

REPORT TO EXECUTIVE

Date of Meeting: 3 December 2024

Report of: Interim Director of Environment Waste and Operations

Title: Selection and Appointment of Exeter Harbour Designated Person

Is this a Key Decision?

Yes

Is this an Executive or Council Function?

Executive

1. What is the report about?

1.1 This report outlines the selection process taken to identify individuals with suitable knowledge and understanding to serve as the 'Designated Person' (DP) to the Exeter Harbour Duty Holder and recommends the appointment of James Hannon, Associate Maritime Consultant as the Designated Person to the Harbour Duty Holder.

1.2 The Scope of the Designated Person role is to:

- Provide a Designated Person service, including a point of contact for staff and harbour stakeholders to raise concerns.
- To carry out an Annual 'in person' Port Marine Safety Code audit.
- To provide an Annual report to the Duty Holder on Port Marine Safety

1.3 Harbour Duty Holders must appoint a DP to provide independent assurance on the efficacy and operation of the ports marine safety system, in accordance with the Port Marine Safety Code (the Code).

2. Recommendations:

2.1 That Executive appoint James Hannon, Associate Maritime Consultant, as the Designated Person to the role of Harbour Duty Holder.

3. Reasons for the recommendation:

3.1 The Duty Holder has the responsibility for selecting and appointing the DP.

3.2 The Duty Holder has delegated the selection process to the Harbour Master in consultation with the Portfolio Holder for City Management and Chair of Harbour Board, ensuring the process is compliant with council procurement policy, and that the DP selection criteria is in accordance with the Code.

3.3 After an invitation to provide quotations for DP services, two applications were received. Both applicants were highly competent and Code compliant in respect of the skills and experience they offered. The most competitive and experienced was James Hannon (ABPmer) resulting in the recommendation.

4. What are the resource implications including non financial resources

4.1 Non-financial resources will be supplied by the DP.

4.2 Table 1. provides the fixed one-year price for the DP service exclusive of VAT

Item Description	Cost
Designated Persons Service	£900
One onsite audit and audit report	£4,900
Annual DP presentation to the Duty Holder	£600
Annual Total	£6,400

4.3 The contract period is limited to two-years and so the total contract value is expected to remain below £25,000. At value below £25,000 a direct supplier approach and two quotes is compliant with ECC procurement and contract procedures.

4.4 The initial two-year period is fully funded by the existing Waterways budget.

5. Section 151 Officer comments:

5.1 As the funding required is covered by existing budgets, there are no additional financial implications for Council to consider.

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 is the statutory Harbour Authority for the Port of Exeter and Canal. Exeter City Council's Executive is the Duty Holder responsible for ensuring that the organisation complies with the Department for Transport's Port Marine Safety Code (PMSC). The Duty Holder cannot assign or delegate its accountability or compliance with the Code.

6.3 The PMSC provides for two main roles for achieving compliance with the Code. They are the 'Duty Holder' and the 'Designated Person'. The members of Executive as Duty Holder are individually and collectively accountable for compliance with the PMSC and to ensure safe marine operations in the harbour and its approaches. The PMSC sets out best practice to be followed. Although compliance with the PMSC is not a legally binding obligation, failure to comply with its provisions can result in legal action, for example, under the Health and Safety at Work Act 1974.6.3 The Designated Person is a paid independent adviser who provides assurance and advice directly to the Duty Holder. The DP effectively works for the Duty Holder. The main responsibility of the DP is to determine, through assessment and audit, the effectiveness of the Marine Safety Management System which is a significant part of the PMSC. The DP must be independent and have a thorough knowledge and understanding of the requirements of the PMSC (and the 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. The DP will assist, when required, in assessing and auditing the Council's compliance with the Code and will report back to the Duty Holder.

