

PAPER D

Decision Report - Executive Decision

Forward Plan Reference: FP/23/11/08

Decision Date – 6 December 2023

Key Decision – no

Confidential Information – no



Harbour Management Advisory Committee

Executive Member(s): Leader of the Council and Lead Member for Governance and Communications

Lead Officer: David Clark, Service Director-Governance, Democratic & Legal Services

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Summary / Background

- 1.1 As Members will be aware, Somerset Council has Ports and Harbours within its areas of responsibility. The Council is the Statutory Harbour Authority and Competent Harbour Authority for the Port of Bridgwater (does not include Bridgwater Docks), the Statutory Harbour Authority for Minehead and Watchet Harbours, and has statutory responsibility for Bridgwater Docks.
- 1.2 The operation of ports and harbours is governed by both national and local legislation which sets out duties and powers that the respective Statutory Harbour Authorities must fulfil. In addition, there are codes of practice and guidance documents such as the Port Marine Safety Code and the PMSC Guide to Good Practice, Ports Good Governance Guidance, Safety in Docks (ACOP) that cover issues such as governance and safety.
- 1.3 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.
- 1.4 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 Full Council previously resolved that the responsibility for the Council’s functions as

Statutory Harbour Authority and the role of Duty Holder should sit with the Executive.

- 1.5 The Duty Holder is responsible for ensuring that the organisation complies with the Port Marine Safety Code (“PMSC”). The 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). 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.
- 1.6 Many municipal ports have established Harbour Management Committees as detailed in the DfT Ports Good Governance Guidance as a means to govern the operation of the port. On 15th March 2023 the Executive resolved to establish a Harbour Management Advisory Committee as an Executive Sub-Committee from 1st April 2023 on the terms of reference set out in Appendix 1.
- 1.7 In order to widen the membership, experience and expertise of the Harbour Management Advisory Committee, this report recommends that the Harbour Management Advisory Committee is established as a Council committee (rather than an Executive sub-committee) with membership drawn from the Full Council and external co-opted members with relevant expertise in order to increase governance and scrutiny in relation to that important function.

Recommendations

- 2.1 The Executive agrees:
- a. That the Harbour Management Advisory Sub-Committee is disbanded with immediate effect;

- b. The terms of the Memorandum of Understanding between the Executive and the Harbour Management Advisory Committee attached as Appendix 2;
- c. To recommend to Full Council :
 - (i) that a Harbour Management Advisory Committee is established as an advisory committee to the Executive under s102(4) of the Local Government Act 1972;
 - (ii) approval of the Terms of Reference of the Harbour Management Advisory Committee attached at Appendix 1;
 - (ii) approval of the terms of the Memorandum of Understanding between the Executive and the Harbour Management Advisory Committee attached as Appendix 2;
 - (iii) the appointment of 6 elected members, as nominated by relevant political group leaders, to the Harbour Management Advisory Committee in accordance with the political balance requirements in section 15 of the Local Government and Housing Act 1989.
 - (iv) delegated authority be granted to the Service Director Regulatory and Operational in consultation with the Service Director Governance, Democratic & Legal Services to conduct a skills audit for the Harbour Management Advisory Committee and to conduct the process for the recruitment of appropriately skilled co-opted members to the Committee and make recommendations to Full Council for appointment of the co-opted members

Reasons for recommendations

- 3.1 The establishment of a Harbour Management Advisory Committee as an Executive Sub-Committee limits the membership from Somerset Council to the Sub-Committee to only members of the Executive. The recommendations propose the formation of a committee of the council which would enable broader membership and locally elected members to be part of the Harbour Management Advisory Committee.
- 3.2 S102(4) of the Local Government Act 1972 expressly allows the Council to appoint a committee to advise the Executive as Duty Holder and allows the committee to consist of both members of the Council and co-opted members. The Harbour Management Advisory Committee would remain purely 'advisory' in nature. So although it can continue to have external co-opted members on it, the Harbour

Management Advisory Committee itself would still only be able to make 'recommendations' to the Executive. The Executive would remain as the Duty Holder under the PMSC which makes it clear that the Duty Holder cannot assign or delegate its accountability for compliance with the Code and as Duty Holder the Executive is the body with ultimate responsibility in relation to the Ports and responsibility to make financial decisions about their operation.

3.3 Establishing the Harbour Advisory Committee as a Council committee with both members of the Council and external co-opted members therefore strengthens governance by widening the pool for membership of the committee and allowing members of the wider Council and external appointees who are stakeholder representatives or individuals with valuable skills and experiences to participate in advising the Executive as Duty Holder, and in doing so achieving the balance of skills required to effectively govern the ports.

3.4 The Ports Good Governance Guidance recommends:

“Harbour Management Committees should ideally comprise:

- *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.*

The Harbour Management Committee Chair should ideally be an elected representative of the LA as this will automatically maintain reporting lines and accountability to the Council. Should the LA favour the appointment of an independent Chair, it is important that reporting lines and voting arrangements are clear and in line with LA corporate governance practice. Before recruiting, local authorities should undertake a skills audit to assess the balance of skills required to effectively govern the port and deliver against the business plan.

