

South Hams Salcombe Harbour Board



Title:	Agenda								
Date:	Monday, 24th January, 2022								
Time:	2.30 pm								
Venue:	Cliff House, Salcombe								
Full Members:	<p style="text-align: center;">Chairman Cllr Brazil</p> <p style="text-align: center;">Vice Chairman Mr H Marriage</p> <p><i>Members:</i></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">Cllr Brown</td> <td style="width: 50%;">Mr A Owens</td> </tr> <tr> <td>Cllr Foss</td> <td>Mr C Plant</td> </tr> <tr> <td>Ms A Jones</td> <td>Mr I Shipperley</td> </tr> <tr> <td>Cllr Long</td> <td>Mr I Stewart</td> </tr> </table>	Cllr Brown	Mr A Owens	Cllr Foss	Mr C Plant	Ms A Jones	Mr I Shipperley	Cllr Long	Mr I Stewart
Cllr Brown	Mr A Owens								
Cllr Foss	Mr C Plant								
Ms A Jones	Mr I Shipperley								
Cllr Long	Mr I Stewart								
Interests – Declaration and Restriction on Participation:	Members are reminded of their responsibility to declare any disclosable pecuniary interest not entered in the Authority's register or local non pecuniary interest which they have in any item of business on the agenda (subject to the exception for sensitive information) and to leave the meeting prior to discussion and voting on an item in which they have a disclosable pecuniary interest.								
Committee administrator:	Democratic.Services@swdevon.gov.uk								

- 1. Apologies for Absence**
- 2. Minutes** **1 - 6**
to approve as a correct record the minutes of the meeting of the Board held on 15 November 2021;
- 3. Urgent Business**
brought forward at the discretion of the Chairman
- 4. Division of Agenda**
to consider whether the discussion of any item of business is likely to lead to the disclosure of exempt information
- 5. Declarations of Interest**
In accordance with the Code of Conduct, Members are invited to declare any Disclosable Pecuniary Interests, Other Registerable Interests and Non-Registerable Interests including the nature and extent of such interests they may have in any items to be considered at this meeting;
- 6. Public Question Time**
a period of up to 15 minutes is available to deal with questions from the public
- 7. Feedback from Harbour Community Forums**
to receive verbal reports from Board Members who attend the Harbour Community Forums on behalf of the Board
- 8. Duty Holder Arrangements** **7 - 12**
- 9. Harbour Master's Report**
Verbal Update
- 10. Batson Projects**
Verbal Update

**MINUTES OF THE MEETING OF
THE SALCOMBE HARBOUR BOARD
HELD AT CLIFF HOUSE, SALCOMBE, ON MONDAY, 15 NOVEMBER 2021**

Members in attendance			
* Denotes attendance		∅ Denotes apology for absence	
*	Cllr J Brazil (Chairman)	*	Ms A Jones
*	Cllr D Brown	∅	Mr H Marriage (Vice-Chairman)
∅	Cllr R J Foss	*	Mr A Owens
*	Cllr M Long	∅	Mr C Plant
		*	Mr I Shipperley
		*	Mr I Stewart

Other Members in attendance and participating:
Cllr H Bastone

Item No	Minute Ref No below refers	Officers in attendance and participating
All agenda items		Director of Place and Enterprise; Salcombe Harbour Master; Deputy Section 151 Officer; Estuaries Officer; Democratic Services Manager; and Senior Specialist – Engineering

SH.19/21 APOLOGIES FOR ABSENCE

Apologies for absence for this Board Meeting had been received from Cllr R Foss and Messrs Marriage and Plant.

SH.20/21 MINUTES

The minutes of the meeting of the Salcombe Harbour Board held on 20 September 2021 were confirmed as a correct record, subject to reference being included to the fact that Mr Shipperley had joined the meeting (albeit in a non-voting capacity) via Microsoft Teams.

SH.21/21 URGENT BUSINESS

There were no items of urgent business raised at this meeting.

SH.22/21 DECLARATIONS OF INTEREST

Members were invited to declare any interests in the items of business to be considered during the course of the meeting, and the following were made:

Ms Jones and Messrs Owens, Shipperley and Stewart each declared a disclosable pecuniary interest in all related agenda items by virtue of paying harbour duties. As a result of the Deputy Monitoring Officer having granted each Board Member a dispensation, they were all able to take part in the debate and vote on any related matters (Minute SH.04/21 above refers).

SH.23/21 **PUBLIC QUESTION TIME**

In accordance with the Public Question Time Procedure Rules, there were no issues raised at this meeting.

