

11.7.90.

IN PARLIAMENT

SESSION 1988-89

HAYLE HARBOUR BILL

AGREEMENT

between

The Hayle Harbour Company Ltd.

and the

Nature Conservancy Council

and the

Cornwall County Council

and the

Penwith District Council

WHEREAS the Hayle Harbour Company Ltd. (hereinafter referred to as "the Company") promoted a Bill in the 1988-89 Session of Parliament;

AND WHEREAS the Company agreed to make certain amendments to the Bill in the course of proceedings in the first House and have agreed to make further amendments in the second House;

AND WHEREAS Aldersgate Developments Ltd. have agreed to transfer lands, viz. Lelant Water^(Part of), Lelant Dunes, Carnsew Pool (part of) and part of Copperhouse Pool (each area as

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delineated by a continuous red line on the attached Plan No. 1), to the Royal Society for the Protection of Birds in perpetuity;

AND WHEREAS the Company have entered into a Deed of Covenant of even date herewith, a copy of which is at Annex A to this Agreement;

AND WHEREAS Aldersgate Developments Limited have agreed that any works or other developments to be undertaken by them at Hayle shall not intrude upon the Site of Special Scientific Interest at Hayle to a greater extent than as shown on the attached Plan No. 1;

AND WHEREAS the Nature Conservancy Council, the Cornwall County Council and the Penwith District Council (hereinafter referred to as "the three Councils") have discussed the Company's plans with the Company and together with other conservation bodies have been provided with the results of tests carried out on a model of Hayle Harbour at Hydraulics Research Limited at Wallingford and have had the opportunity to peruse an Environmental Impact Assessment made in respect of the proposed developments at Hayle Harbour;

AND WHEREAS the three Councils on the basis of the information provided by the said reports and assessment and in consideration of the agreements hereinafter contained have agreed to refrain from all further opposition to the Bill;

IT IS HEREBY AGREED between the three Councils and the Company that the following undertakings shall be observed:-

1. The Company shall consult with the three Councils in the exercise of such of its functions concerning or affecting the harbour as are likely to affect the

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interests of the three Councils including in particular functions exercisable by the Company with respect to:-

(a) the construction of works under sections 5 (Works in the harbour) and 14 (General powers in respect of harbour) of the Hayle Harbour Act 1989 (hereinafter referred to as "the Act.") and under any other powers available to the Company or the carrying out of any dredging operations or other operations under section 6 (Dredging) of the Act in any part of the harbour which is within any area designated for the time being as a Site of Special Scientific Interest but the Company shall not carry out any such works or operations except for the purposes either of improvement or protection of the environment or of the safety or improvement of navigation;

(b) the deposition of dredged material under section 6 (Dredging) of the Act in any location which might have adverse effects on any area designated for the time being as a Site of Special Scientific Interest;

(c) any submission for the approval of the Secretary of State of works under section 7 (Tidal works not to be executed without approval of the Secretary of State) of the Act;

(d) the laying or licensing of moorings under the section 31 (Powers as to moorings, etc.) of the Act in any part of the harbour which is within the area designated for the time being as

a Site of Special Scientific Interest (it being noted that it is not in fact the Company's general intention to lay or license any moorings in that area except for the licensing of some existing moorings immediately adjacent to Griggs Quay);

(e) the raising and removal of wrecks under section 34 (Power to raise and remove wrecks) of the Act except in case of emergency;

(f) the removal of derelict vessels and structures under section 36 (Powers relating to derelict vessels and structures) of the Act.

2. Without prejudice to the generality of the foregoing Article the Company shall give to the three Councils such information as may reasonably be required concerning their proposals for the exercise of functions specified in Article 1 above, and except in case of emergency shall do so not less than four months before the carrying out of any works or operations, supplying as necessary plans defining the nature, extent and manner of execution of the works or operations intended, and the Company shall consider and take account of any observations which the three Councils may make in that period of four months.

3. Without prejudice to the foregoing provisions of this agreement the Company shall consult the three Councils about its proposals to make, amend or revoke byelaws under section 19 (Byelaws as to harbour) of the Act and shall afford the three

Councils not less than four months to make written representations on such proposals. Before pursuing such proposals the Company shall consider any representations thus made by the three Councils, and not later than the notice of intention to apply to the Secretary of State for the confirmation of any byelaws or alteration of byelaws is first published, the Company shall send a copy of the notice to the three Councils.

