**Defra Consultation on the creation of a new waterways charity**

The consultation document (and the Impact Assessment document which covers financial issues) can both be found here: <http://www.defra.gov.uk/consult/2011/03/30/waterways-1103/>

Rob has produced a great summary of the consultation which is on the London Boaters website.

All responses should be sent to NWCresponses@defra.gsi.gov.uk
By 30 June 2011

**NOTE**

There are no questions in the consultation about whether or not you think BW should become a charity – that doesn’t mean that you can’t say that you think it’s a bad idea and why.

In any consultation you don’t have to limit yourself to answering the questions and you don’t have to answer all the questions.

Below I’ve listed the questions and included a few notes thoughts on the ones that are most relevant to liveabord boaters. For some of the questions I’ve given a brief summary of the explanation in the consultation document in *italics*.

The questions break down into themes as follows:

* Charity mission and vision (Qs 1 –6)
* Powers of the new charity (Q7)
* Governance structures (Qs 8 – 12)
* Engagement / Involvement (Qs 13 – 17)
* Representation and scrutiny (Qs 18 – 22)
* The Community Interest Company (Q 23)
* Finances (Qs 24 – 28)
* The name (Q29)

Key questions for us are likely to be mission / vision / trust declaration, the powers to be transferred to the new charity, governance, representation and the Community Interest Company / trading.

**Question 1: Do you agree that, over time, the charity should work towards including other navigations, including the EA Navigations in the next Spending Review?**

Presumably if you support the creation of the charity you are likely to answer ‘yes’ here – if you don’t then ‘no’.

There are issues about whether or not taking on the EA navigations will make the proposed new charity more or less financially viable....

**Question 2: Do you think that the proposed requirements of the Trust Declaration are the right ones? Are they sufficient/are there others that should be considered?**

*The Trust Declaration is the mechanism by which the government intends to pass over the waterways assets to the new charity to manage ‘on behalf of the nation’*

*The Government proposes that the Trust Declaration should require that:*

* *former state-owned waterways are held and operated for the public benefit ‘on behalf of the nation’;*
* *operation and management are to take proper account of local social, economic and environmental needs and interests;*
* *free access to the towpaths will be protected;*
* *NWC shall not be prevented by the Trust Declaration from continuing to make reasonable charges including for boating, fishing and use of its waterways, subject to the general objective of retaining free access to the towpaths.*

Note that there is nothing here about taking proper account of / protecting the rights / heritage of those who live on the waterways.

This would need to be included in any Trust Declaration in order to make sure it couldn’t be changed by a new charity. The Declaration would be the legal basis of the transfer and written by the Government.

We can also seek to get our position and rights included in the charitable aims and objectives but the charity *could* change those at some point in the future.

**Question 3: Do you agree that the suggested charitable purposes for the NWC are broadly the right ones? Can you think of other necessary requirements?**

*The consultation document sets out what the Government believe to be the key public benefits delivered by the waterways. These are:*

* *Heritage – listed buildings, monuments, historical sites, archaeological sites and conservation areas*
* *Natural Environment – wildlife, biodiversity, water management, renewable energy generation and flood defence*
* *Access – including health and wellbeing benefits and tourism*

*The Government believes that the key charitable purposes of the NWC as set out in its constitution need to encompass the following objectives:*

* *the stewardship of inland waterways for the public benefit including:*
* *their efficient operation and management;*
* *preserving and enhancing their availability for navigation;*
* *facilitating a broad range of other recreational and leisure uses for public health and well-being, including safeguarding free public access to towpaths;*
* *conserving and enhancing their built and natural heritage, including wildlife habitats;*
* *sustainable use and management of natural resources, which take account of climate change;*
* *use of the waterways as an educational resource (including museums);*
* *the restoration of waterways; and*
* *regeneration of waterways and the adjoining land corridors through which they pass.*

Again nothing here that recognises that people live on the water or which puts a responsibility on any new charity to recognise the rights and heritage of liveaboard boaters:

e.g. the key charitable purposes of the NWC as set out in its constitution need to encompass the following objectives:

* conserving the heritage and protecting the interests and rights of the community of liveabord boaters on the waterways

**Question 4: Do you agree with the proposed ‘mission statement’?**

**How could it be improved?**

*The proposed first draft of the mission statement for the NWC is:*

*“NWC exists to protect and promote our inland waterway network so that our unique waterway heritage will always be a valued part of local landscapes and communities.”*

Again no mention of people living on the water.

