

Annex D-2: Application of Neath Port Authority

NEATH PORT AUTHORITY
(formerly Neath Harbour Commissioners)

VAT REG'N NO. 122 6968 60

Woodfield House, Castle Walk, Neath SA11 3LN

E-mail: [REDACTED]

Our Ref:
Your Ref:

7th March 2016

Caroline Wall
Port Governance & Trust Port Policy, Maritime Commerce & Infrastructure
2/32 Great Minster House
33 Horseferry Road
London
SW1P 4DR

Dear *Caroline*,

Re: **Harbour Directions – Application on behalf of the
Neath Port Authority (NPA)**

Further to our correspondence of the 13th October 2015, confirming our intention to seek powers of Harbour Directions for the Neath Port Authority (NPA), we are pleased to now be able to submit our formal application to be designated with these powers (under section 40A-40D of the Harbour Act 1964 (HA1964 as inserted by section 5 of the Marine Navigation Act 2013) and based on the following information:

1.00 Introduction

This application is being made on behalf of the NPA acting as the Statutory and Competent Harbour Authority, and is made on the instructions of the NPA Commissioners in their capacity as “Duty Holder” for the Port.

The NPA is a statutory company (i.e. a company established by an Act of Parliament) and which has been given Statutory Powers or duties for the purpose of constructing, improving, maintaining and managing the Port of Neath.

The NPA are of a type commonly known as “Trust Ports” but unlike authorities which are usually companies, the Port is controlled not by shareholders but by a specially constituted body known as Commissioners (see Neath Harbour Revision Order No. 2207 dated 2009 for the constitution of the NPA).

2.00 Rationale for Application for Powers of Harbour Directions

The NPA was one of the first Ports to comply with the requirements of the new Port Marine Safety Code, and has publically committed to full compliance with

all aspects of the code, including employing an independent Marine Consultant to ensure the continuous updating of its PMSC plus its submission to the MCA and ongoing overseeing of the manner in which the Port conducts all its marine and navigation operations.

The first substantive paragraph of the PMSC (section1.2) requires harbour authorities to ensure that:-

“Duties to ensure the safety of marine operations are matched with general and specific powers to enable the authority to discharge these duties”.

Furthermore, section 3.3 states that:-

“Existing powers should be revised on a periodic basis by harbour authorities, to avoid a failure in discharging its duties or risk exceeding its powers”.

Plus section 3.4 recommends that:-

“Harbour authorities should be well advised to secure powers of general direction to support the effective management of vessels in their harbour waters, if they do not have them already”.

The NPA similar to the majority of the ports operating within the UK, rely on very old legislation to regulate the movement of vessels within their statutory limits.

For the NPA these comprise various “enabling acts” and apart from the new Harbour Revision Order of 2009, the majority of these documents due to their age and archaic terms and language used in their drafting are not in regular use. (See table below for a summary of the enabling acts and pilotage byelaw dates).

Enabling Act	Short Title	Extent of Repeal
1843 c .lxxi	Neath Harbour Acts 1843	Sections 15 to 17, 19, 21, 23, 25 to 27, 29 and 31
1884 c .cxvi	Neath Harbour Acts 1844	Sections 6 to 16 and the first & second schedules
1886 c .lv	Neath Harbour Acts 1886	Sections 5, 7, 8 and 12 to 27
1891 c .cxvi	Neath Harbour Acts 1891	Section 4
1901 c .xvi	Neath Harbour Acts 1901	Section 6
Statutory Instruments	Harbour Revision Order	2009 No. 2207
General Bye-laws	Covering pilotage	1 st October 1988

There is a need therefore for the NPA to update, and in some cases supplement the regulatory powers available to the NPA, with modern directions which are fit for purpose and compliment the obligations placed on the NPA by our commitment to the PMSC.

Although the NPA has never resorted to legal proceedings to enforce an act or byelaw infringement, the NPA internal PMSC audit, coupled with the MCA external audit or “Health Checks” have identified that in some cases it would be difficult to legally enforce some aspects of the above NPA legislation due to the outdated drafting of the documents.

Other factors which have prompted the NPA to apply for these powers include the need for appropriate legislation for use as a control measure for the ever changing traffic conditions being experienced or planned within the NPA limits. For example the proposed construction of the new Swansea Bay Tidal Lagoon which will significantly alter the entrance to the port, in addition to bringing vastly increased commercial and leisure marine traffic throughout its construction and completion.

The NPA are also mindful of the need to be able to control the private leisure craft users operating from the expanding Monkstone Cruising and Sailing Club, as well as the proposals being muted to develop the Brunel Dock Basin also for leisure use.

Whilst the NPA is not seeking these new powers to enable them to secure potential future prosecutions, it does recognise the need to have appropriate local legislation (directions) which will make it easier for all the NPA users to fully understand and comply with their responsibilities to ensure safe navigation within the NPA statutory limits.

