



Department for Transport

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Dear Mr Mountford

Ports Act 1991

Dover Harbour Board Transfer Scheme

1. On 25 January 2010 Dover Harbour Board ("the Board") submitted a scheme for a proposed transfer under the provisions of the Ports Act 1991 ('1991 Act'). The Board also submitted further information amending the scheme on 9 July 2010 and 13 June 2012 to the Secretary of State. The scheme proposes the transfer of all the property, rights and liabilities of the Board (other than certain securities), together with the functions conferred or imposed on the Board by Dover Harbour Acts and Orders 1954 to 2006, to Port of Dover Limited ('PoD Ltd'). PoD Ltd is a wholly-owned subsidiary of the Board. It is designated as the successor company to the Board under section 9 of the 1991 Act.
2. The Secretary of State for Transport authorised the Minister of State for Transport, Simon Burns MP, to consider the scheme and to decide whether to confirm the scheme pursuant to section 9 of the 1991 Act. (References to the Secretary of State in this letter in relation to the making of the decision mean the Minister acting on behalf of the Secretary of State.) The Secretary of State has not been personally involved in the making of the Minister's decision.
3. The Secretary of State has decided not to confirm the transfer scheme from the Board. He reached this conclusion taking into account his published policy. He concluded that the transfer scheme proposed would not ensure a sufficient level of enduring community participation in the port. He also concluded that in so far as the Board made the application in order to be able to obtain the additional finance

necessary to undertake the proposed redevelopment of the Western Docks, there were other options available to secure that redevelopment.

Application procedure

4. The transfer scheme submitted to the Secretary of State was made available at the Board's office and on its website. A notice of this fact was published in the London Gazette on 28 January 2010 and in the Dover Express on 11 and 18 February 2010. Notice that the Board had submitted further information in July 2010 was given by announcements published in the Dover Express and London Gazette on 29 July 2010. Amendments to the transfer scheme were submitted on 13 June 2012. Copies of these were available at the Board's office and were published on its website. Notice of these matters was published in the Dover Express on 14 and 21 June 2012.
5. In all there were three separate periods for representations to be made in respect of the proposal. In total the Secretary of State received more than 770 separate representations from 630 individuals or organisations. There were representations from a number of organisations or companies, including ferry operators, Dover Town Council, Dover District Council and Kent County Council, employees, Unite and the Shop Stewards Committee for the port of Dover, Dover Chamber of Commerce and Dover People's Port Trust Ltd, as well as more than 600 from private individuals, mainly residents of Dover or its surrounding area.

The application

6. The Board stated that it put forward the transfer scheme which would enable the sale of the Port of Dover in pursuit of the following objectives:
 - To gain access to the full range of debt and equity markets, enabling the business to grow over time adding financial, economic and social value to its investors, customers and the local community.
 - To reduce business and financial uncertainty and in doing so secure infrastructure resilience for this major element of the international transport network and UK trade flows.
 - To enable the port, at the time of privatisation and into the future, to deliver tangible benefits to the local community, ensuring that the community have an enduring interest and influence in the port's commercial success.
 - To allow the port organisation to use the skills and experience of its staff to unlock the port's potential to grow and add value, expanding into future business activities, led and managed from its base in Dover, creating new career opportunities and fulfilling careers for our people.
 - To involve port employees in a share ownership arrangement that embeds loyalty and motivation.
 - Consistent with achieving the other objectives, to achieve proceeds that, having regard to the benefits from the transfer scheme to the Dover community and the wider economy, represent value for money for the nation at a time of deficit reduction and pressure on national finances.

7. The application identified two options for the form of a sale: either a trade sale of PoD Ltd as a single entity, or through an initial public offer (IPO) of shares through the Stock Exchange. The latter route was stated as the preferred option.
8. The application proposed the creation of the Port of Dover Community Trust (PDCT), which it was hoped could be established as a charitable trust for the benefit of people in Dover. The intention is that the PDCT would deliver benefits to the local community and ensure the local community had an enduring interest and influence in the port's continued success. The application provided that the PDCT could (for example):
 - support voluntary bodies that would make Dover a stronger community;
 - stimulate the growth of local businesses to create jobs and strengthen the local economy;
 - provide local residents with new opportunities in education or training;
 - encourage entrepreneurial skills;
 - improve social and leisure opportunities for residents of Dover; and
 - provide support for families within the town and district.
9. The application provided that PDCT would (a) hold £20m of shares in PoD Ltd, (b) have an initial endowment of £10m in cash and a guaranteed level of dividends of £1m a year for the first five years, and (c) receive dividends thereafter in the same way and to the same extent as other shareholders in PoD Ltd. The application also suggested that the cash endowment could be increased by a further £10m that was payable when the port was sold to reflect circumstances of the local economy and to aid the regeneration of Dover.
10. The application provided that PDCT would be a member of the appointment panel for the two partnership directors to the Board of the PoD Ltd, along with the Chairman of PoD Ltd. The shares held by PDCT would also enable PDCT to veto certain events: for example, any decision to sell all, or a major part, of the statutory harbour; any proposed change to share capital that would result in a return of capital to investors; proposed change to the name or registered office of the PoD Ltd; or any proposed change to the Articles of Association to the detriment of the PDCT. In respect of all such matters, PDCT could use the veto unless it would not be reasonable to do so.
11. The proposed Articles of Association of PoD Ltd contained provision for consultative bodies, namely:
 - a Port Community Advisory Forum (building on the existing Port Consultative Committee) with members from local groups ranging from ferry companies to anglers' associations; and
 - a Strategic Development Forum for the PoD Ltd and the local authorities.

