

Full Council

20 October 2022

Harbours Governance and Functions

For Recommendation to Council

Portfolio Holder: Cllr S Flower, Leader of the Council

Local Councillor(s): All

Executive Director: J Sellgren, Executive Director of Place

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Report Status: Public

Brief Summary:

In a council that operates the Leader and Cabinet model of executive decision making the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 require that some functions are matters for the executive only, other functions (such as deciding planning applications) are not to be discharged by the executive and are Council functions which can be delegated to a Committee and a third group of functions are described as “local choice functions” whereby the Council decide locally how they are to be discharged.

Management of Dorset Council harbours is a local choice function. A Harbours Committee which is made up of both councillors and co-opted members chosen for their background and expertise in Harbours matters exercise all functions in matters relating to administration and harbour operations. Functions with regard to income are limited to those set out by Full Council and expenditure is limited to the budget allocated to the Committee. The Harbours Committee also act collectively and individually as duty holders. Currently decisions made by the Harbours Committee are reported to Full Council (which meets only six times a year) for approval.

Going forward, it is proposed that Harbour Management becomes an executive function of Dorset Council, with the Portfolio Holder undertaking the responsibility of duty holder, and the existing Harbours Committee becoming an advisory committee making recommendations to the Executive. Whilst still benefiting from the advice and expertise provided by the Harbours Committee, this change will streamline and accelerate the decision-making process, and enable closer working and collaboration across other council services. It will remove harbours business from Full Council meetings where there is insufficient time to scrutinise and question recommendations. Instead, harbours business will be publicised in the Cabinet forward plan, ensuring visibility for both the Place and Resources Overview Committee and the Scrutiny Committee.

The proposed change will also support improved financial resilience and governance, with Cabinet having the ability to make timely decisions about funding and with access to levels of funds which are beyond the ability of the Harbours Committee, should it be necessary.

The Harbour Budgets are significant, with the three Harbours generating income of over £2M per year, with combined reserves of approximately £2.5M. The existing and forthcoming Harbour Revision Orders are clear that this funding can only be spent on Harbour related activities. The financial accountability will be strengthened as a consequence of the proposed change. This is particularly pertinent when considering future liabilities for the repair, maintenance, and renewal of the harbour walls at each of Dorset's harbours and the cost to all Dorset residents. For Weymouth this amounts to £60m of which Dorset Council's contribution will be in excess of £20m.

Part of the proposed governance changes includes the agreement that the responsibility for historic harbour wall repair loan repayments at Weymouth Harbour which amount to £260k annually should be permanently transferred to Dorset Council allowing the Harbour to build reserves to deliver its asset management plan and to make continued improvements to facilities and customer services.

It is recommended that:

1. The harbour function becomes an Executive function with the Portfolio Holder for Highways, Travel and Environment assuming the responsibility of Duty Holder.
2. The existing Harbours Committee becomes an advisory committee under Section 102(4) of the Local Government Act 1972.

3. That consequential changes are made to the Constitution in order to reflect recommendations 1 & 2.

Reason for Recommendation:

A change to an Executive function will streamline the decision-making process, allow closer synergy between council services and strategic plans and provide the ability to make significant levels of finances available at short notice should they be required. The proposed use of an advisory committee made up of both Council and independent expert members will continue to meet the department for Transport Good Ports Governance Guidance.

