

Council – 20 July 2006

## **GOVERNANCE ARRANGEMENTS FOR THE HARBOUR AUTHORITY**

### **Report of the Head of Property Services, Acting Strategic Director (Operations)**

**Statutory Powers:** Local Government Act 1972 and the Pier and Harbour Order (Salcombe) Confirmation Act 1954.

**Financial Implications:** None

#### **Purpose of report**

To agree new governance arrangements for the Harbour Authority and an appointments process for Salcombe Harbour Board as a Committee of the Council.

### **RECOMMENDED**

**That the Council RESOLVES that:**

- (i) The governance arrangements for the Harbour Authority as set out in this Report, including the Memorandum of Understanding and Harbour Constitution, are adopted and implemented as set out in this Report;**
- (ii) Appointments to the Council's new Harbour Board be made through the process as set out in this Report;**
- (iii) That the political balance rules are disapplied in the case of the Elected Member representation on the Salcombe Harbour Board.**

#### **Background**

1. The current Harbour Board has been considering how the Council can best govern as a Harbour Authority for the future in line with Department for Transport's (DfT) 'Guide to Good Governance' the Municipal Ports Review which has recently been published.
2. Over the last twelve months the Board has undertaken research and developed a set of key principles for reviewing board governance arrangements and in essence, although there is no suggestion that municipally operated harbours will be removed from local authority control, there is a strong indication that local authority operated harbours will be required to demonstrate effective decision-making, accountability, transparency, expertise and stakeholder involvement.

3. The Board has resolved that these and other elements of good open governance can be delivered through a sound long term Strategic Business Plan with clear objectives and measurable performance targets to be overseen with improved Harbour Board governance arrangements that accord with DfT guidance and relevant legislation.
4. Given it is a function of the Council to make appointments to Council Bodies, it is now prudent to put in place new governance arrangements for Salcombe Harbour Authority and the Council's Harbour Board itself in view of this work.

### **Current Governance Arrangements**

5. As part of the District Council and reporting directly to Council, Salcombe Harbour is governed by a Board of 18 Members made up of 10 District Councillors and 8 Co-opted Members representing user and community groups:-

#### **District Council Representatives**

Riparian Wards at least 5  
Inland areas maximum of 5  
(of which one District Councillor is appointed as Chairman)

#### **Co-opted Representatives**

Salcombe Town Council 2  
Kingsbridge Town Council 1  
East Portlemouth Parish Council 1  
Salcombe and Kingsbridge Estuary Association 1  
Royal Yachting Association 1  
South Devon & Channel Shell-fishermen's Association 1  
English Nature 1

6. This Board arrangement has worked well for the Council since 1998 but does not fit with modern governance standards for municipal harbours or ensure robust engagement with the users on service improvement.

### **Future Governance Arrangements**

7. These are as set out in the proposed new **Constitution** and **Memorandum of Understanding** for the Harbour Board (**Appendix 1 and 2**).
8. **Composition of Board** – reporting to the District Council's full Council, the new Harbour Board will comprise of up to 10 appointed persons, of which 4 shall be District Council Members and the remainder shall be co-opted members. One of the District Councillors shall be nominated by Council as Chairman. Whilst the Municipal Ports Review implies that a Board could be set up with no requirement for Elected Member representatives, this is not permissible under current legislation. Under the Local Government Act 1972, the Council can only

discharge the Harbour function through a committee (ie. the Harbour Board) that has sufficient Councillors to constitute a quorum to which co-opted Members can be added.