The Articles provided for a continuing role for the Ferry Port User Group, under the chairmanship of the ferry operators. The proposed Articles of Association further provided for an Annual Public Meeting that would be open to anyone (including port users, local residents and employees) following publication of an Annual Community Report. This would continue the current practice of Dover Harbour Board.
12. The application provided for the establishment of an employee share ownership trust (ESOT). The application proposed that approximately £4.6m of shares were allocated to the ESOT and that each member of staff at the time of privatisation would

participate. About 80% of this allocation would be at a rate equivalent to 25% of salary with a minimum allocation of £10,000 for each employee. The balance would be shared among senior management and those staff who have contributed to the proposed sale. A Remuneration Committee would have the discretion to distribute a further award not exceeding £1m to named employees depending on the success of the sale.

Representations on the application

13. The statutory period for representations ended on 25 March 2010. A second period for representations followed publication by the Board of additional material in July 2010, and ended on 27 August 2010. In June 2012, the Board published an enhanced scheme with a further period for representations that ended on Friday 27 July 2012.
14. There were more than 770 representations in total, from 630 organisations or individuals. In addition, there were several separate petitions. There was one petition against the proposed sale of the port of Dover and other major trust ports which gathered 5,650 signatures and attracted 600 signatures to a similar e-petition. A further e-petition received 344 signatures at its close on 16 Oct 2012.
15. The content of the representations received can be broadly summarised as follows:
 - Representations against the sale of the port of Dover, mainly due to concerns about security, immigration and its historic significance, and consequently opposed to foreign ownership.
 - Representations expressing concerns that the community involvement proposed by the Board would not be significant or enduring and that some of the provisions set out in the current proposal might be changed during the sale process. In particular many representations considered that a 20%-share allocation to PDCT was the minimum necessary for it to have a significant and enduring influence on the port operations and strategy.
 - A number of representations were concerned that the Board and its management were motivated by personal financial benefit.
 - Representations from persons who were against the sale in principle, but were content for it to happen if certain conditions – mainly relating to some benefit for the community – were met.
 - Representations that favoured a privatisation as the best way to allow the port to invest in new infrastructure and business.
 - Representations from the ferry operators. These did not oppose privatisation in principle, but did express concern that the form proposed by the Board would lead to pressure for higher harbour dues.
 - Representations from Board employees, who were concerned about the employee share ownership trust and the pension fund deficit, as well as any impact a new owner might have on their redundancy terms. Most employees stated that they were supportive of privatisation in principle to allow the port to invest to meet demand for growth.
 - A small number of responses seeking assurances that the Port of Dover Police would continue in existence.

- Representations that supported alternative structures for the future running of the port. One such was the Dover People's Port Trust Ltd, established by Charlie Elphicke MP, in order to create a community port managed by a local trust.

Some representations made several of the above points.

16. The Annex to this letter contains further analysis of the representations.

Secretary of State's decision

17. The Secretary of State recognises that all trust ports are encouraged to analyse their corporate structure to identify opportunities to enhance their efficiency and to obtain value from their assets (see *Modernising Trust Ports 2 – A Guide to Good Governance*, published by the Department in August 2009). By this document, all major trust ports (that is, those with a turnover above the threshold set in the 1991 Act) were asked by April 2010 to report to the Department an analysis of structural change and their intended course of action. Further, the National Infrastructure Plan (published October 2010) stated that the Government would encourage trust ports to bring forward proposals for modernisation and privatisation. In January 2012, the Secretary of State for Transport designated the National Policy Statement for Ports. This sets out the Government's policy for investment in new port infrastructure. This is to encourage sustainable port developments for long-term forecast growth in volumes of imports or exports with a competitive and efficient port industry.
18. In August 2011, the Secretary of State published the *Guidance Note on the Procedure for the Sale of Trust Ports*. This Guidance set out the Secretary of State's policy in respect of the sale of ports. The policy applies to both voluntary and compulsory sales (although there is no present policy to compel sales of ports). The policy comprises "essential criteria", "highly desirable criteria" and "desirable criteria".
19. The essential criteria comprise (1) community participation; (2) future investment in development of the port; (3) fair price; and (4) fair competition. Each of these matters is explained in the Guidance. The Secretary of State has stated that he will not approve an application for sale unless he considers that the proposal meets those requirements. The "highly desirable criteria" are (1) that following the sale the port will be operated so as to contribute to reliable, resilient and efficient transport networks; and (2) that the sale process proposed should be such as to give all bona fide prospective purchasers a fair opportunity to participate. There is one "desirable" criterion – that there should be employee participation in the ownership of the port, for example by way of an employee share ownership scheme.
20. The Secretary of State noted that one of the Board's original reasons for submitting a transfer scheme was the need to finance redevelopment of the Western Docks (Terminal 2), for which the Dover Harbour Revision Order 2012 was confirmed in February 2012. So far as future investment and development of the port is concerned, the Secretary of State accepted that following a sale, it could be easier for the PoD Ltd to access capital for investment and development of infrastructure at the appropriate time. The position is not guaranteed, of course, and could depend on the ultimate purchaser of PoD Ltd. If the purchase of PoD Ltd was funded by a high level of debt to be serviced by revenues from PoD Ltd then it could be difficult to secure additional finance for future development. The position would be otherwise if PoD Ltd were to be purchased by an organisation with a strong balance sheet or access to

other sources of capital such that it was in a position to obtain finance for future development.

