



## PAPER D

Purpose: For Decision

# Committee report

Committee	<b>CABINET</b>
Date	<b>THURSDAY 11 JANUARY 2018</b>
Title	<b>NEWPORT HARBOUR – FORMATION OF HARBOUR BOARD</b>
Report to	<b>CABINET MEMBER FOR ENVIRONMENT AND HERITAGE</b>

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### EXECUTIVE SUMMARY

1. This report sets out the requirements of the Port Marine Safety Code in relation to the establishment of a harbour board to assist in demonstrating its compliance with the code and in particular its performance in ensuring safe marine operations.
2. The recommendation is to establish a harbour board which will act as the duty holder and be accountable for marine safety under the code. It also seeks to agree the proposed terms of reference for the board.

### BACKGROUND

3. As Newport is a harbour authority with statutory powers the Port Marine Safety Code (PMSC) is applicable – the code came into effect in 2000 and has been developed to improve safety in UK ports and to enable harbour authorities to manage their marine operations to nationally agreed standards.
4. The code does not contain new legal requirements but includes references to existing legal duties; accordingly failure to comply with the code is not an offence in itself. However, the code is recognised as good practice and failure to adhere to it would be frowned upon especially if the authority was found to be in breach of certain legal duties.
5. The Duty Holder is required to confirm compliance with the code is every three years to the Maritime and Coastguard Agency (MCA). In addition to this the MCA occasionally undertakes “Health Check” visits to review a harbour’s operation, policies and procedures.

6. The code requires that each harbour authority must have a 'duty holder' who is accountable for its compliance with the code and its performance in ensuring safe marine operations in the harbour and its approaches.
7. For most harbour authorities, the role of duty holder is undertaken by members of a harbour board who are both collectively and individually accountable for marine safety under the code acting through a named individual/post.
8. At the meeting of the Executive on 27 October 2015 it was agreed that the Isle of Wight Council's Executive would be the duty holder and as such would receive the appropriate internal officer support as well as independent assurance and training.
9. While the training was provided to the then Executive members, the combination of the change in administration and move to a Cabinet in May 2017 means that the council does not have a clearly defined designated duty holder.
10. The council has not established a harbour board, and while this is not a legal requirement the lack of a harbour board/duty holder is not satisfactory in terms of compliance with the PMSC. This was recently identified as an inadequacy during a routine health check of Newport harbour undertaken by the Maritime and Coastguard Agency (MCA).
11. The creation of a harbour board is timely as it will promote good practice and a modern approach to policies and practices within the harbour. In addition to this it will be able to support the works to promote regeneration of the harbour estate and adjoining land
12. The PMSC requires each harbour authority to hold themselves accountable for the discharge of its duties and powers to the standard laid down. It requires board members to accept responsibility for ensuring that the authority discharges its duties and powers to that standard. Duties and powers relating to the safety of marine operations in any harbour have been entrusted to the statutory authority. Board members are collectively and individually accountable for the proper exercise of their authority's legal duties. It follows clearly that it – and they – are severally and collectively the 'duty holder' and they cannot assign or delegate their accountability for compliance with the code.
13. Guidance on these roles and responsibilities is contained within the PMSC guidance document which forms a background paper to this report. However, the key elements of the role are as follows:
  - Be aware of, and review their existing powers, based on local and national legislation. Seek additional powers if the existing powers are insufficient to meet the obligation to provide safe navigation.
  - Comply with the duties and powers under existing legislation, as appropriate.

- Ensure all risks are formally assessed and as low as reasonably practical in accordance with good practice.
  - Operate an effective marine safety management system which uses formal risk assessment.
  - Use competent people (i.e. trained, qualified and experienced) in positions of responsibility for safety of navigation.
  - Monitor, review and audit the marine safety management system on a regular basis - an independent designated person has a key role in providing assurance to the duty holder.
  - Publish a safety plan showing how the standard in the code will be met and a report assessing the performance against the plan.
  - Comply with the directions from the General Lighthouse Authorities and supply information and returns as required.
  - Sign the MCA required Port Marine Safety Code compliancy statement (every three years).
14. As the harbour is a non-executive function in order for it to be a decision making board/committee it would be necessary for Full Council to delegate this function – which can be called ‘the board’ – but which will be a formal committee.
15. The draft terms of reference set out the extent of the harbour board’s powers as well as detailing functions which are reserved to Full Council.
16. In 2014 officers appointed Marico to act as the designated person for the harbour; Marico are marine consultants that specialise in providing marine and Designated Person services. The PMSC states that each harbour must have a designated person, who is able to provide independent assurance to the duty holder that the marine safety systems are being complied with.
17. The role of the designated person is to:
- Determine through assessment and audit that Newport Harbour Authority has an effective and appropriate Marine Safety Management System.
  - Provide the Newport Harbour Board with independent and professional advice regarding Newport Harbour’s overall compliance with the requirements of the Port Marine Safety Code.
  - Monitor the thoroughness of the risk assessment process and the validity of the assessment conclusions;
  - Monitor the thoroughness of the incident investigation process and the validity of the investigation conclusions;
  - Monitor the application of lessons learnt from individual and industry experience and incident investigation;
  - Assess the validity and effectiveness of indicators used to measure performance against the requirements and standards in the Code; and
  - Assess the validity and effectiveness of the consultation process used to involve all appropriate stakeholders.