6.4 The role of the DP is central in ensuring that the Duty Holder is properly informed and aware issues concerning the management of the harbour in the context of compliance with the PMSC. In appointing an experienced Duty Holder, and following their recommendations following audit, it is intended that the Council will be compliant with the PMSC. This will provide a significant safeguard that the Duty Holder will act in compliance with the Port Marine Safety Code on the basis that the DP will provide independent confirmation that the Council is complying with the PMSC or sets out what the Council needs to do in order to become compliant. The intention is that the DP will have independent advice on the compliance with the Port Marine Safety Code.

7. Monitoring Officer's comments:

7.1 This report sets out the requirements to appoint a Designated Person. The Legal Aspects at paragraph 6 set out the respective roles of the Duty Holder and Independent Person, and the role of the Independent Person in advising the Duty Holder on issues of compliance with the Port Marine Safety Code.

8. Report details:

8.1 As work to enhance Code compliance and best practice within Port and Harbour operations is ongoing, an objective and robust auditing system is required. To provide objective assurance, the approach taken to fulfilling the DP has been to identify external consultants with the relevant qualities and competencies, and with no individual or conflicting interests in the Harbour.

8.2 After consultation with the Harbour board on the Job and Person Specification, and in compliance with Council Contract Procedure Rules, with limited potential applicants because of the specialist competencies, the Harbour Master directly approached five industry competent individuals for competitive application and quote.

8.3 Port Marine Guide to Good Practice considers competent as:

- Having relevant first-hand experience of the port marine environment and port operation.
- Having appropriate knowledge of shipping, shipboard operations, and port operations.
- Understanding the design, implementation, monitoring, auditing, and reporting of Safety Management Systems.
- Understanding and being able to apply assessment techniques for examining, questioning, evaluating, and reporting on operations and safety management systems.

8.4 The Harbour Master received two applications, both from qualified Master Mariners with demonstratable competencies (as in 7.3), capable of potentially delivering DP services for Exeter Duty Holders.

8.5 Both applicants provided suitable professional indemnity of £1,000,000 or above.

8.6 Of the two applications James Hannon (ABPmer) however, is considered to have the most extensive and bespoke DP and Port Marine Safety experience. They are the current DP with Dorset Council and Peel Ports group and have been formerly the policy lead and

subject matter expert to the Department for Transport for Port Marine Safety Code operations, technical advice, and assurance auditing (see appendix 1).

8.7 In addition to having the most extensive and directly relevant experience James Hannon (ABPmer) provided the most competitive quote.

8.8 Fully competent and with considerable direct experience of port marine safety application and the lowest competitive quote, James Hannon is considered the most suitable applicant.

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

9.1 The recommendation meets all six pillars of a well-run council:

- 1) The appointment and cost falls within an existing balanced budget.
- 2) The appointment of a DP will support compliance with the Code and implementation of the Harbour Revision Order, enhancing Harbour Governance.
- 3) In compliance with Council procurement rules the appointment will supply value-for-money, with the most experienced candidate for the lowest possible cost.
- 4) The DP provides assurance that there is a customer-focused safety system in place.
- 5) As a resource the DP will support staff and members to upskill and achieve best practice.
- 6) The appointment will ensure Exeter harbour and waterways are managed to industry required standards.

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

10.1 There are no risks identified with the appointment of an appropriately qualified DP.

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 the recommendations are limited to the procurement of Compliance based services only. This bears no relevance to protected characteristics and is a service based on legal duty compliance.

12. Carbon Footprint (Environmental) Implications:

12.1 The DP will be required to make one site visit, by car or train. All other contact will be remote.

13. Are there any other options?

13.1 Compliance with the Code is not statutory, so there remains the option to do nothing. However, whilst the Code is not statutory failure to comply with the provisions outlined within it could, in the event of an incident, lead to prosecution under the Health and Safety at Work Act 1974.

13.2 The appointment of a DP in accordance with the Code to mitigate marine safety risks and assure the efficacy of the port marine safety system is considered a reasonably practicable measure to ensure moral and legal compliance.

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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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