Could be changed to include something like:

‘improve our unique inland waterways so that they enhance the landscape, the lives of those who visit them, and the communities who live on and around them’

**Question 5: Do you agree with the proposed ‘belief’ statement? How could it be improved?**

*The consultation document proposes the following belief statement:*

*“Our unique waterways belong to us all, and we believe that they should be enjoyed today and protected for tomorrow. Waterways are part of our local communities, history and cultural identity. They refresh the spirit and provide a haven for wildlife and people amid an otherwise fast-paced and pressured world.”*

Again no mention of people living on the waterways or the role that the waterways have in providing jobs, homes, livelihoods etc

**Question 6: Do you agree with the proposed ‘vision’ statement? How could it be improved?**

*The proposed draft for a vision for NWC is:*

*“We want canals and rivers to be enjoyed, valued, used and cared for by everyone.”*

**Question 7: Do you agree that the New Waterways Charity should enjoy the same powers and be subject to similar legal duties to maintain the waterways as British Waterways currently is?**

This is clearly a critical question for us and should be informed by the briefing note that NBTA sent round. That note should probably form the basis of any response to this question.

There are concerns that it is proposed that the new charity would have the power to make its own secondary legislation and would not be subject to Freedom of Information requirements. There is uncertainity to what extent it would be covered by Equalities and Human Rights legislation.

The NBTA recommends that:

In order to protect boat dwellers from homelessness, BW should not be transferred to charity status unless and until the following conditions are met:

* Legal recognition of the homes of boat dwellers on a par with that enjoyed by house dwellers.
* Statutory protection of boat dwellers from harassment and unlawful eviction of the same magnitude as the protection enjoyed by house dwellers, applicable to all boat dwellers on inland and coastal waters, whether or not they have a permanent mooring.
* Clarification that the test for compliance with Section 17 3 c ii of the 1995 British Waterways Act is as intended by Parliament, namely, whether the boat has remained in one place for longer than 14 days without good reason.
* Explicit recognition of boat dwellers without permanent moorings are classed as travellers for the purposes of Section 225 of the 2004 Housing Act; the 2010 Equality Act; the Human Rights Act and the EU requirement placed on the UK to draw up a national plan in 2011 to ensure that every homeless traveller has access to suitable accommodation.
* Security of tenure for mooring holders on a par with that enjoyed by the tenants of houses.

According to the consultation document the order which will pass powers from the government to the new charity will also have to be subject to a public consultation process (likely to happen in the autumn). This can’t happen until another piece of legislation (the Public Bodies Bill) has been passed.

**Question 8: Do you agree with the proposed governance model for the new charity? What improvements could be made?**

*The consultation states that it is the government’s intention to ‘best nurture the spirit of cooperation by devolving power, assets, money and knowledge to those best place to find the best solutions to local needs’. It goes on to state that the transfer of the waterways to a new charity will give stakeholders a better say in the running of the waterways. This diagram outlines what Defra is proposing as a governance structure.*

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The current structure does not have a membership or a role for members.

It is unaccountable and undemocratic and everything is controlled from the centre.

There are proposals for 11 Local Partnerships but they wont be very local and they don’t have much power – most decisions and budgets would happen from the centre.

A membership would provide a mechanism for members being able to vote on the membership of local partnerships and national councils.

More local partnerships with more powers would give more local control.

The system could be turned upside down so that individual members elect representatives to Local Partnerships and the national Council could be made up of reps from local boards. The national council and members could then elect trustees. At the moment it’s all done by a selection panel who not accountable to anyone.

Or there could be some other system entirely....

**Question 9: Should funds be raised locally by Local Partnerships be spent on local priorities? Why?**

*The consultation document details what the intended role of local partnerships will be. These include agreeing a 10-year vision, endorsing the local area budget, endorsing and monitoring customer service standards, championing volunteering on the waterways and running an annual waterways festival. Working closely with local management teams is flagged as necessary across every element of NWCs work at the local partnership level.*

Not sure of the point of this question – seems like a bit of red herring.

