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**GLOSSARY:**

ALARP	As Low As Reasonably Practicable
DP	Designated Person
HHAC	Hayle Harbour Advisory Committee
HHML	Hayle Harbour Management Ltd
HHRL	Hayle Harbour Rentals Ltd
PMSC	Port Marine Safety Code
SMS	Safety Management System
SSSI	Site of Special Scientific Interest.

## **1. EXECUTIVE SUMMARY:**

Harbour Authorities have been created by statute to serve a public interest. They have a duty to manage, maintain and improve a Harbour.

Hayle Harbour Management Ltd as the statutory Harbour Authority now finds itself custodian to a deteriorating harbour infrastructure with difficult navigation issues, few users and little income.

Each Harbour Authority should be governed by duty holders (often a Harbour Board) in a manner that is open, accountable and fit for purpose and the duty holders remain accountable for the discharge of the Harbour Authority's statutory functions.

We have found that the present Governance regime at the Harbour Authority at Hayle has failed to sufficiently direct the operational staff with the result that the functions of the Harbour Authority have become co-mingled with the management of the development estate. Without clear guidance the Harbour Master's efforts have become mixed between discharging the operational functions of the Harbour Authority, development estate management and general community enhancement.

We have additionally found that the finances of the Harbour Authority are also co-mingled with those of managing the development estate.

The income that is available to the Harbour Authority is insufficient to meet its present expenditure. We recommend that consideration be given to increasing harbour dues and other charges and that the accounts for the Harbour Authority should be ring fenced.

We further recommend that the Governance of the Harbour Authority should be improved by forming a Harbour Board that will include the involvement of the local Councils and will seek advice from the already functioning Hayle Harbour Advisory Committee. The Harbour Board should set clear strategies and policies and the Harbour Master should execute them as well as managing the day to day operation of the harbour.

Hayle Harbour is a "public harbour undertaking" and we therefore recommend that discussions should be commenced with Cornwall County Council to explore if they have an interest of ultimately taking over the Harbour as a Municipal Port. This would give them the opportunity of maximising its potential as a public amenity.

## **2. INSTRUCTIONS AND METHODOLOGY:**

Marine Enforcement was instructed to carry out a review of the Harbour Authority at Hayle. This entailed a one day visit to the Harbour Office, a tour of the harbour and of the lands earmarked for development, meetings with staff and examination of papers and records.

Capt. Mark Capon of our offices attended Hayle Harbour on 18<sup>th</sup> August 2009 to conduct the review. He met with the following:

1. Richard Ford, Harbour Master;
2. Peter Haddock, Deputy Harbour Master and Safety Officer;
3. Owen Neale, Director Hayle Harbour Rentals Ltd
4. Wayne Adams, Buro Happold;
5. Andrew McDouall, Natural England
6. Douglas Wright, commercial harbour user
7. John Carter, Hayle Fishermen's Association
8. Georgina Schofield, Hayle Chamber of Commerce
9. Jayne Nannes, Hayle Town Council
10. Robb Lello, Hayle Harbour Users Association
11. Peter Gilley, commercial vessel operator.

We thank all those we spoke to for their candid views and their most helpful input.

## **3. BACKGROUND:**

Hayle Harbour is a small harbour on the North Coast of Cornwall. The once busy commercial port lies at the head of a natural estuary. The channel to the harbour from the sea in St Ives Bay runs through a seabed mostly of fine sand. The harbour consists of 3 docks bounded by harbour walls and quays. The harbour is tidal and vessels using the harbour take the ground at low water. The infrastructure of the harbour is in a state of benign dereliction. The Harbour is adjacent to and the Harbour Authority has jurisdiction over Sites of Special Scientific Interest (SSSI) and the Port of Hayle is included in the Cornish Mining World Heritage Sites.

Originally large inland tidal lakes at the head of the estuary were sluiced. The sluices were closed at high water and reopened as the tide fell and

this coupled with the scouring effect of large vessels using the harbour kept the navigation channel through the sand relatively well defined. These sluice gates are no longer in use and the channel is subject to silting. Recent maintenance dredging has improved the definition of the channel.

Hayle Harbour and substantial adjoining and nearby land is owned by ING RED UK (Hayle Harbour) Limited (ING). ING has extensive plans to redevelop the area around the harbour and beyond. The timescale for this development is uncertain.

