

AGENDA
ITEM

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SOUTH HAMS DISTRICT COUNCIL

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NAME OF COMMITTEE	Salcombe Harbour Board
DATE	2 June 2014
REPORT TITLE	HARBOUR DIRECTIONS
REPORT OF	Salcombe Harbour Master
WARDS AFFECTED	All South Hams

Summary of report:

To consider an application to the Department for Transport (DfT) for the power to make Harbour Directions.

Financial implications:

There are no direct financial implications from this report. The DfT have indicated that there will be no charge for their conference of the powers of Harbour Directions as ports will be dealt with in batches.

RECOMMENDATIONS:

That the Harbour Board RESOLVES to RECOMMEND to Council:

The Harbour Authority applies to the DfT to be considered for the for the power to make Harbour Directions. The Harbour Authority has had regard to the content of and agrees to comply with the code of conduct on Harbour Directions, in particular:

- a. To maintain a Port User Group and to apply dispute resolution procedure such as is set out in the code of conduct when required;
- and,
- b. To have regard to supplementary guidance issued from time to time by the National Directions Panel on the subject of harbour directions.

Officer contact:

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1. BACKGROUND

- 1.1 Salcombe Harbour Authority is a statutory harbour authority and has a duty to regulate navigation within its harbour. The Authority also has the power to make byelaws to provide an enforceable legal framework that can be used to assist in regulation.
- 1.2 Byelaws provide general rules for navigation and the conduct of a vessel within the jurisdiction of a Harbour Authority. In addition to these powers, The Harbour Master is able to give special directions to vessels within his area of authority in respect of when and how they may enter the harbour and where and how they may moor.
- 1.3 The Marine Navigation Act 2013, Appendix A, made provision in relation to marine navigation and harbours and provides Salcombe Harbour Authority with the opportunity to apply for the powers to make Harbour Directions.
- 1.5 At the Board meeting in February 2014 the Board Resolved that Salcombe Harbour Authority apply for the power to make harbour directions under sections 40A-40D of the Harbours Act 1964 as inserted by section 5 of the Marine Navigation Act 2013 (SH43/13).
- 1.6 An Expression of Interest was made to the DfT Appendix 1 and an acknowledgement received, Appendix 2.

2. ISSUES FOR CONSIDERATION

- 2.1 The formal application is now required by the DfT by the end of June 2014. The draft application is at Appendix 3.
- 2.2 As part of the application the Harbour Authority is required to confirm that:
 - a. To maintain a Port User Group and to apply dispute resolution procedure such as is set out in the code of conduct when required.
 - b. To have regard to supplementary guidance issued from time to time by the National Directions Panel on the subject of harbour directions.

To comply with the DfT's requirements of compliance the statements have been incorporated into the recommendation. For completeness the DfT's Harbour Direction Guidance is at Appendix 4 and the National Directions Panel Supplementary Guidance: Code of Conduct is at Appendix 5.

3. LEGAL IMPLICATIONS

- 3.1 The Salcombe Harbour Authority is the statutory body, and is South Hams District Council. The Salcombe Harbour Board is the Board of 10, which is a committee of Council. The Board is the Duty Holder for the Harbour Authority.
- 3.2 The Harbour Board is responsible for making and enforcing policies for the regulation and safe conduct of Salcombe Harbour. It is right and proper to review the policies for conducting enforcement from time to time in the light of experience and prevailing circumstances.
- 3.3 The appended enforcement policy has been updated and accords with current legal requirements including the Human Rights Act.
- 3.4 A review of byelaws will be required to determine if any statutory provision of local application will be need to be amended or repealed.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications from this report.

5. RISK MANAGEMENT

- 5.1 The risk management implications are:

Risk/Opportunity	Risk Status			Mitigating and Management Actions
	Impact/Severity	Likelihood/Probability	Risk Score	
Byelaws become out of date and do not address the current problems within the Harbour	3	2	6	Byelaws reviewed annually. The minor changes currently outstanding are manageable in the short term with the most expedient way of making any changes being the introduction of the Marine Navigation Bill 2012-13. Byelaw changes are extremely difficult to

				progress through the DfT and could take up to 2 years. The power of Harbour Directions offers a complementary power to aid port management.
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6. OTHER CONSIDERATIONS

Corporate priorities engaged:	Community Life Economy Environment
Statutory powers:	The Pier and Harbour Order (Salcombe) Confirmation Act 1954 (Sections 22-36).
Considerations of equality and human rights:	A person accused of contravening civil or criminal law has the right to a fair hearing, to have their views considered before action is taken, and, if it comes to it, to a fair trial. They are also entitled to be treated without unlawful discrimination of any kind. The enforcement policy has been drafted with these requirements in mind.
Biodiversity considerations:	None
Sustainability considerations:	None
Crime and disorder implications:	The Enforcement Policy gives clear guidance on the enforcement of Harbour byelaws
Background papers:	Salcombe Harbour Byelaws Enforcement Policy dated April 2013 (SH 62/12) 2013 Port Marine Safety Code Audit Harbour Risk Assessments and safety management System, reviewed November 2013. Report on Harbour Directions (SH43/13).
Appendices attached:	1. Expression of Interest. 2. Acknowledgement of Expression of Interest 3. Draft Formal Application for harbour Directions 4. DfT Harbour Direction Guidance. 5. NDP Guidance – Code of Conduct