It would seem to me that if you are going to have local decision making then as much as possible budgets should be managed locally not by head office.

**Question 10: Who do you think should be encouraged to sit on Local Partnerships? How should the nominations panel be constituted; who are the essential parties?**

*The consultation document proposes that the Local Partnerships should be made up of 8 – 12 members selected through an undefined ‘locally based and transparent process’. It suggests that the Chair would be selected by the Appointments Committee following an open invitation and transparent process and that all proposed appointments would then need to be formally endorsed by the Trustees.*

*All members of the Partnership would be expected to act in the best interests of the waterway rather than to represent any particular interests or causes. All members would be local, credible and knowledgeable in their area of expertise.*

It is my personal view that any new charity should have members and local representatives should be elected by members of the new charity and nominated by their respective constituencies (boaters, anglers, local residents etc). The Local Partnership should elect its own Chair rather than have it appointed by some unaccountable central appointments body.

**Question 11: Is between 8 and 12 the right size for a Local Partnership?**

**Question 12: Which are the particular subjects or activities you think may require the attention of a specific sub-committee of a Local Partnership?**

*The consultation states that Local Partnerships would decide if it wanted to establish any permanent or time-limited subcommittees, to consider specific cross-cutting issue, chosen from a list of possible subjects, agreed at a national level.*

I’d have thought this was a matter for the Local Partnership and should not be dictated by the national headquarters.

**Question 13: How best can the NWC strike the right balance between local needs and the needs of the waterways network as a whole?**

**Question 14: How could the charity encourage effective working between different communities and partnerships that share the same waterway?**

The consultation document proposes that Local Partnerships should meet no less than four times per year with an Open Meeting once a year. It proposes that the Chair would be the ambassador for the Partnership and an ex officio member of the Charity's Council, drawing his/her authority from considered views of the Partnership and the policies and approaches agreed at their business meetings.

The preamble to questions 15, 16 and 17 discusses the importance of volunteers to the waterways and sets the aim of NWC having 5,000 regular volunteers contributing 80,000 working days to the waterways upkeep by 2020.  It goes on to provide two examples of volunteering on the waterways and an example of volunteering at The National Trust.  A description of the establishment of the pilot local partnership on the Kennet and Avon Canal is also included.

**Question 15: In what ways could people be helped to become more involved and take more responsibility for their local waterways? What might the barriers be, and how could they be overcome?**

**Question 16: In what ways could more people be encouraged to volunteer for the waterways? What might the barriers be and how could they be overcome?**

**Question 17: What would a successful volunteer program look like? What would it achieve?**

**Question 18: Do you agree that the new charity should initially focus on securing fair representation, and move towards a greater element of direct membership over time?**

*The consultation document describes the Council as ‘ the guardian of the long-term values of the charity’, having the powers to appoint and remove trustees as well as the chairs of the local partnerships. The Council will not determine policy or strategy but will help shape it at its twice-yearly meetings. Council membership, comprising between 35 and 50 individuals, will be appointed from 11 proposed ‘constituency organisations’ invited to nominate individuals as council members. It is unclear whether these individuals would be corporate members, in that they represent the interests of the nominating organisation, or whether they would be individual members representing themselves on the Council.*

*The consultation document includes a brief discussion on the merits of membership and representation as different approaches to appointing the Council.*

A ‘representative’ basis – where members of the national Council and Local Partnerships are chosen by Appointments Panel will not be as democratic and accountable as a membership body where fee paying members / licence holders etc all have a vote in appointing local and national representatives.

**Question 19: Do you agree with the proposed make up of the Council? Which interests should be represented?**

**Question 20: Should a proportion of the Council be directly elected? If so, who should be entitled to vote?**

*The consultation document explains how Council members would be drawn from nominated organisations and local partnerships. It proposes that each Local Partnership chair sits on the Council along with between 22 and 35 members nominated from stakeholder bodies and up to five co-opted members selected by the Appointments Committee to ensure balance of skills, gender, age, race, etc. Notably it proposes twice as many stakeholder representatives from the private boater group than any other stakeholder group and that 50% of these are elected by boat owners directly.*



Again this question presupposes that there is a representative rather than a membership structure. The make up of the Council currently proposed is mainly representatives of the existing interest groups and has no specific representation for the interests of liveaboards.