Hayle Harbour Rentals Limited (HHRL) acts as land agents for ING. HHRL is a private company acting as agents for ING.

Buro Happold are multi disciplined engineering consultants that are assisting ING with the planned development.

The Hayle Harbour Act 1989 established the Hayle Harbour Company Limited as the Harbour Authority. We understand that when this company went into liquidation Hayle Harbour Management Limited (HHML) lawfully succeeded as the Harbour Authority.

HHML does not own any of the harbour. Its primary function is that of Harbour Authority. This report examines the obligations of the Harbour Authority and the funding and resources required to discharge those obligations.

## **4. HAYLE HARBOUR MANAGEMENT LIMITED AS HARBOUR AUTHORITY.**

### **4.1 THE OBLIGATIONS OF A HARBOUR AUTHORITY**

Harbour Authorities have been created by statute to serve a public interest. They have a duty to manage, maintain and improve a Harbour. The powers and duties of HHML are prescribed in the Hayle Harbour Act 1989 and these reinforce the general premise that the Harbour Authority must improve, maintain and manage the harbour. The Act specifically enunciates that the Harbour Authority **may** (our emphasis);

- improve, maintain, regulate, manage, mark, sluice and light the harbour and provide services and facilities therein;

- construct, alter, demolish and reconstruct structures and works in the harbour; and
- do all other things which they consider necessary or expedient to facilitate the proper carrying on or development of the undertaking.<sup>1</sup>

Whilst the Harbour Authority is permitted to do those things listed above they are not obliged to do so.

However the Harbour Authority is subject to what is known as the “open port duty”.<sup>2</sup> This is a key provision in harbour legislation. It applies both in relation to vessels wishing to use the harbour and to members of the public wishing to use the quays and jetties to enable the shipping and unshipping of goods (including landing fish) and the embarking and landing of passengers.

It is generally accepted that this positive duty to keep the harbour open is subject to the physical limitations of the harbour. With this in mind and given that the Hayle Harbour Act 1989 specifically provides the Harbour Authority with an ability to sluice the harbour it is our view that the open port duty in Hayle would include keeping the entrance channel reasonably free from silt and also reasonably defined so that vessels can enter and leave the port.

In addition to the statutory provisions which create the open port duty the Harbour Authority also has a common law duty to conserve the harbour so that it is fit for use as a port, and a duty of reasonable care to see that the harbour is in a fit condition for a vessel to use to it. In short the harbour authority has a duty at common law to take reasonable care that those who lawfully use the harbour may do so in safety.

It follows that to discharge the open port duty and the duty of conservancy the Harbour Authority will need funds to provide the necessary resources.

Harbour Authorities have powers to collect dues from users to pay for the discharge of their statutory functions. They may demand, take and recover such “ship, passenger and goods dues as they think fit”<sup>3</sup>. Dues are, to some extent, in the nature of a tax, the amount payable by a user not necessarily being directly related to the service received by that user. The public right to use a port for the purpose of

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<sup>1</sup> Hayle Harbour Act 1989 sec 14(2)

<sup>2</sup> Harbour Docks and Piers Clauses Act 1847 sec 33.

<sup>3</sup> Section 26(2) Harbours Act 1964.

shipping and unshipping goods and the embarking and landing of passengers (the 'open port duty') is exercisable expressly upon payment of the rates made payable by the local legislation for that port. The right to use a harbour for the shipping and unshipping of goods, or the embarkation or disembarkation of passengers is subject to the payment of dues. Every Harbour Authority must ensure that adequate resources are available to discharge marine safety obligations and to set dues accordingly. It follows therefore that a Harbour Authority should raise sufficient income by collecting harbour dues to meet the costs of discharging its statutory functions.

The Port Marine Safety Code (see later) says

“The power to levy dues is conferred to ensure that users pay for the discharge of an authority's legal functions. It is obligatory to reduce all risks associated with the harbour undertaking as low as reasonably practicable. It follows that each harbour authority also has a duty, so far as is reasonably practicable, to raise at least sufficient in dues to provide the resources needed fully to discharge these functions. To meet the standard in this Code, sufficient must be raised in dues to fund adequately the full discharge of these requirements.