21. The Secretary of State noted that the Board considers that, due to the current economic conditions, the full development of the Western Docks is some years away, although the Board would still require the ability to fund investment within the foreseeable future. It was also noted that, following a significant increase in traffic through Dover between 2004 and 2007, volumes had decreased and were now broadly stable¹. This meant that the need for the additional capacity was not as urgent as it had been.
22. The Secretary of State noted that there may be other ways to fund the redevelopment of the Western Docks if the port of Dover remains a trust port. Some representations had suggested alternative approaches, such as a landlord tenant model, concessions, or the creation of a special purpose vehicle company, that would provide the additional capacity that the redevelopment of the Western Docks would provide when it was needed.
23. Accordingly, the Secretary of State concluded that the decision to not confirm the transfer would not necessarily delay the proposed development but would give time to consider alternative methods to have access to capital for that development.
24. As to fair competition, the Secretary of State was content that, in principle, the transfer scheme and sale would not change the market position of the port of Dover. (Although, on this point too, had the Secretary of State confirmed the scheme, the position would have required further consideration once the specifics of the proposed terms of sale were known.)
25. In relation to the transport networks criterion, the Port of Dover is a significant link between the UK and the rest of Europe and handled some 2 million freight units in 2011 (equivalent to 23.8m tonnes of freight)². The efficient operation of the port contributes to an efficient transport network and provides some resilience in the event that there are problems with other transport modes (e.g. Channel Tunnel rail link, aviation). The proposed Terminal 2 would provide additional capacity to cope with forecast growth in roll-on-roll-off ferry operations, and would provide improvements to the road network to provide access to and from the new terminal. The Secretary of State considered that the ownership model proposed would be consistent with the Port of Dover's continued contribution to the UK transport network.
26. In respect of the proposed sale process, the Secretary of State noted that if he had been minded to confirm the transfer scheme, he might have wished to ensure that community based groups would have a fair opportunity to participate.
27. In respect of employee involvement, under the 1991 Act the Secretary of State is required to have regard to the desirability of disposal of the whole or a substantial part of PoD Ltd to managers or employees of PoD Ltd. The Department is not aware of any proposal for a management or staff buy-out. The application proposed an Employee Share Ownership Trust (ESOT). The Secretary of State considered that the establishment of the ESOT would achieve employee participation.
28. The fair price criterion requires that *'the sale is considered likely to represent good value for money, having regard not only to Exchequer proceeds and market*

¹ Source: Port Freight Statistics: 2011 final figures

² Source: Port Freight Statistics: 2011 final figures

conditions, but also to other benefits including those to the community and the wider economy.'

29. The Secretary of State accepts that a sale at this time could satisfy this criterion. So far as the likely return to the Exchequer was concerned, market conditions meant that it was not entirely clear what level of return could be expected. The latest information provided by the Board restates the valuation by the Board's advisers (Rothschild) in 2010, which valued the port of Dover at between £230m and £290m. The Secretary of State noted that some elements of the financial performance of the port of Dover, such as its earnings before interest, taxation, depreciation and amortisation, have deteriorated since this valuation was made. The Secretary of State also noted the strength of local opposition to the proposed sale and that this might create uncertainty about a sale at this time. It is uncertain what price would be achieved in the current climate, but the Secretary of State accepted that this should not give rise to any objection in principle to the application, and that the position on this matter could be left on a "wait and see" basis – i.e. to see what level of interest there would be, and at what price, in the event that he had decided to confirm the scheme.
30. The Secretary of State also recognises that "fair price" is not measured only by reference to Exchequer proceeds. The Secretary of State considered how the potential benefits for the community from the PDCT contributed to the overall value for money. As part of its application, the Board commissioned a report on the potential scale of regeneration and economic development impacts likely to arise from the PDCT and this was included in the information submitted in support of the application for a transfer scheme. The information in the Board's submission estimated that the potential economic benefit would be the creation of 1,886 full time equivalent (FTE) jobs over the first five years and then 157 FTE jobs each year. This benefit relied on the assumption that other bodies provided funding that matched that of the PDCT. The report stated that this would lead to a total level of funding of £33m over the first five years and £2.75m thereafter.
31. The Secretary of State accepts that the transfer scheme as proposed would provide benefits to the community and the wider economy. Nevertheless, this aspect of the application was not strong as there was little supporting evidence to substantiate the values set out in the report. Furthermore, it was not clear whether the sale model proposed by the scheme (i.e. sale by IPO) would provide the greatest benefit possible to the community whilst still obtaining benefits to the wider economy and a return to the Exchequer.
32. These matters apart, as stated above, the Secretary of State has concluded that so far as the community participation criterion is concerned, the application is not satisfactory.
33. The community participation criterion is that *"the Secretary of State will not approve an application for the sale of a trust port ... unless the sale is considered likely to deliver an enduring and significant level of community participation in the port. Such participation could take a variety of forms, but must include the ability to influence the port's long term development and may include the right to receive a share in the profits of the port or the future increases in its value."*
34. In this respect the proposal focussed on the role of the Port of Dover Community Trust. Through its shareholding in PoD Ltd, and through the proposed endowment, the PDCT would share in the profitability of the port, and in any increase in the port's

value. PDCT would also have an ability to influence the management of the port both through its shareholding and through the two Partnership Directors.