4. Without prejudice to the generality of the foregoing Article the Company hereby undertakes to use its best endeavours to make a byelaw, subject to confirmation by the Secretary of State, to regulate the taking of fauna for use as bait. In the event of such a harbour byelaw being declared ultra vires Cornwall County Council shall use its best endeavours to make a similar byelaw under its powers in respect of Local Nature Reserves.
5. The constitution of and terms of reference for the Advisory Committee which the Company is required to establish and maintain by section 59 (Advisory committee) of the Act shall be as set out in Annex B to this Agreement.
6. Except in so far as in the opinion of the Company, and the three Councils the following matters have already been adequately discussed and reviewed in the Advisory Committee, the Company shall, both before the completion of construction of the works specifically authorised by the Act and thereafter from time to time review with the three Councils the

policies it proposes to pursue, whether in the exercise of its statutory functions or as a Company or as an owner or occupier of land, as regards:-

(a) the enforcement of byelaws;

(b) other means available to the Company of avoiding disturbance to any Site of Special Scientific Interest for the time being designated within the harbour;

(c) the control of anchoring in any part of the harbour which is for the time being designated as a Site of Special Scientific Interest;

(d) the licensing and operation of pleasure craft under section 23 (Power to license pleasure craft and boatmen) of the Act;

(e) the prevention or reduction of pollution in the harbour;

(f) the operation of the harbour in relation to the interests of nature conservation.

7. The Company hereby undertakes to use and operate that part of the harbour which is known as Copperhouse Pool in accordance with the principles set out in Annex C to this agreement.

8. In the event of Copperhouse Pool being designated a Site of Special Scientific Interest the Nature Conservancy Council undertake to consider any proposal the Company may make for the construction of a harbour basin at the western extremity of Copperhouse Pool, and any dispute arising between the Company and the Nature Conservancy Council in

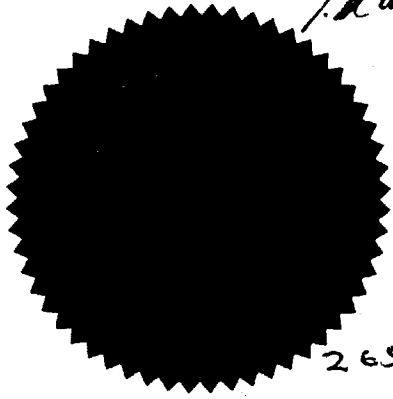
respect of such a proposal shall be referred for arbitration to Cornwall County Council.

9. In this agreement "the harbour" has the same meaning as in the Act, and places and areas mentioned in this agreement are identified on Plan No. 1 appended to it.

THE COMMON SEAL OF THE HAYLE HARBOUR COMPANY LTD. was hereunto affixed this 3rd day of ~~June~~^{July} 1990 in the presence of:-

[Handwritten signature]
[Handwritten initials]
[Handwritten signature]

THE COMMON SEAL OF THE NATURE CONSERVANCY COUNCIL hereunto affixed is authenticated by:-



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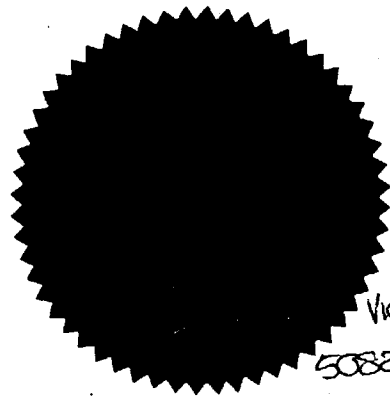
Authorised Member/ Officer of the Nature Conservancy Council.

THE COMMON SEAL OF THE CORNWALL COUNTY COUNCIL was hereunto affixed this 3rd day of ~~June~~^{July} 1990 in the presence of:-

[Handwritten signature]

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THE COMMON SEAL OF THE PENWITH DISTRICT COUNCIL was hereunto affixed this 3rd day of ~~June~~^{July} 1990 in the presence of:-



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Vice CHAIRMAN

5082.

DIRECTOR OF CENTRAL SERVICES

THIS DEED OF COVENANT is made the 3rd day of July 1990 BETWEEN ALDERSGATE DEVELOPMENTS LIMITED of 46/47 Pall Mall London SW1Y 5SG (hereinafter called "the Developer") of the first part the HAYLE HARBOUR COMPANY LIMITED (hereinafter called "the Harbour Company") of the second part NATURE CONSERVANCY COUNCIL of Northminster House Peterborough PE1 1UA (hereinafter called "N.C.C.") of the third part CORNWALL COUNTY COUNCIL (hereinafter called "the County Council") of the fourth part and PENWITH DISTRICT COUNCIL (hereinafter called "the District Council") of the fifth part.