Potential conflicts between Harbour Directions and Existing Legislation

As detailed in the table above, many of the NPA’s enabling acts are extremely dated and seek mainly to regulate landside (non-navigational) aspects of the day to day operations of the port and which do not provide the marine navigation safety requirements now needed.

It would therefore be the intention of the NPA to use the new Harbour Directions to regulate all aspects of commercial and leisure traffic within the port, to ensure that the NPA always achieves full compliance with the PMSC.

The existing enabling acts where appropriate, would continue to be used by the NPA’s solicitors to regulate the management of the NPA plus any non-navigation issues.

Consultation with stakeholders – Harbour Users

The NPA take their obligations (formalized under section 3.12 of the PMSC) to consult with harbour stakeholders and users very seriously and have appointed commissioners drawn from the Local Authority, including representatives from the wharf owners plus appropriate local councillors.

In addition, the NPA have established a number of stakeholder / user groups to ensure all of them are consulted over matters involving the operation of the port including representatives from:-

- Wharf operators / agents.
- Tug & pilotage providers.
- Mooring service providers.
- Port customers.
- Port staff
- Pilots
- Ports Independent Marine Auditor (IMA)
- Regulatory bodies (MCA, TH)
- Local Authority including planners / biodiversity representation
- Other local statutory authorities – NRW plus Surveying Consultants.
- Local life boat / rescue organisations
- Marina Operators
- Adjacent land owners
- Adjacent Harbour Authorities
- All other interested parties.

The NPA can confirm that the River User Group comprising delegates from the above stakeholders / representatives are held at least four times a year.

During these meetings a PMSC update is included as a formal agenda item and when the NPA's IMA advises the group on all issues relative to the PMSC plus the safety of navigation within the NPA. These meetings are always minuted and actions taken accordingly.

Through these meetings, the NPA's Harbour Master plus the IMA explained the benefits of obtaining the new Harbour Directions and both recommended the NPA submit their application as early as possible. (see Appendix 1 & 2).

Accordingly, the NPA's Chairman, Clerk and Commissioners have also approved this application.

Details of the wide range of stakeholders consulted by the NPA, plus copies of minutes of appropriate meetings will be available on request if required to support this application.

Code of Conduct

The NPA are aware that the ports industry have produced a "Code of Conduct Statement" and are able to confirm that the NPA agree to comply with the requirements of this code particularly:-

- To maintain and expand if necessary the Port User Group and to apply a dispute resolution procedure as set out in the code of conduct when required.
- To have regard to supplementary guidance issued from time to time by the National Directions Panel on the subject of Harbour directions. The manager is also authorized if required to apply to the ~~Welsh Minister~~ Secretary of State for Ports / Transport for the NPA to be approved as a designated Harbour authority for the purpose of section 40A of the Harbour Acts 1964.

Secretary of State
for
Transport


(corrected
by Port
Governance
Branch
Dept. for
Transport

In a recent telephone conversation you confirmed that your offices already possessed copies of our enabling acts so there was no need for the port to forward further copies of same. However we have included a copy of the small booklet detailing the General Byelaws for controlling the pilots.

Finally, we trust this application contains all of the information required to enable your offices to progress our application to become a Designated Harbour Authority, and you are still able to confirm that the new document will be processed and issued on a "Free of Charge" basis.

However, if in the meantime you require further information or clarification on any of the points made please contact me.

Yours sincerely

A redacted signature and name, consisting of a small dark shape above two horizontal black bars. A thin line extends from the right side of the top bar.

RM/LP File No: PI/26
Dated: 7th March 2016

RECEIVED 08 MAR 2016



Tel&Fax: UK [REDACTED]

info@maritimeresolve.com

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Research - Recovery - Resolution

Manager
Neath Port Authority
Woodfield House
Castle Walk
NEATH. SA11 3LN

2nd March 2016

Dear [REDACTED]

HARBOUR DIRECTIONS

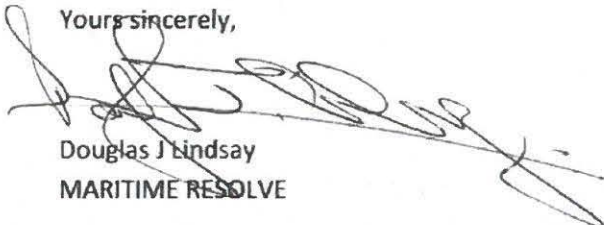
You have advised me that Neath Port Authority intend to apply to become a Designated Harbour Authority with a view to being able to make Harbour Directions to control shipping activities within the port of Neath. The object of the exercise is to provide you with up-to-date powers for control and management of shipping movements within the port, as the existing powers are elderly and no longer fully fit for purpose.

