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| NAME OF COMMITTEE | COUNCIL |
| DATE | 26 September 2013 |
| REPORT TITLE | MOORINGS ALLOCATION POLICY |
| REPORT OF | Salcombe Harbour Master |
| WARDS AFFECTED | All South Hams |

Summary of report:

To propose a change to the Mooring Allocation Policy. This report was considered by the Harbour Board on 23 September 2013 and an update from that meeting will be presented by the Chairman of the Harbour Board Cllr R J Carter, this will enable any policy change to be implemented for the 2014 mooring allocations, the process for which begins in November 2013.

Financial implications:

There are no direct financial implications from this report.

RECOMMENDATIONS:

That Council RESOLVES to change the Mooring Allocation Policy to give priority to customers who pay Council Tax to SHDC as described in paragraph 3.

Officer contact:

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1. BACKGROUND

- 1.1 The current edition of the Moorings Policy was published in 2012. The Salcombe Harbour Board (“SHB”) recommended to Full Council on 12 November 2012 that the updated Moorings Policy be adopted (SH36/12). The Moorings Policy was adopted by Full Council on 13 December 2012 (63/12).

- 1.2 The Moorings Policy is routinely reviewed every five years with urgent issues being considered by the Harbour Board as they arise. Continuing uncertainty in distinguishing between permanent residents and second home owners, following the removal of the Council Tax discount for second home owners, has given rise to an urgent review of the Moorings Allocation Policy. The issue was raised at the Board on 20 May 2013 (**SH 7/13**) and discussed in full at a Harbour Board workshop on 15 July 2013. The discussion points covered by the workshop are detailed in Paragraph 2.

2. **Moorings Allocation Policy Factors for Consideration**

- 2.1 The Moorings Policy adopted in 2007 gave priority to customers who paid 100% Council Tax. This policy was adopted to give priority to permanent residents of the South Hams. The waiting list was in two parts, the A list for 100% Council Tax Payers and a B List for discounted Council Tax Payers (second home owners). Customers whose residential status changed to 100% Council Tax payers were transferred from the B list to the A list with their original seniority and an allocation made when they came to the top of the waiting list.
- 2.2 In April 2013 the District Council removed the discount offered to second home owners on their properties within the South Hams. This gave rise to an expectation that people on the B list would now be allocated a mooring when they came to the top of the waiting list.
- 2.3 The Harbour Board had anticipated that this change might cause difficulties for the moorings policy and specifically consulted about this in March 2012 as part of its consultation on the new moorings policy. At the same time SHDC gave some reassurance that it would continue to be possible to tell from Council Tax bills who was a permanent South Hams resident and who was a second home owner. This was absolutely essential for the scheme to be administered fairly by the Harbour Office staff.
- 2.4 Accordingly, the Moorings Policy adopted in 2012 changed the criteria for allocation of moorings from 100% Council Tax payers to customers who were permanently resident within the South Hams. However, with the experience of the allocations for the 2013/14 season, it proved to be more difficult than anticipated to discern from the Council Tax bill the residency status of the customer.

- 2.5 There were a large number of complaints about the Moorings Allocation Policy which focused on the fact that the Policy was discriminatory, including from people whose families had owned properties in the South Hams, and been on a waiting list for a mooring, for a very long time. Advice was sought from SHDC Legal Department which affirmed the legality of the Policy, providing that the Policy could be applied fairly. But, because there is now no unambiguous way to distinguish permanent residents from second home owners, applying the Policy fairly continues to be an issue.
- 2.6 After careful consideration we feel that further consultation on the proposed policy change will **not** be needed for the following reasons;
- 2.6.1 The last consultation was recent and anticipated the change to CT rebate. Consultation feedback at Appendix 1.
- 2.6.2 The responses are likely to be the same – existing users are likely to seek to maintain the status quo and there was no response to the second public consultation.
- 2.6.3 Since the original decision the end to CT rebate for second home owners has been implemented and in response to correspondence from local residents and MP the Board have sought detailed legal advice.
- 2.6.4 The Board Members have undertaken a focussed workshop on the possible alternative Moorings Policies and decided that a two tier list is no longer appropriate given the equal CT liability for all residents.
- 2.6.5 The Moorings Policy states at para 5.0.1 that the Board may review ‘urgent’ matters as they arise. The policy does not define urgent but given that the alternative is to wait for the 5 year review in 2017 and the significant change to CT rebate, it is reasonable to describe this issue as ‘urgent’. Any changes required as a result of such a review need to be ratified by the Full Council and amendments published.
- 2.6.6 The report for the Harbour Board meeting in September will be published prior to the meeting and this will provide a further opportunity for people to comment if they want to.

3. Moorings Allocation Policy Proposal

3.1 It is proposed that the Moorings Allocation Policy be amended as follows:

3.1.1 The current waiting list, which customers joined with the understanding that priority was given to local residents over second home owners, is closed with effect from 1 September 2013. This closed list is then allocated to, Permanent Residents first, then to second home owners on the former B list, so meeting the contractual obligation to these customers.

3.1.2 A new waiting list is started with effect from the same date. The criterion for joining the 2013 list is proof of payment of Council Tax to SHDC.

3.1.3 Once the closed waiting list has been satisfied, allocations will be made to the 2013 waiting list.

3.1.4 Because of a number of factors, the current waiting lists are at their lowest level for at least two decades. It is therefore an opportune time to change the mooring allocation and waiting list criteria.

3.1.5 It is to be noted that the moorings policy would continue to give priority to those who have a residence in the South Hams. Only if there were no waiting list for a mooring would a mooring be allocated to someone who was not a South Hams Council Tax payer.

4. LEGAL IMPLICATIONS

4.1 Statutory Powers: Local Government Act 1972, Section 151. The Pier and Harbour Order (Salcombe) Confirmation Act 1954 (Sections 22-36).

4.2A local authority is entitled to make policies in order to provide guidelines for its own decision-making (whether by members or officers) but it should not regard itself as completely restricted by policy. It must always be possible for the authority to make an exception to policy; if it isn't, the authority will be regarded as having "fettered its discretion" and that is unlawful. However, in order to be fair to everyone, the authority should have good reasons both for making an exception, or refusing to do so.

5. FINANCIAL IMPLICATIONS

5.1 There are no direct financial implications from this report.

6. RISK MANAGEMENT

6.1 The risk management implications are:

| Risk/Opportunity | Risk Status | | | Mitigating and Management Actions |
|---|-----------------|------------------------|------------|--|
| | Impact/Severity | Likelihood/Probability | Risk Score | |
| The Harbour Board is accused of discrimination in its allocation of harbour facilities. | 3 | 2 | 6 | As part of the policy review an Equality Impact Assessment has been undertaken to ensure compliance with equality legislation and the needs of Harbour users. The Harbour Authority will have a fit for purpose moorings allocation policy which is strictly adhered to and kept under constant review. Mooring allocation has an appeals process. |

7. OTHER CONSIDERATIONS

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| Corporate priorities engaged: | Community Life Economy |
| Statutory powers: | Local Government Act 1972, Section 151. The Pier and Harbour Order (Salcombe) Confirmation Act 1954 (Sections 22-36). |
| Considerations of equality and human rights: | None |
| Biodiversity considerations: | None |
| Sustainability considerations: | None |
| Crime and disorder implications: | None |
| Background papers: | Moorings Policy 2012 (SH 36/12) Harbour Board Agenda 20 May 2013 (SH 7/13) |
| Appendices attached: | 1. Moorings Policy Consultation Feedback 2012. |

Ian Gibson
Harbour Master

Council
26 September