You may have issues with the make up of the Council, its very existence or how it is elected / chosen.

**Question 21: Should the independent chairman of the Appointments Committee be chosen by Committee members or the Council? What skills would they need?**

*The consultation document explains that the Appointments Committee will be a joint committee of the Council and the board of Trustees. Its proposed activities would be to: “identify appropriate stakeholder bodies or groups within the generically deﬁned stakeholder constituencies that will be invited to nominate persons to serve as members of the Council; identify and recommend persons to co-opt to the Council; manage a recruitment process for positions on the Board of Trustees; and appoint the Chairs of Local Partnerships”.*

**Question 22: Are there other topics that you consider would benefit from council scrutiny committees?**

*The consultation document briefly explains NWC’s plans for establishing Audit and Remuneration Committees as sub committees of the main board as a “means to enquire into the outcomes of its activities as the key governance body”.*

We might want to argue for a scrutiny committee with a responsibility for protecting the rights of liveabord communities in order to ensure that a watching eye is kept on the charity operates.

**Question 23: Are there any other activities of British Waterways that would be best placed in the CIC?**

*Community Interest Companies (CICS) are limited companies, with special additional features, created for the use of people who want to conduct a business or other activity for community benefit, and not purely for private advantage. This is achieved by a "community interest test" and "asset lock", which ensure that the CIC is established for community purposes and the assets and profits are dedicated to these purposes.[[1]](#footnote-1)*

*The consultation document outlines the reason for establishing a CIC as a 100% owned vehicle of NWC to undertake all trading activities. The reason for this is stated that “as a general rule [charities] cannot engage in trading activity’. The document goes on to say that the assets of NWC are likely to be held by the charity and their commercial management contracted to the CIC. It goes on to state that NWC will hold all director appointment rights and that some directors may be remunerated for their work.*

The consultation document wording is misleading. Charities are able to undertake trading as long as it “contribute[s] directly to the furtherance of their charitable objects”.[[2]](#footnote-2) This is often called primary purpose trading. So, for much of the activity that NWC will be undertaking there appears to be no need to transfer trading activity to the proposed CIC.

Maintaining all primary purpose trading activity within the new charity would maximise tax benefits to the charity and ensure a clear divide between ‘primary purpose’ and ‘commercial purpose’ activity. If the charity also set up its objects to continually strive to maximise primary purpose trading, by splitting trading activity between the charity and the CIC, it would be clear to anyone looking at the accounts to what extent it was trading in accordance with its principles. The holding of primary purpose trading within NWC would also improve transparency and accountability of these activities within the new group structure.

It is also notable that some CIC directors to be remunerated. In the spirit of UK charity law it is usual for paid and unpaid functions to be separated. Trustees of the charity should be allowed to take paid positions in the CIC as is currently proposed.

**Question 24: Government policy is to support the movement of freight on inland waterways, where it is economically sustainable. Do you agree the status quo is no longer an option? Which of the five options (in Annex C) do you prefer? What other options should we consider?**

**Question 25: What measure of the effectiveness of NWC’s use of public funds (through the government funding contract) would be appropriate?**

**Question 26: Are there other areas where you think NWC could increase:**

* **Commercial income**
* **Voluntary income**
* **Third Party income**

**Question 27: Are there other areas where you think NWC could save more money/make greater efficiencies?**

Executives pay and head office costs might figure quite highly here!

**Question 28: We would welcome any views you have on the analysis in the Impact Assessment and relevant evidence that we could draw upon in finalising the assessment.**

*The impact assessment is separate document which sets out some details about the financial assumptions that are being made with regard to whether the new charity will get its income / how it will maintain the waterways*

**Question 29: New Waterways Charity is just the working title for the new charity. Which of the following suggestions for the name of the new charity do you prefer, and why?**

a) National Waterways Trust

b) Waterways Trust for England and Wales

c) Waterways Trust

d) National Canals and Rivers Trust

e) Canals and Rivers Trust

f) National Waterways Charity

g) [your suggestion]?

1. <http://www.cicregulator.gov.uk/> [↑](#footnote-ref-1)
2. <http://www.charity-commission.gov.uk/publications/cc35c.aspx> [↑](#footnote-ref-2)