

REPORT TO EXECUTIVE

Date of Meeting: 10 March 2020

REPORT TO COUNCIL

Date of Meeting: 21 April 2020

Report of: Director (DB)

Title: Port Marine Safety Code – Pathway to Compliance

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

1. What is the report about?

To highlight major changes required to enable Exeter City Council to meet Port Marine Safety Code Compliance

2. Recommendations:

Executive recommends to Council the following changes to its constitution;

- 2.1 To set up a politically balanced Harbour Board (Council Committee) comprising of six elected Members and six externally appointed members
- 2.2 To agree the Terms of Reference for the Board as follows:
 - (a) To maintain strategic oversight and direction of all aspects of the Harbour operation, including marine safety;
 - (b) To be responsible for the development of policies, plans, systems and procedure for safe navigation;
 - (c) To ensure that all assessments and reviews are undertaken as required to maintain and improve marine safety;
 - (d) to ensure that the harbour authority sees and adopts appropriate powers for the effective enforcement of their regulations, and for the setting dues at a level which adequately funds the discharge of all their duties;
 - (e) To appoint a Designated Person to provide independent assurance directly to the Duty Holder that the Marine Safety management system is working effectively;
 - (f) To investigate the potential for applying for a Harbour Revision Order to empower the Council to take enforcement action on issues such as dangerous use of jet skis through Special Directions and to oversee a review of the Bye-Laws covering the Estuary.

- 2.3 To agree expenditure of £25,000 on a Harbour Patrol vessel following contributions from East Devon District Council (£15,000) and Exmouth Town Council (£10,000)

3. Reason for the recommendation:

- 3.1 To put in place vital elements of the Exeter Port Authority governance and legal framework that are necessary to successfully obtain Port Marine Safety Code compliance;
- 3.2 To act on the advice of the Council's internal Legal Team, alongside external legal advice from a specialist in marine law.
- 3.3 To follow recommendations made by the Maritime & Coastguard Agency following a Port Marine Safety Code Health Check visit in November 2019 and subsequent report.
- 3.4 To follow good port governance guidance issued by the Department for Transport in 2018.
- 3.5 To put on record the Council's thanks to both East Devon District and Exmouth Town Council for their financial contribution and to seek Member approval to put the additional £25,000 to the existing £50,000 capital sum to purchase a Harbour Patrol boat for the sum of £75,000.

4. What are the resource implications including non financial resources.

- 4.1 External positions on the Harbour Board are expected to be non-salaried although a small annual sum of £1,800 should be made available to cover the expenses of these six members from existing Waterways budgets.
- 4.2 The formation of a Harbour Board will create extra work for Democratic Services in managing between 4 and 6 meetings per year.
- 4.3 Exploring a Harbour Revision Order will have high impact on the workload of the Council's internal Legal Team and officers within Waterways and therefore additional resources which have not been costed are likely to be needed.
- 4.4 Authorising an additional £25,000 on the Harbour Patrol vessel will have no direct financial impact as this money has been contributed by other Authorities.

5. Section 151 Officer comments:

- 5.1 The request for additional expenditure to be added to the capital programme is noted along with the external funding that has been awarded. It is a requirement that Council approve all expenditure regardless of how it is funded.
- 5.2 As a result of the external funding there will be no overall impact on the Council's financial position.

6. What are the legal aspects?

Given the Health & Safety implications, there is a pressing need to ensure that the City Council complies with the Port Safety Marine Code.

7. Monitoring Officer's comments:

Pursuing a Harbour Revision Order is expensive and time consuming and may result in a Public Inquiry. The Harbour Board will have to consider this aspect as part of its due diligence when testing the feasibility of applying for a Harbour Revision Order.

8. Report details:

8.1 The Council is the Port Authority for the Exe Estuary from Blackaller Weir (outside Mill on the Exe) to the 'Safe Water Mark', one mile out to sea off Exmouth beach.