As the designated person and Port Marine Safety Code advisor for Neath, this proposal has my full support. Once the Harbour Direction is made it will give you enhanced powers to manage the port shipping movements and enable you to comply fully with the latest requirements of the Port Marine Safety Code and underlying legislation. The port is already well organised and operates a Port User Group attended by Stakeholders, Independent Safety Advisor, Harbour Master, Pilots and Port Staff and which was formed to discuss and advise on any practical issues that should impact on the safe navigation of shipping throughout the port.

As well as providing the ports Harbour Master with the necessary modern powers to support the effective management of vessels within the port limits, these new Harbour Directions can be utilised to provide operational guidelines for discussions within this group.

I therefore fully support the ports application on this issue and look forward to discussing these new Harbour Directions during future meetings of the above group.

Yours sincerely,


Douglas J Lindsay
MARITIME RESOLVE

Office: [REDACTED]

Neath Port Authority
Woodfield House
Castle Walk
Neath
SA11 3LN

To : [REDACTED]
Port Manager

20 January 2016

Dear [REDACTED]

Marine Navigation Act 2013

Background and rationale for applying for Powers of Harbour Direction

Neath Port Authority, as a Competent Harbour Authority (CHA) currently relies on old legislation to regulate the movement of all types of vessels within its limits. The Port has a mix of Parliamentary Acts, Byelaws and the Neath Harbour (Constitution) Revision Order in 2009.

It is generally agreed within the industry that much of this legislation is antiquated and no longer 'fit for purpose'. To better regulate shipping of all types and improve overall safety, Port Authorities need to give Harbour Directions (to masters of ships) to control movements, mooring and unmooring, manning and equipment of ships in their harbour.

At present, in order to obtain the power to do this they are obliged to apply for an HRO under the Harbours Act of 1964 (HA 1964) which is a long, costly and bureaucratic process. (See page 24 of consultation paper)

The Port Marine Safety Code introduced in 2001, then amended in 2009 and 2012, became a standard toolbox for every aspect of port marine safety operations. Refer also to the Code's supplementary guidance :- Guide to Good practice.

Extracts from the UK Port Marine Safety Code for harbour authorities :-

'Duties to ensure the safety of marine operations are matched with general and specific powers to enable the authority to discharge these duties'

'Existing powers should be reviewed on a periodic basis by harbour authorities, to avoid a failure in discharging its duties or risk exceeding its powers'

'Harbour authorities would be well advised to secure powers of general direction to support the effective management of vessels in their harbour waters'

Opinion and Observations

Our Safety Management System (SMS) should support various types of commercial traffic and be mindful of possible new trading activities within the Harbour limits.

The way leisure craft from the Monkstone Cruising and Sailing Club and the possible introduction of marine activities at Swansea University could make use of the River.

The development of the Brunel Dock Basin, however remote, is a possibility.

Management of the Tidal Lagoon construction site within the Harbour jurisdiction.

How alterations to the Training Walls or beach topography on Aberavon sands or Crymlyn Burrows foreshore may have a detrimental effect on navigation, tidal flows and sediment transportation.

Personal Water Craft (PWC) - Jet skis are **not** currently classed as 'ships' following the Court of Appeal ruling, it is important to be aware that the lack of proper control of these craft is of concern generally. The MCA and RYA run 'road shows' in an attempt to educate and encourage the registration of users.

Yours sincerely,




Harbour Master, Neath Port Authority

Excerpts from exchange of e-mails between Department for Transport Port Governance Branch and Neath Port Authority regarding port user group arrangements with respect to NPAs application to be designated with the power to give harbour directions.

Sent: 12 April 2016

From: Neath Port Authority

To: Department for Transport Port Governance Branch

I was pleased to receive your message of the 8th April 2016, confirming that you have now reviewed the initial application for the NPA to be designated with the power to give harbour directions, and as requested I would respond to the two points you have made as follows:-

- The existing River User Group RUG will become the Port user Group for the purpose of the Harbour Directions as this meeting is attended by wharf owners & agents, Harbour Master, Independent Marine Advisor, Pilots and Pilot vessel operators as well as the Management team.

It is at these meetings where all practical issues affecting the safe operation of the port are discussed and acted upon.

In addition, although the commissioners, comprising wharf operators, Local Authority Director, Councillors etc are in agreement with the submission of our application, the new Harbour Directions when approved will be summarised under a separate item within the managers' report plus discussed at all quarterly meetings.

- All the above including the Committee of the local Marina, whom the Harbour Master meets on a regular basis have no objection to the port applying for these new harbour directions"

Sent: 08 April 2016 14:52

To: Neath Port Authority

From: Department for Transport Port Governance Branch

Subject: RE: Harbours Act 1964 Section 40A. 2nd Round of Applications Invited from Harbour Authorities to be designated with the power to give harbour.

