

**Argyll and Bute Council**  
Comhairle Earra Ghaidheal agus Bhoid

Customer Services  
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12 December 2014

## **SUPPLEMENTARY PACK 1**

**POLICY AND RESOURCES COMMITTEE - ARDRISHAIG PUBLIC HALL, CHALMERS STREET, ARDRISHAIG on THURSDAY, 18 DECEMBER 2014 at 10:15 AM.**

I enclose herewith item 8 (FURTHER POTENTIAL INVESTMENT OPPORTUNITY IN THE COUNCIL'S SCHOOL ESTATE) and item 17 (GOVERNANCE OF COUNCIL HARBOURS THROUGHOUT ARGYLL AND BUTE) which were marked "to follow" on the Agenda for the above meeting.

Douglas Hendry  
Executive Director - Customer Services

## **BUSINESS**

- 8. FURTHER POTENTIAL INVESTMENT OPPORTUNITY IN THE COUNCIL'S SCHOOL ESTATE**  
Report by Executive Director – Community Services (to follow) (Pages 1 - 24)
- \* 17. GOVERNANCE OF COUNCIL HARBOURS THROUGHOUT ARGYLL AND BUTE**  
Report by Executive Director – Development and Infrastructure Services (Pages 25 - 68)

## **POLICY AND RESOURCES COMMITTEE**

Councillor Dick Walsh (Chair)	Councillor Robin Currie
Councillor Vivien Dance	Councillor Donald Kelly
Councillor Alistair MacDougall	Councillor Duncan MacIntyre
Councillor Roderick McCuish	Councillor Aileen Morton
Councillor Ellen Morton	Councillor Gary Mulvaney
Councillor Douglas Philand	Councillor James Robb
Councillor Len Scoullar	Councillor Isobel Strong
Councillor Sandy Taylor	Councillor Richard Trail

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**ARGYLL AND BUTE COUNCIL****POLICY AND RESOURCES COMMITTEE****COMMUNITY SERVICES****18<sup>th</sup> DECEMBER 2014**

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**FURTHER POTENTIAL INVESTMENT OPPORTUNITY  
IN THE COUNCIL'S SCHOOL ESTATE**

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**1.0 Executive Summary**

- 1.1 This report provides updated information to Members on an announcement by the Scottish Government (SG) of a further £100M of revenue based NPD investment in school infrastructure through the Scotland's Schools for the Future (SSF) programme. The programme aims to continue to remove schools out of poor (Category C) or bad (Category D) condition to satisfactory (Category B) or good (Category A) condition, either through refurbishment or replacement. The Council currently only has one school property in the whole school estate in either Category C or D condition. This is Dunoon Primary school (Category D).
- 1.2 If the Council wants to take advantage of the opportunity of additional revenue support, a decision is required now. The SG has asked for a letter of confirmation from the Council to be submitted on the afternoon of 18 December 2014 if the project is approved.
- 1.3 A report to the Policy and Resources Committee (P&R) on 27 November 2014 informed Members of the conditions to the SG funding offer as well as the detail of potential options to remodel/refurbish Dunoon Primary school. The report is available at:  
<http://www.argyll-bute.gov.uk/moderngov/documents/s94297/Dunoon%20PS%20revised.pdf>
- 1.4 At the P&R Committee meeting the Policy Lead for Education, Lifelong Learning and Strategic IT Services tabled the following revised motion which was subsequently agreed:
1. Notes the detail provided in the paper regarding the Scottish Government's offer for further investment in school infrastructure; the financial implications of committing further capital monies as per paragraphs 4.4.6 and 4.4.9; and the significant risks associated with the cost estimates as contained within this report;
  2. Notes the new information provided by officers advising;  
(a) the extended timeline now available to the Council, and we record our appreciation of the Scottish Government's approach to this matter;  
(b) Historic Scotland's willingness to meet with us to discuss further the best way of ensuring a positive future for the Dunoon Primary School pupils in a building fit for purpose.
  3. Agrees that this Council wishes to see all children educated in good condition schools, and that all actions necessary should be taken to find

a deliverable solution for Dunoon Primary. This requires concerted effort on the part of several public bodies and we request officers to convene urgent meetings with all relevant parties including the Scottish Government, Scottish Futures Trust, HubNorth and Historic Scotland to make every effort to identify an affordable and suitable design for Dunoon Primary School; and

4. Agreed a delegation to the Chief Executive in consultation with the Council Leader, the Policy Lead and the Leader of the Opposition to determine the matter if a response is required before 18 December 2014.
- 1.5 Following the P&R Committee meeting on 27 November, urgent discussions and meetings have taken place to try and find a deliverable solution for Dunoon Primary School to bring it into Grade A or high Grade B for Condition.
- 1.6 **Dunoon Primary School Potential Options**

Three potential options to find a deliverable solution for Dunoon Primary School have been further investigated. The detail of the opportunities and constraints of each option are set out in Appendix 1 hereof. Based on the three potential options, it was agreed by all parties that Option 1 (Demolition/ Newbuild) and Option 2 (Façade Retention and Newbuild) cannot be delivered within the required timescales and should not be considered further. The only viable option considered suitable to be able to deliver a potential solution for Dunoon Primary school was Option 3 – the Remodel/Refurbishment option (with 6 variant options – options 3A-3F considered).
- 1.7 In addition, the synergy of developing a deliverable solution for Dunoon Primary school with the previously agreed Kirn Primary school project was investigated and it is envisaged that cost savings can be made if a combined decant solution for both school projects is adopted. The decant of Kirn Primary into Dunoon Primary school would reduce potential additional costs on the Kirn project and also potentially shortens the Kirn construction programme by approximately 6 months. Given the short time frame since the Committee meeting on 27 November, these decant arrangements have not yet been discussed with the parents of either school and work will be required to engage them on how the arrangements would operate. The potential programme for both school projects is contained as Appendix 2 hereof.
- 1.8 **Dunoon Primary School – Funding Implications**

For the purposes of the workshop session, a notional affordability cap for the Dunoon Primary project was considered incorporating a Scottish Government contribution of £4.3M. The affordability cap was in line with the SFT metric for a new build school of comparable size.

High level cost plans have been provided by HubNorth's appointed consultant (Sweett's) for three options to remodel/refurbish Dunoon Primary school to achieve a school for 300 Primary roll and 30 Early Years places at Grade A for Condition. These are:

- Option 3A - include a 2 court sports hall;
- Option 3B - include a 1 court sports hall with the structure designed to be easily extended to incorporate a second court in the future if required; or
- Option 3C - that no sports hall is provided and is considered at a later date in the future.

1.9 Costs for a further three cost models, Options 3D, 3E and 3F, have been provided for the same building scope as Options 3A, 3B and 3C respectively but without the Kirn Primary decant into Dunoon Primary school.

The cost models for Options 3A - 3F are set out in Appendix 3.

In summary, the potential total Council contributions are:

<b>Dunoon Primary School Remodel/Refurbishment including decant of Kirn Primary into Dunoon Primary</b>	<b>Potential Total Council Contribution</b>
Option 3A	£3.619M
Option 3B	£3.488M
Option 3C	£3.365M

<b>Dunoon Primary School Remodel/Refurbishment excluding decant of Kirn Primary into Dunoon Primary</b>	<b>Potential Total Council Contribution</b>
Option 3D	£3.896M
Option 3E	£3.783M
Option 3F	£3.678M

- 1.10 At its meeting in June 2014, the Council agreed that any potential surplus capital sum from that required for the delivery of the new Kirn Primary school should be earmarked to improve the condition of schools within the school estate. The unallocated balance could be potentially up to £1.598M that could be set against the residual Council contribution to remodel/refurbish Dunoon Primary school. This figure cannot be confirmed until the Kirn Project reaches financial close and therefore there remains a level of risk on its availability.
- 1.11 If a potential surplus of £1.598M is realised then Option 3B (with a 1 court sports hall provided and decant of Kirn Primary into Dunoon Primary) would require an additional Council contribution of £1.890M.
- 1.12 **The Preferred Option - Remodel/Refurbishment Dunoon Primary School**  
Ryder Architecture has set out revised sketch designs for the Ground, and First Floor layouts of Dunoon Primary school. The layouts are set out in Appendix 4 hereof. The proposed areas to be demolished are shown in Appendix 5 hereof.
- 1.13 Although this offer of additional SG funding support is a welcomed opportunity, there remains a high degree of risk and uncertainty regarding the project costs

with taking forward Option 3B.

This is due to:

- At this stage the anticipated capital costs for the building works are outline only based on block plans and certainty of cost would be determined only as the design process is progressed through to financial close;
- The Council would have to fund all excluded costs such as decant. Decant costs are only estimated at present;
- Risk has been included in the cost model at 7.5%, this is a relatively low figure for this stage of cost plan for a refurbishment of a grade B listed building;
- No location factor has been added to the high level costs; and
- Any unallocated balance from the Kirn project would only be known once that project reaches financial close. If the potential estimated balance of £1.59M is not realised this would increase the net Council funding requirement for all options.

1.14 Members are asked to consider if an application for additional infrastructure funding should be made to the Scottish Government based on:

- Dunoon Primary School to be remodelled/refurbished as a 300 capacity Primary School and 30 Early Years Places to achieve Grade A or High B for Condition;
- Potential Scottish Government funding that is expected to be in the range of approximately £4.03M to £4.3M based on the Scottish Futures Trust metric for Primary Schools;
- Additional Council contribution in a range from £1.898M - £3.488M (subject to realising the balance of funding from Kirn and allocating it to the Dunoon PS project); and
- Scottish Government acceptance of an extended construction programme to allow for the synergy between the Kirn and Dunoon school projects.