35. However, what was proposed, particularly in terms of the shareholding, was limited. *First*, the transfer scheme proposed an allocation of shares with a value of £20m in PoD Ltd. Under the valuation of the port by DHB's advisers Rothschild's in 2010 of between £230m and £290m, a £20m shareholding would equate to a shareholding of between 7% and 9% on the assumption that PoD Ltd were to be purchased with only equity and no debt. *Second*, the level of the shareholding proposed was such that if the sale of the port was by IPO (the Board's preferred option), PoD plc would then be subject to the provisions of the City Code on Takeovers and Mergers and the provisions of the Companies Act 2006, and so a takeover or a scheme of agreement would constitute a transfer required as a matter of law as set out in the proposed Articles of Association. Therefore, if either event were to occur, the PDCT could be forced to sell its shares. However this might not be the case if the PDCT were to hold a separate class of shares. The Secretary of State noted that it was unusual for a company listed on the main market of the London Stock Exchange to have more than one class of voting shares. The UK Listing Authority would need to approve any IPO, including any unusual share capital structure such as a separate class of shares.
36. For this reason, and taking into account also the points referred to at paragraphs 20 – 23 above as to the other means by which the proposed redevelopment of the Western Docks could be achieved, the Secretary of State concluded not to approve the Board's application.

Yours sincerely,

Mostaque Ahmed

Glossary

1991 Act	The Ports Act 1991, which provides powers for statutory harbour authorities that are not private companies or local authorities (known as trust ports) to create a wholly owned subsidiary, which can then be sold.
The Board	Dover Harbour Board is the statutory harbour authority that submitted the transfer scheme.
ESOT	Employee Share Ownership Trust, which would be established at the time of sale to benefit current employees.
The Guidance	Secretary of State's Guidance Note Concerning Procedure for Sale of Trust Ports (published August 2011 to replace the version of January 2010)
IPO	initial public offering of shares on the Stock Exchange
PDCT	Port of Dover Community Trust, which would be established at the time of sale.
PoD Ltd	the successor company
PoD plc	the successor company, if sold through an IPO

Summary of representations January 2010 to September 2012

1. The 42-day statutory period for written representations to be made to the Secretary of State ended on 25 March 2010. A further period for representations was announced by Mike Penning on 21 July 2010, which ended on 27 August. In autumn 2010, those making representations were given the opportunity to comment on the representations made by others, as DHB had done and this was done to ensure fair process.
2. On 15 June 2012, DHB published an enhanced set of documentation about its proposed transfer scheme and this was subject to a six week period for representations. There were nearly 560 responses, with representations from an additional 505 people or organisations who had not commented on this before.
3. Overall there have been 773 separate representations (of these 560 by 541 individuals were to the enhanced submission by DHB) made by 630 individuals or organisations. These have been taken into account in preparing this submission, and their responses can be broken down as follows:-
 - representations from individuals, many of whom live in the Dover or Deal areas, or have close family ties to Dover;
 - 10 letters or e-mails from MPs who wrote in response to letters from their constituents;
 - 1 letter from a Welsh Assembly Member;
 - 12 responses from the ferry operators at the Port of Dover;
 - 4 from Dover Town Council;
 - 12 from Dover District Council, its leader or its legal advisers;
 - 2 from Kent County Council – one as part of other correspondence on roads and the other a joint representation with Dover District Council;
 - 2 from the former MP for Dover, Gwyn Prosser MP;
 - 3 from the current MP for Dover, Charlie Elphicke MP and one seeking an extension to allow the Unite Shop Stewards' Committee to comment on 27 July announcement by DHB;
 - Kent Federation of Amenity Societies;
 - 5 responses from Dover District Trade Union Committee;
 - 43 employees (including one joint letter) and 1 former employee, and 2 letters from a former Director;
 - 3 from Unite Shop Stewards' Committee, including a late representation to respond to an announcement by DHB on 27 July;
 - 2 from Unite;
 - Port of Dover Staff Association (2 letters);
 - a privately owned port company (3 letters);
 - Freight Transport Association;
 - 6 from Dover Society;
 - Dover Chamber of Commerce;
 - The Dover People's Port Trust Limited (2 letters);
 - a user of port facilities;
 - a petition of nearly 5,650 signatures and an e-petition of around 600 signatures against the sale of the port of Dover and the other major trust ports;

- a further e-petition of 344 signatures (closed 16 Oct 2012) against the port of Dover being sold to private equity and asking that instead it should be transferred into the ownership of its community in perpetuity;
 - a petition of 1,200 signatures that asked the Secretary of State to refuse consent for DHB to auction the port to private investors was presented by Charlie Elphicke MP to Stephen Hammond, the Parliamentary Under Secretary of State in early October 2012; and
 - a parish referendum was held on 23 March 2011 for those living within the area of Dover Town Council. There were 5,244 votes for the motion (yes votes) against the DHB proposal and supporting the DPPTL proposal with 113 against the motion (no votes). This represented a turnout of approximately 25% of those eligible to vote.
4. The overwhelming majority of responses from individuals – excluding those who described themselves as employees – were strongly opposed to the sale of Port of Dover and cited concerns about:
- a. the historic importance of Dover;
 - b. how important it was for the port to be in British ownership or control;
 - c. the importance of the port as national infrastructure;
 - d. the implications of a sale on security, and immigration;
 - e. the impact on local employment if the port was owned by a company that was focused on generating a return on its investment and the risk of asset stripping; and
 - f. general opposition to foreign companies or foreign governments owning UK infrastructure.