SH.24/21 **FEEDBACK FROM HARBOUR COMMUNITY FORUMS**

The Board received verbal update reports from those Members who attended the Harbour Community Forums. The updates were given as follows:

Salcombe Kingsbridge Estuary Conservation Forum (SKECF)

The Forum had recently met on 2 November 2021 during which particular reference had been made to:

- (a) there being new patches of Dwarf Seagrass at Charleton Point. In recognition of the significant environmental benefits generated from Dwarf Seagrass, this was welcomed by Board Members and it was acknowledged that an options paper may be presented to a future Board Meeting that sought to increase the provision further in the Estuary;
- (b) a recently published DEFRA report on the containment of oysters. The Forum had recognised that volunteers had a key role to play in the containment and further information was awaited from DEFRA;
- (c) the review of the latest version of the Salcombe Harbour Guide was considered by the Forum; and
- (d) the next meeting of the Forum had been arranged to be held on 5 April 2022.

South Devon & Channel Shellfishermen

The Board was updated that, whilst the recent power cut had been unfortunate, the Shellfishermen were content and the industry had enjoyed a good season.

Kingsbridge and Salcombe Marine Business Forum

The Board representative informed that marine businesses had been incredibly busy during 2021 and, as a consequence of this success and supply chain issues, boats and engines were now in short supply.

Kingsbridge Estuary Boat Club (KEBC)

The Harbour Master confirmed that he has regularly updates with the Boat Club and the next Club meeting was to be held soon.

East Portlemouth Parish Council

The representative advised that there was no update to give to the Board.

SH.25/21 **DUTY HOLDER – VERBAL UPDATE FROM THE DIRECTOR OF PLACE AND ENTERPRISE**

The Director of Place and Enterprise extended his apologies to the Board at the lack of a written report for consideration at this meeting. It was noted that a full report would be presented to the next Board meeting to be held on 24 January 2022 that would include reference to:

- the options over the recommended Duty Holder;
- the relationship between the Duty Holder and the Board;
- the appropriateness of an external governance review being carried out; and
- the fact that the responsibility of the appointed Duty Holder was significant and must not be shirked.

SH.26/21 **PORT MARINE SAFETY CODE**

The Board received and considered the findings of the initial audit of Salcombe Harbour Authorities Port Marine Safety Code (PMSC) compliance system and associated documents.

The Harbour Master introduced the findings and forwarded the apologies of the report author who was unable to attend this Board meeting. In summary, the audit had demonstrated broad compliance but had also recognised that the Authority could improve in certain areas. Furthermore, it was the intention of the Harbour Master to provide a further detailed update to the next Board meeting to be held on 24 January 2022.

In discussion, the following points were raised:-

- (a) Members were of the view that swift progress should be made on the recommendations that had been generated and the use of external advice would also be beneficial. As a result, the following recommendation was **PROPOSED** and **SECONDED**:

‘That the Harbour Master give an initial view on each of the 15 recommendations arising from the initial audit of the Port Marine Safety Code and, following that, be in a position to use external resources to support this process (up to £10,000 from the General Reserve) before providing a progress update to the next Board Meeting.’

Support was subsequently expressed for this recommendation and, when put to the vote, it was declared **CARRIED**;

- (b) The Board emphasised that there was a great deal of work to be undertaken to deliver on the audit findings.

It was then:

RESOLVED

That the Harbour Master give an initial view on each of the 15 recommendations arising from the initial audit of the Port Marine Safety Code and, following that, be in a position to use external resources to support this process (up to £10,000 from the General Reserve) before providing a progress update to the next Board Meeting.

SH.27/21 REVENUE BUDGET MONITORING 2021/22

Consideration was given to report that provided Members with an update on income and expenditure variations against the approved budget and forecasted the year-end position.

In discussion, the Board wished to put on record its thanks to the Deputy Section 151 Officer and the following points were raised:

- (a) The reductions in Credit Card Handling Charges was welcomed;
- (b) With regard to the Batson Project, it was requested that a more detailed costs breakdown be presented to a future Board meeting;
- (c) In respect of any staff merit payments, officers confirmed that this would be a matter to be determined by the Board on an annual basis.

It was then

RESOLVED

That the forecast income and expenditure variations for the 2021/22 financial year and the projected surplus of £139,200 be noted.

SH.28/21 BATSON PROJECTS – VERBAL UPDATE

(a) The Harbour Depot

As part of his update, the Senior Specialist – Engineering advised that the project was frustratingly two weeks behind schedule. In terms of the timescales, it was intended that:

- By 25 December 2021: the frame structure would be in place;
- Between 8 April and 25 April 2022: the car park provision would be in place; and
- 15 May 2022: the project would be completed in accordance with the approved contract.

It was also confirmed that the project was projected to be delivered £180,000 under the approved Budget.

(b) Commercial Units

Whilst it was intended that additional information would be provided to the next Board meeting, the Senior Specialist advised that petrol and zinc levels had been identified as problematic issues. Nonetheless, officers were still aiming to go out to tender for the works before the end of November 2021.

(Meeting commenced at 2:30 pm and concluded at 3.50 pm)

Chairman

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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:

Author: **David Fairbairn** Role: **Head of Legal Services and Monitoring Officer**

Contact: **01803 861359/email: David.Fairbairn@swdevon.gov.uk**

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.
Comprehensive Impact Assessment Implications		
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.

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