

## **REPORT TO EXECUTIVE**

Date of Meeting: 04 June 2024

Report of: Director, Net Zero and City Management

Title: Exeter Port Authority: The role of the Duty Holder

### **Is this a Key Decision?**

No

### **Is this an Executive or Council Function?**

Executive

#### **1. What is the report about?**

1.1 Establishing the role of the Duty Holder for the Port of Exeter

#### **2. Recommendations:**

That the Executive agrees to:

2.1 undertake the role of the Duty Holder for the Port of Exeter in accordance with the Port Marine Safety Code; and

2.2 undertake the required training to fulfil the role.

#### **3. Reasons for the recommendation:**

3.1 The Duty Holder is responsible for ensuring that the organisation complies with the Department for Transport's Port Marine Safety Code (PMSC). Our ambition to achieve compliance with the PMSC and to demonstrate best practice in harbour management, was previously approved at Executive (10/03/20) and Council (21/04/20).

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

4.1 It is anticipated that meetings would be quarterly and there would be two half-day training courses to complete, to gain familiarity with the PMSC and the role of the Duty Holder.

4.2 It is also advised that members of the Executive undertake a familiarisation visit with the harbour team to gain an understanding of the work they do, and the estuary and surrounding environment.

#### **5. Section 151 Officer comments:**

5.1 There are no financial implications contained in this report.

#### **6. What are the legal aspects?**

6.1 A harbour is defined by the Harbours Act 1964 as any natural or artificial harbour, any port, haven, estuary, tidal or other river or inland waterway navigated by sea going ships. Harbour authorities are responsible for the management and running of the harbour.

6.2 Exeter City Council are the statutory Harbour Authority (HA) for the Port of Exeter and Canal.

## **7. Monitoring Officer's comments:**

This report sets out the necessity of putting in place more robust arrangements concerning the role of the Duty Holder in order to demonstrate best practice in harbour management and to aim to ensure a robust approach to safe marine operations in accordance with the Port Marine Safety Code. The Deputy Monitoring Officer has no additional comments.

Simon Copper – Deputy Monitoring Officer.

## **8. Report details:**

8.1 Exeter City Council is the Statutory Harbour Authority for the Port of Exeter and the Canal. The area over which we are the Harbour Authority includes the Exe Estuary from Blackaller Weir (outside Mill on the Exe) to the 'Safe Water Mark', one mile out to sea off Exmouth beach including the Exeter Ship Canal.

Our responsibilities as HA include:-

- a) Being responsible for safety of navigation;
- b) Providing and maintaining lights and buoys to ensure safe navigation (there are over 50 navigation aids in the estuary, which we have provided and maintain);
- c) Exercising functions with regard to nature conservation and other environmental considerations;
- d) 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;
- e) Complying with the Port Marine Safety Code;
- f) Complying with Environmental Protection legislation;
- g) Keeping the canal open, maintained, and navigable for commercial vessels.

This note focuses on the Port Marine Safety Code and the roles identified within the code.

### **8.2 What is the Port Marine Safety Code (PMSC)**

8.2.1 The PMSC published by the Department for Transport, offers a national standard for port safety in the UK with the aim of improving "safety for those who use or work in ports, their ships, passengers, cargoes, and the environment".

8.2.2 Although the PMSC is not a statutory instrument, all Harbour Authorities are expected to comply, and failure to do so can lead to prosecution under other relevant legislation such as the Merchant Shipping and the Health and Safety at Work legislation.

8.2.3 Exeter City Council committed to achieving full compliance with the PMSC at Executive (10/03/20) and Council (21/04/20) and we are starting the process of applying for a Harbour Revision Order, which will bring us a large way towards compliance.

### **8.3 PMSC Compliance and the Duty Holder**

8.3.1 The PMSC introduces two main roles for achieving compliance with the code. They are the 'Duty Holder' and the 'Designated Person'. The PMSC is primarily intended for

the 'Duty Holder', which will, for most organisations, mean those members of the organisation, both individually and collectively, who are ultimately responsible for marine safety.