The board of each harbour authority is responsible for ensuring that adequate resources are provided to its officers to enable them to operate the policies, procedures and systems effectively, recognising that proper discharge of the authority's duties will otherwise be compromised. This includes adequate resource for training.”

A Harbour Authority should not run at a loss but this presupposes that there are sufficient users of the harbour from which to collect dues to generate adequate income. It is our view that a Harbour Authority can not be expected to spend money which, by the nature of the use of the harbour, it is incapable of raising.

The ability for a Harbour Authority to raise income from dues should be distinguished from its ability to charge for services it may wish to provide. A Harbour Authority is not obliged to provide services but if it does it may make a reasonable charge for those services. Harbour dues may be likened to a tax on the users of a harbour, whereas fees for services may be supplied on a commercial basis at the discretion of the Harbour Authority.

There are statutory obligations to publish the rates of dues and to keep accounts<sup>4</sup>.

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<sup>4</sup> Sections 30 and 42 of the Harbours Act 1964 and Sections 10(5) & 14 of the Pilotage Act 1987.

## **4.2 The Governance of a Harbour Authority**

Each Harbour Authority should be governed by decision makers known as duty holders (often a Harbour Board) in a manner that is open, accountable and fit for purpose and the duty holders remain accountable for the discharge of the Harbour Authority's statutory functions although they can appoint a Harbour Master and other professionals to manage the operation of the harbour.

What is clear is that for a Harbour Authority to discharge its obligations, strategic and policy decisions need to be made by an effective decision making body (the Harbour Board). The Harbour Board should make well informed decisions and to assist in this process they should consult with the users of the harbours and other members of the public that have an interest in the harbour. The Hayle Harbour Act 1989 prescribes that the Harbour Authority shall establish and maintain an advisory committee to provide advice to the Harbour Authority. The Act prescribes the membership of the advisory committee. The constitution and terms of reference of this committee are further defined in what is known as the "Three Councils Agreement"<sup>5</sup>

The Hayle Harbour Advisory Committee HHAC (as the committee is known) has been active for some years and is an ideal means by which the Harbour Board should obtain local and focussed advice from stakeholders and their representatives. This provides an ideal platform for the Harbour Board to make well informed decisions about how it should go about discharging its obligations and serving the public interests.

## **4.3 The Management of Safety by a Harbour Authority**

In 2001 the Port Marine Safety Code (PMSC) introduced a National standard for every aspect of port marine safety. It establishes a measure by which Harbour Authorities can be accountable for the legal powers and duties which they have to discharge. The PMSC applies to all Harbour Authorities although it is not law. Because the PMSC imposes a National standard, compliance with it provides evidence that a Harbour Authority is doing all it should. Conversely non-compliance raises suspicions that a Harbour Authority may not be meeting what is now regarded as the industry standard. This in turn may open the door wide to uncomfortable scrutiny and potential claims of negligence in the aftermath of any accident. Evidence of

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<sup>5</sup> Agreement between the Hayle Harbour Company Ltd and the Nature Conservancy Council and the Cornwall County Council and Penwith District Council 1989.

compliance with the PMSC will be amongst the first documents sought by accident investigators and lawyers.

#### 4.3.1 Basic Requirements of the Port Marine Safety Code:

The PMSC relies upon the principle that duties and powers in relation to marine operations in ports should be discharged in accordance with a Safety Management System (SMS). That system should be informed by and based upon a formal risk assessment<sup>6</sup>.

In simple terms a Harbour Authority has to assess what accidents may happen, take reasonable precautions to prevent such accidents happening and keep appropriate records. The PMSC requires that a Harbour Authority must take a proactive role in managing safety, it is no longer acceptable to wait for an accident to happen and then react. It is not expected that a Harbour Authority should eradicate all risks. The PMSC is pragmatic in that it directs that risks should be managed so that they are reduced to as low as reasonably practical (ALARP). This proactive management of risks must be recorded and subject to continual review and formal audits.

The PMSC also requires that the SMS needs to be audited and that those accountable for the Harbour Authority are kept informed with respect to compliance with it and with the operation of the Safety Management System. To this end the Harbour Authority must assign a “Designated Person” to audit compliance and provide independent assurance to the highest level in the Harbour Authority that the SMS is working effectively. It is for the Harbour Board to determine how best to meet this requirement in the context of their responsibilities, structure and circumstances. The Harbour Board must be sure that the advice it is given is objective and impartial.