## **Recommendations**

It is recommended the Policy and Resources Committee:

1. Note the Scottish Government offer for further investment in school infrastructure.
2. Note the financial implications of committing further capital monies as previously set out in the report to the Policy and Resources committee on 27 November 2014.
3. Note the ongoing but reduced risks associated with the cost estimates as contained within this report.
4. Agree that the preferred remodel/refurbishment solution for Dunoon

Primary school is Option 3B (with 1 court sized sports hall provided and a temporary decant of Kirn Primary school into Dunoon Primary school) noting that the potential additional Council contribution ranging from £1.89M - £3.488M as set out in Paragraphs 4.3.3 – 4.3.7 (subject to the risks associated with the cost estimates as outlined in this report and also the final costs in relation to Kirn PS new build) will require to be provided within the capital plan in 2016-17, 2017-18 and 2018-19.

5. Agree that an application should be made immediately to the Scottish Government for additional infrastructure funding to remodel/ refurbish Dunoon Primary school. That application to be for:
  - Dunoon Primary School to be remodelled/refurbished as a 300 capacity Primary School and 30 Early Years Places to achieve a Grade A or high B for Condition;
  - Potential Scottish Government funding that is expected to be in the range of approximately £4.03M to £4.3M based on the Scottish Futures Trust metric for Primary Schools; and
  - Scottish Government acceptance of an extended construction programme for Dunoon Primary School to allow for the synergy between the Kirn and Dunoon school projects as set out in Appendix 2 hereof.

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**FURTHER POTENTIAL INVESTMENT OPPORTUNITY  
IN THE COUNCIL'S SCHOOL ESTATE**

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**2.0 INTRODUCTION**

- 2.1 The Council received communication on 27 June 2014 from the Scottish Government's School Infrastructure Unit to advise that the Cabinet Secretary for Finance, Employment and Sustainable Growth had announced a further £100M of revenue based NPD investment in school infrastructure through Scotland's Schools for the Future (SSF) programme.
- 2.2 The overarching aim of this additional investment is to continue to remove schools out of poor (Category C) or bad (Category D) condition to satisfactory (Category B) or good (Category A) condition, either through refurbishment or replacement. The Council currently has only one school property in Category C or D condition. This is Dunoon Primary school (Category D).
- 2.3 A report to the Policy and Resources Committee (P&R) on 27 November 2014 informed Members of the conditions to the SG funding offer as well as the detail of potential options to remodel/refurbish Dunoon Primary school. The report is available at:  
<http://www.argyll-bute.gov.uk/moderngov/documents/s94297/Dunoon%20PS%20revised.pdf>
- 2.4 At the P&R Committee meeting the Policy Lead for Education, Lifelong Learning and Strategic IT Services tabled the following revised motion which was subsequently agreed:
1. Notes the detail provided in the paper regarding the Scottish Government's offer for further investment in school infrastructure; the financial implications of committing further capital monies as per paragraphs 4.4.6 and 4.4.9; and the significant risks associated with the cost estimates as contained within this report;
  2. Notes the new information provided by officers advising;
    - (a) the extended timeline now available to the Council, and we record our appreciation of the Scottish Government's approach to this matter;
    - (b) Historic Scotland's willingness to meet with us to discuss further the best way of ensuring a positive future for the Dunoon Primary School pupils in a building fit for purpose.
  3. Agrees that this Council wishes to see all children educated in good condition schools, and that all actions necessary should be taken to find a deliverable solution for Dunoon Primary. This requires concerted effort on the part of several public bodies and we request officers to convene



urgent meetings with all relevant parties including the Scottish Government, Scottish Futures Trust, HubNorth and Historic Scotland to make every effort to identify an affordable and suitable design for Dunoon Primary School; and

4. Agreed a delegation to the Chief Executive in consultation with the Council Leader, the Policy Lead and the Leader of the Opposition to determine the matter if a response is required before 18 December 2014.

### **3.0 RECOMMENDATIONS**

3.1 It is recommended the Policy and Resources Committee:

1. Note the Scottish Government offer for further investment in school infrastructure.
2. Note the financial implications of committing further capital monies as previously set out in the report to the Policy and Resources committee on 27 November 2014.
3. Note the ongoing but reduced risks associated with the cost estimates as contained within this report.
4. Agree that the preferred remodel/refurbishment solution for Dunoon Primary school is Option 3B (with 1 court sized sports hall provided and a temporary decant of Kirn Primary school into Dunoon Primary school) noting that the potential additional Council contribution ranging from £1.89M - £3.488M as set out in Paragraphs 4.3.3 – 4.3.7 (subject to the risks associated with the cost estimates as outlined in this report and also the final costs in relation to Kirn PS new build) will require to be provided within the capital plan in 2016-17, 2017-18 and 2018-19.
5. Agree that an application should be made immediately to the Scottish Government for additional infrastructure funding to remodel/ refurbish Dunoon Primary school. That application to be for:
  - Dunoon Primary School to be remodelled/refurbished as a 300 capacity Primary School and 30 Early Years Places to achieve a Grade A or high B for Condition;
  - Potential Scottish Government funding that is expected to be in the range of approximately £4.03M to £4.3M based on the Scottish Futures Trust metric for Primary Schools; and
  - Scottish Government acceptance of an extended construction programme for Dunoon Primary School to allow for the synergy between the Kirn and Dunoon school projects as set out in Appendix 2 hereof.

### **4.0 DETAIL**

#### **4.1 Dunoon Primary School – Finding a Deliverable Solution**

4.1.1 Following the P&R decision on 27 November 2014, Council

Officers arranged meetings with interested parties to find an affordable and deliverable solution for the refurbishment / remodelling of Dunoon Primary School. The main workshop took place on 3 December 2014.

The parties represented were:

- Senior Council Officials;
- hubNorth Scotland and members of their design team that included Architects, Project Managers, Cost Consultants and the Tier 1 building contractor appointed to build the new Campbeltown, Oban and Kirn schools;
- The Scottish Futures Trust; and
- Historic Scotland.

- 4.1.2 The SFT has confirmed that the Scottish Government will be making an announcement in December 2014 of the Councils that have been awarded funding under the additional infrastructure award announced in June. Therefore, a decision would have to be made at the P&R Committee on 18 December 2014, otherwise the Council would lose the opportunity of applying for this funding offer. The SG has asked for a letter of confirmation from the Council to be submitted on the afternoon of 18<sup>th</sup> December 2014 if the project is approved.

This requirement has introduced a very strict time deadline that required practicable feedback from all parties involved for a report to be presented at the P&R committee meeting on 18<sup>th</sup> December.

## 4.2 Dunoon Primary School Potential Options

- 4.2.1 Three potential options to find a deliverable solution for Dunoon Primary School have been further investigated. These were:

Option 1 - Full demolition of existing Dunoon Primary school and replaced with a new build of Dunoon Primary school;  
Option 2 - Façade retention and new build of Dunoon Primary school joined to retained façade; and  
Option 3 - Remodel/Refurbishment (including part demolition/ part new build) of Dunoon Primary school.

The opportunities and constraints of each option are set out in Appendix 1 of this report.

Based on the three potential options, it was agreed by all parties that Option 1 and Option 2 cannot be delivered within the required timescales and should not be considered further.

- 4.2.2 The preferred option would be Option 3. This option would have:
- the majority of the original Dunoon Primary school building retained (to contain the main teaching areas);
  - minimal works carried out on the existing kitchen/dining area;

- the existing sports hall demolished;
- the demolition of all of the eastern side of the school (1930s building); and
- a newbuild space to contain sports hall, changing areas, toilets, offices/admin and the Learning Centre.

4.2.3 Combining the programme of building the new Kirn Primary school and Dunoon Primary school Remodel / Refurbishment

It was also noted by the workshop participants that one of the possible outcomes and savings from combining the building of the new Kirn Primary school and the remodel/refurbishment of Dunoon Primary school would be a likely substantial reduction in the length of the overall build programme for the new Kirn Primary school and the potential decant costs for both projects.

All decant costs are met in full by the Council.

The remodel refurbishment of Dunoon primary school would require some temporary decant accommodation during the construction period.

The current proposal for the new Kirn Primary school programme includes decanting most of the primary school into temporary accommodation while the new building is constructed. A second decant is required when the current 1881 building is refurbished. As highlighted previously, the funding from the Scottish Government does not cover any decant costs. The estimated cost of the temporary decant accommodation at Kirn Primary is £782K.

These costs could be reduced if Kirn pupils were decanted into the eastern block of Dunoon Primary school and some limited temporary accommodation during the period of construction of the new Kirn Primary school.

- 4.2.4 HubNorth’s tier 1 contractor has estimated that the overall build programme for the new Kirn Primary School could be completed within a shortened build programme due to the removal of the complication of retaining a functioning school on the site during construction. The saving could be as much as 6 months off the programme to build Kirn Primary School if the whole school was decanted offsite into Dunoon Primary school. The proposed programme for each primary school would be:

**Kirn Primary School Proposed Programme**

Financial Close	September 2015
Mobilise and carry out alterations to Dunoon Primary School east Wing to accommodate Kirn primary	October – December 2015

School	
Kirn Primary pupils move to Dunoon primary school site	Start of January term 2016
Demolition and build New Kirn primary School	January 2016 – December 2016
Kirn Pupils move back to new Kirn primary	December 2016

This is a proposed construction period of 12 months for the new Kirn Primary school with pupils being decanted to Dunoon Primary School site for a similar period of time spread across two school sessions.

