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Decision Report - Executive Decision

Forward Plan Reference: FP/22/12/05

Decision Date - 27/02/23

LGR Port and Harbour Governance

Executive Member(s): Cllr Bill Revans - Leader of the Council

Local Member(s) and Division: All

Lead Officer: Dave Coles – Coastal and Environmental Protection Manager (Sedgemoor District Council)

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1. Summary / Background

- 1.1 This report details the various governance arrangements that will need to be put in place for the ports and harbours for the New Somerset Council.
- 1.2 Sedgemoor District Council, Somerset West and Taunton, and Somerset County Council have Ports and Harbours within their areas of responsibility.
 - Sedgemoor District Council is the Statutory Harbour Authority (SHA) and Competent Harbour Authority (CHA) for the Port of Bridgwater (Does not include Bridgwater Docks)
 - Somerset West and Taunton are the Statutory Harbour Authority (SHA) for Minehead and Watchet Harbours.
 - Somerset County Council have statutory responsibility for Bridgwater Docks.
- 1.3 The operation of ports and harbours are governed by both national and local legislation which sets out duties and powers that the respective SHAs must fulfil. In addition, there are codes of practice and guidance documents such as the Port Marine Safety Code, PMSC Guide to Good Practice, Ports Good Governance Guidance, Safety in Docks (ACOP); that cover issues such as governance and safety.
- 1.4 The Port Marine Safety Code ("PMSC") sets out a national standard for marine safety at ports and harbours. It applies to ports, harbours, and other marine facilities, berths and terminals. The PMSC is best practice guidance rather than "law". However, ports and harbours are expected to comply and failure to do so can lead to prosecution (for example, under section 3 Health and Safety at Work Act 1974).

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Harbour Function and Duty Holder Appointment

- 1.5 The Harbour Function is a local choice function under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. This means that it can sit with Full Council, the Executive or be split between the two. The legal advice obtained is that the Harbour/Port function should sit with the Executive as this will give clear reporting lines and be consistent with the recommendations relating to the Duty Holder discussed below.
- 1.6 The PMSC requires that all organisations must also have a “Duty Holder” who is accountable for compliance with the Code and their performance in ensuring safe marine operations. For most organisations the role of Duty Holder is undertaken by members of the management team or a board who are (both collectively and individually) publicly accountable for marine safety under the Code. The responsibility of the Duty Holder, once appointed, cannot be delegated.
- 1.7 The Duty Holder is responsible for ensuring that the organisation complies with the Code. In order to effectively undertake this role they should:
- be aware of the organisations powers and duties related to marine safety;
 - ensure that a suitable Marine Safety Management System is in place;
 - appoint a suitable Designated Person (the person who provides audits and monitors compliance and provides independent assurance that the MSMS is being effective in ensuring compliance with the PMSC);
 - appoint competent people to manage marine safety;
 - be responsible for publication of a marine safety plan and reporting of performance against objectives and targets set; and
 - report compliance with the Code to the MCA every 3 years.
- 1.8 The Duty Holder will need training in relation to their role and responsibilities, access to the Designated Person (and vice versa), the financial authority to ensure compliance with the PMSC, and the ability to make decisions quickly if necessary.
- 1.9 At Sedgemoor District Council the Duty Holder is currently the Executive committee of the council. The Duty Holder at Somerset West and Taunton is also the Executive with the lead being taken by the Portfolio Holder for the Environment.

Harbour Function and Duty Holder – Proposed Way Forward

- 1.10 Legal advice has been sought on the where the Duty Holder role and port function should sit in the new Somerset Council. The view is that the port function and role of Duty Holder should sit with the Executive Committee. Other Options were explored and were not considered appropriate and are discussed in Section 4 of this report.

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1.11 Once appointed the Harbour Team will arrange for suitable training to be provided to members of the duty holding body.

Establishment of a Harbour Management Committee (HMC)

1.12 Some ports have established Harbour Management Committees as detailed in the DfT Ports Good Governance Guidance. The legal advice sought has suggested that a HMC is an option that could be followed for the new Authority. A Harbour Management Committee would be established as means to govern the operation of the port.