In the responses to the enhanced documents, there was a significant number of representations concerned that a subsequent sale could result in the port becoming foreign owned.

Summary of representations

5. The representations received can be broadly categorised as:-
- those against the sale of the port of Dover, mainly due to concerns about security, immigration and its historic significance and consequently opposed to foreign ownership;
 - those expressing concerns that the community involvement proposed by DHB would not be significant or enduring and that some of the provisions set out in the current proposal might be changed during the sale process. In particular, those representations that considered that a 20% share allocation to PDCT was the minimum necessary for it to have a significant and enduring influence on the port operations and strategy;
 - a number who distrusted the motives of DHB and its management and were concerned that they were motivated by personal financial benefit;
 - those who were against the sale in principle, but were content for it to happen if certain conditions – mainly relating to some benefit for the community – were met;
 - those favouring a privatisation, as the best way to allow the port to invest in new infrastructure and business;

- the ferry operators, who did not oppose privatisation in principle, but were concerned that the form proposed by DHB would lead to pressure for higher harbour dues;
- DHB employees, who were concerned about the employee share ownership trust, and the pension fund deficit, as well as any impact a new owner might have on their redundancy terms. Most employees stated that they were supportive of privatisation in principle to allow the port to invest to meet demand for growth;
- a small number of responses seeking assurances that the Port of Dover Police would continue in existence; and
- those who supported alternative structures, such as the Dover People's Port Trust Ltd, which was established by Charlie Elphicke, the local MP, in order to create a community port managed by a local trust.

Some representations made several of the above points.

6. A significant number of the more recent representations from both individuals and local organisations supported the People's Port proposed by Charlie Elphicke MP and urged the Secretary of State carefully to consider this proposal, which has now become the Dover People's Port Trust Ltd (DPPTL).
7. Many of the responses from current or former Dover residents said that those living in Dover were generally opposed to the sale.

Unions' position

8. The Unite Stewards' Committee, Dover District TUC and Unite all opposed a sale in principle, as did the Dover & Deal Constituency Labour Party, the former MP for the constituency, and a prospective Parliamentary candidate. As well as concerns about the sale of vital infrastructure, which contributes significantly to the local economy, these organisations were concerned that a sale would result in employees, or at least new employees, having worse terms, with a greater risk of redundancy. There were also concerns that a sale could impact on employers dependent on the port for business, eg ferry operators, and increase their costs. Unite favoured alternative options that would provide funding for investment, but stopped short of a sale. The union was also concerned that sale would result in short-term focus on maximising profit for minimum investment and that this would result in a decline in safety.

Dover District Council (DDC) & Kent County Council (KCC) position

9. The most recent representation from Dover District Council and Kent County Council, which was submitted jointly, highlighted concerns about DHB releasing early non-operational land that would enable Dover Waterfront, a key element in DDC's Local Development Framework Core Strategy (LDF), to proceed. This development would provide investment and allow early delivery of jobs at this location. Both Councils sought agreement that the Dover Waterfront development should not depend on progress with Terminal 2 (Western Docks) so that the development can go ahead as proposed by a consortium of mainly private companies. Therefore the release of non-operational land to Dover Waterfront should be a condition of any sale. DDC and KCC would also like the air rights to be transferred to either the Waterfront developer or DDC, which would enable a cable car to operate between Dover Castle and Dover Waterfront.
10. DDC and KCC supported DHB's proposal that the cash sum given to PDCT should be increased to reflect the economic difficulties that Dover faces. Therefore, a £20m

endowment would be more appropriate. However, DDC and KCC consider that the arrangement for community benefit should be legally binding and operationally efficient and provide an on-going dividend after the sale and any subsequent ones, as well as on-going participation and influence for the community. This should not be changed without the agreement of the Partnership Directors and the PDCT.

11. Both DDC and KCC consider the strategic forum an essential component, which would need to involve KCC, as the highway and transport authority, and the Local Enterprise Partnership, and others such as the Highways Agency and English Heritage.
12. DDC and KCC consider that until the Waterfront is delivered, the level of reward proposed for DHB senior management under the ESOT should be reduced.
13. DDC and KCC were concerned about a deterioration of operational and non-operational property at Dover Waterfront. DDC and KCC do not wish to see either DHB or PoD Ltd allowing the estate, including high quality buildings, to deteriorate further. Both Councils favoured an obligation on DHB or its successor to remedy this situation both for operational and non-operational property. If this was not possible, then DDC should have the power to undertake planning enforcement on operational estate where appropriate. When the Waterfront is released, it should be a condition of the sale that the PoD Ltd should remediate the property. This would relieve the public sector of this immediate burden.
14. DDC welcomed DHB's proposals to safeguard historic artefacts and works of art in Dover.