#### 4.2.5 **Dunoon Primary School Proposed Programme**

Kirn Pupils vacate Dunoon Primary and Dunoon Pupils move into East Wing	December 2016
Refurbishment of West Wing	January 2017 – June 2017
Dunoon Primary Pupils move into refurbished West Wing	June 2017
Vacated East Wing demolished and new East Wing constructed	July 2017 – June 2018
Pupils occupy whole site	August 2018

This is a proposed construction period of 18 months for the remodel / refurbishment of Dunoon Primary school. Dunoon Primary pupils remain on site during the whole construction period although will require to move to occupy the West and East wings at appropriate times.

The overall combined project programme is set out in Appendix 2 hereof.

### 4.3 **Dunoon Primary School – Funding Implications for Option 3 – Remodel/ Refurbishment**

#### 4.3.1 Building Scope

The process to find a deliverable solution for Dunoon Primary school has been viewed very positively by the SFT. The remodel/ refurbishment option has received significant support and encouragement in terms of the projected design capacity, and funding support for both the space and cost metric.

4.3.2 Due to the cost uncertainty associated with refurbishment, it will be necessary to scrutinise every aspect of the design specification to seek efficiencies as the detailed design is developed to ensure it keeps within the project budget. It is highlighted that a refurbishment of a listed property will inevitably contain significant risk in terms of unknown property conditions that may only be identified post

commencement.

#### 4.3.3 **Dunoon Primary School – Funding Implications**

For the purposes of the workshop session, a notional affordability cap for the Dunoon Primary project was considered incorporating a Scottish Government contribution of £4.3M. The affordability cap was in line with the SFT metric for a new build school of comparable size.

High level cost plans have been provided by HubNorth's appointed consultant (Sweett's) for three options to remodel/refurbish Dunoon Primary school to achieve a school for 300 Primary roll and 30 Early Years places at Grade A for Condition. These are:

- Option 3A - include a 2 court sports hall;
- Option 3B - include a 1 court sports hall with the structure designed to be easily extended to incorporate a second court in the future if required; or
- Option 3C - that no sports hall is provided and is considered at a later date in the future.

Costs for a further three cost models, Options 3D, 3E and 3F, have been provided for the same building scope as Options 3A, 3B and 3C respectively but without the Kirn Primary decant into Dunoon Primary school.

The cost models for Options 3A - 3F are set out in Appendix 3.

#### 4.3.4 **The Cost Models**

The detail of each cost model for Options 3A – 3F are contained as Appendix 3 hereof.

In summary, the potential total Council contributions are:

<b>Dunoon Primary School Remodel/Refurbishment including decant of Kirn Primary into Dunoon Primary</b>	Potential Total Council Contribution
Option 3A	£3.619M
Option 3B	£3.488M
Option 3C	£3.365M

<b>Dunoon Primary School Remodel/Refurbishment excluding decant of Kirn Primary into Dunoon Primary</b>	Potential Total Council Contribution
Option 3D	£3.896M
Option 3E	£3.783M
Option 3F	£3.678M

- 4.3.5 Options 3A and 3D provide a two court sized sports hall which is double the current provision at Dunoon Primary. These projects have the highest potential Council contribution within each decant strategy employed.

Options 3C and 3F have the lowest potential Council contribution within each decant strategy employed. However, there would be no sports hall provided within the overall high level design and cost plan. This would be a detriment to the existing facility available and would not enable the school to provide the necessary primary school PE curriculum. This option is unlikely also to receive support from the wider school community.

Options 3B and 3E include a 1 court sized sports hall (same level as currently used by the school) but with Option 3B at a lower cost. This is due to the potential lower decant costs associated with the project of moving Kirn Primary into Dunoon Primary.

Option 3B is considered to be the preferred option.

- 4.3.6 At its meeting in June 2014, the Council agreed that any potential surplus capital sum from that required for the delivery of the new Kirn Primary school should be earmarked to improve the condition of schools within the school estate. The unallocated balance could be potentially up to £1.598M that could be set against the residual Council contribution to remodel/refurbish Dunoon Primary school. This figure cannot be confirmed until the Kirn Project reaches financial close and therefore there remains a level of risk on its availability.
- 4.3.7 If a potential surplus of £1.598M is realised then Option 3B (with a 1 court sports hall provided and decant of Kirn Primary into Dunoon Primary) would require an additional Council contribution of £1.890M.

#### 4.4 **Dunoon Primary School - The Preferred Option and Risks**

##### 4.4.1 **The Preferred Option - Remodel/Refurbishment Dunoon Primary School**

Ryder Architecture has set out revised sketch designs for the Ground, and First Floor layouts of Dunoon Primary school. The second floor layout remains the same as the designs as first proposed in September 2014. The layouts are set out in Appendix 4 hereof.

The proposed areas to be demolished are shown in Appendix 5 hereof.

##### 4.4.2 **The Risks**

###### Decant of Kirn Primary into Dunoon Primary.

The particular synergies of combining the Dunoon Primary school programme with the new Kirn Primary school project and the

resulting option of decanting Kirn Primary school into Dunoon Primary for a period of 12 months will require parental engagement to agree the arrangements for this approach. Given the short time frame since the Committee meeting on 27 November, these decant arrangements have not yet been discussed with the parents of either school and work will be required to engage them on how the arrangements would operate.

#### School Meals and School Transport

Further work would have to be carried out also to ensure that the education and ancillary spaces made available were suitable and that facilities were put in place to provide for the additional school meals required. Also for any increase in the cost of school transport during any decant period.

Early estimated costs to provide the additional school meals if Kirn decanted onto the Dunoon site are approximately £50K.

Similarly work will be required to assess the additional requirement for school transport during the decant period.

#### 4.4.3 Build Costs – Risk and Location Factor

The larger element of new build as proposed at Dunoon Primary school brings with it a higher degree of cost certainty for those elements of the project, but the refurbished element of the project is currently based on high level block designs and costs only. The anticipated capital costs for the refurbished building works would only achieve certainty of cost as the design process is progressed through to financial close.

The cost plan for Dunoon Primary school includes Risk at 7.5% of overall costs. The 1% Risk factor is as accepted by SFT for their calculation of any potential SG additional funding provision. This factor has been increased to include an overall uplift to have a 7.5% Risk factor to take account the nature of, in the main, a refurbishment project and the potential inherent risks attached in dealing with a refurbishment project.

The Sweett cost plan for each option does not include any location factor uplift in costs. This uplift would be to take account of additional costs to be met by the contractor such as transport or subsistence. This is not accepted by SFT within their calculation of any potential SG additional funding provision and will require further discussion with the Tier 1 contractor.

#### 4.4.4 Historic Scotland and Planning

##### Historic Scotland

Following Historic Scotland's involvement in the workshop on 3

December 2014 positive correspondence has been received. A level of concession has been intimated to allow for the part demolition of the school property. Historic Scotland welcome the positive intention that the school is to continue in use and recognise that a degree of flexibility will be required to facilitate this.

Historic Scotland has expressed that although the later extensions are of some interest, they are of much less interest than the first phase and if it is satisfactorily demonstrated that the demolitions proposed are necessary to secure the future of the building and to provide modern accommodation standards, Historic Scotland would accept that. This is based on the assumption that a good quality overall scheme can be agreed, including high quality repairs, protection of the most important internal spaces and a well thought out approach to the design of the new interventions.

If an application comes forward as submitted, Historic Scotland would expect that it would include a detailed account of the options and the rationale for the proposed approach.

#### Planning

The design team has had contact with Planning & Regulatory Services regarding the evolution of the strategy for upgrading Dunoon's primary schools. The outline proposal to remove the defective sports block and later extensions can probably be supported in terms of Policy LP ENV 13(b) of the adopted Argyll and Bute Local Plan and its emerging replacement in the Argyll and Bute Council Local Development Plan, subject to satisfactory redevelopment proposals in respect of the latter element. As set out in previous correspondence from Historic Scotland, any application for listed building consent would require to set out clearly the steps that have been taken to try to keep the building and must be supported by clear evidence to show why these have failed.

#### 4.4.5 **SG Funding**

To date the SFT has indicated that they would have a more flexible approach to the requirements of grant funding and accept the refurbished element of Dunoon Primary school achieving either a Grade A or a high Grade B for Condition. Confirmation of this position would continue to be sought as a more detailed design proposal develops.

#### 4.4.6 Although this offer of additional SG funding support is a welcomed opportunity, there remains a high degree of risk and uncertainty regarding the project costs with taking forward Option 3B.

This is due to:

- At this stage the anticipated capital costs for the building works are outline only based on block plans and certainty of cost would be determined only as the design process is progressed through to financial close;



- The Council would have to fund all excluded costs such as decant. Decant costs are only estimated at present;
- Risk has been included in cost model at 7.5%, this is relatively low for a refurbishment of a grade B listed building;
- No location factor has been added to the high level costs; and
- Any unallocated balance from the Kirn project would only be known once that project reaches financial close. If the potential estimated balance of £1.59M is not realised this would increase the net Council funding requirement for all options.

4.4.7 However, the current condition of Dunoon Primary school is Grade D and the condition of the building will only deteriorate further over time without some significant investment in the fabric of the building.

4.4.8 Option 3B (with 1 court sized sports hall provided and including a temporary decant from Kirn Primary to Dunoon Primary) is the preferred option and as such Members are asked to consider if an application for additional infrastructure funding should be made to the Scottish Government based on:

- Dunoon Primary School to be remodelled/refurbished as a 300 capacity Primary School and 30 Early Years Places to achieve Grade A or High B for Condition;
- Potential Scottish Government funding that is expected to be in the range of approximately £4.03M to £4.3M based on the Scottish Futures Trust metric for Primary Schools;
- Additional Council contribution in a range from £1.898M - £3.488M (subject to realising the balance of funding from Kirn and allocating it to the Dunoon PS project); and
- Scottish Government acceptance of an extended construction programme to allow for the synergy between the Kirn and Dunoon school projects.

