

Report of the Leader and Executive – for decision

Executive Member: Cllr Bill Revans – Leader of the Council

Division and Local Member: All

Lead Officer: Scott Wooldridge – Head of Governance & Democratic Services and Monitoring Officer

Author: Scott Wooldridge – Head of Governance & Democratic Services and Monitoring Officer & Mike Bryant - Service Manager – Democratic Services

Contact Details: democraticservicesteam@somerset.gov.uk / 01823 357628

1. Summary

- 1.1** This report sets out the Leader’s and Executive’s recommendations to Council arising from their consideration of reports at the Executive meeting on 27 February 2023.

Note: The references in this report to Paper A relate to the relevant report considered by the Executive containing specific recommendations to the County Council meeting on 1 March 2023.

- 1.2 Paper A (Port Governance)** was considered at the Executive meeting on 27 February 2023. The Executive endorsed the recommendations and agreed for this to be reported to the County Council to consider and approve.

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. 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.

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.

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).

Harbour Function and Duty Holder Appointment

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.

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. The Duty Holder is responsible for ensuring that the organisation complies with the Code.

The report proposes that the Harbour Function and Duty Holder role should sit with the Council's Executive.

Establishment of a Harbour Management Committee (HMC)

A Harbour Management Committee would be established as means to govern the operation of the port. 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). The HMC can have decision making powers or can be advisory in nature.

This report recommends that a HMC is set up to govern the operation of the ports in accordance with the DfT Ports Good Governance Guidance. 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.

Appointment of Designated Person

Harbour Authorities 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. It is advisable for the Designated Person to be independent and not employed directly by the local authority.

The report recommends the continuation of existing arrangements with the Bristol Port Company to be requested they continue to act as the Designated Person for the ports and harbours in the new authority.

Port/Harbour Legislation and Powers

The operation of ports and harbours are governed by both national and local legislation which sets out their duties and powers. 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.

The report recommends 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.

2.0 Recommendations

2.1 Paper A – Port Governance- see Paper A that Executive considered and endorsed at its meeting on 27 February 2023.

The Council is recommended to agree:

- 1. 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.**
- 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**

3. Options considered and consultation undertaken

- 3.1** Options considered and details of consultation undertaken in respect of the recommendations set out above are set out in the reports and appendices within Paper A.

4. Implications

- 4.1** Financial, legal, Human Resources, equalities, human rights and risk implications in respect of the recommendations set out in this report are detailed within Paper A.

It is essential that consideration is given to the legal obligations and in particular to the need to exercise the equality duty under the Equality Act 2010 to have due regard to the impacts based on sufficient evidence appropriately analysed.

The duties placed on public bodies do not prevent difficult decisions being made such as, reorganisations and service reductions, nor does it stop decisions which may affect one group more than another. What the duties do is require consideration of all of the information, including the potential impacts and mitigations, to ensure a fully informed decision is made.

5. Background Papers

5.1 These are set out within Paper A and its appendices.