to attract the necessary investment to achieve the construction of the Outer Harbour.
11. In 2007 commercial agreements were concluded with International Port Holdings Eastport resulting in the construction of the Outer Harbour which opened for business in 2010.
12. In 2007 and as part of the commercial agreements the applicant transferred the assets, business and operation of the Port to the Great Yarmouth Port Company ("the GYPC") by virtue of the 1986 Act. The statutory powers of the applicant as a harbour authority were not transferred although the majority of the functions were delegated to the GYPC.
13. Since 2007 the applicant has had a limited role in the management of the Port. The applicant meets throughout the year to exercise its non-delegable duties.
14. In summary, it is the applicant's case that the proposed reconstitution both in terms of the reduction of members and their selection is consistent with relevant policy and is necessary to facilitate the efficient and economical improvement, maintenance and management of the Port in the context of the delegation of functions.

Application procedure

15. On 11 September 2014 an application for the Order was submitted by the applicant to the MMO.
16. Notice of the application for the Order was advertised in the London Gazette on 19 September 2014 and in the Yarmouth Mercury on 19 and 26 September 2014.
17. In addition the MMO consulted directly with:
 - Department for Transport ("DfT");
 - Chamber of Shipping;
 - Royal Yachting Association ("RYA"), and;
 - Trinity House ("TH")

18. The MMO received 8 objections and a single representation from the DfT during the statutory 42 day period provided for in Schedule 3 to the 1964 Act.

19. Objections were received from:

- Mr Cooper;
- Cllr Myers;
- Cllr Myers on behalf of the Great Yarmouth United Kingdom Independence Party;
- Norfolk and Suffolk Boating Association;
- Cpt Andrews;
- Mr Balls;
- Great Yarmouth Port Users Association, and;
- RYA.

20. In summary issues can be categorised as follows :

- Validity of the board;
- Policy;
- Stakeholder engagement, and;
- Miscellaneous

Validity of the board

21. Objectors state that the applicant has failed to comply with the 1989 Act when making appointments to the extent that the board is invalid and has no power to apply for the Order. Objectors also state that some members have exceeded a maximum period permitted to act as a member.

MMO response

22. It is important to note that there is a distinction to be drawn between the requirements set out in the 1989 Act and guidance contained in MTP2. A number of the representations made appear to confuse elements of the two.

23. Having considered the issues raised, the 1989 Act, MTP2 and the appointments of the current board, the MMO is satisfied at the time of the making of the Order there is a lawfully appointed sufficiently constituted board in place and considers any minor irregularities associated with the appointment process are of a nature such that they are adequately mitigated by paragraph 5 of Schedule 1 to the 1984 Order.

24. Paragraph 5 of Schedule 1 to the 1984 Order provides that:

'no act of the Commissioners shall be deemed to be invalid by reason of any irregularity in the appointment of any Commissioner or by reason of any person irregularly acting as a Commissioner'.

Policy

25. Objectors raise concern that the proposed Order is not compliant with policy in a number of areas including but not limited to the size of the proposed board and the number of board meetings specified in the Order.
26. The MMO also received representation that stakeholder interest on the board should be preserved, that the appointment process under the 1989 Act is satisfactory and that there is insufficient detail about the makeup of the selection panel available. The MMO considers these additional points also fall within the category of policy.

Board constitution

27. The guidance contained in MTP2 represents a code of good practice and states that trust ports should do all they can to comply with it. It also acknowledges that not all trust ports will be in a position to comply with every provision and that in some cases the size and nature of the trust port's operation may mean that a particular stipulation doesn't apply, or that compliance would be excessively burdensome.

Section 3.1 states:

“a trust port board should comprise between 8 and 12 members. Larger boards are unwieldy. Their effectiveness tends to decline in proportion to the number of members. A move from representatives to independent board membership removes the need for a large and potentially ineffective board structure. Trust port boards should seek instead to achieve an effective balance of skills to meet operational and strategic needs as set out in these standards. It is perfectly feasible for any board to embrace all of its core skill requirements within 8-12 members.”

Section 3.3.2 states:

“All trust ports must work to phase out any remaining reserved appointments from their constitution. Even where existing reserved appointments (eg where the local authority appoints) are conducted according to these principles, trust ports should look to go one step further and create entirely open competition for board membership.”

28. The MMO acknowledges that the Order would give rise to a board which consists of 7 members and this is one less than the range set out in MTP2. However, the MMO notes the DfT's acknowledgement that the guidance may not be relevant in all circumstances and considers that the overall objective is to reduce board sizes to achieve boards which are independent and comprise an effective balance of skills such to meet operational and strategic needs. In this context the MMO considers that it would be inappropriate to follow the illustrative range set out in MTP2 without exception and considers each case must be assessed on its merits.
29. The MMO is satisfied that the removal of representative appointments, and in the context of the delegation of functions described in paragraph 12, the reduction of members to 7, is consistent with policy and in the interests of the efficient and economical management of the harbour.