As with any Safety Management System the personnel involved in it need to have their roles clearly defined. This extends from the highest levels of authority down through all levels of management and to the staff. Everybody in the “team” needs to know what is expected of them and how to meet that expectation.

In its simplest form the PMSC requires:

- All those involved in a Harbour Authority including the governing body should have clearly defined roles and responsibilities;

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<sup>6</sup> Port Marine Safety PMSC Introduction 14

- A Harbour Authority must proactively manage safety by constantly assessing and managing the risks associated with marine operations;
- A Harbour Authority must consult with all those who have an interest;
- Those accountable for the Harbour Authority must be kept informed.

#### 4.3.2 The “Duty Holder”:

The PMSC requires that each Harbour Authority holds itself accountable for the discharge of its functions. The PMSC envisages that the executive management of a Harbour Authority should be conducted by a Harbour Board.

Each member of the Harbour Board has an onerous task and the PMSC reinforces this. It requires the Board members to accept responsibility for ensuring that the Authority discharges its duties and powers to the standard laid down. Board members are collectively and individually responsible for the proper exercise of their Authority’s legal duties. Harbour Authorities have powers to appoint a Harbour Master and to authorise pilots and may properly entrust the operation of the harbour to such professional people; but Board members cannot assign their accountability. **Board members may not abdicate accountability on the grounds that they do not have particular skills. They retain strategic oversight and direction of all aspects of the harbour operation<sup>7</sup>.**

For these reasons we consider it vital that all Harbour Board members are kept fully informed by way of thorough written reports with all aspects of compliance with the Port Marine Safety Code.

#### 4.4. Other obligations

The Harbour Authority has a wide range of other responsibilities that include complying with all the relevant Health and Safety laws, to meeting a common law duty of care to everybody using the harbour, to preventing dangers of navigation, maintaining aids to navigation, surveying and monitoring the navigation and keeping mariners informed, removing wrecks, preventing and removing pollution, managing waste from ships and overseeing the carriage of dangerous substances.

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<sup>7</sup> Port Marine Safety PMSC 1.5.3 & 1.5.4

In carrying out its functions the Harbour Authority must have careful regard to the environment in its widest sense.<sup>8</sup> It also has a positive duty to preserve and where possible improve the SSSI. It does not have an obligation to provide security throughout the port although it may do so and charge for this service on a commercial basis

## **5. FINDINGS AND OBSERVATIONS:**

### **5.1 The relationship between the Harbour Authority and the development estate.**

The distinction between the Harbour Authority (which has a specific statutory function to manage, maintain and improve the harbour) and the management of the estate which is earmarked for redevelopment is not clear. The staff employed by HHML fulfil roles which are not defined between the Harbour Authority and managing the estate. The accounts are muddled and do not distinguish between the accounts for the Harbour Authority and those for the estate. The audited accounts for HHML posted a loss for the year ended 31 December 2008 after taxation of £394,796. Yet the income and expenditure of the Harbour Authority is not separately defined.

The Harbour Master and his staff approach their duties to manage the estate and operate the harbour with equal vigour but it is not clear how much of their time is spent discharging the functions of the Harbour Authority as opposed to managing the estate and perhaps meeting the needs of the public which falls outside of both. Both HHRL and Buro Happold are engaged at times to assist in the management and operation of the Harbour Authority yet their fees for doing so are not attributed to the accounts of the Harbour Authority (because the Harbour Authority do not keep separate accounts). Given the absence of dedicated accounts for the Harbour Authority it is difficult to gauge the proportion of the overall loss posted by HHML to the Harbour Authority. What is clear however is that the present income derived by the Harbour Authority is insufficient to fund its present staffing levels and activities.

There is no doubt that the Harbour Master and his staff do an excellent job in ensuring, as best they are able, that the Harbour and the estate are safe and pleasant public amenities. Whilst their efforts in maintaining the stakeholder's and public's opinion of ING at comfortable levels should be applauded, it is for ING to consider whether the losses they sustain represent good value.

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<sup>8</sup> Hayle harbour Act 1989 s17 and Harbours Act 1964 s48A.

