

Report to: **Salcombe Harbour Board**

Date: **25 April 2022**

Title: **Governance and duty holder arrangements**

Portfolio Area: **Councillor Judy Pearce – Leader of the Council**

Wards Affected: **All**

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

Date next steps can be taken: 19 May 2022

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### **Recommendation:**

The Board is recommended to recommend to full Council that responsibility for the Council's functions as harbour authority and the role of duty holder should be that of the Executive with the Harbour Board acting as an advisory board to the Executive.

#### **1. Executive summary**

1.1 This report considers where responsibility for the Council's functions as harbour authority and the role of duty holder for the purposes of the Port Marine Safety Code 2016 ("the Code") should sit within the Council's decision-making arrangements and makes recommendations to Council.

#### **2. Background**

2.1 The Council is the Harbour Authority for Salcombe Harbour. There is therefore an expectation that it will comply with 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.

2.2 The Council has adopted executive arrangements as its permitted form of governance. This means that the Council has arranged for executive functions to be the responsibility of the Leader of the Council and a cabinet executive ("the Executive"). Executive functions are essentially, all those functions that are not prescribed by law as being functions of the full Council or that the full Council

as a matter of local choice has decided should be the responsibility of the Executive. The Council's harbour authority functions are functions that may be the responsibility of the full Council or of the Executive.

- 2.2 As was reported to the Board at its meeting on 24 January 2022, the Council's current arrangements for the discharge of its harbour authority functions lack clarity as to whether the full Council, the Executive, or the Board, and in particular who is the duty holder. At that meeting the Board did not agree with the recommendation to designate the Director of Place and Enterprise as the duty holder and requested a further report.
- 2.3 On 12 April 2022 members of the Board had workshop with solicitors, Ashfords.
- 2.4 The Council is reviewing its Constitution, which identifies which bodies have responsibility for discharging functions and the Board's recommendation will help to shape the document. The draft Constitution will be considered by the full Council at its meeting on 19 May 2022.

### **3. The way forward**

- 3.1 Following the workshop, where members of the Board informally appeared to support the suggestion that the Executive should be the duty holder and discharge the Council's harbour authority functions, Ashfords have produced a governance paper setting of the options and making an assessment of the potential impacts (see **Appendix A**).
- 3.2 Having evaluated the options, officers consider that the option providing the greatest clarity and certainty, would be for the Council to agree to the Executive having responsibility for the discharge of the Council's harbour functions and being the duty holder for the purposes of the Code.
- 3.3 Under this arrangement, the Board would continue to perform an advisory role, making recommendations to the Executive based on its expertise in maritime matters. As the governance paper suggests this regular interaction with the Executive, strengthening the links between the Board as advisor and the Executive as duty holder.
- 3.4 Members of the Executive will need to be trained on their role and responsibilities in connection with discharging those functions and under the Code.

#### 4. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<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 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		<p>The legal requirement for there to be separate accounts for the harbour would remain and from this point of view the proposal would maintain the current position.</p>
Risk	Y	<p>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.</p>
Supporting Corporate Strategy	Y	<p>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</p>

		purposes.
Climate Change - Carbon / Biodiversity Impact	N	There are no climate change or biodiversity impacts.
<b>Comprehensive Impact Assessment Implications</b>		
Equality and Diversity	N	There are no equality and diversity impacts.
Safeguarding	N	There are no safeguarding impacts.
Community Safety, Crime and Disorder	N	There are no crime and disorder impacts.
Health, Safety and Wellbeing	Y	The proposal seeks to provide clarification as to responsibility for the discharge of the Council's harbour authority functions and in particular the body that is the duty holder. The duty holder is responsible for ensuring safe marine operations.
Other implications	N	There are none

### **Supporting Information**

#### **Appendices:**

Appendix A – Ashfords: Governance paper

#### **Background Papers:**

There are none