

Report to: **Salcombe Harbour Board**

Date: **24 January 2022**

Title: **Salcombe Harbour Duty Holder Arrangements**

Portfolio Area: **Salcombe Harbour**

Wards Affected: **Salcombe and Thurlestone; Kingsbridge and Stokenham**

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken:

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## **Recommendations:**

1. That Council be recommended to agree that the Director for Place and Enterprise assumes the role of the Duty Holder for the purposes of the Port Marine Safety Code.

### **1. Executive summary**

1.1 The Council is the Harbour Authority for Salcombe Harbour. There is therefore an expectation that it will comply with the Port Marine Safety Code 2016 ("the Code"). The Code requires the Council to have a "duty holder" who is accountable for their compliance with the Code and their performance in ensuring safe marine operations.

1.2 The Council's current arrangements for the management of the Harbour lack clarity as to whether the full Council, the Executive, or the Board is the duty holder. This report proposes that the Director of Place and Enterprise is designated as the duty holder.

### **2. Background**

2.1 The Code sets out a national standard for the discharge of responsibilities for port marine safety. Although the Code is not statutory guidance, there is a strong expectation that harbour authorities such as the Council will comply with it. The Code is

underpinned by the Guide to Good Practice on Port Marine Operations ("the Guide") which contains further and more detailed guidance.

- 2.2 The Code requires a harbour authority to formally identify and designate a Duty Holder who is accountable for the safe and efficient operation of the harbour. The Duty Holder is also responsible for the harbour authority's compliance with the Code. This means that the Duty Holder should, among other things:
  - a. be aware of the harbour authority's powers and duties;
  - b. ensure that a suitable Marine Safety Management System is in place;
  - c. appoint a designated person to monitor and report the effectiveness of the Management System and provide independent advice on matters of marine safety;
  - d. ensure that sufficient resources are made available for discharging their marine safety obligations; and
  - e. appoint competent people to manage marine safety.
- 2.3 The duties of the Duty Holder cannot be delegated or assigned to another person. This reinforces the accountability of the Duty Holder.
- 2.4 Unfortunately, the Council's current arrangements allocating responsibility between full Council, the Executive and the Board do not identify clearly, which of them is the Duty Holder.

### **3. Proposed arrangements**

- 3.1 In making the recommendation, consideration was given to the options available (the Board; the full Council; or a Senior Officer) and the approach taken by other municipal harbours. There are two approaches consistently used, one is to make the Council the duty holder and the other to appoint a senior officer.
- 3.2 Appointing the Council (all 31 members) as the duty holder has been considered as; it is the statutory harbour authority and sets the budget; approves the policy framework within which the harbour operates and the harbour function is undertaken within and as part of the wider Council.
- 3.3 However, it is not considered practical or effective to train all 31 members to the required standard. Furthermore, it would add an additional layer of bureaucracy to operational safety decision making that may hinder the process.

- 3.4 It is also felt that it is beneficial to maintain a clear split between the democratic function of the Harbour Board (to set strategy and policy) and the Duty Holder function with regard to safety.
- 3.5 Given the above, the recommendation is to appoint a member of the Senior Leadership Team as the Duty Holder, who will attend the relevant safety training and assume the associated responsibilities.
- 3.6 To ensure organisational efficiency the Director of Place and Enterprise who is the line manager for the Harbour Master is the proposed Senior Leadership Team member to become the Duty Holder.

#### 4. Risks of failure to identify a duty holder

- 4.1 While non-compliance with the Code is not an offence, failure to comply with it is something that will be taken into account by regulatory bodies when deciding if a harbour authority has failed in its legal duties. For example, non-compliance with the fundamental elements of the Code may be evidence of a failure to provide a safe system of work.
- 4.2 Also, failure to comply with the Code may result in the Council suffering reputational damage for either not complying with the Code, or if having committed publicly to the Code's standards, then fails to meet them.

#### 5. Proposed Way Forward

- 5.1 It is proposed to clarify the governance arrangements so that the Director of Place and Enterprise is expressly designated as the duty holder for the purposes of the Code.

#### 6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance		<p>The Pier and Harbour Order (Salcombe) Confirmation Act 1954 made the Council the Harbour Authority for Salcombe Harbour. As such, the Council has a duty to:</p> <p>a) take reasonable care, so long as the harbour is open for public use, that all who may choose to navigate in it may do so without danger to their lives or property;</p>

		<p>b) conserve and promote the safe use of the harbour, and prevent loss or injury through the Council's negligence;</p> <p>c) have regard to efficiency, economy and safety of operation as respects the services and facilities provided; and</p> <p>d) take such action that is necessary or desirable for the maintenance, operation, improvement or conservancy of the harbour.</p> <p>While the Harbour Board is a committee of the Council, the precise division of roles and responsibilities between the Council, Executive, the Harbour Master and the Board lacks clarity, which the proposals set out in paragraph 3, seek to address.</p>
Financial implications to include reference to value for money		It is estimated that training on the role and responsibilities of the duty holder would cost of in the region of £10,000 (Harbour Board); £20,000 (full Council) or £2,000 (Senior Officer) depending on the option agreed.
Risk		The failure to formally designate the duty holder would be a breach of the Code and the non-compliance with the Code may provide evidence in court proceedings in the event of an accident or incident.
Supporting Corporate Strategy		In accordance with the principles of the Ports Good Governance Guidance 2016, Salcombe Harbour is in the interests of stakeholders including the local community both for employment and leisure purposes.
Climate Change - Carbon / Biodiversity Impact		There are no climate change or biodiversity impacts.
<b>Comprehensive Impact Assessment Implications</b>		
Equality and Diversity		There are no equality and diversity impacts.
Safeguarding		There are no safeguarding impacts.

Community Safety, Crime and Disorder		There are no crime and disorder impacts.
Health, Safety and Wellbeing		The proposal seeks to provide clarification as to the body that is the duty holder. The duty holder is responsible for ensuring safe marine operations.
Other implications		There are none.

### **Supporting Information**

#### **Appendices:**

There are none.

#### **Background Papers:**

There are none.