In the immediate future the income that can be derived from the Harbour will remain small and it necessarily follows that the functioning of the Harbour Authority should be proportional to its income.

## **5.2 The Income of the Harbour Authority**

At present the Harbour Authority derives most of its income from the vessels using the harbour which includes 36 fishing vessels and 91 leisure vessels. Apart from a few commercially operated angling and dive boats there is no other commercial activity.

The vessels that use and moor in the harbour are charged an annual fee collected in two instalments. The invoices issued variously describe the fees as “harbour dues” and “harbour dues and mooring rental”. It is not clear what proportion of the fee is for harbour dues (the “tax” the Harbour Authority can charge all vessels using the harbour) as opposed to the cost of providing the mooring and any other facility. Whilst this co-mingling of dues and rental is permitted in law<sup>9</sup> we do not recommend this is sound practice because there is a statutory right to object to the level of dues and in principle it should be clear to those paying fees to the Harbour Authority what those fees are for.

The level of the fees charged to harbour users are modest and whilst the facilities afforded to them are also modest we recommend that the Harbour Board separately review the level of dues and the fee for a mooring with comparable rates of other local harbours. Whilst perhaps not a direct comparison we note that the cheapest comparable fee for harbour dues and a modest mooring on a well known south coast leisure harbour run by a Council is in the order of 5 times more expensive than that charged at Hayle. The moorings to which we refer are keenly priced so that they are within reach of the majority of the public; moorings in privately owned marinas are much more expensive (although Harbour Dues are charged at the same rate).

We would suggest that the setting of the rates for dues and for mooring fees together with considering whether dues should also be levied on the fish and shellfish landed (goods dues) are matters for the Harbour Board. Due consideration should be given to the cost of collection and the ability of harbour users to pay.

At present the Harbour provides few facilities other than a mooring and ladders on which to alight the quay. There are some toilets

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<sup>9</sup> Harbours Act 1964 sec 27A.

provided at the Harbour Master's office and there is a water supply to the quay used by the fishermen. These are facilities that need not be provided by the Harbour Authority but for which they can make a reasonable charge.

We understand that although the water supply to the fishermen's quay is metered no charges are made by the water company and no charges are therefore passed on to the fishermen. We recommend that the supply of water to the fisherman's quay is reviewed to ensure that it is appropriately charged and that the charges are recovered. We also understand that a back flow tank needs to be fitted to the supply. The Harbour Authority is not obliged to supply a free or subsidised water supply to any quay. If it provides water as a service it should charge commercial rates for doing so. Alternatively it may allow the users to install a supply at their cost and the infrastructure required is permitted by way of a licence with appropriate terms and conditions.

### **5.3 Fulfilling the obligations of a Harbour Authority**

We are content to state that at present the Harbour Authority fulfils its obligations save in respect of the following:

- the governance arrangements (see below).
- the requirement for the harbour to have an approved oil spill response plan (although we understand this is in hand)
- formal plans with emergency responders and the local authorities for emergency preparedness
- keeping the users of the harbour and potential visiting mariners informed regarding navigation within the jurisdiction
- the annual loss it incurs.

Previous reports (Buro Happold 2004, Just Safety 2007, MACE 2008) have reviewed various operational and safety aspects of the Harbour and the development estate. We recommend that these reports are reviewed and it is confirmed that any recommendations made in them have been considered and acted upon as considered appropriate.

The Deputy Harbour Master/Safety Officer should be congratulated on formulating a proportional Safety Management System (SMS) that meets the requirements of the Port Marine Safety Code and

generally managing safety in accordance with national requirements. Given that the risks associated with marine operations are comparatively low (i.e. the port does not handle large commercial ships carrying pollutants and dangerous cargoes although we recognise the dangers associated with the use of the channel and associated currents) the maintenance of this SMS should now require less resources.

The channel to the Port of Hayle requires careful management. History has indicated that without the benefit of sluicing and scouring the channel silts and its route across the coastal sands can change dramatically over a short period. We understand that the redevelopment of Hayle may include the re-instatement of the sluicing systems in the future but in the meantime maintenance dredging is preferred. This maintenance dredging is largely self funding as the dredging contractor retains some of the spoil which he sells. This appears a sensible and cost effective solution to a potentially difficult problem because without maintaining the efficiency of the channel there have been indications that the channel would silt up and the Harbour would be naturally closed.