## 5.0 CONCLUSION

5.1 The announcement of the potential of additional school infrastructure funding is a welcome opportunity. However, there are costs also that the Council will have to meet in full, such as decant and any uplift in Risk above 7.5%. Dunoon Primary school is the only eligible school estate project meeting the funding criteria. It is the worst condition school within the Council's school estate. The property will continue also to require continued and significant maintenance investment if the project to remodel/refurbish the school is not to be taken forward.

5.2 In considering the options available to address the category D condition of Dunoon PS, the material change to the SG funding available, albeit with specific conditions, now provides an opportunity for an alternative to be considered. The key consideration will be whether to pursue this funding.

## 6.0 IMPLICATIONS

- |     |                  |  |
|-----|------------------|--|
| 6.1 | Policy           | Continuation of the Council's strategic investment in its school estate to address category C and D condition properties.  |
| 6.2 | Financial        | <p>The financial offer to the Council could be considerable, potentially up to £4.3M based on the scope and level of refurbishment proposed. However, there are financial consequences in the requirement to provide match funding at one third of eligible costs and there are financial risks associated with the progress of a larger number of capital projects. There is also a degree of uncertainty as to the actual cost of the building works, as well as excluded costs that the Council would have to fund, such as any decant.</p> <p>The financial implications should be noted in the context of the impact on the overall Council financial position.</p> |
| 6.3 | Legal            | None   |
| 6.4 | HR               | None   |
| 6.5 | Equalities       | None   |
| 6.6 | Risk             | There are potential financial risks associated with the Council's decision in relation to the additional funding made available through the SSF programme. There are similarly risks to the continuing condition of the assets if the Council is unable to invest in the properties. There are significant risks in relation to the cost information currently available on each option – these risks will not be fully resolved until the project reaches financial close.  |
| 6.7 | Customer Service | None   |

Councillor Aileen Morton, Policy Lead Education, Lifelong Learning and Strategic IT Services  
Cleland Sneddon, Executive Director of Community Services  
12<sup>th</sup> December 2014

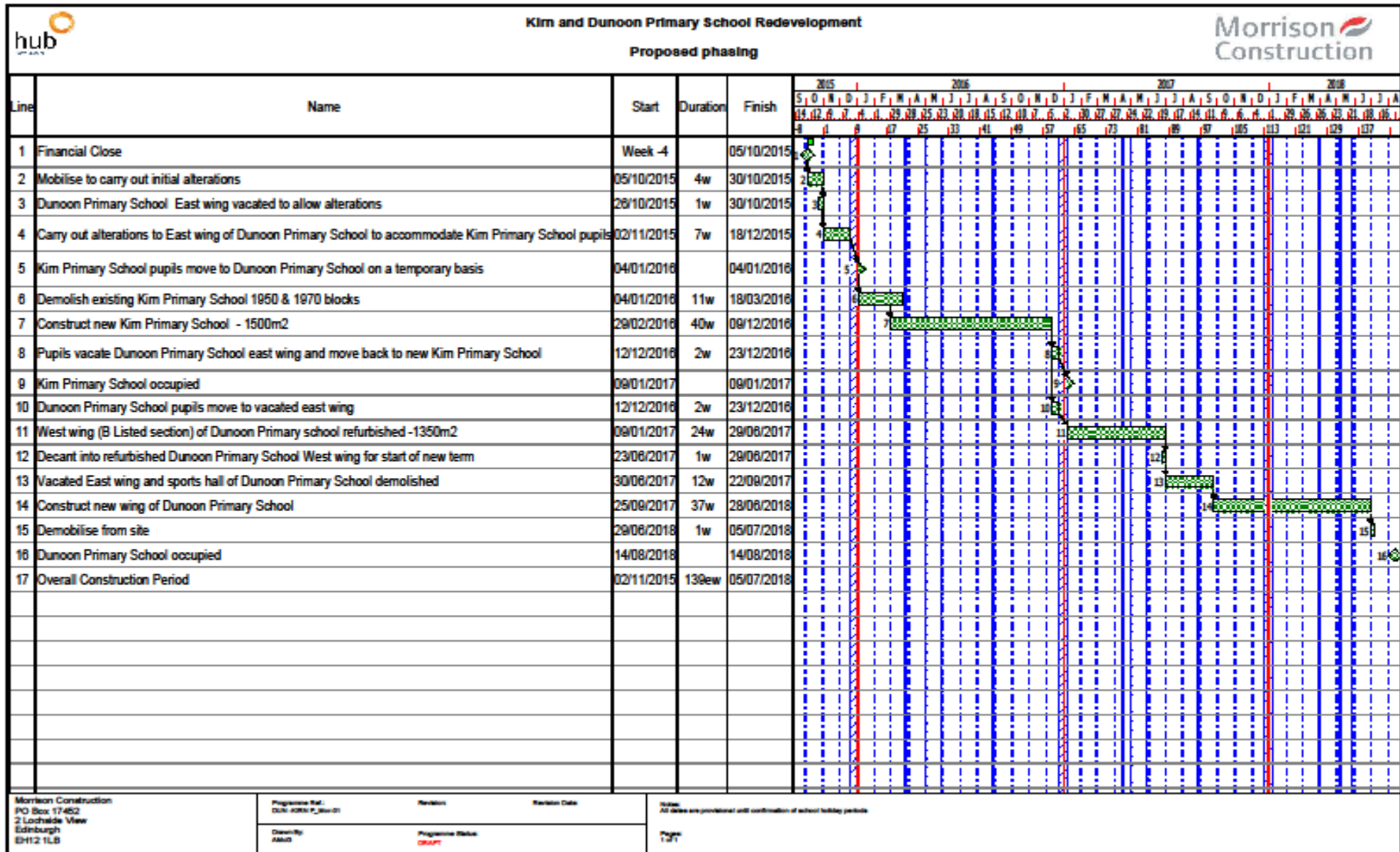
For further information contact: Cleland Sneddon on 01546 604 256  
[Cleland.sneddon@argyll-bute.gov.uk](mailto:Cleland.sneddon@argyll-bute.gov.uk)



## Appendix 1 Dunoon Primary School Potential Options - Opportunities and Constraints

Opportunities	Constraints
<b>Option 1 Dunoon Primary School - Full demolition</b>	
Would attract maximum 2/3 (100%) of funding from SG for a 300 pupil and 30 Early Years places.	Would not be supported by Historic Scotland and would result in lengthy planning procedures and would be timed out.
New build can achieve Grade A for Condition more easily than a refurbishment option.	Full decant of school would be required which would result in additional costs to the Council (Decant not funded by SG).
New build can address all suitability issues and achieve Grade A.	Unknown demolition and landfill costs.
New build could result in a reduced programme length.	
New build would reduce construction risks and bring more cost certainty.	
New build would be more energy efficient and have reduced life cycle costs.	
New build would result in more space efficiency.	
<b>Option 2 Dunoon Primary School - Façade Retention</b>	
Would likely attract maximum 2/3 (100%) of funding from SG.	Would not be supported by Historic Scotland and would result in lengthy planning procedures and would be timed out.
The new build element can achieve Grade A for Condition more easily than a refurbishment option.	Full decant of school would be required which would result in additional costs to the Council (Decant not funded by SG).
New build can address all suitability issues and achieve Grade A.	Unknown demolition and landfill costs.
New build element would reduce construction risks and bring more cost certainty.	Higher costs due to technical requirements to support façade.
New build element would be more energy efficient and have reduced life cycle costs.	Could result in a longer programme due to technical challenges associated with façade retention.
New build element would result in more space efficiency.	
<b>Option 3 Dunoon Primary School - Partial Remodel (part New Build) and Refurbishment</b>	
In principle, this option is supported by Historic Scotland and the Planning Authority.	Has associated higher risks compared to new build options as a result of retaining and refurbishing a listed B building.
Potential for project to be delivered without the need for substantial decant of school due to a phasing strategy.	Could result in a higher footprint than required due to constraints of existing building.
Remodel element comprising new build would achieve a Grade A for condition and suitability.	Refurbished elements would achieve a Grade A or high Grade B for Condition but would not achieve a Grade A for Suitability. This would likely be Grade B.
Remodel new build element would attract maximum 2/3 SG funding (100%).	Refurbished element would only attract up to a potential 90% SG funding (dependent on the final design proposals)
This option is likely to be delivered within an accepted timescale.	