W H E R E A S:-

The Developer is desirous of carrying out certain development which may involve the construction of residential and other building infra-structure and other works (hereinafter referred to as "the works") within areas at Hayle in the County of Cornwall falling within the Hayle Estuary and Carrack Gladden Site of Special Scientific Interest (hereinafter referred to as "the S.S.S.I.");

AND WHEREAS the Hayle Harbour Act (hereinafter referred to as "the Act") has conferred certain powers on the Hayle Harbour Company;

AND WHEREAS N.C.C., the County Council and the District Council following discussions with the Developer have confirmed that they have no objections to the works being

carried out provided the incursion into the S.S.S.I. is limited to certain areas agreed between the parties;

NOW THIS DEED WITNESSETH AS FOLLOWS:-

1. This deed is made in pursuance of section 52 of the Town and Country Planning Act 1971, section 111 of the Local Government Act 1972, section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and all other provisions enabling the parties hereto in that behalf.

2. The Developer and the Harbour Company for themselves and their respective successors in title to the land at Hayle aforesaid shown delineated on the plan annexed hereto and thereon edged in red and (in the case of the Harbour Company) for its successors as statutory undertakers for Hayle Harbour or any part thereof hereby covenant with N.C.C., the County Council and the District Council so as to bind the said land as aforesaid and any part or parts thereof into whosoever hands the same may come that neither the Developer nor the Harbour Company nor their respective successors in title nor (in the case of the Harbour Company) its successors as statutory undertakers for Hayle Harbour or any part thereof shall carry out any part of the works or any subsequent or varied works or (notwithstanding any planning permission given by virtue of the Act) any development authorised by the Act in any part of the land shown edged red on the said plan annexed hereto; except in accordance with the terms of a specific planning permission (not a planning permission granted by virtue of any General Development Order under the Town and Country Planning Act 1971 or any amendment or re-enactment of that Act) **PROVIDED ALWAYS** that none of

ANNEX B

HAYLE HARBOUR ADVISORY COMMITTEE

1. There shall be an Advisory Committee ("the Committee") consisting of two members appointed by the Hayle Harbour Company Ltd. ("the Company") and not more than 20 other members.

2. The other members of the Committee shall be appointed as follows:-

bers

by

- (a) Cornwall County Council - 2 members
- (b) Penwith District Council - 2 members
- (c) Hayle Town Council - 2 members
- (d) St. Ives Town Council - 1 member
- (e) Commercial Fishermen
using Hayle Harbour or
a body representative
of such persons - 2 members
- (f) Other Commercial Boat
Owners using Hayle
Harbour or a body
representative of
such persons - 1 member
- (g) Hayle Harbour Users
Association - 1 member
- (h) South West Regional
Sports Council - 1 member

- (i) Royal Society for the
Protection of Birds - 1 member
- (j) Cornwall Trust for Nature
Conservation - 1 member
- (k) Nature Conservancy
Council - 1 member
- (l) South West Water
Authority - 1 member
- (m) Ramblers Association - 1 member
- (n) Cornwall Sea Fisheries
Committee - 1 member
- (o) Hayle Chamber of Commerce - 1 member
- (p) Nature Conservancy
Council and Royal Society
for the Protection of
Birds (jointly) - 1 member

and the Committee shall have power to co-opt as additional but non-voting members of the Committee up to 2 persons who in the Committee's opinion have special knowledge or expertise which would be of value to the Committee in the discharge of its functions.

3.(a) If any of the specific bodies mentioned in paragraph 2 above cease to exist the Committee shall if practicable arrange for an appointment to be made instead by another body appearing to be of a similar nature or to have similar objectives.

(b) The selection of representatives under subparagraphs (e) and (f) above shall be carried out in accordance with arrangements determined by the Committee.

4.(a) If as a result of any sale or lease effected under section 45 (Power to sell or lease undertaking) of the Act the undertaking as it existed on the passing of the Act is vested in any two or more persons, (within the meaning of the Interpretation Act 1978), the two persons appointed by the Company for the purposes of paragraph 1 above and all other provisions of this Annex shall be the individuals appointed in that regard by the person in whom there is vested the main part of the undertaking as it existed on the passing of the Bill.

(b) Any dispute or difference as to which part of the undertaking constitutes the main part for the purposes of this paragraph shall on application by any of the specific bodies mentioned in paragraph 2 above or by the Company or by any successor of the Company as undertakers for any part of the harbour be referred to and settled by a single arbitrator to be agreed between the parties to the dispute or difference or, failing agreement, to be appointed on the application of either or any party or of any of the said specific bodies (after notice in writing to all other parties) by the President of the Institution of Civil Engineers.