Dover Town Council (DTC) position

15. DTC remains opposed to the sale of the port of Dover and considers that the port should remain in British ownership, which can best be achieved by either retaining trust port status, or a sale to the people of Dover to hold in trust, which is assumed to be the DPPTL option, or something similar.
16. DTC considers that the DHB proposals do not meet the criteria for community participation and cite the reasons identified by DPPTL in their adverts for the DHB proposal to be rejected.
17. DTC was concerned that the DHB appears to have discounted the DPPTL proposal as a viable or realistic bid.

Employees

18. The majority of employees who made representations (43) in 2010 stated that they were supportive of a sale to allow the port to grow and invest without the constraints on borrowing. A few were opposed. The overwhelming majority of employees raised concerns about the pension fund, ESOT, and job security and redundancy. These concerns were also shared by the Port of Dover Staff Association (PoDSA), Unite Stewards' Committee and Dover District Trade Union Committee. The employees and PoDSA mostly welcomed the PDCT.
19. Unite Shop Stewards Committee for DHB sought, and were given, the opportunity to provide a supplementary response following the announcement by DHB on 27th July that it was considering making a number of staff in the maintenance department redundant. This reinforced the Shop Stewards Committee's concerns about earlier restructuring that had resulted in redundancy and now due to additional pressure on remaining staff, injuries and long term sick leave that meant temporary staff were

brought in who were unfamiliar with the local conditions of the vessels used by DHB within the harbour area.

20. Unite in its most recent representation has maintained its opposition to the sale of the port of Dover. The Union considers that the DHB proposal fails to deliver an enduring or significant level of community participation, as DHB or PoD Ltd could change the understanding with the community after receiving a 'minded to decision' to reflect regulatory requirements (eg UK Listing Authority) or commercial discussions with potential investors. The Union is also concerned that there has been a decline in the maintenance of port infrastructure and that some of the ports assets have fallen into disrepair.

Dover People's Port Trust Ltd (DPPTL)

21. The Dover People's Port Trust Ltd (DPPTL) was established under the Co-operative and Community Benefit Societies and Credit Unions Act 1965, as a community trust port. Local people have been invited to subscribe to shares within the DPPTL and it has made an offer for the port, setting out that it has access to the finance to acquire at a commercial value.
22. Neil Wiggins, the chair of DPPTL, submitted a detailed representation on DHB's proposals to argue that Government should conclude that it is not minded to approve the transfer scheme. The DPPTL considers that the size of its membership (some 1,200 paid up members) demonstrates the local opposition, as does the March 2011 referendum, when 97.5% opposed DHB's proposals. DPPTL added that the local political parties, the sitting MP, the Labour Party prospective candidate, Dover Town Council and others are also opposed.
23. DPPTL considers that the DHB submission does not comply with the criteria and that it does not provide significant and enduring community participation; certainty over long term and sustained investment in the Port; comfort that any investment would make a contribution to the transport networks; or deliver value for the Exchequer, Dover community or economy as a whole. DPPTL also considers that DHB's proposals do not address competition, which affects the performance of the port and its users.
24. DPPTL considers that DHB's proposals are also highly prescriptive, which would make it difficult for a community group like DPPTL to succeed in acquiring the port, which provide disproportionate and inappropriate incentives for senior employees overseeing DHB's proposal
25. DPPTL also considers that the structure proposed would not impose any restrictions on a new owner to operate the port in national or local interest, or to take a long term view of managing and developing the port. As a result, DPPTL considers that there is a risk that a new owner, especially if foreign owned, would be focused on short term returns to their shareholders, and so lead to higher tariffs, redundancies, or failure to provide investment.
26. DPPTL also considers that the PDCT would not be empowered to influence decisions that affect the port, and so indirectly the town.
27. DPPTL has held public meetings and used paid advertising to publicise its arguments against DHB's proposals. The wording in the adverts was:
 - The Community Shareholding proposed by DHB is NOT significant.

- £20m shares out of £200-250m is only 8-10%. It is well below the level of 20% that would be significant.
- The proposed Shareholding is NOT enduring.
- The shares can be traded. By definition this makes the PDCT stake unenduring. Moreover reserved matters (PDCT vetoes) can be removed at any time after a 'minded to approve' decision.
- The Partnership Directors' influence to modify/change board resolutions is worthless, unless they both agree the same course of action. The method employed for their appointment makes such an outcome unlikely and hence this mechanism is INSIGNIFICANT and UNENDURING.
- The new forums are advisory only and recommendations from them are non-binding and can be ignored by the board of the PoD Ltd. Hence the forums have little point and are essentially worthless.
- The PDCT link with the PoD Ltd will lapse and ceases to exist altogether if the PDCT shareholding is reduced through sale of shares to less than £10m.

A significant number of representations (nearly 80) since June 2012 have cited some or all of these points, while a large number of others have quoted some of them or made similar points.

28. A number of representations, as well as supporting the DPPTL, also wanted to ensure that DPPTL would be able to bid and so wanted the category of suitable buyers extended to include 'mutual bidders' and that bids that did not conform to DHB's evaluation criteria should not be excluded so that DPPTL could be allowed to bid.