I have now had a chance to review Neath Port Authority's (NPA) application to be designated with the power to give harbour directions under section 40A of the Harbours Act 1964.....

What would be useful to have in addition is information on what the response was from harbour users to NPA acquiring the power, for example did they register support for NPA being conferred with the power?

You mention the broad range of stakeholders belonging to the River User Group. Is it NPA's intention that the RUG will become the Port User Group for the purposes of harbour directions, or a more focussed sub-committee, say, of the RUG comprising those harbour users who will be affected by proposed harbour directions?

I will amend your letter in manuscript under the heading Code of Conduct – this is because at the present time the Secretary of State for Transport, rather than the Welsh Minister, is responsible for designation of Welsh non-fishery harbours which NPA is. This will change in the future once the Wales Bill becomes law.”

Further exchange of e-mails between Department for Transport Port Governance Branch and Neath Port Authority (NPA) regarding port user group arrangements with respect to NPAs application to be designated with the power to give harbour directions.

Sent : 4 October 2016

From: Neath Port Authority

To: Department for Transport Port Governance Branch

We acknowledge receipt of your communication dated the 19th September 2016, and would respond as follows:-

Port User Group

It is accepted that the idea of the Port User Group (PUG) is that it should be representative of the port users (i.e.) those who would be directly affected by the new proposed Harbour Directions.

Although our Harbour Master has informed various members of the MCSC [Monkstone Cruising and Sailing Club] Committee that the Port has applied for these New Directions, we can also confirm that we have now invited a representative from the MCSC to attend future meetings of the PUG, particularly as they would be affected by this new legislation plus, of course, the proposed Swansea Bay Tidal Lagoon and the preliminary proposals to develop the Brunel Dock would also impact on the MCSC.

However, when checking the list of proposed members of the group we originally submitted in our letter of the 7th March 2016, we have decided to reduce these attendees to the following:-

- Wharf Operators/Agents
- Tug and pilotage providers
- Mooring service providers
- Port customers
- Port staff
- Pilots
- Port's independent Marine Auditor
- Adjacent land/wharf owners

- Marina Operators
- Future Representatives of Swansea Bay Tidal Lagoon
- Future Representatives of Brunel Dock Development

We have made this reduction based on the above organisations who would be directly affected by the new Harbour Directions and for the following reasons:-

All the Regulatory bodies, including Planners, Biodiversity Representatives, NRW, DWR Cymru, plus Surveying Consultants attend the Neath Estuary Group meetings, where the Port keep them updated on all Port issues, including dredging, training wall repairs etc., (i.e.) these organisation will not be affected by the new Harbour Directions.

Similarly, the new Harbour Directions will not impact on the local Harbour Authorities who are competitors, and therefore it is not expected that the Port will now be invited to their meetings or should they be invited to the NPA meetings.

Whilst the Port will invite other interested parties to these meetings in the future, and should the need arise, it is also now thought that the local Lifeboat/Rescue organisations will continue to be kept informed of all the Port's activities via the Harbour Mater, plus the oil spill exercises, etc., the Port hold.

Sent: 19 September 2016

From: Department for Transport, Port Governance Branch

To: Neath Port Authority

I understand from the NPA Harbour Directions application and previous exchanges we have had that it is your intention that the River Users Group (rug) will serve as the Port User Group whose membership I gather comprises the following stakeholders/representatives:

- Wharf operators/agents
- Tug and pilotage providers
- Mooring service providers
- Port customers
- Port staff
- Pilots
- Ports independent Marine Auditor
- Regulatory Bodies
- Local Authority including planners/biodiversity representation
- Other local statutory authorities – NRW plus Surveying Consultants
- Local lifeboat/rescue organisations
- Marina Operators
- Adjacent landowners
- Adjacent Harbour Authorities
- All other interested parties.

In the rationale section of your application I note you also refer to the need to be able to control the private leisure craft users operating from the expanding Monkstone Cruising and Sailing Club (MCSC) as well as the proposals being mooted to develop the Brunel Dock Basin for leisure use and port traffic increases that may arise from the proposed Swansea Bay Tidal Lagoon.

The idea of a Port User Group (PUG) is that it should be just that – representative of users – i.e. those who would be affected by proposed harbour directions. We were contacted several months ago by the MCSC to say that they had become aware of NPA's application to be designated with the harbour directions power but were not directly consulted. They do not object in principle to NPA's application but would like to be involved so they can protect their interests.

Are MCSC on the RUG? If they are likely to be affected by future harbour directions it would not be unreasonable to be represented on the PUG. Does the RUG adequately capture all those users (commercial and leisure) to whom harbour directions would apply).