5. If a member of the Committee is unable to attend a meeting of the Committee, he may be represented at the meeting by a deputy duly appointed in the same manner as the member is appointed, and any such deputy shall at that meeting have the full status of a member of the Committee.

6. The first appointments of members under paragraphs 1 and 2 above shall be made within three months after the passing of the Hayle Harbour Act 1989, and the co-option of

additional members may be carried out at any meeting of the Committee.

Duties

7. It shall be the duty of the Committee to consider and advise the company upon such matters in connection with the discharge of the Company's functions and the use of the harbour as the Committee may think fit, and upon any matter or question which may from time to time be referred to the Committee by the Company.

Procedure

8.(a) The Committee shall elect a Chairman from amongst its members and the Chairman shall in the event of an equality of votes have a second or casting vote.

(b) The Committee shall elect a Vice-Chairman from amongst its members, and if from any cause the Chairman shall be unable to attend a meeting or otherwise be unable to act, the Vice-Chairman shall act as, and while so acting shall be deemed to be, the Chairman of the Committee.

(c) If at any meeting of the Committee neither the Chairman nor the Vice-Chairman is present the members present at the meeting shall choose one of their members to be Chairman of the meeting, and he shall act as, and while so acting be deemed to be, the Chairman of the Committee.

(d) The Committee shall meet at least four times in each calendar year and all meetings shall be convened by the Chairman and shall be held in public with the press having a right to be present unless matters of a confidential nature are to be discussed.

(e) On receipt of a request in writing signed by at least 5 members of the Committee to convene a meeting of the Committee the Chairman shall forthwith convene such a meeting to take place as soon as reasonably possible.

(f) The quorum of the Committee shall be seven.

(g) The Committee may appoint sub-Committees for any such purposes as may in their opinion be better considered by means of a sub-Committee and such sub-Committee shall consist wholly of members of the Committee and shall report to the Committee.

(h) Minutes shall be kept of the proceedings at every meeting of the Committee and copies of the minutes relating to any meeting shall be sent to the Company which shall consider and take account of the advice of the Committee recorded therein.

(i) Subject as provided in the foregoing sub-paragraphs the Committee may regulate its own procedure.

9.(a) The term of office of a member of the Committee shall be 2 years from the date of his or her appointment or co-option;

PROVIDED THAT the body which appointed a member of the Committee may terminate the appointment of that member before the expiration of 2 years.

(b) Upon the expiration of the term of office of a member he shall be eligible for re-appointment.

(c) A member of the Committee may resign at any time by notice in writing to the Chairman.

(d) Upon the expiration of the term of office of a member or upon a member ceasing to hold office by reason of death, resignation or otherwise, his duly appointed deputy, appointed under Article 5, shall at the same time be deemed to have ceased to be appointed in that capacity but shall be eligible for appointment as a member or re-appointment as a deputy.

Casual
Vacancies

10. On a casual vacancy occurring on the Committee by reason of death, resignation or otherwise, the vacancy shall be filled by the appointment of a new member in like manner as the member whose place has become vacant, and the new member shall hold office during the remainder of the term of office of the member whose place has become vacant.

Accommod-
ation etc.

11. The Company shall provide the Committee with such secretarial assistance and with such accommodation as the Company deems appropriate, but it shall be open to any other appointing body to offer secretarial assistance and accommodation for the Committee within the County of Cornwall.

12. The Company shall make available to the Committee such information relating to the Harbour as may be appropriate for the Committee's discharge of its duties.

13. The Committee may accept from any body represented on it gifts of property, grants and other forms of support.

Amendments

14. The constitution of the Committee, its procedure and the arrangements made for it, as set out in the foregoing Articles, may be amended at any time by a resolution of the Company but the Company shall obtain the approval of the Committee before passing any such resolution.

ANNEX C

PRINCIPLES TO BE OBSERVED BY THE COMPANY IN THE USE AND
OPERATION OF COPPERHOUSE POOL

(1) Water-based leisure activity shall not be permitted except between 1st April and 30th September each year and on such other limited occasions for specific purposes during October each year as the Company may arrange after prior consultation with the three Councils.

(2) The Company shall maintain a tidal regime in the Pool:-

- (a) Between 1st April and 30th September each year on a basis to be agreed from time to time between the Company and the three Councils.
- (b) Between 1st October and 31st October each year except on those limited occasions which may be arranged under the provisions of paragraph (1) above.
- (c) Between 1st November in each year and 31st March in the following year generally.