These skills should be considered for all committee members. In order for the Harbour Management Committee to operate effectively a formal memorandum of understanding could be established between the harbour committee and the local

authority. The memorandum of understanding could set out the recommended ground rules for a framework between the port and its authority.”

In line with the Ports Good Governance Guidance, if Members support the recommendations in this report, two documents will therefore be required to articulate the governance arrangements for the Harbour Management Advisory Committee. The first being Terms of Reference to set out the purpose of the Harbour Management Advisory Committee for incorporation into the Council' constitution. The second is a Memorandum of Understanding setting out the commitments and agreements of the Executive and the Harbour Management Advisory Committee, whether the Committee is advisory or decision-making and the running and management of the Harbours. Draft Terms of Reference for the Committee and a draft Memorandum of Understanding are therefore attached at Appendices 1 and 2 respectively for consideration.

Other options considered

4. Making no change to the existing arrangement and continuing to operate with an Executive Sub-Committee has been considered as an option. However, it is considered that widening the membership to the wider Council and external co-optees who are stakeholder representatives or individuals with valuable skills and experiences to participate in advising the Executive as Duty Holder, will increase participation and achieve the balance of skills required to effectively govern the ports, thereby increasing scrutiny and improving governance.

Links to Council Plan and Medium-Term Financial Plan

5. The recommendations in this report will allow for the port services to be run in an efficient and safe manner that is consistent with best practice guidance to deliver a single service for Somerset residents, and meets the Council core principles including being a listening, empowering council, a council with evidence based and open decision making and a collaborative council.

Financial and Risk Implications

- 6.1 The direct financial implications arising from recommendations in this report result from a moderate increase in travel expenses for attending meetings of the proposed new committee, membership of which is slightly larger than the existing Executive Sub-Committee. These costs will be met from the Members Expenses budget. The Independent Remuneration Panel will need to consider whether to recommend to the Council that the Chair of the new committee should receive a Special Responsibility Allowance as part of the Scheme of Members' Allowances.
- 6.2 There are risks to the authority if the recommendations 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. 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 recommendations					
Likelihood	2	Impact	2	Risk Score	4

Predicted risk score implementing recommendations					
Likelihood	1	Impact	1	Risk Score	2

Legal Implications

- 7.1 Section 102(4) of the Local Government Act 1972 allows the Council to appoint a committee to advise the Executive on any matter relating to the discharge of their functions. Section 102(4)(a) provides that such a committee may consist of such persons (whether members of the appointing authority or not) appointed for such term as may be determined by the appointing authority. The recommendation to Full Council to establish an advisory committee to advise the Executive is therefore in accordance with the Act.

7.2 As the Council previously resolved that the responsibility for the Council's functions as Statutory Harbour Authority and the role of Duty Holder should sit with the Executive, the Committee would be entirely advisory. The Executive would remain the Duty Holder under the Port Marine Safety Code which makes it clear that the Duty Holder cannot assign or delegate its accountability for compliance with the Code. All decisions would therefore need to be taken by Executive or in accordance with the other arrangements permitted in section 9E of the Local Government Act 2000.

7.3 The Council member appointees will need to accord with the political balance requirements in section 15 of the Local Government and Housing Act 1989.

HR Implications

8.1 There are no HR implications arising from this report.

Other Implications:

Equalities Implications

9.1 The proposed new Harbour Management Advisory Committee will be administered by Democratic Services, with all meetings being arranged and administered by Democratic Services under their established policies/procedures which have had equalities impacts assessed. Equalities impacts will therefore be addressed through these existing processes.

9.2 The process for the recruitment and appointment of co-opted members of the Committee will comply with equalities duties and legislation.

Community Safety Implications

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

Climate Change and Sustainability Implications

11.1 This report relates solely to governance of the port and harbours and therefore there are no Climate Change and Sustainability Implications arising.

Health and Safety Implications

12.1 If implemented, the recommendations in this report would reduce the risk of noncompliance with health and safety legislation by ensuring that port operation and safety is given appropriate oversight and scrutiny.

Health and Wellbeing Implications

13.1. This report relates to governance of the port and harbours and therefore there are no Health and wellbeing implications arising.

Social Value

14.1 This report relates solely to governance of the port and harbours and therefore there are no social value implications arising.

Scrutiny comments / recommendations:

15.1 The recommendations in this report have not been considered by a scrutiny committee.

Background Papers

16.1 None

Appendices

- Draft Terms of Reference
- Draft Memorandum of Understanding

Assurance checklist (if appropriate)

	Officer Name	Date Completed
Legal & Governance Implications	David Clark	21/11/23
Communications	Peter Elliott	27/11/23
Finance & Procurement	Nicola Hix	27/11/23
Workforce	Alyn Jones	27/11/23
Asset Management	Oliver Woodhams	27/11/23
Executive Director / Senior Manager	David Clark	21/11/23
Strategy & Performance	Alyn Jones	27/11/23
Executive Lead Member	Cllr Bill Revans	27/11/23
Consulted:	Councillor Name	
Local Division Members	f	
Opposition Spokesperson	Cllr David Fothergill	13/11/23
Scrutiny Chair	Cllr Martin Dimery	13/11/23