## Appendix 2 Kirn Primary and Dunoon Primary School Proposed Redevelopment Programme



### Appendix 3 – Dunoon Primary School – Cost Models

		<b>Option 3A</b>	<b>Option 3B</b>	<b>Option 3C</b>	<b>Option 3D</b>	<b>Option 3E</b>	<b>Option 3F</b>
		Refurbishment / New Build + Double Sports Hall + To Suit Kirn Decant	Refurbishment / New Build + Single Sports Hall + To Suit Kirn Decant	Refurbishment / New Build + No Sports Hall + To Suit Kirn Decant	Refurbishment / New Build + Double Sports Hall + Excl Kirn Decant	Refurbishment / New Build + Single Sports Hall + Excl Kirn Decant	Refurbishment / New Build + No Sports Hall + Excl Kirn Decant
<b>1</b>	<b>Project Cost – including decant required at Dunoon &amp; Risk @ 7.5%</b>	£7,914,900	£7,471,600	£7,056,400	£7,458,900	£7,034,400	£6,636,900
<b>2</b>	<b>Potential SFT Funding</b>	£4,344,973	£4,033,008	£3,740,878	£4,344,973	£4,033,008	£3,740,878
<b>3</b>	<b>Kirn decant costs</b>	-	-	-	£782,200	£782,200	£782,200
<b>4</b>	<b>Catering</b>	£50,000	£50,000	£50,000	-	-	-
<b>5</b>	<b>Potential Total Council Contribution</b>	<b>£3,619,927</b>	<b>£3,488,592</b>	<b>£3,365,522</b>	<b>£3,896,127</b>	<b>£3,783,592</b>	<b>£3,678,222</b>

#### For each cost model

Line 1 – Project cost including decant required at Dunoon PS and Risk at 7.5%

Line 2 – Potential SFT funding metric based on a 300 Primary roll and 30 Early Years places and size of school (square metres)

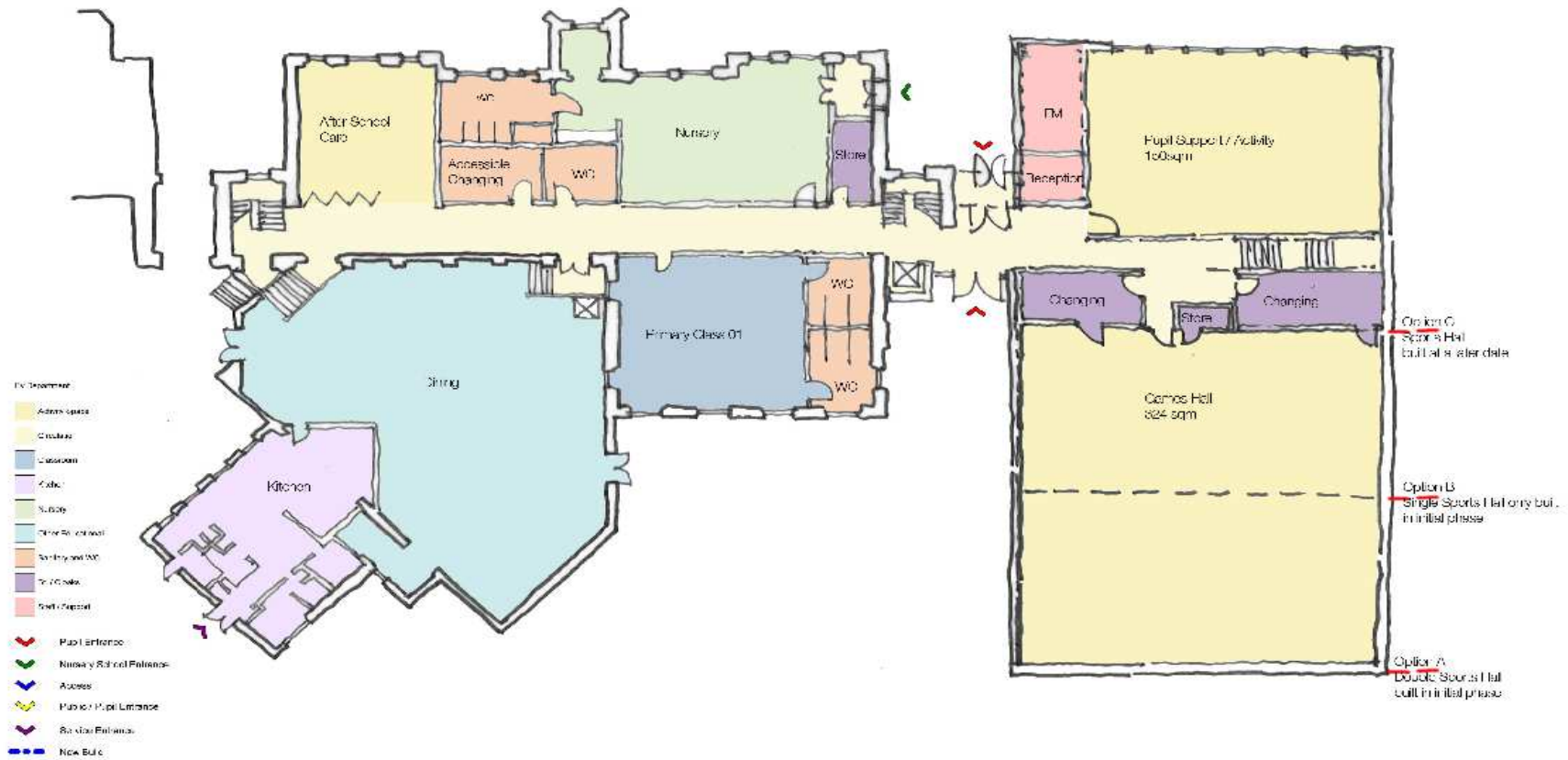
Line 3 – Cost of Kirn temporary accommodation required during Kirn construction programme (if Kirn not decanted to Dunoon Primary)

Line 4 – Catering – additional costs if Kirn decant to Dunoon.