1.13 The establishment of a HMC (which would be constituted as a committee within the current LA system) can bring openness and additional accountability to port decisions, along with more expertise and experience (as a skills audit can be carried out prior to board members being decided upon). Membership of a HMC would usually be along the following lines

- approximately 50% LA elected members of a constituent authority. These do not all have to be LA councillors, but can be co-opted representatives who are appointed by the LA or provide specific skills in support of port management;
- the port chief executive/harbour master should have access to the HMC in an advisory role, but as an officer of the Council they cannot serve on the committee or have voting rights;
- external appointees who are stakeholder representatives or individuals with valuable skills and experiences;
- a Chair appointed on merit, skills and suitability;
- external members should be appointed by public advertisement using the guidance applicable to public appointments, in line with the advice given above.

1.14 The HMC can have decision making powers or can be advisory in nature. If the HMC is advisory (rather than decision making) then the Executive would take decision on the advice/recommendations arising (if the port function sits with the Executive).

1.15 Sitting outside of the Committee structure, the existing Councils have a number of advisory groups that are consulted regarding activity within the ports. These include the Watchet Advisory Committee which was set up pursuant to the Watchet Harbour Revision Order 2000. This cannot be altered without amending the Harbour Revision Order (HRO).

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Harbour Management Committee -Proposed Way Forward

- 1.16 It is recommended that a HMC is set up to govern the operation of the ports in accordance with the DfT Ports Good Governance Guidance.
- 1.17 If this is supported by members two documents will be required to articulate the governance arrangements for the HMC. The first being a Terms of Reference to set out the purpose of the HMC for incorporation into the Council' constitution. The second is a Memorandum of Understanding setting out the commitments and agreements of the Executive and the HMC, whether the HMC is advisory or decision-making and the running and management of the Harbours.
- 1.18 Whilst the HMC could be granted decision-making powers, it is usually required to operate within a budget approved by the Council, with restraints on the level of expenditure that can be approved. As it is recommended that the Executive has the ultimate responsibility as Duty Holder, it is proposed that the Harbour Management Committee is advisory only and makes recommendations to the Executive. This is because as Duty Holder the Executive has the ultimate responsibility in relation to the Ports and also the ability to make financial decisions about its operations.
- 1.19 If Members are supportive of this approach, it is recommended that Ashford's Solicitors are requested to prepare the Terms of Reference for the Harbour Management Committee and Memorandum of Understanding for member approval.
- 1.20 Due to the Watchet Advisory Committee being established by a Harbour revision order (HRO) it is recommended that the current advisory groups remain the same pending an application for HROs when the number and composition of these groups will be reviewed.

Appointment of Designated Person

- 1.21 Each Harbour Authority must appoint an individual to fulfil the role of Designated Person. Their role is to provide independent advice to the Duty Holder on compliance with the Port Marine Safety Code and effective operation of any Marine Safety Management Systems operating within the port. They will effectively audit port operations to ensure independent scrutiny and assessment and advise the Duty Holder accordingly. It is advisable for the DP to be independent and not employed directly by the local authority.
- 1.22 The Designated Person must have suitable knowledge and experience of maritime legislation and codes of practice to enable them to fulfil role.

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- 1.23 At the port of Bridgwater the Designated Person role is provided by the Bristol Port Company. At SWAT ports the role is currently fulfilled by an officer of the council.

Appointment of Designated Person Proposed Way Forward

- 1.24 Discussions are taking place with the Bristol Port Company who have indicated that they may be willing to continue to act as the Designated Person for the ports and harbours in the new authority.
- 1.25 Discussions between the Harbour Master and officers at SDC and SWAT agreed that the most suitable option would be for the Designated Person to be provided independently by a third party. It was also agreed, that Bristol Port Company (if they wish to continue in the role) should be recommended to the Duty Holder of the new authority (once appointed) to fulfil their role of Designated Person. If the Bristol Port Company do not wish to continue in the role a suitable alternative will be proposed. The Duty Holder will need to approve this appointment in due course.