Ferry operators

29. The ferry operators are not opposed to the privatisation or sale of the port of Dover, but have a number of concerns about the way DHB proposes to do so. In particular, one ferry operator questioned whether the procedures in the Ports Act were adequate to deal with the sale of a 'special monopoly' that might allow a profit-making body to seek to maximise profit, perhaps through tariff increases. Therefore, the operator asked the Secretary of State to consider whether an independent regulator, similar to that for certain airports provided by the Civil Aviation Authority, was necessary. Another ferry operator also sought some form of independent regulator. As this would not be possible under the Ports Act, the ferry operator wanted the sale to include a legally binding undertaking that the PoD Ltd would be subject to an independent arbitrator. The ferry operators were also concerned that the existence of the PDCT, especially with its guaranteed dividend of £1m for five years, and the ESOT would further exacerbate pressures for tariff increases.
30. One ferry operator wanted assurances that there should be the widest number of potential bidders with full disclosure of costs including maintenance, and that all bids would be fairly assessed with no vested interests favoured.
31. Both ferry operators, who responded in 2012, were concerned at the source of the funds to provide cash to the PDCT for either the cash endowment or to purchase shares, or the share allocation for the ESOT. Both wanted assurances that the funding for this would come from the proceeds from the sale and not the cash reserve built up in recent years for developments, especially the Western Docks, from tariffs mainly paid by ferry operators.

32. Both ferry operators re-stated their concern that the cash reserve should be ring-fenced. While DHB has agreed to this, there is no detailed information in the proposal on how this would be done and the ferry operators want DHB to be transparent on this. To ensure that the cash reserve is not 'asset-stripped', one operator sought a restriction on the dividends that could be paid – for instance no dividends in the first two accounting periods and then for the next five years 75% of the total investments and cash at bank before the transfer date should be an undistributable reserve.
33. Both ferry operators sought the right for one of the Partnership Directors to be appointed by a nomination committee consisting of a member from the Ferry Port User Group and a representative from the cruise operators.
34. One ferry operator, in its submission, suggested that alternative structures should be considered to provide the access to private finance and expertise. These options were either a 'landlord and tenant' model with commercial companies running and operating areas of the port on long leases, or to create a special purpose vehicle company to deliver the Western Docks and transfer the necessary assets to it, with the company raising finance commercially. The ferry operator also suggested that the port should be split into two entities.

Specific issues

Position of local community

35. Many of the representations, in line with the concerns set out in the DPPTL adverts, were concerned that the sale of the port would adversely affect the local economy and that the PDCT would not have a significant or enduring role in influencing the future of the port. These representations set out the important role the port and the businesses based in the port had on the local economy and employment.
36. There were frequent concerns that the recent trend by DHB to reduce staff numbers would continue under the new owners of the PoD Ltd. DHB has in recent years reduced the number of staff from 800 to around 300.
37. Many local residents making representations raised the impact of the large number of lorries on the local population in terms of both noise and pollution, as well as the dual-carriageway in the town separating the port from the rest of the town. It was also stated by a number of Dover residents that DHB had not taken an interest in the town of Dover or acted to support the community.
38. On the proposed forums, there was a general concern, when mentioned, that as these bodies would be advisory only, there would be limited influence on the Board of the PoD Ltd and that they would be talking shops and not provide a meaningful means for interested parties to express their views on proposed changes or strategy.

Port of Dover Community Trust (PDCT)

39. Many representations considered the dividend returned to the community in the form of the PDCT was not sufficient to tackle the problems of the town of Dover and its surrounding area with its relatively high levels of unemployment as well as the impacts of the traffic travelling to and from the port. DHB's enhanced documentation includes a report by Ove Arup & Partners Ltd that highlights a number of urban regeneration schemes, which includes Northern Rock Foundation that receives a donation equivalent of 1% of pre-tax profits from Northern Rock Ltd and the Millennium Stadium Charitable Trust, which receives a levy from ticket sales that provides grants

of between £2,500 and £12,500 and has distributed £3m to community groups in Wales.

Impact of sale on the development of Terminal 2 (T2)

40. A number of representations raised the proposed development of Terminal 2 (Western Docks), which is the main factor behind DHB wishing to sell the port to enable it better access to commercial financing. Some representations suggested that given the economy since 2008, Terminal 2 was no longer necessary, while others considered that it was no longer as urgent as it had been. Other representations were concerned that there was no obligation on the new owner to invest in Terminal 2.

Foreign ownership

41. A significant proportion of individual responses were concerned about a foreign company or even a foreign government owning the port. In many cases this was the result of concern that too much UK infrastructure was owned by foreign companies with water and electricity frequently given as examples.
42. Some representations were concerned that foreign ownership might weaken immigration controls, reduce security, or safety. A number of large UK ports (Felixstowe, Southampton) are already owned by foreign companies.

Port of Dover Police

43. There were nine representations about the benefits for the port and its customers of the port maintaining its own police force. These representations sought assurances that following a sale, there would be a requirement for the new owners to continue to fund the Port of Dover Police (PoD Police).
44. The representations set out the contribution the force made to reducing and preventing crime in the port, as well as investigating. The PoD Police also supported others working within the port (eg HMRC, UK Border Agency, and VOSA), as well as managing traffic on public roads near the port, and so relieving the Home Office force of this role, and prosecuting disqualified or uninsured drivers or other road traffic offences in vehicles travelling through the port.
45. It was noted in several replies that PoD Police worked closely with the local force and assisted them on occasions. The PoD Police is based in the port and more easily deployed than the local force.