1. Report

- 1.1 The Council is the Statutory Harbour Authority (SHA) with responsibility for the Weymouth, Lyme Regis and Bridport Harbours. As the SHA the Council must act in accordance with the statutory provisions governing it which come from local acts, national legislation, and orders. A Harbour Revision Order (HRO) was obtained for Weymouth Harbour in 2021, which modernised and consolidated the relevant statutory powers. A similar HRO is being sought for Bridport and Lyme Regis Harbours.
- 1.2 Amongst other duties the SHA is required to keep the harbour open for the shipping and unshipping of goods, to exercise its functions with regard to nature conservation and to conserve the harbour so it is reasonably fit for use as a port with a duty of reasonable care to see that the harbour is in a fit condition for a vessel to utilise it safely. The SHA must comply with the Port Marine Safety Code (the Code) and has responsibilities for providing the facilities for safe navigation such as lighting and marker buoys.
- 1.3 The harbour function is a 'local choice' function. Currently the Harbours Committee has responsibility for the discharge of any function by the Council acting as the Statutory Harbour Authority. The Harbours Committee is comprised of Councillors and co-opted members who have particular skills or expertise relevant to the harbour operation, in line with the recommendations in the DfT Good Ports Governance Guidance. Input from harbour stakeholders is provided to the Harbours Committee through the Harbour Consultative Group for each harbour. The Harbours

Committee is also the Duty Holder, and its members are individually and collectively accountable for compliance with the Code, and their performance in ensuring safe marine operations in the harbour and its approaches. A 'designated person' provides independent assurance to the Duty Holder about the operation of the marine safety management system.

1.4 Currently the Harbours Committee is delegated '*to exercise all functions of the Council as a harbour authority that relate to any matter concerning issues of administration, harbour operations and/or the management of Lyme Regis, Bridport and Weymouth harbours and associated harbour land (the terms "harbour authority" and "harbour land" all being as defined in section 57 Harbours Act 1964). This power includes power to determine income and expenditure matters relating to the harbours and harbour land in respect of which the Harbours Committee has functions. However: (a) in the case of income, only in relation to such matters as Full Council has expressly resolved may be determined by the Harbours Committee; and (b) in the case of expenditure, only to the extent that such expenditure is within such budget as may be allocated to the Harbours Committee.*'

1.5 The Port Marine Safety Code recognises that the Duty Holder should be 'ultimately accountable for marine safety' and in this instance responsible for ensuring that Dorset Council complies with the Code. In order to effectively undertake this the role of Duty Holder should:

- be aware of the Dorset Council's powers and duties related to marine safety;
- ensure that a suitable Marine Safety Management System (MSMS), which employs formal safety assessment techniques, is in place;
- appoint a suitable 'designated person' to monitor and report the effectiveness of the MSMS and provide independent advice on matters of marine safety;
- appoint competent people to manage marine safety;
- ensure that the management of marine safety continuously improves by publishing a marine safety plan and reporting performance against the objectives and targets set; and
- report compliance with the Code to the MCA every 3 years

The Duty Holder 'should also ensure that appropriate resources are made available for discharging their marine safety obligations.' Given the lead responsibility that each member of the Cabinet exercises in relation to their portfolio it is sensible that the Portfolio Holder for Highways Travel

and Environment should take on the duty holder responsibility. Each portfolio holder is able to make spending commitments up to the key decision threshold of £500,000. This is considered sufficient spending power to enable the Portfolio Holder to act swiftly in a situation of urgency to discharge the duty holder responsibility. Proposals for spending above the key decision threshold would be decided by Cabinet and subject to scrutiny through the forward plan.

- 1.6 The external co-opted members of the Harbours Committee are not elected councillors. Although the terms of reference for the Harbours Committee require that elected members should always be in the majority in order for the Committee to be quorate, it is nonetheless unusual in local government that unelected co-optees should play a part in formal decision making, including in relation to the harbours budget. The proposed changes would retain the expertise of the co-optees but in an advisory capacity.
- 1.7 Currently, the Harbours Committee make recommendations to Full Council for final decision/approval. There is often a time delay between the Harbours Committee meeting and Full Council approval. Under the proposed changes recommendations would be made either to the Portfolio Holder or to a meeting of the Cabinet.
- 1.8 Harbour operations are closely linked with other council services such as flood and coastal erosion risk, highways, parking, economic regeneration and property and assets and would potentially benefit from Executive oversight where a more holistic approach could be taken to future development.
- 1.9 It is proposed that the harbour authority function should rest with the Executive within the Council's constitutional arrangements. Under these arrangements the Harbours Committee would be constituted as an advisory Committee under s102(4) of the Local Government Act 1972:

(4) A local authority may appoint a committee to advise the appointing authority or authorities, or, where the appointing authority ... operate executive arrangements, any executive ... on any matter relating to the discharge of their functions, and any such committee—

(a) may consist of such persons (whether members of the appointing authority or authorities or not) appointed for such term as may be determined by the appointing authority or authorities; and

(b) may appoint one or more sub-committees to advise the committee with respect to any such matter.