Port/Harbour Legislation and Powers

- 1.26 As discussed above the operation of ports and harbours are governed by both national and local legislation which sets out their duties and powers.
- 1.27 There are four different statutory harbour undertakings for which Somerset Council will be the SHA each with its own legislation. Some of this legislation dates back to the 19th century and there is a different set of legislation for each port. Therefore, combining and modernising this legislation using a Harbour Revision Order (HRO) is a potential course of action. Ashford's solicitors in their advice have stated:

"With each undertaking governed by different local harbour legislation, the various statutory regimes that the Council must comply with becomes confusing and complex. This position makes it harder for the Council to manage the harbours in an efficient and economical manner.

If an HRO was sought to fully modernise and consolidate the Council's powers as SHA under a single Order, it would be sensible to repeal nearly all of the current local harbour legislation and replace it with clear, modern powers under the new HRO.

The modernised powers could include:

- 1. Powers of General Direction (Ability to control leisure craft and some land based activities);*

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2. *a wide power of disposal and associated modern powers regarding development of land;*
3. *a modern suite of charging powers and the repeal of any wide charging exemptions;*
4. *a standard provision regarding the use of harbour funds and the establishment of a reserve fund (central reserve fund for all the harbours or a separate reserve fund for each); and*
5. *clearly defining the Council's jurisdiction at each harbour."*

1.28 A Harbour Revision Order is not needed prior to vesting day however it is something that should be considered post vesting day for the reasons specified 1.26 above.

Legislation and Powers -Proposed Way Forward

1.29 The Governance workstream has advised that all existing legislation and powers will transfer automatically to the new authority on vesting day and will included in the new authority's constitution.

1.30 It is suggested that further work post vesting day is considered to raise a Harbour Revision Order to combine and modernise the various legislation for the Port of Bridgwater, Watchet, Minehead, and Bridgwater Docks.

2. Recommendations

The Executive is recommended to:

1. To recommend to Full Council that the responsibility for the Council's functions as Statutory Harbour Authority and the role of Duty Holder should sit with the Executive Committee.
2. That appropriate training be provided to members of the Executive Committee in relation to their role of Duty Holder.
3. To agree that the role of Designated Person for the new authority should be fulfilled by a independent third party and not by a council officer
4. To approve the appointment the Bristol Port Company as the Designated Person (should they wish to continue in the role)
5. That the establishment of a Harbour Management Committee for the Ports and Harbours outlined in this report is approved.

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6. That delegated authority be granted to the Service Director (Responsible for the Port Functions) to conduct a skills audit for the Harbour Management Committee as soon as reasonably practicable
7. That Ashford's solicitors be instructed to prepare the Harbour Management Committee Terms of Reference, Memorandum of Understanding and Harbour Revision Orders.
8. That delegated authority is granted to the Service Director (Responsible for the Port functions) to run the process for making appointments to the Harbour Management Committee and in consultation with the Service Director (Legal) to establish the Harbour Management Committee
9. To note the continuation of the Watchet Advisory Committee and other existing advisory groups.
10. That delegated authority be granted to the Service Director (Responsible for the Port Functions) to progress the proposed harbour revision orders and the draft proposals be submitted to the Harbour Management Committee and Executive once produced

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3. Reasons for recommendations

- 3.1 Recommendations (1) (2) (3) and (4) relating to the Appointment of Duty Holder and Appointment of Designated Person:

These are requirements of the Port Marine Safety Code. The Port Marine Safety Code ("PMSC") sets out a national standard for marine safety at ports and harbours. It applies to ports, harbours, and other marine facilities, berths and terminals.

The PMSC is best practice guidance rather than 'law'. However, ports and harbours are expected to comply and have to submit a compliance statement to the Maritime and Coast Guard Agency. Failure to do so can lead to prosecution (for example, under section 3 Health and Safety at Work Act 1974) should there be an accident or incident and may have implications for insurance cover.

- 3.2 Recommendations (5) (6) (7) and (8) (9) relating to the Establishment of a Harbour Management Committee:

This is a recommendation of the DTR Ports Good Governance Guidance and will bring openness and additional accountability to port decisions, along with more expertise and experience. It will mean the service will have oversight and scrutiny ensuring the service is run effectively with relevant stakeholder engagement.

