

Salcombe Harbour Board**26 September 2011****REVIEW OF MOORINGS ALLOCATION ISSUES****Report of the Salcombe Harbour Master****Wards Affected – All South Hams****Summary of Report**

To present a mooring allocation Issue to the Harbour Board for consideration.

RECOMMENDATION

That the Harbour Board RESOLVES to review the mooring allocation issue and decide on future allocation against the Moorings Policy.

1. BACKGROUND

- 1.1 The Moorings Policy was updated in 2007 following an extensive public consultation. The Salcombe Harbour Board (“SHB”) recommended to Full Council on 21 September 2007 that the updated Moorings Policy be adopted (SH32/07). The Moorings Policy was adopted by Full Council on 15 November 2007 (59/07).
- 1.2 Demand for SHB moorings and other harbour facilities has always exceeded supply. SHB has always taken the view that people living within the South Hams should be given priority in the allocation of harbour facilities under SHB control. Most recently it was decided by SHB in November 2009 that this should be evidenced by the production of proof of payment of Council Tax to South Hams District Council, and that customers who no longer qualified for a Harbour Authority mooring would be given a period of two years’ grace to find alternative facilities before the Harbour facility would not be renewed (minute SH34/09).
- 1.3 The SHB lease the estuary fundus from the Duchy of Cornwall, on which all the harbour facilities and moorings sit. One of the terms of the Lease is that mooring licences cannot be issued for a period of more than one year. Therefore all mooring facilities are issued or re-issued annually. This condition derives from the statutory requirement in the Pier and Harbour Order (Salcombe) Confirmation Act 1954.
- 1.4 The qualification criteria for mooring facilities, and the prohibition on sub-letting or re-assignment, are covered in paragraph 6.0 of the Moorings Policy:

6.0.1 *All Salcombe Harbour Authority mooring contracts and licences are issued annually to a named individual or company and are not transferable, except between spouses or civil partners.*

6.2.1 *Council Tax payers and persons recorded on the South Hams Council Tax Register are given priority over others in the allocation of harbour facilities.*

6.3.1 *The Harbour Authority waiting lists are separated into the following categories:*

“A” Private individuals who pay 100% Council tax in South Hams District Council; and

“B” Private individuals who pay 90% of Council Tax in the District.

1.5 At the Harbour Board meeting on 27 September 2010 the Harbour Board agreed (SH26/10) the following:

Moorings allocated to Residents.

- “A resident” is defined as a person (a named individual or company) who can prove that they live in the District of the South Hams by producing a Council Tax invoice addressed to them by name and payable in respect of an address within the district; for the avoidance of doubt this includes existing residents of Southern Mill & Alston Farm Caravan Parks who were CT payers in their own right when their moorings were allocated (new owners will not qualify).
- Residents are entitled to the allocation of a berth or mooring controlled by the Harbour Board or, if none is vacant, to have their name placed on a waiting list.
- the waiting list will be in two parts: the A list, for persons who pay 100% council tax and the B list for persons who pay 90% council tax .
- if a person on the B list becomes a 100% council tax payer, they will move on to the A list retaining the benefit of the time accrued on the B list.
- Any mooring licence or berthing licence holder who ceases to be a resident will cease to qualify for the mooring at the end of the year in which they cease to be resident but at the discretion of the Board may be allocated a ‘period of grace’ of two years to find another mooring; thereafter they will not be re-allocated a mooring.

Moorings that were allocated prior to the requirement to be a Resident of the South Hams.

- the requirement to be a resident of the South Hams will be taken as having been introduced on 23 January 1985, when the then Policy was implemented.
- Moorings holders who are not resident but who claim to have been entitled to an annual renewal of their mooring licence or berth from a date before 23 January 1985 may apply to have their request to maintain annual renewal of their licence reviewed by the Board

- If the Board (or a sub-committee of the Board convened for that purpose) is satisfied both that the applicant was allocated a mooring prior to 23 January 1985 and that all other requirements of the licence are met, their mooring licence will be renewed annually until they have found a suitable alternative mooring or until 24 March 2028¹, whichever is sooner.

1.6 The situation has now arisen that there are a number of unallocated moorings in Frogmore, Bowcombe and Kingsbridge. There is currently no waiting list for these areas with all resident requirements being satisfied. The attached request is for the Board to agree to the allocation of a mooring in Frogmore Creek, where there is no waiting list, to a customer who is not resident within the South Hams. This is contrary to the Moorings Policy, which is programmed for review in 2012, and the implications of departing from the moorings policy need to be carefully considered.

2. ISSUES FOR CONSIDERATION BY THE BOARD OR AD HOC SUB COMMITTEE

2.1 The following customers have made representation for consideration by the Board regarding moorings:

2.1.1 Mr S Montandon – Appendix 1.

2.1.1.1 Pros:

- Would make use of a mooring that otherwise would not be allocated. There is no waiting list for moorings in Frogmore Creek, a situation which has endured for several years. Can be conditional – in making the exception you could dis-apply the normal renewal provisions.
- Would satisfy the customer's request.

2.1.1.2 Cons:

- Contrary to Moorings Policy, this has been enforced over recent years to allocate moorings only to residents.
- Could potentially set precedence.
- Difficult to justify when mooring licences are not being renewed in other parts of the harbour for customers who are not resident in the South Hams.

3. LEGAL IMPLICATIONS

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

3.2 A 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

¹ The expiry date of the current lease from the Duchy of Cornwall.

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.

- 3.3 This application should be considered in the light of this advice, the Board's own Moorings Policy, the current availability of moorings, the fact that each licence is annual, and on the basis that there need be no guarantee of continuity if an exception is made now.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications immediately consequent upon this report.

5. Risk Assessment

- 5.1 The risk management implications are:

Risk/Opportunity	Issues / Obstacles	Mitigation
There are no human rights issues within this report.	The Council could be challenged over the legality of the Moorings Policy.	Monitoring Officer has confirmed that it is not unlawful to allocate a scarce resource using the criteria of local residency.
There are insufficient Local Residents requiring moorings at some stage in the future.	There is currently a healthy waiting list of local people who pay 100% Council tax. This may change in the future.	If the "A" list is satisfied, then moorings can be allocated to people waiting on the "B" list (90% Council Tax payers).

Corporate priorities engaged:

CP3: Retain the district's character
 CP 5: An accessible Council
 CP6: Value for Money

Consideration of equality and human rights:

There are no equality or human rights issues with this report

Biodiversity

None

considerations:

Sustainability considerations:

The Moorings Policy is fundamental to the sustainability of all harbour activities.

Crime and disorder implications:

None

Background Papers:

Moorings Policies Dated 25 September 2007, revised in 2009 and 2010; Moorings Policy dated 23 January 1985

Appendices attached:

Appendix 1 Montandon Letter dated 5 August 2011

Ian Gibson
Harbour Master

Salcombe Harbour Board
 26 September 2011