Historic and iconic status of the port

46. A significant number of individual representations (nearly 25 in total) cited the historic importance of the port of Dover, including its role and significance in the Second World War and the length of time the port had had a Royal Charter. Others saw this as a symbol of the UK and England.

Historic documents and artefacts

47. DHB hold a number of historic documents (eg original Charter) and artefacts (eg paintings) that are important for the town and community and not the day to day operations of the port. A number of representations wanted assurances that these

would go on display locally and not be included in the assets transferred to the new PoD Ltd, but be held elsewhere, perhaps by the PDCT.

Pension

48. Some representations, including all those from employees, the PoDSA, and Unite Shop Stewards' Committee, were concerned about the pension fund deficit and wanted assurances to be given that the deficit would be made good before a sale was completed. Many advocated that DHB pay a lump sum immediately to make good the existing deficit, as well as that for the revaluation of the pension liabilities once the purchaser is known. Those who made this point saw it as providing certainty that their pension fund was properly funded.
49. Most responses from employees, as well as those from PoDSA and Unite Shop Stewards' Committee wanted assurances that the existing final salary defined benefits pension fund would be retained by the new owners and not wound up.
50. The ferry operators were concerned that the port of Dover continued to have final salary pensions, when most businesses had moved to defined benefits schemes. They considered that this meant that DHB was not controlling its overheads and that they were paying for these enhanced pensions, which were better than the ones available to their own employees. They were also concerned that the cash reserve built up would be used to deal with the deficit. One port operator commented that the pension fund is a 'highly expensive and generous final salary scheme still open to new entrants' and that the commitment to rectify the deficit will reduce the value of the port and 'demonstrates that DHB management lacks any intention to move the port to a truly private sector basis.'

Redundancy terms

51. A number of responses in summer 2010 from employees and PoDSA raised concerns that many employees might face redundancy and so were concerned for assurances that the existing redundancy provisions – greater than statutory minimum – would be retained after a sale.
52. Another concern raised was that senior managers' contracts included better redundancy terms.

Employee Share Ownership Trust (ESOT) & Port of Dover Community Trust (PDCT)

53. With one or two exceptions, all employees, who responded as individuals, welcomed the creation of the ESOT, but there were a number of concerns about the allocation of shares. In summer 2010, many employees were also concerned at the difference in value of the shares allocated to ESOT & PDCT. In January 2010, DHB had proposed that ESOT & PDCT should have the same percentage of shares in the PoD Ltd of 5% (10% in total). The revised information provided in July 2010 proposed a £4.6m share allocation for ESOT, with £20m in shares and £10m cash for the PDCT. The majority of employees wanted the ESOT allocation of shares to be increased to the same level as that for PDCT to recognise their contribution to the creation of a successful port business that should be sold.
54. The ferry operators view both trusts as creating additional pressure to raise income to provide dividends. They were also concerned that 'there were no reasonable grounds

for granting generous employee ownership terms to senior management, who they felt are responsible for the breakdown in relationships’.

55. Local groups generally welcomed the PDCT, although several wanted the benefits restricted to the town of Dover, as opposed to the area covered by Dover District Council, which includes a number of other towns.

Alternative options

56. There were suggestions that the status of DHB should be changed so that the restraints on investment were removed.
57. Unite proposed that the capital needed for investment could be found by issuing bonds or seeking investment from the companies who would most benefit from expanded facilities for preferential terms or reduced costs.
58. One correspondent suggested the creation of a port service toll to fund developments at ports, and to provide funding for the local authorities in which ports were based as well as an income stream for central Government. The levy would be £50 a vehicle.

Level of Harbour Dues

59. DHB has been pressing its users for a five-year pricing agreement (‘price path’). Ferry operators, given their concerns about the current level of harbour dues (see paragraphs 29-31 of this annex), want excess tariffs rebated, price paths agreed for the next few years at an acceptable level of service, and new investment to be guaranteed.
60. The ferry operators consider that DHB management has no plans to improve efficiency or to work closely with customers, or to create new revenue streams to reduce overheads.
61. The Freight Transport Association (FTA) shared the concerns of the ferry operators that the port of Dover had a near monopoly on cross-Channel ferry crossings and that a privatised port might have higher prices than were justified by operating costs or legitimate profit due to its market dominance. The FTA wanted firm commitments that development will proceed within the short term.

Cash reserves

62. In recent years DHB has increased harbour dues to allow it to build up a reserve to help finance redevelopment within the port, especially of the Western Docks (Terminal 2 – T2). This has now reached approximately £60m on an annual turnover of £58.5m in 2009. A number of representations, ferry operators and a few employees were concerned that this cash reserve could be siphoned out of the business and not used for port infrastructure.

Senior management

63. Several representations were concerned that senior management for the port of Dover were motivated by the potential personal benefit that they might receive on completion of a sale, rather than the needs of the business, the businesses using the port or the local community. In particular, it was perceived that the ESOT would benefit Board members and senior executives and so they were not impartial about the proposed sale.