As the channel constantly moves and the available depths are never constant it is not an easy channel to navigate. Nor is it easy to navigate over the bar outside the entrance to the channel. Because the channel is for ever shifting, especially since it is no longer sluiced, it is impossible to mark it with any longevity.

The Harbour Authority has a duty to keep all those who may use the harbour informed of any dangers to navigation and that would include the shifting of the channel and the variation of the available depths. This in itself could be a burdensome undertaking but given the present use of the harbour and the absence of funds the best that can be achieved is a clear public statement of the risks associated with entering and leaving the harbour. It must then be for the skipper of each vessel to make a well informed command decision whether to use the harbour. Reeds Nautical Almanac (widely used by commercial mariners and yachtsmen) warns against using the harbour even though it provides very good shelter. It recommends only crossing the bar in good weather one hour either side of high water and states "charted aids do not necessarily indicate best water". Similar warnings should appear on all charts of the harbour.

To protect the Harbour Authority the information it provides to the public and the hydrographic office should be reviewed and made robust. Mariners should be left in no doubt about the risks associated with entering and leaving Hayle. The Harbour Authority

should issue a Local Notices to Mariners that clearly makes the situation clear.

#### **5.4 The Governance arrangements.**

An efficient Harbour Authority requires that strategic and policy decisions (including financial planning) are made by well informed decision makers (the Harbour Board). The execution of these strategies and policies should be entrusted to the Harbour Master and his staff who also deal with the day to day management and operation of the Harbour. Without clear instructions from the decision makers (the Harbour Board) the Harbour Master is largely at a loss of what he is to achieve and how he should fund the activities of the Harbour Authority.

It is generally accepted that the governance at a Harbour Authority (especially as it is a body formed by statute to serve a public interest) should be open, accountable and fit for purpose.

It is our view that the Governance arrangements at Hayle have not met the expected standard. We acknowledge that the Harbour Master has worked diligently and efficiently in achieving what he considered to be in the best interests of the local stakeholders, yet we are not convinced that all of what has been achieved has been consistent with a Harbour Authority entrusted to govern a small and decaying port with a very limited income.

The stakeholders that we spoke to were unanimous that the harbour had improved since the appointment of the present Harbour Master and it is clear that he is committed to ensuring that the harbour is operated safely. However we are not convinced that some of the decisions that have been made have been considered at an appropriate level (i.e. by the Harbour Board) or whether they have been referred to or considered by the Hayle Harbour Advisory Committee. To ban a legitimate maritime activity (i.e. kite surfing) is severe and should only be implemented where it can be justified by formal risk assessment.<sup>10</sup> (The PMSC requires that all maritime activities should be regulated on a risk basis). We find it difficult to consider the risks associated with kite surfing within the jurisdiction of the Harbour Authority being unacceptable as opposed to the risks associated with surfing without a kite, windsurfing, jet skiing or dinghy sailing. We may be wrong, but the decision to ban an activity, especially without an express power to do so (i.e. by way of a byelaw or a Harbour Master's direction in the case of emergency only)

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<sup>10</sup> We recognise that a risk assessment has been completed for kite surfers colliding with another vessel in the main channel and this acknowledges "several near misses".

should be considered by the Harbour Board only after it has sought the advice of the Hayle Harbour Advisory Committee and after they have consulted with those stakeholders that may be affected.

We therefore recommend that consideration is given to establishing a Harbour Board that should be tasked by ING to make well informed decisions regarding the strategies and policies of the Harbour Authority. As the Harbour Authority is owned by a limited company it will be for the board of that company to ratify the decisions of the Harbour Board.

Given that the Harbour Authority is to serve a public interest we would recommend forming a Board that consists of officers of ING, Cornwall County Council, Hayle Town Council and appointed independent persons with relevant skills and or backgrounds. Those that sit on the Harbour Board should do so not as representatives of any particular stakeholder group but in the interests of the Harbour Authority. The “Trust Ports Review”<sup>11</sup> provides much useful guidance on the composition and structure of Harbour Boards. We would recommend a small Board of perhaps 6 members and they would look extensively for assistance to the already functioning Hayle Harbour Advisory Committee.