9. **Board Membership** – By means of an agreed appointments process, the non-Councillor members of the Board will be co-opted. Their appointment will be determined through assessment of each applicant's skills, knowledge, experience and commitment. With regard to the District Council Members on the Board, it is also proposed that their nomination shall be based upon a similar assessment of skills, knowledge, experience and commitment. In both cases, the aim is to demonstrate that the Board is fit for purpose, following the DfT's most recent guidance on Harbours.
10. As we are seeking to meet the fit for purpose requirements, it is proposed that the Council be requested to disapply the political balance rules in respect of the 4 Council nominees. This will require the approval of Council without any votes against but would give more flexibility in terms of the appointment of the nominees.
11. Each Board Member will be required to demonstrate that they are 'fit for purpose' having regard to a **Job Specification (Appendix 3)** for Harbour Board Members. Broadly speaking, the duties of a Board Member will be considered to be on a par with those of a director of a company with obligations, responsibilities and statutory duties relating to the Harbour.
12. In a similar way to the existing Harbour Board, the new Board will be expected to act with independent judgement, to use their skills and experience for the benefit of the Board, be committed to working in the best interests of the Harbour and devote the necessary time to carry out the function of the Board including, where appropriate, undertake training.
13. **Work of the Harbour Board** – this will be to support and review work within the Strategic Business Plan of the Harbour. The Board should ensure that all works and projects support one of the five core business objectives agreed; the maintenance of safety; improving the customer experience; environmental stewardship; encouraging community and user engagement; and support for local prosperity. Within this context some of the key elements of work that the Board will need to own include:-
  - a. Consideration of views from stakeholders and users from the established 'Community Forums'.
  - b. Harbour Service Planning and organisation.
  - c. Performance and financial monitoring.
  - d. Review, update and recommending Harbour policies.
  - e. Reviewing and recommending fees and charges.

### **Appointments Process**

14. In line with DfT guidance recruitment of co-opted Members to the Board will be open to persons who are both able to demonstrate they are technically 'fit for

purpose', able to uphold the 'Nolan Principles' of governance for the public sector and whose principal residence is within the South Hams District Council area.

15. An outline timetable for appointments to the new Board is shown below:

20 July 2006	Council decision on new constitution
End July 2006	Adverts placed for Board members
Early September 2006	Applications close
Mid September 2006	Interviews plus proposals for Council nominees
28 September 2006	Council approval of new Board
Early October	First meeting of new Board

16. The Appointments Panel will consist of a nominated District Councillor from the majority party, a nominated District Councillor from the minority parties collectively and an independent technical advisor from outside of the Council with a thorough understanding of harbour/port modernised governance arrangements e.g. a DfT or other industry representative. After the first round of appointments to the new Board and during their term, the Chairman of the Harbour Board or another Board Member chosen by the Board will also form the Appointments Panel.

17. Members of the Council shall be appointed to the Board at the Council's annual general meeting. A co-opted Member's term of appointment shall be three years from the date of appointment to expire on the date of annual Council of the relevant year and in order to stagger the appointments process to maintain some continuity of Board membership, the first term shall be divided so that two co-opted Members sit for two years only and the remainder of co-opted Members sit for the standard three year term. Following this initial staggering, terms will remain at three years from appointment.

18. Under the new governance arrangements it will be possible to appoint Board Members for a second term but a third term will be the exception rather than the rule and both will be open to a competitive process.

### **Board Meetings**

19. Board meetings will take place regularly at least six times a year supported by the relevant Council officers. Board meetings will be public meetings arranged and publicised at local venues with good public access. It is suggested that to enable greater numbers of public and Harbour users to attend Board meetings, the meeting itself should commence sometime in late afternoon. Board meetings are to be structured to enable a 15-minute public question time at the commencement of the meeting.

### **Recognised 'Harbour Community Forums'**

20. To ensure the new smaller sized 'fit for purpose' Harbour Board has strong and direct links with both harbour users, local communities and other external organisations with an interest in the Salcombe-Kingsbridge Estuary, a formal

consultation mechanism is proposed as part of the new Harbour Board governance arrangement.