Selection panel

30. 'Section 3 Guiding Principles – Appointments' of MTP2 sets out a basic process which should be adopted to provide a simplified, consistent, open and accountable system for board appointments. The Order requires members to be appointed by a panel and that the panel consists of three members comprising the chairperson and two other members (not members of the board or officers of the Port Authority) with specified knowledge or experience of the Port and in particular experience in a number of relevant areas.
31. Further, it is noted that the Order provides that in making an appointment the selection panel must act in accordance with any guidance issued by the Secretary of State.
32. The MMO is satisfied the process for appointments set out in the Order is adequate and consistent with relevant policy.

Meetings

33. MTP2 states that the DfT considers "*Unless there are truly exceptional circumstances all trust port boards should convene at least 6 times a year.*"
34. The current statutory requirement for meetings to be held by the board is set out in Great Yarmouth Port Authority Acts and Orders 1866 to 2005 and requires the applicant to hold an annual general meeting in April of each year plus such other meetings as may be required.
35. The Order as applied for proposed to increase this number requiring an annual general meeting and 2 additional ordinary meetings and such other meetings as may be required.
36. The MMO welcomes the increase in the statutory minimum number of occasions per year the board will meet but considers that this should be increased further and the Order amended to require an annual general meeting plus a minimum of 4 ordinary meetings. The MMO acknowledges the need to maintain a degree of flexibility to convene as the board considers appropriate whilst also having regard to guidance issued by the secretary of state and therefore does not require the number of meetings set out in statute to mirror the figure set out in MTP2.
37. The MMO is satisfied that the Order as amended compliments the guidance issued by the secretary of state allowing the applicant discretion to act as it sees fit in the interests of the efficient and economical management of the harbour.

Quorum

38. No representations were made in respect of the proposed quorum for meetings, the figure for which was proposed to be set at 3. The MMO has considered the point and determined that an increase in this figure to 5 is both necessary and appropriate.

Stakeholder engagement

39. The MMO received representations which stated that the Order should provide for the formation of a statutory advisory committee to compensate for the removal of sector led appointments to the board. Objectors are of the opinion that the current Community & Marine Liaison Committee (CAMLC) is inadequate in its current non statutory form.

MMO response

40. The Order is proposed to revise the constitution of the applicant in accordance with MTP2 and in the context of the delegation of functions to the GYPC.
41. The MMO recognises the reduction in members to 7 but does not consider this translates to a reduction in skill or knowledge on the board against that provided by the 1989 Act; indeed removal of representative appointments, reduction in board size and appointment via open and fair competition is recommended by MTP2 and considered conducive to achieving an effective balance of skills necessary to meet operational and strategic needs thus facilitating a reduced board size and the effective and efficient management of the Port.
42. Section 1.5.5 of MTP2 'the Role of the Stakeholder' provides that *"as a means to consult trust ports may find it beneficial to establish formal stakeholder groups which meet regularly and have representation from the various stakeholders."* There is no suggestion that when removing representative appointments from the board they must be replaced with a statutory advisory committee.
43. In any event, the MMO notes the existence of the CAMLC and the purpose it currently fulfils; to exchange information, represent ideas and proposals for discussion between constituent interest groups and the Ports CEO's and Harbour Master, thus improving co-ordination and understanding between the different port users and interest groups within Great Yarmouth with relevance to the operations of the Port.
44. The CAMLC is made up of a comprehensive number of stakeholder groups which is representative of stakeholders in Great Yarmouth. The CAMLC meets 3 times a year and the terms of reference for the CAMLC also provide a process by which matters, including urgent matters, can be raised by members of the committee for inclusion of the agenda and for additional meetings to be convened to consider urgent matters raised when appropriate.
45. The applicant considers the CAMLC to be an appropriate and adequate mechanism for stakeholder engagement and highlight that no issues have been raised with it since its creation in 2010.
46. For the reasons set out the MMO do not consider it necessary to amend the Order to include provision for a statutory advisory committee. The MMO is satisfied that the Order is consistent with the relevant policy framework and in the interests of the efficient and economical management of the harbour.

Miscellaneous

47. In addition to the matters set out above representations were also made in respect of a number of other matters including:

- The failure of the Order to set out arrangements between the applicant and the GYPC in respect of the delegation of functions and operation of the Port;
- The failure of the Order to provide for the transfer of the applicants obligations under the Haven Bridge Act 1925; and
- Suggestion that the applicant fails to demonstrate that the Order satisfies the test set out in section 14(2)(b) of the Act.

MMO response

48. The MMO considers the first two matters to fall outside of the scope of its consideration of this Order and that third is dealt with below.

MMO consideration

49. 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.

50. 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.

51. 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

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

53. The MMO is satisfied for the reasons set out by the applicant 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.

54. The MMO authorises the making of the Order with amendments and modifications which it considers necessary and appropriate.

Challenge to decisions

55. 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 'AW', enclosed in a thin black rectangular border.

Andrew Watson
Inshore Licensing Team

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Annex

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.