

Report to: **Salcombe Harbour Board**

Date: **14 November 2022**

Title: **Governance Arrangements – Memorandum of Understanding with the Executive**

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

Wards Affected: **All**

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: Immediately following this meeting

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Recommendation

It is recommended that that the Board agrees to the Chairman signing the Memorandum of Understanding with the Executive 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 Board becoming an advisory board to the Executive.
- 1.2 This report seeks approval for the Chairman to sign a memorandum of understanding with the Executive setting out the respective roles of the Board and the Executive.

2. Background

- 2.1 On 24 January 2022, the Board was advised that the Council’s then arrangements for the discharge of its harbour authority functions

lacked clarity as to whether the full Council, the Executive, or the Board was the duty holder. Following a further report and a workshop, the Board recommended that responsibility for the Council's functions as Harbour Authority, and the role of Duty Holder, should be that of the Executive, with the Board using its experience and knowledge to act as an advisory board to the Executive, in accordance with a Memorandum of Understanding and Terms of Reference (Min SH.41/21 refers). The full Council agreed the recommendation at its meeting on 19 May 2022 (Min CM. 8/22 refers).

3. Outcomes/outputs

- 3.1 External solicitors with experience of harbour governance issues were instructed to draft a memorandum of understanding. The draft memorandum of understanding is set out in **Appendix A**.
- 3.2 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 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.

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 has been circulated to members of the Board.

5. Proposed Way Forward

- 5.1 If the Board agrees the recommendation, then a substantially similar report will be taken to the Executive seeking approval for the Leader to sign the memorandum on behalf of the Executive.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address

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 out of 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 /	N	

Biodiversity Impact		
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 – Draft Memorandum of Understanding

Background Papers:

There are none.