

Report to: **Executive**

Date: **26 January 2023**

Title: **Memorandum of Understanding with the Salcombe Harbour Board**

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

Wards Affected: **All**

Urgent Decision: **N** Approval and clearance obtained: **N/a**

Date next steps can be taken:

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

Contact: **Telephone/email: 01803861359/david.fairbairn@swdevon.gov.uk**

Recommendations:

It is recommended that that the Executive agrees to the Leader of the Council signing the Memorandum of Understanding with the Salcombe Harbour Board in relation to the exercise of the Executive's harbour functions and its role as duty holder for the purposes of the Port Marine Safety Code.

1. Executive summary

- 1.1 The review of the Council's governance arrangements resulted in the Executive assuming the role of duty holder for the purposes of the Port Marine Safety Code ("the Code") and the Salcombe Harbour Board becoming an advisory board to the Executive.
- 1.2 This report seeks approval for the Leader to sign a memorandum of understanding with the Board setting out the respective roles of the Executive and the Board.

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 full Council has agreed that the Executive should be the duty holder. It has also been agreed that given the knowledge and experience of the Salcombe Harbour Board, the Board should provide advice to the Executive in performing its role as duty holder.
- 2.3 External solicitors with experience of harbour governance matters were instructed to draft a memorandum of understanding explaining the roles and relationship between the Executive and the Harbour Board. The Memorandum of Understanding is attached as **Appendix A**.
- 2.4 The memorandum of understanding is consistent with the recommendations of the Ports Good Governance Guidance published by the Department for Transport in March 2018. It provides a framework for decision-making, accountability and the financial management of the Harbour under which the Harbour Board will provide advice and assistance to the Executive so that it can exercise its functions that takes account of the needs of the Harbour as a business and an environmental and community asset, in the light of the commercial realities of municipal port operations.
- 2.5 At its meeting on 14 November 2022, the Harbour Board authorised its chairman to sign the Memorandum of Understanding on behalf of the Harbour Board (Min. * refers)

3. Outcomes/outputs

- 3.1 The Memorandum of Understanding, although not legally binding, will provide the clarity that the Code and Guidance seek in port and harbour governance arrangements.

4. Options available and consideration of risk

- 4.1 The option of not proceeding with the memorandum of understanding is not realistic as it would undermine the clarity that the Council has been seeking to bring to the governance arrangements for the Harbour. This would be something that would be taken into account by regulatory bodies when deciding if the Council had failed in its legal duties as a harbour authority. This in turn may result in the Council suffering reputational damage.
- 4.2 Members of the Executive have been briefed formally and the draft memorandum of understanding was circulated to all members of the Harbour Board before formal authority to sign was sought

5. Implications

Implications	Relevant to	Details and proposed measures to address
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	proposals Y/N	
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>The Council has now clarified responsibility for exercising its harbour authority functions and the memorandum of understanding is the final piece in the governance arrangements.</p>
Financial implications to include reference to value for money	N	There are no financial implications arising directly from this report
Risk	Y	The memorandum of understanding will complete the governance arrangements and therefore ensure the clarity that the Code requires.
Supporting Corporate Strategy	Y	In accordance with the principles of the Ports Good Governance Guidance 2016, ensuring good governance for Salcombe Harbour is in the interests of stakeholders including the local community both for employment and leisure purposes.
Consultation & Engagement Strategy	N	
Climate Change - Carbon / Biodiversity Impact	N	

Comprehensive Impact Assessment Implications		
Equality and Diversity	N	
Safeguarding	N	
Community Safety, Crime and Disorder	N	
Health, Safety and Wellbeing	N	
Other implications	N	

Supporting Information

Appendices:

Appendix A –Memorandum of Understanding

Background Papers:

There are none.