- 3.3 Recommendation (10). Approval for the application for a Harbour Revision Order (HRO) in the 2024/25 financial year:

Each Port and Harbour has its own separate legislation which it must comply with, some dating back to 19th century. This makes it more complex when managing the ports especially now they will be being run by a single organisation. Applying for a HRO will allow one consolidated piece of legislation to be in place for all ports and allow the legislation to be modernised where necessary.

4. Other options considered

- 4.1 The advice contained within this report is based on specialist marine legal advice from Ashford's Solicitors and advice from the governance workstream. Whilst other options are available, they are not considered applicable/ the most appropriate course of action in this instance. These issues are discussed below:

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Appointment Duty Holder - Other Options

4.2 The role of the Duty Holder could sit in one of the following four places:-

A Harbour Management Committee (HMC's) – these may be advisory or decision-making. However, even if decision-making they usually operate under an approved budget and therefore have limits on the level of financial transaction they can authorise without Council approval. For this reason, it is not recommended that HMC's are the Duty Holder as they may not have sufficient authority to ensure compliance with the PMSC.

An Individual Person – this could, for example, be a Portfolio Holder. This is less common and usually better to be filled by more than one person jointly and severally to mitigate absence for illness etc and by allocating to more than one person (e.g. the entire Executive) it can aid visibility of the role.

Full Council – this option requires all members of the Full Council to receive Duty Holder training and be aware of their roles and responsibilities. It can also make it harder to make timely decisions due to the cycle of meetings.

Executive – this is the recommended option because there is more than one person appointed, so mitigating concerns about absence for illness etc but the number of people to be trained is significantly lower than for Full Council.

Harbour Function - Other Options

4.3 The Harbour Function is a local choice function under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. This means that it can sit with Full Council, the Executive or be split between the two. Splitting the function between the Executive and Full Council is not recommended as it can lead to increased difficulties in having clear reporting lines which would increase complexity of decision making.

4.4 If the entirety of the harbour authority function was to rest with Full Council then it would logically follow that Full Council will become the Duty Holder under the PMSC. The PMSC makes it clear that the Duty Holder cannot assign or delegate its accountability for compliance with the Code. Conversely, if the entirety of the harbour authority function was to rest with the Executive, then it would logically follow that the Executive become the Duty Holder under the PMSC.

4.5 Due to the concerns expressed above about having to train all Council members and speed of decision-making, it is recommended that the Harbour Function

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rest with the Executive and that the Executive become the Duty Holder under the PMSC.

Appointment of Designated Person - Other Options

- 4.6 The only other option would be not to appoint an independent designated person. However, this would not be consistent with the PMSC therefore was not considered appropriate.

Establishment of Harbour Management Committee (HMC) - Other Options

- 4.7 The only other option would be not to have a Harbour Management Committee. However a HMC is a recommendation of the Ports Guide to good governance and is considered good practice, therefore this option was not considered appropriate.

Port Legislation - Harbour Revision Order (HRO) - Other Options

- 4.8 The only other option would be not to apply for a Harbour Revision Order however with the various ports having separate legislation dating back to the 19th century not applying for a HRO was not considered the most appropriate course of action.

5. Links to County Vision, Business Plan and Medium-Term Financial Strategy

- 5.1.** This decision to approve the recommendations specified in section 2 of this report is part of the LGR Service Alignment and Governance workstreams to ensure Port and Harbour services are safe and legal from vesting day. The proposed recommendations will allow for the port services to be run in a manner that is consistent with best practice guidance to deliver a single service for Somerset residents.

6. Consultations and co-production

- 6.1.** The approach outlined in this report has been produced as part of the LGR Service Alignment – Environment and Climate Change Sub workstream 3 (Environmental Health) and has input from relevant partner organisations and the LGR Governance workstream. Both Sedgemoor District Council and Somerset West and Taunton’s Harbour Teams are in agreement with the approach outlined. The LGR Service Alignment Board on 30th November 2022 and the LGR Governance Board on 14th December 2022 were satisfied in with the approach outlined in this report. A briefing on this report was also given at the SCC Executive/SLT meeting on the 16 January 2023.