21. A consultation event took place on 5 April 2006 chaired by the Chairman of the current Harbour Board where 44 people attended as both individuals and those representing a range of community groups and agencies associated with Harbour or Estuary activities. The aim of the evening was to explain the development of the new Harbour Board governance arrangements and find out how harbour users and other interested community groups could remain involved in influencing Harbour services when new governance arrangements were established.
22. As a consequence, with regard to stakeholder engagement, several avenues for communication and feedback have been identified for incorporation into the new Harbour Board governance arrangements:
  - The use of recognised 'Harbour Community Forums' i.e. existing community groups and associations that have a wide membership and a direct interest in Estuary/Harbour activities.
  - That the remit of new Board Members includes listening and responding to the views of recognised 'Harbour Community Forums' as well as individual users and groups.
  - At the public question time at each Harbour Board meeting.
  - A Harbour Board Annual General Meeting and other events.
  - Through the use of Town/Parish Council cluster meetings.
23. As a result of this consultation event three not-for-profit community groups, with a wide and representative membership of individuals and organisations with a direct interest in the Harbour or Estuary, have expressed an interest to work with the Council in relation to its future Harbour activities:
  - The Salcombe Kingsbridge Estuary Association
  - The Salcombe Kingsbridge Estuary Conservation Forum
  - The Kingsbridge Estuary Boat Club
24. These three groups will be recognised as 'Harbour Community Forums' and thereby form part of a formal consultation mechanism for the new Harbour Board. Each group has also been asked to review its governance, membership and communication methods to ensure that whilst they remain independent Voluntary and Community Sector (VCS) organisations, they must be 'fit for purpose' in the context of a recognised 'Harbour Community Forum' for Salcombe Harbour Board. These groups will undertake an advocacy role for their members, which it should be noted, may include representing disparate views.
25. Copies of the groups' Terms of Reference are to be provided to the Community Development Officer for review. Further work will then need to be completed on establishing links with the appropriate Harbour Board Members once appointed.
26. It is anticipated that there will be opportunities for further community groups to be added and progressed as time progresses. A fourth organisation representing the South Devon & Channel Shell-fishermen's Association has also expressed an

interest in joining as a forum and follow up work is currently underway in relation to this proposal.

### Feedback from Salcombe Harbour Board

27. The draft Constitution and Memorandum of Understanding were presented to the existing Harbour Board on 13 June for consideration and comment. In general there was support for the proposals, although a number of matters were raised. The most significant of these was concern in relation to the provision at the end of the Memorandum of Understanding which related to the Harbour's financial position.
28. As Members will see, this proposed an arrangement whereby Salcombe Harbour will be expected to accumulate funds year on year to establish reserves which is good business planning. However, there is provision for funds to be "returned" to the District Council's general account in circumstances where reserved have risen to a level about that which might reasonably be required for the proper operation of the Harbour.
29. The Harbour Board were concerned that this may lead to the Council taking funds to support its revenue budget leading to an adverse effect on the Harbour operation. Whilst this concern is understood, Members are recommended to retain this provision in the draft Memorandum of Understanding as it is not intended to prevent the efficient operation of the Harbour.

### Strategic Risk Assessment

Risk	Mitigation
The Council fails to modernise in line with Government guidance in respect to governance and management of Salcombe Harbour.	Review Harbour governance arrangements in line with Government guidance and known best practice municipal harbours.
The work of the Harbour Board does not align with community and users' views.	Consultation and liaison takes place with local users groups, residents and community stakeholders on Salcombe Harbour Board's draft Business Plan at the earliest opportunity.
Governance arrangements are not transparent.	Board arrangements are reviewed and brought into line with the DfT's 'Guide to Good Governance'.
Non-compliance with the Human Rights Act	The rights of individuals will be protected in any future policy development.

### Conclusion

30. A newly constituted Harbour Board as set out in this Report will help ensure the Council operates and governs an exemplar municipal harbour which works for the benefit of direct users as well as the local community.

Nick Hodgson  
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Acting Strategic Director (Operations)

Council  
20 July 2006

### **Background Papers**

Department for Transport's (DfT) Guide to Good Governance  
Municipal Ports Review

Minutes of Salcombe Harbour Board - 4 October 2005 Minute SH.06/05

Minutes of Salcombe Harbour Board - 29 November 2005 Minute SH.19/05.

Minutes of Salcombe Harbour Board - 13 June 2005 Minute SH.5/06

Notes of the Salcombe Harbour Community Consultation Event – 5th April 2006