Line 5 – Potential Total Council Contribution

# Appendix 4 Dunoon Primary School Proposed Ground Floor Plan

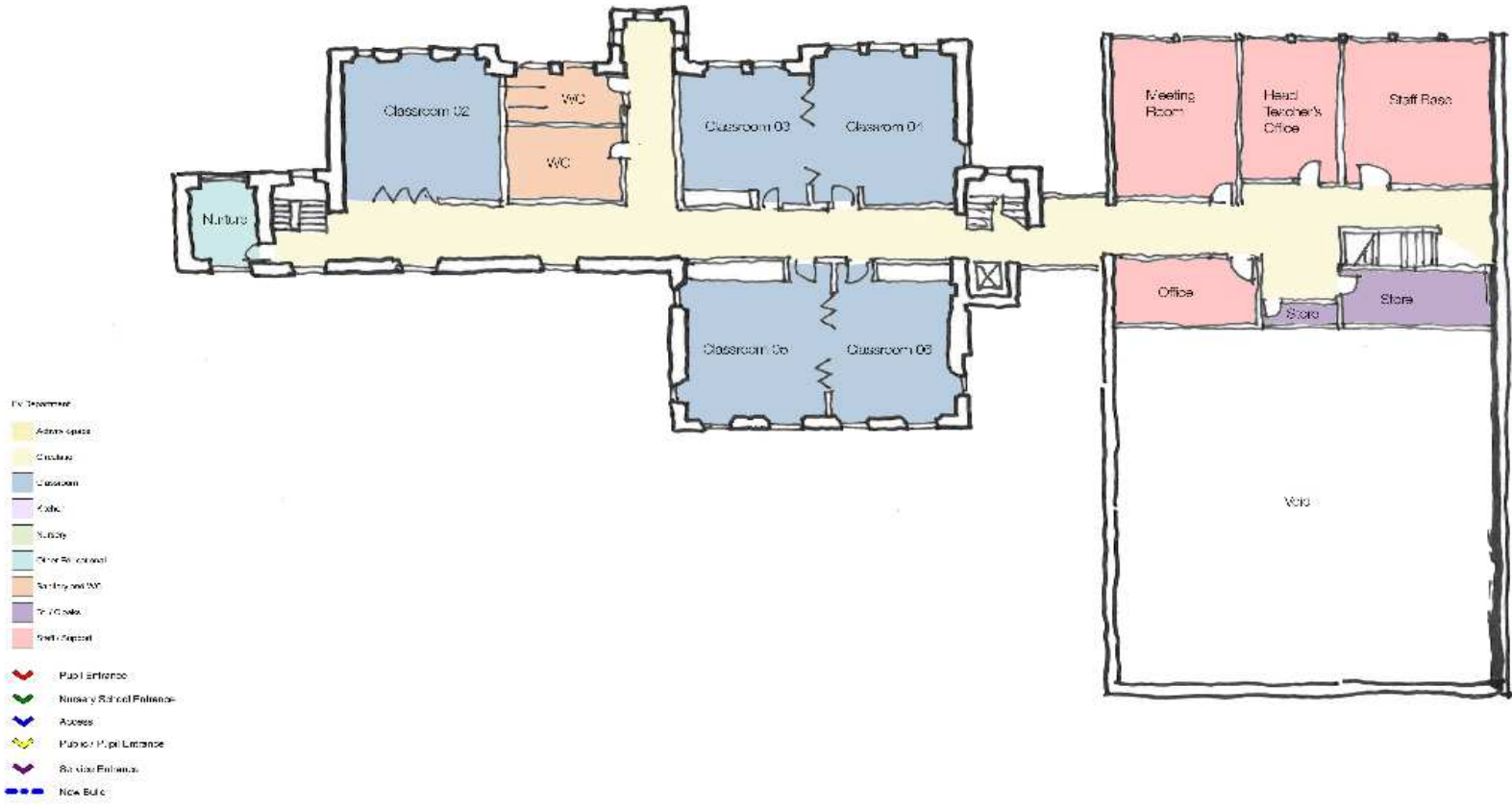
Ryder



Dunoon Primary School - Proposed Ground Floor Plan

# Appendix 4 Dunoon Primary School Proposed First Floor Plan

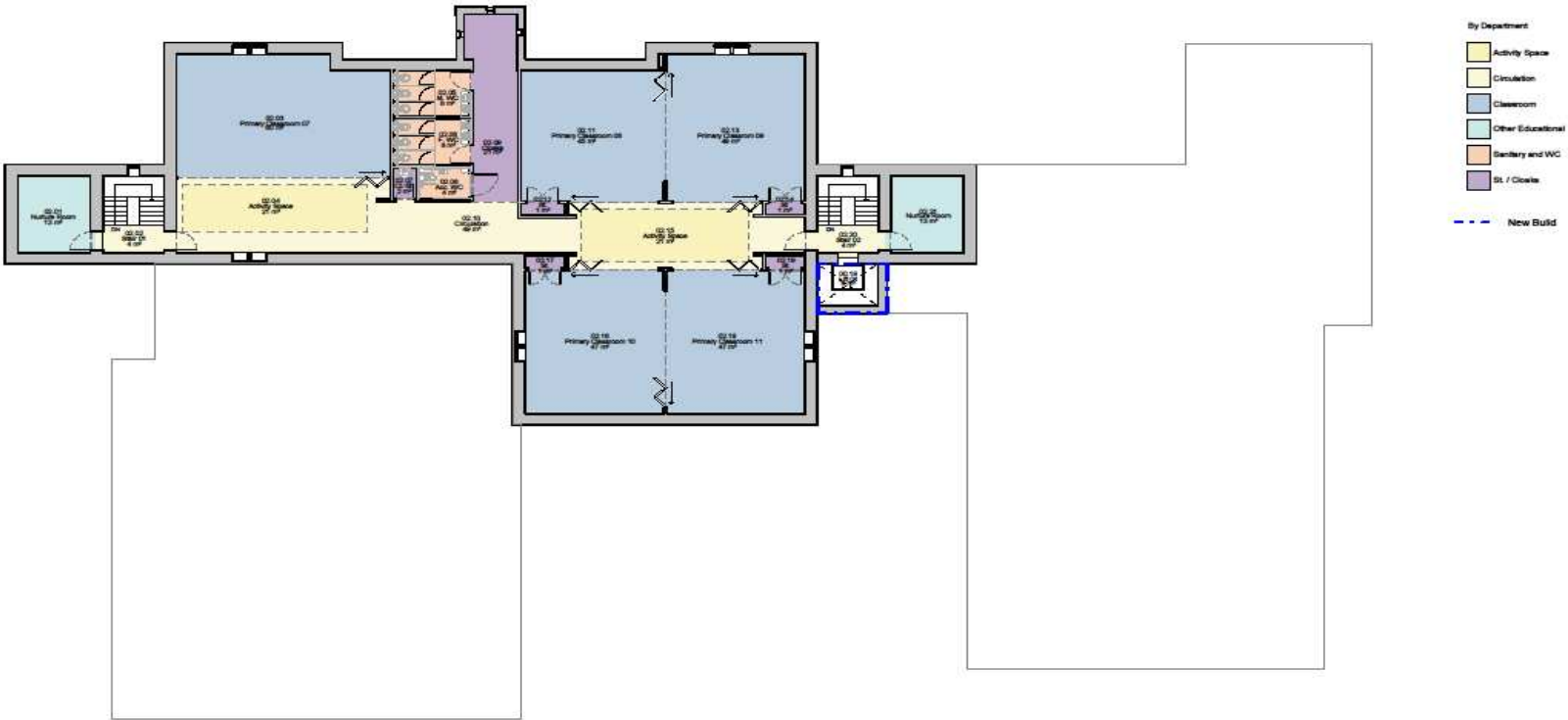
Ryder



Dunoon Primary School - Proposed First Floor Plan

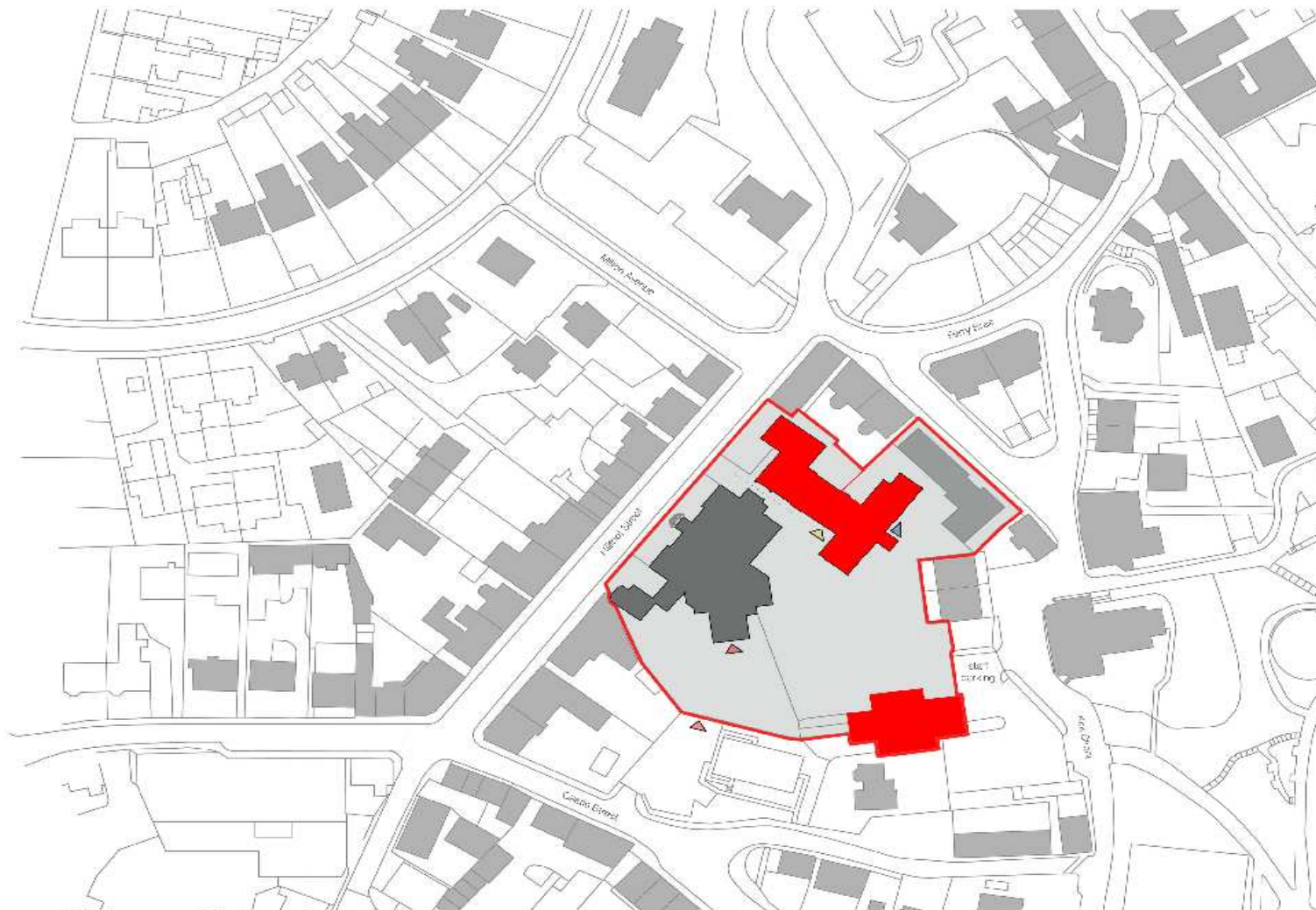


Appendix 4 Dunoon Primary School Proposed Second Floor Plan



**Appendix 5 Dunoon Primary School Proposed Existing Buildings to be demolished**

Ryder



**Dunoon Primary School**  
Existing Buildings to be demolished

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**ARGYLL AND BUTE COUNCIL****POLICY AND  
RESOURCES**

---

**DEVELOPMENT AND INFRASTRUCTURE  
SERVICES****18 DECEMBER 2014**

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**GOVERNANCE OF COUNCIL HARBOURS THROUGHOUT ARGYLL AND  
BUTE**

---

**Executive Summary**

1.1 The purpose of this report is to inform members of the background to the existing system of Harbour Authority management established in 2001. It also gives both information and recommendations for changes to the governance of the Council's ports and Harbours. It sets out the roles and duties connected with the discharge of the duty holder as defined in the Port Marine Safety Code.

1.2 The recommendations are as follows:-

That Members recommend to the Council that they:-

- 1.2.1 Agree the definition of roles as set out in section 4 of this report.
- 1.2.2 Agree the publication of a notice confirming who the duty holder for the Council's Harbours is, as required by paragraph 2.4 of the Code; and
- 1.2.3 Agree the establishment of a Harbour Authority as a sub-committee of the existing Economic Development and Infrastructure Committee for all Council owned ports and Harbours.

---

**ARGYLL AND BUTE COUNCIL**

**POLICY AND  
RESOURCES**

---

**DEVELOPMENT AND INFRASTRUCTURE SERVICES  
2014**

**18 DECEMBER**

---

**GOVERNANCE OF COUNCIL HARBOURS THROUGHOUT ARGYLL AND BUTE**

---

**1. Introduction**

1.1 The purpose of this report is to inform members of the background to the existing system of Harbour Authority management established in 2001. It also gives both information and recommendations for changes to the governance of the Council's ports and Harbours. It sets out the roles and duties connected with the discharge of the duty holder as defined in the Port Marine Safety Code.

**2. Recommendations**

2.1 That Members recommend to the Council that they:-

2.1.1 Agree the definition of roles as set out in section 4 of this report.

2.1.2 Agree the publication of a notice confirming who the duty holder for the Council's Harbours is, as required by paragraph 2.4 of the Code; and

2.1.3 Agree the establishment of a Harbour Authority as a sub-committee of the existing Economic Development and Infrastructure Committee for all Council owned ports and Harbours.