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7. Financial and Risk Implications

7.1. The financial implications for the council are summarised below:

(1) Establishment of Duty Holder and Harbour Management Committee:

Councillor expenses in attending committee meetings as either the duty holder (Executive Members) or as part of the Harbour Management Board. These budgets are not held within the Port budgets and would need to come from a central Democratic Services budget.

(2) Appointment of Designated Person:

Fees associated with the Designated Person advising the Executive (Duty Holder) attending meetings and undertaking the annual compliance audit. The level of cost will dependent on how much advice is needed by the Duty Holder/port officers.

It is recommended that a budget is established to cover these costs once known within the new council

(3) Harbour Revision Order:

There would also be costs post vesting day associated with a full consolidation /modernisation HRO covering all harbours. These are estimated below:

MMO fee - £9,970 currently. £15,579 from Oct 2023. Payable when the application is submitted.

Publication of notices in local newspaper and London Gazette. £3 - £5,000

Legal fees iro £40,000 - £50,000 plus VAT and disbursements.

With the HRO application fee increasing to £15,579 in October 2023, it may make sense to commence the HRO process after vesting day but before October 2023.

There is currently no budget identified to undertake this work therefore in order to progress this a new budget would need to be established.

7.2. The key non-financial risks for the council are:

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(1) Non-compliance with best practice in relation to the Port Marine Safety Code and the DTR Ports Good Governance Guidance.

There are risks to the authority if the recommendations in relation to the Duty Holder, Designated Person, and Governance arrangements are not implemented. It could mean that regulatory bodies and port users would not have confidence that the port is being governed and run effectively and in accordance with best practice. The Maritime and Coastguard Agency may take action for non-compliance with the PMSC. There could potentially be insurance implications for the Council. Additionally should there be an accident or incident and it was shown the Council was not compliant with the PMSC then it could lead to further issues in relation to health and safety legislation.

By implementing the recommendations of this report, the risks identified above should be managed effectively.

Predicted Risk Score **Without** Implementing Report Recommendations

Likelihood	5	Impact	4	Risk Score	20
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Predicted Risk Score **With** Report Recommendations implemented

Likelihood	2	Impact	2	Risk Score	4
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8. Legal and HR Implications

- 8.1 The proposals contained within this report have been discussed and agreed with the LGR Governance Board.
- 8.2 The recommendations if implemented will create a clear legal framework within which the port will operate. It will establish a governance structure for the port that will be in accordance with codes of practice, best practice and compliant with the Port Marine Safety Code. It will mean that the port should operate in a safe and efficient manner with open and accountable decision-making including effective stakeholder consultation. Therefore the recommendations should reduce the risks of legal implications as a result of operation of the ports.
- 8.3 As the report relates to Port governance rather than staff structures there are no known HR implications.

9. Other Implications

9.1. Equalities Implications

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The equalities implications of the proposals contained within this report have been considered in relation to:

- **The Port Function sitting as an Executive Function and the Executive Committee acting as the Duty Holder** – the Executive Committee is an established committee within the Council's committee system. Therefore all meetings will be arranged and administered by Democratic Services under their established policies/procedures which will have had equalities impacts assessed. Therefore EIA impacts will be addressed through these existing processes.
- **Appointment of a Designated Person** – This relates to appointment of a third party company/contractor to act as an independent auditor to audit port safety and to act as advisor on safety matters to the Executive Committee (Duty Holder) . Therefore there are no equalities implications considered applicable for this recommendation.
- **The Establishment of a Harbour Management Committee** – The Governance Workstream has confirmed that this committee will be administered by Democratic Services. Therefore all meetings will be arranged and administered by Democratic Services under their established policies/procedures which will have had equalities impacts assessed. Therefore equalities impacts will be addressed through these existing processes.
- **Application for a Harbour Revision Order** – This is purely an administrative function to apply to central government to consolidate the various port legislation into one piece of legislation. Therefore there are no equalities implications considered applicable for this recommendation.

Consultation has taken place with the Equalities Officer who endorses the conclusions outlined above.