Once the Governance regime has been established and the accounts ring fenced and providing ING so wish then that may be the time to approach Cornwall County Council to see if they would be interested to take over the Harbour Authority as a Municipal Port. The harbour could be run as a public amenity which clearly it is well suited. In any event we would recommend having further early discussions with Cornwall County Council regarding the future of the Harbour Authority.

## **5.5 The Manning of the Harbour Office**

Presently the harbour office is manned by the Harbour Master, the Deputy Harbour Master/Safety Officer, Assistant to the Harbour Master and slipway attendant and an administrator (who also works as the PA to the director of HHRL). The Harbour Master also seeks periodical advice from HHRL and Buro Happold. The staff are fully engaged but not wholly on the business of discharging the functions of the Harbour Authority as their work transcends into that of managing the development estate. The Harbour Master regards his staff and the proprietor of HHRL and the consultant of Buro Happold as all part of a team that represents the public face of ING. This team appears committed to protecting the interests of ING and has

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<sup>11</sup> Modernising Trust Ports – A Guide to Good Governance published by the DfT

worked hard to meet the needs of the harbour users as well as those interests not directly related to the operation of the harbour but that are affected by the development estate.

Taking the Harbour Authority in isolation and given that the Safety Management System now in place is proportional to the risks and is mature we are of the view that the present manning level, especially given the financial loss made by the Harbour Authority, is no longer justified. The revenue generated by the slipway does not meet the expense of attending to it and the Safety Management System now just needs to be maintained and reviewed and periodically audited by an independent "Designated Person".

The decision as to the appropriate level of manning of the Harbour Office and its associated costs should be made by the Harbour Board as it goes to the heart of how the Harbour Authority goes about discharging its functions but the harsh reality is that the Harbour Authority does not generate enough revenue to continue the present level of manning. A lot of the work undertaken by the staff may be beneficial to the management of the development estate but that does not relate to the obligations of the Harbour Authority.

## **5.6 The relationship between the jurisdiction of the Harbour Authority and harbour land.**

The Harbour Authority has the ability to regulate conduct over the geographical area prescribed in the local legislation; this is the jurisdiction of the Harbour Authority. The jurisdiction of the Harbour Authority is independent of the ownership of the land. The jurisdiction of the harbour authority extends over the harbour land<sup>12</sup> which is owned by ING. We understand that ING wish to remove some of the harbour land from being so designated and will do so by way of a Harbour Revision Order.<sup>13</sup> The issue that arises is that it is desired that such land removed from the harbour land should have a clean title and not be encumbered by the regulating powers of the Harbour Authority. As we see it when land is no longer harbour land the jurisdiction of the Harbour Authority will not apply over that land. If harbour land that is presently open to the public for the purposes of the port ceases to be harbour land and the owners restrict or deny public access then so be it. It will be for the Secretary of State to consent to the exclusion of harbour land and no doubt he will be

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<sup>12</sup> S.15(2) (a) Hayle Harbour Act 1989.

<sup>13</sup> Although we note that s. 16 of the Hayle Harbour Act 1989 provides that land can be excluded from harbour land with consent of the Secretary of State. We take it that the Secretary of State has required an HRO before granting his consent.

mindful of the need of a port to provide some public access given the open port duty.

## **6. CONCLUSION:**

Hayle Harbour waits for redevelopment; its gradual degradation has gone beyond quaint. The Harbour Authority was established by statute in 1989 to enable the operation of Hayle Harbour as a public harbour undertaking and to construct works in the harbour. For many reasons the works and associated land side developments have not yet commenced and the Harbour Authority now finds itself custodians to a deteriorating harbour infrastructure with difficult navigation issues, few users and little income. That aside Hayle Harbour has tremendous potential, probably not as a commercial sea port but as a fishing boat and leisure vessel harbour. The harbour will be integral to any redevelopment of Hayle. The Harbour will need governing by an efficient yet cost effective Harbour Authority. The challenge will be to formulate an appropriate governance regime with cost effective operational staff to assist in the process of rejuvenation and improvement of the harbour and Hayle.

Respectfully submitted

A handwritten signature in black ink, reading "Mark G. Capon". The signature is written in a cursive style with a large, stylized initial 'M'.

Mark G Capon  
Managing Director  
Marine Enforcement

21<sup>st</sup> August 2009.