18. Following the recent MCA health check an action plan is being prepared to address all of the identified issues and will continue to work with Marico (in their role of designated person) to ensure that this is implemented and that a letter of compliance can be sent to the MCA.

## STRATEGIC CONTEXT

19. Ensuring that Newport Harbour is managed effectively and has a clear direction of travel will help the harbour to contribute fully to the economic wellbeing of the town, the Medina valley and in accordance with the 2017 to 2020 Corporate Plan will assist in the delivery of economic growth and prosperity.

## CONSULTATION

20. As the PMSC applies to all harbour authorities and requires them to have a duty holder (harbour board) there is not a need to undertake any consultation.

## FINANCIAL / BUDGET IMPLICATIONS

21. It is a requirement by statute to account separately for all income and expenditure associated with the harbour estate. This is achieved through a specific cost centre which is used exclusively for all Newport Harbour budgeting. Should income exceed operational expenditure, the surplus must be reinvested within the harbour estate or maintained separately.
22. The accounts for Newport Harbour are subject to annual audits by the council's external auditors; to date the accounts have been accepted by the external auditor with an unqualified audit opinion.
23. As compliance with the code is primarily based on policy and procedure it is not anticipated that there will be any elements that will require additional expenditure which is over and above the normal level of annual revenue expenditure.

## CARBON EMISSIONS

24. The implementation of the requirements of the Port Marine Safety Code future management and development of Newport Harbour is unlikely to have a direct impact on carbon emissions from the harbour estate.

## LEGAL IMPLICATIONS

25. The predecessors of the Isle of Wight Council became responsible for Newport Harbour in 1852. There is a significant amount of local legislation specific to Newport Harbour, including the River Medina Navigation Act 1852, the River Medina Navigation Order 1898, the Newport (Isle of Wight) Harbour Revision Orders 1968 and 1988. In addition to these there are other statutory provisions affecting Newport Harbour relating to harbours in general, such as the Harbour, Docks and Piers Clauses Act 1847, the Harbours Act 1964, the Docks and Harbours Act 1966, the Pilotage Act 1987, Merchant Shipping Act 1995 and also under general legislation, such as the Health and Safety at Work Act 1974 and its subordinate legislation.

26. As stated failure to comply with the code is not an offence in itself; however, it is recognised by a wide range of stakeholder as good practice; subsequently failure to adhere to good practice may be relevant should the harbour be in breach of certain legal duties.

### EQUALITY AND DIVERSITY

27. The council, as a public body, is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
28. None of the identified groups will be impacted by the recommendation contained within this report.

### PROPERTY IMPLICATIONS

29. There are no direct property implications arising from the formation of the harbour board although they may be consulted on lease renewals and new leases for properties which form part of the harbour estate.

### OPTIONS

30. Option A – not to accept the requirement to establish a harbour board and investigate the possibility of the Cabinet undertaking the role of duty holder as set out in the PMSC.
31. Option B – to accept the requirement to establish a harbour board to undertake the role of duty holder as set out in the PMSC. Subsequently to refer the formation of the board and delegation of appropriate powers to Full Council.
32. Option C – not to accept the terms of reference as drafted for the proposed harbour board and revise these accordingly.
33. Option D - to accept the terms of reference as drafted for the proposed harbour board.

### RISK MANAGEMENT

34. The code is considered to be best practice. The continued management of harbour operations by officers without compliance to the code could result in a risk of formal action taken against the harbour authority in the event of an incident where there is a breach of certain legal requirements.
35. The absence of compliance with the requirements of the code to help manage activities in the harbour and ensure that they are undertaken in a safe manner is a hindrance to the effective management of the harbour and does not reflect best practice.

## EVALUATION

36. With the exception of the lack of a clearly defined Duty Holder the harbour operations have been found to be broadly compliant with the current statutory requirements; as stated in the report non-compliance with the code is not an offence although it is recognised as good practice and accordingly should there be an incident where there was a breach of legal duties then failure to adhere to the requirements of the code would come into question.
37. The establishment of a harbour board to undertake the role of duty holder is a key element of the effective management of the harbour; it will promote compliance with the code and will aid future decisions and discussions around PMSC related issues and resource requirements.
38. The duty holder will require effective communication with both the designated person and the senior harbour master; this should include the designated person providing clear guidance on their role under the code and the submission of annual report from the harbour master, which will over time allow comparisons and emerging trends to be highlighted. This must set out clearly why one or more options are being recommended and others are not. In almost every case, the assessment will be how well the option contributes to the objective, how cost effective and affordable the option is and what risks are associated with the option.

## RECOMMENDATION

39. To implements options B and D:

Option B – to accept the requirement to establish a harbour board to undertake the role of duty holder as set out in the PMSC. Subsequently to refer the formation of the board and delegation of appropriate powers to Full Council.

Option D - to accept the terms of reference as drafted for the proposed harbour board.

## APPENDICES ATTACHED

40. [APPENDIX](#) - Newport Harbour Board draft terms of reference.

## BACKGROUND PAPERS

- [Port Marine Safety Code](#)
- [A guide to Good Practice on Port Marine Safety Operations](#)

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