**3. Background**

3.1 In 2001 the then Director of Transportation, presented a paper through Council that established that each Area Committee would act as Harbour Authority for the Harbours within its own respective area. This continues to be the position at this present time however at the Policy and Resources Committee on 30<sup>th</sup> October it was recommended that Members note that a report on the governance and management of the Council's ports and Harbours be submitted to a future committee.

3.2 The UK Government introduced a Port Marine Safety Code (the Code) following on from the Sea Empress disaster in Milton Haven in February 1996. A copy of this is attached as appendix 1. This is a

guidance document drafted with the intention that it would apply to all Harbour authorities in the UK that had statutory powers and duties. The Code is primarily intended for the “duty holder” which role appears never to have been formally designated by the Council. The Code is not clear and definitive in respect of the person or body which should fulfil this role.

- 3.3 Paragraph 2.3 of the Code states that for most Harbour authorities the role of duty holder is undertaken by members of the “Harbour Authority”, which could be taken, in a Council context, to allocate this role to the Harbour Authority for each of the four areas. It is understood that officers have previously given advice to this effect.
- 3.4 Paragraph 2.4 of the Code, however, goes on to say that if the “Harbour Authority” is not directly accountable for marine safety, or has limited decision making powers in this respect, it is appropriate for the role of duty holder to reside elsewhere. The paragraph goes on to highlight the example of municipal ports (which would cover the Council’s Harbours) where oversight is provided by elected members, and provides that the role of the duty holder may reside elsewhere and this may not be the Harbour authority or Authority but some other person or body. It is understood that my predecessor as Executive Director – Development and Infrastructure has undertaken the duty holder role in the past. However, this would appear to have been done without the required publication of notice as required by paragraph 2.4 of the Code.
- 3.5 In terms of the Constitution, I as the Executive Director of Development and Infrastructure, have the responsibility for management of the Council’s piers and Harbours and as such am *de facto* the duty holder for the Council’s Harbours. It is recommended that members recognise the arrangements in relation to duties and responsibilities as they are outlined here and that this situation be regularised.

#### **4.0 Duties and Responsibilities**

- 4.1 Given the position as outlined in the previous section of this paper, it is necessary to clearly define the roles and responsibilities incumbent on (a) elected members, (b) Development and Infrastructure Services and in particular the Executive Director, and (c) the Designated Person.

#### **4.2 Elected Members**

The Council is the Statutory Harbour Authority for all piers and Harbours under our ownership and has delegated that function to the four Area Committees.

The members of each Committee, when sitting as Harbour Authority for their area have responsibility for providing policy discretion to

officers/others involved in the operational management and use of the facilities, and for scrutinising the implementation of these.

These are largely defined in the Port Marine Safety Code. A copy of this is attached as appendix 1.

4.3 **Executive Director – Development and Infrastructure (also Duty Holder)**

The Duty Holder as defined by the Port Marine Safety Code has responsibility for the Harbours in his or her own area. The Executive Director, through the present scheme of delegation is responsible for the management of Harbours. As such, the Executive Director fulfils the role of Duty Holder. The Code sets out the general duties and powers in respect of the duty holder.

This duty is currently discharged through the **Head of Economic Development and Strategic Transportation**. If this proposal is accepted then it is considered that in order for Members to discharge their responsibilities in respect of the Code they would continue to delegate responsibility for the operational management to the Executive Director of Development and Infrastructure and appropriately qualified officers thereby allowing members to focus on the key role of strategic oversight.

4.4 **Designated person**

The **Designated Person** is an independent individual with specialist marine knowledge whose role is to report directly to the Harbour Authority and give them the assurance that the Council is compliant with the Port Marine Safety Code. Marico has been appointed to undertake this role on behalf of the Council.

5.0 **Governance**

5.1 The present system of governance was agreed by the Council in 2001 through the Strategic Policy Committee and each Area Committee was delegated the duties and responsibilities of acting as the Harbour Authority for its respective Harbours. The Code sets out what is deemed to be best practice, it is therefore proposed that members consider altering this model to enable a more focussed and consistent approach to the function and constitution of Harbour Authority's within the Authority. Such an approach may avoid the possibility of potential local conflicts of interest that may arise for members of the Area Committee and ensure that a Council wide approach is taken to the management of the Council's ports and Harbours over the whole area and that reporting and scrutiny is uniform for all.

5.2 The previous paper to P&R noted that since Harbour dues are set across the whole area of the Council and there is an argument that the

role of Members in relation to Harbours should now be undertaken by a specialised and appropriately trained committee of Members. This is strengthened when it is considered that a single Harbour Authority could ensure that safety procedures are applied Council wide including a consistent approach to the application of Council fees and charges. In addition, engagement with our marine partners such as CalMac Ferries Ltd and Caledonian Maritime Assets Ltd could be focussed to one specialist group as distinct from four disparate groups.

There are 3 options for the constitution of a single Harbour Authority:

Option	Advantages	Disadvantages
Retain existing system	<ul style="list-style-type: none"> <li>• No change for Members</li> <li>• Open for local lobbying</li> </ul>	<ul style="list-style-type: none"> <li>• Requires training for all Members</li> <li>• Potential for lack of consistency in application of strategic policy</li> </ul>
New single Harbour Authority committee	<ul style="list-style-type: none"> <li>• Specialist group</li> <li>• Consistent approach to applying strategic policy</li> <li>• Limited additional training required for members</li> </ul>	<ul style="list-style-type: none"> <li>• Potential for loss of local lobbying</li> <li>• A new committee for Members to attend</li> </ul>
Establish a Harbour Authority through a new sub-committee within the existing Economic Development and Infrastructure Committee	<ul style="list-style-type: none"> <li>• Specialist group</li> <li>• Consistent approach to applying strategic policy</li> <li>• Limited additional training required for members</li> <li>• Committee already constituted</li> </ul>	<ul style="list-style-type: none"> <li>• Potential for loss of local lobbying</li> </ul>

## 6. CONCLUSION

6.1 The present arrangement for the four area committees to act as Harbour Authority for each of the Harbours within its area is not considered to represent the most efficient or consistent model for compliance with the Port Marine Safety Code. Consideration should be

given to altering this model to establish a Harbour Authority through a new sub-committee within the existing Economic Development and Infrastructure Committee. Officers consider this option to be the best in terms of setting a strategic direction for strategic policy and being efficient in making best use of the established committee structure. Members on the Committee would receive the specialist training required to enable them to discharge their duties in respect of the Code thereby giving the Council a consistent approach for all Council Harbours and give the Designated Person a single point of contact when their reports are submitted on Council compliance with the Code.

## 7.0 IMPLICATIONS

Policy	The proposed governance model would require a change in policy subject to ratification by full Council.
Financial	None.
Personnel	None.
Legal	None.
Equal Opportunities	None
Risk	Failure to comply with the Port marine Safety Code would incur reputational risk to the Council
Customer Service	None.

For further information please contact Martin Gorringe, Marine Operations Manager  
(01546604656)

Development and Infrastructure Services  
4 December 2014





Department  
for Transport

# Port Marine Safety Code

December 2012

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# Foreword



The strong safety record of UK ports is underpinned by effective local decision making and with the minimum of regulation. However, this Government is committed to improving the safety of mariners and this code assists marine facilities by setting out practical and effective safety measures.

The varied nature of marine facilities, including location, tides, approaches, cargo types and vessel calling patterns introduce a myriad of operational practices that make a specific legislative framework for safety within the industry difficult. A flexible and responsive framework, enshrined in the non-mandated PMSC, is therefore an effective and desirable alternative.

The non-mandated nature of the code enables it to be more flexible than a rigid legislative approach, reflecting new operational best practice and allowing rapid promulgation to interested parties.

The Code applies to all harbours facilities, berths, terminals and marinas and sets national standards for all aspects of port safety. Although marine operations have the potential to be hazardous, the principles of this code will help ports to protect workers, ships, passengers and the environment.

The common aim of government and industry is to continue to enhance maritime safety. This will ensure that ports are able to operate efficiently in the future and continue their vital role to support the UK's economy.

**Stephen Hammond**  
**Parliamentary Under Secretary of State for Transport**

# Introduction

The Port Marine Safety Code (the Code) applies to all harbour authorities in the UK that have statutory powers and duties. It is also strongly recommended that facilities outside of harbour areas such as berths, terminals and marinas should seek to have safety management systems in place which comply with this code. It has been developed with help from a wide range of interested parties in the ports and shipping industries.

The Code is primarily intended for the “duty holder” – for most harbour authorities this means members of the harbour board, both individually and collectively - who are directly accountable for marine safety in harbour waters. All board members are therefore, urged to familiarise themselves with the updated Code and review its implications on local port operations.

These authorities have serious legal duties relating to the safety of people who use our harbours and their property, and to the well being of the port environment and community. The responsibility for maintaining safety in our ports is governed not only by marine legislation, such as the Pilotage Act 1987 and Merchant Shipping Act 1995 that are referred to in the Code, but also under general legislation, such as the Health and Safety at Work Act and the Dock Regulations.

This Code establishes the principle of a national standard for every aspect of port marine safety and aims to enhance safety for those who use or work in ports, their ships, passengers and the environment. It applies to port marine operations the well-established principles of risk assessment and safety management systems. It provides a measure by which harbour authorities can be accountable for the legal powers and duties which they have to run their harbours safely and help to discharge their obligations effectively.

The supporting “Guide to Good Practice on Port Marine Operations” (the Guide) complements the Code and provides harbour authorities with generic advice and examples about how they might meet the requirements under the Code.