8.3.2 The Port Marine Safety Code ('PMSC') requires the appointment of a 'Duty Holder'. Those people who are appointed as the 'Duty Holder' are individually and collectively accountable for compliance with the PMSC and their performance in ensuring safe marine operations in the harbour and its approaches. The PMSC itself is best practice guidance not a legally binding obligation. However, as set out in the PMSC, failure to comply with the PMSC can lead to prosecution, for example under section 3 of the Health and Safety at Work Act 1974. All persons appointed by the Council to the role of Duty Holder are undertaking the position in the course of their role for the Council and must act with the same level of care and good faith as they do in other activities they undertake for the Council. If the Council appoint an experienced external 'Designated Person' (see paragraph 8.5), and then follow their recommendations following audit to ensure compliance with the PMSC, then that provides a significant safeguard that the Duty Holder will act in compliance with the PMSC (the Designated Person will provide independent confirmation that the Council is complying with the PMSC or what it needs to do to become compliant). On behalf of their Organisation, the Duty Holder should be able to set policy and approve finances. Typically, it is up to the Organisation to evaluate who is best placed to provide the Duty Holder function and where this responsibility lies. The Duty Holder cannot assign or delegate its accountability for compliance with the Code

8.3.3 In commercial ports, the responsibility lies with the senior management team but in municipal ports, there are a number of differing models. They are:

- One a single person (elected member or senior manager);
- the Executive committee;
- a separate committee of elected members; or
- full council.

8.3.4 Recent training from Associated British Ports highlighted that a single person is not considered a robust model since the responsibility cannot be delegated. In addition individuals do not usually have the power to set budgets or policy.

8.3.5 Most typically in municipal ports, the Duty Holder role sits either with the Executive or Full Council (depending on how the statutory harbour function is held within the Council).

8.3.6 For the Port of Exeter, our opinion is that the Duty Holder role, would be best placed at the Executive Committee to give maximum oversight.

#### **8.4 What are the responsibilities of the Duty Holder?**

8.4.1 The duty holder is responsible for ensuring that the organisation complies with the Code. In order to do that they should:

- be aware of the organisation's powers and duties related to marine safety;

- ensure that a suitable Marine Safety Management System (MSMS), which employs formal safety assessment techniques, is in place (this is already in place for Exeter Harbour);
- appoint a suitable 'designated person' (DP) to monitor and report the effectiveness of the MSMS and provide independent advice on matters of marine safety;
- appoint competent people to manage marine safety (competent team already in place);
- ensure that the management of marine safety continuously improves by publishing a marine safety plan and reporting performance against the objectives and targets set (underway); and
- report compliance with the Code to the MCA every 3 years (completed by the harbour team and the DP).

8.4.2 It is anticipated that meetings would be no more than quarterly and that two half-day training courses, to gain familiarity with the PMSC and the role of the Duty Holder would be sufficient for the role.

8.4.3 It is also advised that members of the Executive undertake a familiarisation visit with the harbour team to gain an understanding of the work they do, and the estuary and surrounding environment.

## **8.5 Who is the Designated Person?**

8.5.1 The DP is a paid independent adviser who provides assurance and advice directly to the Duty Holder. They are effectively working directly for the Duty Holder. Their main responsibility is to determine, through assessment and audit, the effectiveness of the Marine Safety Management System which is a large part of the PMSC.

8.5.2 The DP must be independent and have a thorough knowledge and understanding of the requirements of the PMSC (and supporting Guide to Good Practice) and associated port and marine legislation. The role of the DP does not obscure the accountability of the Duty Holder.

8.5.3 The DP will assist, when required, to assess and audit our compliance against the code and report back to the Duty Holder. The DP will be appointed by the Duty Holder following a transparent process.

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

9.1 The role of Duty Holder directly contributes to a well-run council by exhibiting good governance, making sure that assets are well managed and the harbour is a safe place for all users.

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

10.1 Should ECC fail to appoint a Duty Holder then we will be unable to comply with the PMSC. It is one of the core basic requirements of the Code. The proposals in this report seek to reduce the risks of non-compliance with the PMSC.

The best way to reduce the risk is to appoint an appropriate Duty Holder as a matter of priority.

## **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 this is simply to decide where the role of Duty Holder sits within the Council.

## **12. Carbon Footprint (Environmental) Implications:**

12.1 There are no direct carbon or environmental impacts arising from the recommendations.

## **13. Are there any other options?**

13.1 There are a number of other choices for who should be the duty holder discussed in section 8.3.3. These alternatives either do not give adequate powers or responsibility to the Duty Holder or they are not a robust enough provision since the responsibility cannot be delegated.

**Director, Net Zero and City Management, David Bartram**

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## **Local Government (Access to Information) Act 1972 (as amended)**

Background papers used in compiling this report:-

None

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