



Hayle Harbour Advisory Committee Member

9 July 2014

Dear HHAC Member:

Hayle Harbour – Transfer to the Community

The impending transfer of ownership of Hayle harbour to the community was discussed at the AGM of the HHAC on 8 January 2014. The commitment to make a transfer of ownership is included in ING's unilateral undertaking with Cornwall Council as part of its planning consent for the South Quay development. The possible roles of the HHAC following the transfer were discussed.

Following a discussion, the following question was formulated:

***“Are members keen to play a statutory role (under company law) in a new community-based organisation – subject to the approval of the organisation they represent?”***

In an informal vote, more than half of those present voted in favour and none opposed.

**Current Status**

1. ING is committed to transferring harbour ownership and around 40ha of land to the community.
2. Under its agreement with Cornwall Council, ING is obligated to consult the community on the details of the transfer.
3. Cornwall Council has confirmed in writing that it does not wish to add Hayle to the list of municipal ports.
4. The Hayle Harbour Trust (HHT), which was set up with community support, is the only entity that has expressed willingness to take on ownership of the harbour. HHT is a company limited by guarantee and a registered charity.

**Proposed Structure of the Hayle Harbour Trust**

Recognising the need for both a competent and qualified board of trustees and an element of democratic control, HHT has proposed the following:

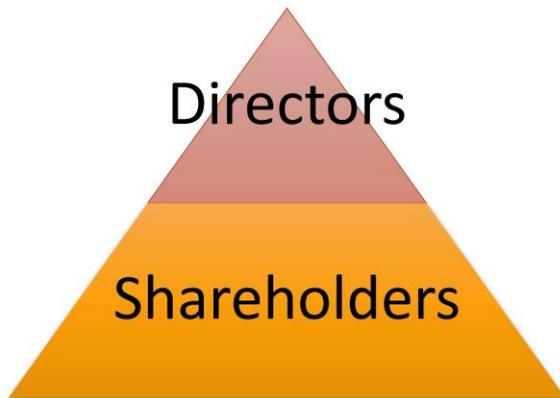
1. The interim board of the HHT will resign and a new board will be appointed using the guidance in the *Department for Transport's Modernising Trust Ports (2<sup>nd</sup> Edition)*. This calls for 8 to 12 trustees who are appointed based on job descriptions (skill sets) following advertising for applicants. As a company limited by guarantee and a charity, board members cannot be remunerated.
2. Democratic control will be exercised through a stakeholder body which represents a wide range of harbour users, statutory bodies and elected representatives. Since the



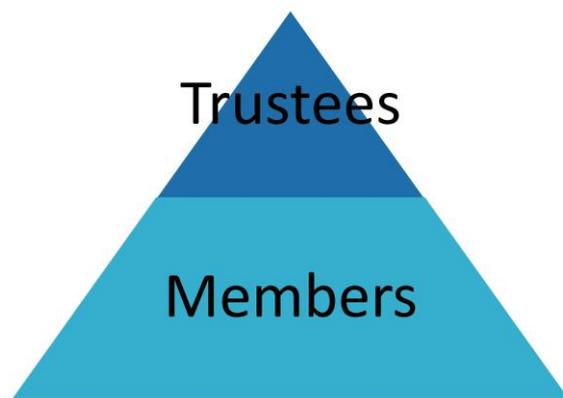
Hayle Harbour Advisory Committee already meets this requirement, the HHT has proposed that the HHAC should be the stakeholder body in the new HHT.

### **Stakeholder Control**

In a company limited by guaranty, the company is managed by directors/trustees and control is exercised by Members. Members, in this context, are similar to shareholders in a for-profit limited liability company. It is important to understand that 'Members' are appointed in accordance with the rules specified in the Articles of the company and not simply by applying for membership.



Limited Liability Company



Company Limited by Guarantee

Under company law, Members accept a liability when they accept membership. This is limited in the articles to £10.

To summarise:

- The Hayle Harbour Trust will have a membership body (the stakeholder body).
- Members of the Hayle Harbour Advisory Committee can be Members of the Hayle Harbour Trust – but they must apply and accept the liability of £10. A member can resign at any time.
- Members can be individuals, companies or legal entities (such as statutory bodies or charities).

### **Why Should HHAC Members become Members of the HHT?**

The Hayle Harbour Act 1989, in its final paragraph, states:

**59.—**(1) The Company shall establish and maintain an advisory committee to provide advice to the Hayle Harbour Company on any question in connection with the discharge of the Company's functions under this Act which the Company may refer to it or on which it considers it should offer its advice.



- (2) There shall be not less than 10 members of the advisory committee, of whom not more than two may be members, directors or employees of the Company.
- (3) Membership of the advisory committee shall include persons appointed by-
  - (a) Cornwall County Council, Penwith District Council and Hayle Town Council;
  - (b) users of the harbour, or bodies representing such users; and
  - (c) bodies representing environmental interests.

The act is silent on the powers, rules, constitution and frequency of meetings of the HHAC.

If the HHAC accepts the role of the Membership Body of the HHT, it will have the statutory right, at an AGM or Extraordinary General Meeting, to appoint or terminate the appointment of the Trustees/Directors of the Hayle Harbour Trust. This would give the HHAC meaningful power and enable it to exert democratic control on behalf of the stakeholders it represents – and ensure the proper management of the harbour.

This role is completely in accordance with the Hayle Harbour Act 1989 and finally gives some meaningful authority to the HHAC.

#### **Could being a Member give rise to a conflict of interest or other complication?**

As stated above, membership of a company limited by guarantee is similar to being a shareholder in a limited company. Members are not involved in the day-to-day management of the organisation – they are not board members or trustees. Their duties are to question and advise management and to appoint (or not) trustees. No conflict of interest will arise with individuals, organisations or statutory bodies.

#### **What now?**

In order to be ready for the community consultation, which is expected to take place in September or October, it would be helpful for current members of the HHAC to take a firmer position as to whether they will be willing to become Members of the Hayle Harbour Trust Ltd. Since all of the details are not yet finalised, no commitment is expected at this time, but I would ask that you discuss that attached form with your organisation and return it to me by 31 August 2014.

For the Hayle Harbour Trust,

A handwritten signature in black ink, appearing to read "John Bennett".

John Bennett, BSc, CEng, FIEE  
Chairman



**From:** Hayle Harbour Trust, Ltd., a company limited by guarantee and a registered charity

**To:** Members of the Hayle Harbour Advisory Committee

**Question:**

Are you/is your organisation willing, in principle, to become a Member of the Hayle Harbour Trust Ltd. assuming that it takes over control of Hayle Harbour? Any decision at this stage is, of course, not binding and will be subject to sight of the final Memorandum and Articles of the Hayle Harbour Trust.

Name of Person	
Name of Organisation	
Position in Organisation	
Phone Number	
Email address	
Response	I / my organisation <b>IS</b> / <b>IS NOT</b> willing, <u>in principle</u> , to become a Member of the Hayle Harbour Trust Ltd. subject to review of full details.
Signed	
Dated	

Please return this form by 31 August 2014 to:

Chairman, Hayle Harbour Trust Ltd.

18 Riviere Towans

Hayle, TR27 5AF

chairman@hayleharbourtrust.org.uk