9.2. Community Safety Implications

This report relates to governance of the port and harbours therefore there are no Community Safety Implications

9.3. Sustainability Implications

This report relates to governance of the port and harbours therefore there are no Sustainability Implications

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9.4. Health and Safety Implications

The recommendations in this report if implemented would reduce the risk of non-compliance with health and safety legislation. By establishing a duty holding body and appointing a Designated Person the council would be complying with the Port Marine Safety Code and ensuring port safety is given appropriate scrutiny and oversight. By establishing a Harbour Management Committee the Council would be working to recommendations in the DTR Ports Good Governance Guidance which would mean transparent decision making and oversight of port operations.

Periodic Reviews and updating of port legislation is also a recommendation of the Port Marine Safety Code. Therefore if applied for, the Harbour Revision Order would mean the ports and harbours would be operating to one set of modern legislation, powers and duties and therefore simplifying the efficient and safe operation of the port function.

9.5. Health and Wellbeing Implications

This report relates to governance of the port and harbours therefore there are no health and wellbeing implications

9.6. Social Value

This report relates to governance of the port and harbours therefore there are no known social value implications

10. Scrutiny comments / recommendations:

This decision has not been considered by a scrutiny committee

11. Background

Appendix 1 Summary Flow Chart of Governance Structures

Appendix 2 Glossary of Terms

All other necessary information detailed in main body of report

12. Background Papers

12.1 [DTR/MCA - Port Marine Safety Code](https://www.gov.uk/government/publications/port-marine-safety-code)

<https://www.gov.uk/government/publications/port-marine-safety-code>

[DTR Ports Good Governance Guidance](https://www.gov.uk/government/publications/good-governance-guidance-for-ports)

<https://www.gov.uk/government/publications/good-governance-guidance-for-ports>

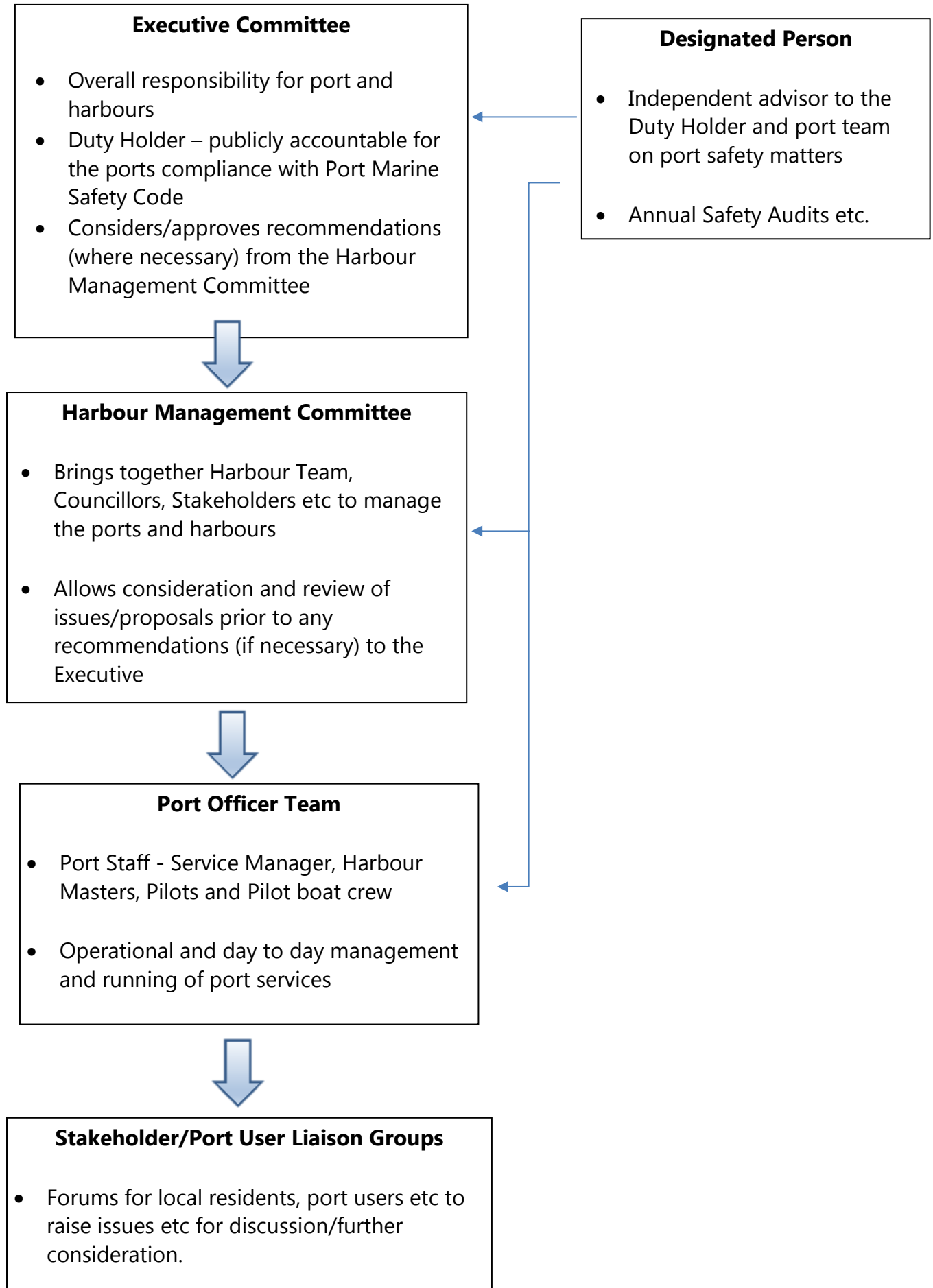
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Report Sign-Off