8.2 As such, the responsibilities include:-

- a) Providing and maintaining lights and buoys to ensure safe navigation;
- b) Exercising functions with regard to nature conservation and other environmental considerations;
- c) Conserving the harbour so that it is reasonably fit for use as a port and in such condition for a vessel to utilise it safely;
- d) Complying with the Port Marine Safety Code;
- e) Complying with Environmental Protection legislation; and
- f) Keeping the canal open, maintained and navigable for commercial vessels

8.3 We are currently pursuing Port Marine Safety Code (PMSC) compliance. Although the PMSC is not mandatory all Harbour Authorities are expected to comply and failure to do so can lead to prosecution under other relevant legislation, such as the Health and Safety at Work Act (maximum penalty 2 years imprisonment and/or unlimited fine), in the event of serious incident or accident.

8.4 During 2018 Members backed the recommendation to appoint a Harbour Master and Harbour Patrollers (x 2 FTE) as the first stage in the Council moving towards Port Marine Safety Code compliance.

8.5 These officers have made good progress in many of the areas (marine safety management systems, risk assessments, competence), however some fundamental obstacles remain on the route to full compliance.

8.6 The first of these is around Port governance and accountability. This is usually achieved by forming and appointing a:-

- a) Harbour Board, to act as a Duty Holder and who are individually and collectively accountable for compliance with the Code; and
- b) Designated Person, to provide independent assurance about the operation of the marine safety management system

8.7 Department for Transport and Maritime & Coastguard Agency guidance is that:-

- a) the formation and membership of a Harbour Board is critical;

- b) it should be strategic and aware of the commercial and legal framework within which ports operate;
- c) it should ideally be made up of between 8 and 12 people;
- d) half should be elected Members and the other half external appointees who are stakeholder representatives or individuals with valuable skills and experience;
- e) a Chair should be appointed on merit, skills and suitability;
- f) external appointees should be appointed by public advertisement using guidance applicable to public appointments;
- g) the Harbour Master should have access to the Harbour Board in an advisory capacity only, and like any other Council officer they cannot serve on the Board or have voting rights; and
- h) the Designated Person must have direct access to the Harbour Board.

8.8 In order to progress with compliance a Harbour Board should be formed and Designated Person appointed in conjunction with the above criteria.

8.9 The second obstacle is that of legislation, with the Council not possessing the appropriate powers to enable adequate management of the Port by Special Directions.

8.10 This is an historical anomaly resulting from the failure of the Council to incorporate the Harbours, Docks and Piers Act in 1847. As such the Council cannot exercise the powers of Special Direction which is a major concern in relation to ensuring navigational safety and compliance with the Code.

8.11 These Directions would allow the Council to take action against personal watercraft such as jet skis and in emergency situations. In order to now obtain the appropriate powers the Council would need to pursue a Harbour Revision Order to incorporate the 1847 Act mentioned above.

8.12 This would be a lengthy and expensive process (18 months and £150,000 potentially) but without doing so it will be impossible to meet, both in principle and practice, the requirements of the Port Marine Safety Code.

8.13 The proposed Harbour Board would be well positioned to investigate the viability of a Harbour Revision Order and approach both Teignbridge and East Devon District Council's for a contribution towards the anticipated £150,000 costs.

9. How does the decision contribute to the Council's Corporate Plan?

This recommendation will allow the Council to manage the Port in an effective and compliant manner, demonstrating a well-run Council. It also seeks to ensure the many users of the Port can partake in healthy and active pursuits in a safer environment.

10. What risks are there and how can they be reduced?

- 10.1 There are no foreseeable risks in accepting these recommendations, the risk is in failing to maintain progress towards PMSC compliance as stated in 8.3 above.

11. Equality Act 2010 (The Act)

- 11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:
- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
 - advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
 - foster good relations between people by tackling prejudice and promoting understanding.
- 11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.
- 11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.
- 11.4 In recommending this proposal no potential impact has been identified on people with protected characteristics as determined by the Act because:-
- 11.4.1 The aim of improving safety within the Port of Exeter is of benefit to all users.

12. Carbon Footprint (Environmental) Implications:

- 12.1 There are no anticipated negative carbon issues.

13. Are there any other options?

- 13.1 To manage the Port without achieving PMSC compliance but to put the Authority at risk if a fatality or other major incident occurs.

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14. Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-
Department for Transport – Ports Good Governance Guidance 2018

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