- 1.10 The Harbours Committee would be 'advisory' in nature. So, although it would continue to have external co-opted members on it, the Committee itself would only be able to make 'recommendations' in respect of the harbours. Councillors serving on the committee would be appointed on a politically proportionate basis in accordance with section 15 of the Local Government and Housing Act 1989. Key decisions would then be recommended to the Cabinet and decisions short of key decisions would be recommended to the portfolio holder.
- 1.11 This would mean that the portfolio holder and the Cabinet would have regular interaction with the Harbours Committee which will strengthen the links between the two and the understanding of 'harbours' within the Cabinet. It will also make the approval of recommendations of the Harbours Committee more streamlined (for example approval of the annual Budget and Schedule of Charges the Committee recommends) than if the function were to remain with Full Council. Furthermore, it would align harbour operations with other statutory functions and services across Dorset Council and improve financial resilience where Cabinet has the ability to make significant levels of finance available to any of the harbours at short notice should it be required.
- 1.12 Recent external legal advice is that it is not appropriate for the Harbours Committee to be duty holder under the Port Marine Safety Code (PMSC) as if it has limited financial authority and as such does not have sufficient resources to ensure compliance with the PMSC.
- 1.13 The Harbours will have significant future liabilities relating to harbour wall, repair, maintenance and replacement. For example, the recent Weymouth Flood and Coastal Erosion Management Scheme Strategic Outline Case estimated a cost of approximately £113 million over the next 100 years, for the Harbour this amounts to £60 million. The expectation is that Dorset Council's contribution should be at least equal or exceed the capital construction cost of these assets in addition to the routine maintenance costs that are usually incurred directly. Up to 2040 this will amount to approximately £8 - £10 million.
- 1.14 Weymouth Harbour carried some historic loan liabilities from the predecessor Weymouth and Portland Borough Council. This amounted to an annual cost of £260k.

The proposed governance changes will enable the liability to be permanently transferred to Dorset Council to assist the harbour in building reserves and improving facilities.

- 1.15 It is important that the harbours maintain a close working relationship with harbour users. The proposed change in governance does not alter the existing model in this regard. Going forward the existing stakeholder consultative groups will remain in place across the harbours providing harbour user group scrutiny and input into harbour management and development.

2 Financial Implications

The proposed change will support improved financial resilience, with the Portfolio Holder having the ability to make timely decisions about funding up to the key decision threshold. Through the wider Cabinet there will also be the ability to access funds which are beyond the authority of the current Harbours Committee should it be required.

3 Climate Implications

The recently adopted Harbours Strategy aims to meet the targets of the Dorset Council Climate and Ecological Emergency Strategy. Harbours have an important role in helping to deliver some of the goals set out within the Climate Strategy and will aim to reduce their carbon footprint in line with that of other council services. In addition, harbours will be linked directly to the Portfolio Holder responsible for delivery of the Dorset Council Climate and Ecological Emergency Strategy and the ongoing initiatives across other council services which may present opportunities to collaborate on strategy delivery.

4 Well-being and Health Implications

It is recognised that our harbours play an important role in supporting leisure and recreation which promotes the health and well-being of our communities and visitors. The proposals in this report will not impact negatively upon this, indeed closer working across executive functions may present additional opportunities for improvement.

5 Other Implications

None

6 Risk Assessment

HAVING CONSIDERED: the risks associated with this decision; the level of risk has been identified as:

Current Risk: LOW

Residual Risk: LOW

7 Equalities Impact Assessment

There are no equalities implications arising from subject of this report.

8 Appendices

None

9 Background Papers

None