		Date completed
Legal Implications	Honor Clarke	27/01/23
Governance	Scott Wooldridge	26/01/23
Corporate Finance	Jason Vaughan	30/01/23
Customers, Digital and Workforce	Chris Squire	24/01/23
Property	Paula Hewitt / Oliver Woodhams	24/01/23
Procurement	Claire Griffiths	27/01/23
Senior Manager	Duncan Sharkey	22/01/23
Commissioning Development	Sunita Mills / Ryszard Rusinek	24/01/23
Executive Member	Cllr Bill Revans - Leader of the Council	27/01/23
<u>Sign-off Key Decision / Consulted on Non-Key Decision</u>		
Opposition Spokesperson	Opposition Spokesperson - Leader - Cllr David Fothergill	06/02/23
Scrutiny Chair	Scrutiny For Policies and Environment - Cllr Martin Dimery	01/02/23
Scrutiny Chair	Scrutiny for Policies and Place Committee - Cllr Gwil Wren	31/01/23

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Appendix 1 Summary Flow Chart of Governance Structures



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Appendix 2 Glossary of Terms

Term	Abbreviation	Summary definition
Competent Harbour Authority (CHA)	CHA	Those harbour authorities that have been given statutory powers relating to the provision of pilotage in their waters
Designated Person	DP	Each organisation must appoint an individual as the “designated person” to provide independent assurance directly to the Duty Holder that the Marine Safety Management System for which the Duty Holder is responsible, is working effectively. Their main responsibility is to determine, through assessment and audit, the effectiveness of the Marine Safety Management System in ensuring compliance with the Port Marine Safety Code.
DfT Ports Good Governance Guidance		Guidance document on the governance of ports and harbours
Duty Holder	DH	Organisations must have a “duty holder” who is accountable for their compliance with the Port Marine Safety Code and their performance in ensuring safe marine operations.
Harbour Management Committee (HMC)	HMC	A committee established to govern the management of the ports and harbours
Harbour Revision Order (HRO)	HRO	An order used to change the existing legislation governing the management of a harbour or harbours controlled by the same statutory harbour authority (including the provision of new powers and duties).
Port Marine Safety Code	PMSC	The Port Marine Safety Code (“the Code”) sets out a national standard for every aspect of port marine safety. Its aim is to enhance safety for everyone who uses or works in the UK port marine environment.
Marine safety management System (MSMS)	MSMS	A safety management system based on risk assessment for managing safety within the Port/Harbours
Statutory Harbour Authority (SHA)	SHA	Statutory Harbour Authorities (SHAs) are Statutory Bodies responsible for the

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		<p>management and running of a harbour. The powers and duties in relation to a harbour are set out in local Acts of Parliament or a Harbour Order under the HA 1964.</p>
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