## Updating the Code and the Guidance

At the end of 2008, it was clear that both documents needed to be updated to take account of new developments. A working group was established which included representatives from the Department for Transport (DfT), the Maritime and Coastguard Agency (MCA) and industry which considers revisions to the code.

It is the Government's intention to review and update the Code at least once every three years. The Guide, which was always envisaged to be a living document for marine practitioners, will now be maintained by the ports industry and reviewed on an annual basis.

## Status of the Code

The Code refers to some of the existing legal duties and powers that affect harbour authorities in relation to marine safety, but it does not – in itself - create any new legal duties for harbour authorities. There are however several additional measures which, although not mandatory under legislation, are key to its successful implementation. In order to comply with the Code therefore, harbour authorities must:

- be aware of their existing powers and duties;
- appoint someone as an independent 'designated person' with direct access to the board;
- develop an effective marine safety management system, which employs formal risk assessment techniques;
- employ people who are competent and qualified for the positions they hold; and
- publish a comprehensive safety plan, along with a regular assessment showing the authority's performance against the plan.

Harbour authorities would be well advised to secure powers of general direction, to support the effective management of vessels in their harbour waters.

## Devolution

Under the devolution settlements, marine safety is a reserved matter. However, there are a few areas that are referred to – such as some aspects of pilotage and some responsibilities in Welsh fishing ports – which are devolved matters. As far as possible, any alternative procedures that are followed in Scotland, Wales and Northern Ireland are referred under the end notes section.

## Implementation

The Government, other regulatory authorities and the industry associations have a very strong expectation that all harbour authorities will comply with the Code. Authorities should note that:

- The Code does not contain new legal obligations, but includes – amongst other things -references to the main legal duties which already exist;
- As such, failure to comply is not an offence in itself. However, the Code represents good practice as recognised by a wide range of industry stakeholders and a failure to adhere to good practice may be relevant to whether the harbour authority is in breach of certain legal duties. Moreover, the authority may suffer reputational damage if it has publicly committed to the Code’s standards and then fails to meet them.
- Periodically and /or following an incident, the regulatory authorities will seek assurance that all ports are complying with the Code. The Government will monitor levels of compliance to assess its effectiveness in delivering improved safety.

## Enquiries

Enquiries about this Code should be made to:

The Department for Transport Maritime Safety and Environment, Zone 2/33  
Great Minster House, 33 Horseferry Road, London, SW1P 4DR

[maritime@dft.gsi.gov.uk](mailto:maritime@dft.gsi.gov.uk)



# A Summary of the Port Marine Safety Code

The Port Marine Safety Code (the Code) applies to all harbour authorities. The Code is primarily intended for “the duty holder” who is directly accountable for the safety of marine operations in their waters and approaches. In most authorities, the harbour board is the duty holder, so board members should regard themselves as individually and collectively responsible for meeting the Code’s standards.

The Code has been developed to improve safety in UK ports and to enable harbour authorities to manage their marine operations to nationally agreed standards. It provides the standard against which the policies, procedures and the performance of harbour authorities can be measured. It also describes the role of board members, officers and key personnel in relation to safety of navigation and summarises the main statutory duties and powers of harbour authorities. As well as complying with these duties and powers, the authority must develop an effective marine safety management system based on formal risk assessment. When fully implemented, the Code should reduce the risk of incidents occurring in harbour waters and provide some protection for the duty holder if an incident does occur.

In order to comply with the Code, the duty holder on behalf of the harbour authority must:

1. **Review and be aware** of their existing powers based on local and national legislation;
2. **Comply** with the duties and powers under existing legislation, as appropriate;
3. **Ensure all risks are formally assessed** and as low as reasonably practicable in accordance with good practice;
4. **Operate an effective marine safety management system (SMS)** which has been developed after consultation and uses formal risk assessment;
5. **Use competent people** (i.e. trained, qualified and experienced) in positions of responsibility for safety of navigation;
6. **Monitor, review and audit** the marine SMS on a regular basis – an independent designated person has a key role in providing assurance for the duty holder;

**7. Publish a safety plan** showing how the standard in the Code will be met and a report assessing the performance against the plan;

**8. Comply with directions** from the General Lighthouse Authorities and supply information & returns as required.

In addition, harbour authorities should seek additional powers if the existing powers are insufficient to meet their obligations to provide safe navigation.

It is strongly advised that the duty holder and all officers involved in marine safety consider the guidance provided on how to comply with this Code and review the lessons learnt from incidents which have occurred in harbours. Guidance can be found in “A Guide to Good Practice on Port Marine Safety Operations”; recommendations and the common lessons that can be learnt from major incidents can be found on the Marine Accidents Investigation Branch website.

The Code is divided into four main sections:

**1. Accountability for marine safety:** This part identifies who is accountable for marine safety in the harbour waters and the approaches. It is based on these general principles:

- a. The duty holder, on behalf of the harbour authority is accountable for managing operations within the port safely and efficiently.
- b. Harbour authorities should make a clear published commitment to comply with the standards laid down in this Code.
- c. Executive and operational responsibilities for marine safety in harbour authorities must be clearly assigned, and those entrusted with these responsibilities must be answerable for their performance.
- d. A ‘designated person’ must be appointed to provide independent assurance about the operation of its marine safety management system. The designated person must have direct access to the board.

## **2. Key measures needed for compliance.**

- e. Powers, policies, plans and procedures should be based on a formal assessment of hazards and risks, and harbour authorities should have a formal marine safety management system.
- f. The marine safety management system should be in place to ensure that all risks are controlled – the more severe ones must either be eliminated or kept “as low as reasonably practicable” (ALARP).
- g. All parties involved in the management and safety of navigation must be competent and qualified up to a minimum national standard.
- h. Harbour authorities should monitor, review and audit the marine safety management system on a regular basis.
- i. Harbour authorities should publish plans and an assessment of their performance in meeting their obligations under the Code, at least once every three years.

**3. General duties and powers:** For the purposes of this Code, the duty holder should ensure that the harbour authority discharges its responsibilities to:

- j. Take reasonable care, so long as the harbour is open for the public use, that all who may choose to navigate in it may do so without danger to their lives or property.
- k. Conserve and promote the safe use of the harbour; and to prevent loss or injury caused by the authority’s negligence.
- l. Have regard to the efficiency, economy and safety of operation as respects the services and facilities provided.
- m. Take such action that is necessary or desirable for the maintenance, operation, improvement or conservancy of the harbour.
- n. Ensure that enough resources are available to discharge their marine safety obligations and set the level of dues accordingly.

**4. Specific duties and powers:** The duty holder should also be aware of other specific duties and powers which are relevant to port safety, including the following:

- o. Powers to direct vessels are available and should be used to support safe navigation.
- p. Dangerous vessels and dangerous substances (including pollution) must be effectively managed.
- q. A pilotage service must be provided if required in the interests of safety.
- r. Harbour authorities have duties and powers as local lighthouse authorities. Aids to navigation must be provided (as necessary), properly maintained and any danger to navigation from wrecks, obstructions or changes in the navigable waterway effectively managed.

# The Port Marine Safety Code

The Code should be read in conjunction with the Guide to Good Practice on Port Marine Operations.

# 1. Background

- 1.1** The Code includes a brief general summary of the main duties and powers that are common to many harbour authorities in relation to marine operations. It also contains guidance as to how some of these duties and powers should be exercised consistent with good practice.
- 1.2** There are several general principles
- **A harbour authority has statutory and non-statutory duties.**
  - **These duties include an obligation to conserve and facilitate the safe use of the harbour; and a duty of care against loss caused by the authority's negligence.**
  - **Duties to ensure the safety of marine operations are matched with general and specific powers to enable the authority to discharge these duties.**
  - **There are procedures for these to be changed where necessary.**
- 1.3** Some duties, and each harbour authority's powers, are contained in local Acts and Orders, and, although they have much in common, the detail varies from port to port. Most are established by the incorporation or transposition into local Acts and Orders of model provisions in the Harbours, Docks and Piers Clauses Act 1847. Other duties and powers are in general legislation - for example, the Harbours Act 1964, the Dangerous Vessels Act 1985, the Pilotage Act 1987 and the Merchant Shipping Act 1995. This Code is designed to provide general guidance and so while it describes typical powers and duties, it is not practicable for it to cover the specific legal position for each port, and it should not be relied upon for that purpose. Authorities should check their local Acts and Orders if there is doubt (for example) as to whether they have all of the common duties and powers described in this Code.

## Harbour authorities subject to the Code

- 1.4** The Code applies to every harbour authority with statutory powers and duties, including competent harbour authorities<sup>1</sup>, which have specific powers and duties for marine pilotage. It is written to apply to ports of all sizes, irrespective of resources, cargoes handled or levels of traffic. Any harbour authority with statutory powers in relation to shipping and safety of navigation will be affected to some degree.

## Functions to which the Code applies

- 1.5** The Code is concerned with harbour authority responsibilities for port marine safety but does not purport to cover all the duties and responsibilities of harbour authorities, or even all their safety responsibilities. The Code does not, for example, relate to duties and responsibilities deriving from health and safety legislation,<sup>2</sup> and (with some exceptions) those relating to the safety of vessels under the Merchant Shipping Acts. However, it has been designed so that compliance with the good practice guidance in the Code should be fully compatible with compliance with harbour authorities' other duties and responsibilities.

## 2. Accountability for Marine Safety

**2.1** This chapter identifies who is accountable for maritime safety in harbour waters and their approaches. It is based on these general principles:

- **The duty holder, on behalf of the harbour authority is accountable for managing operations within the port safely and efficiently.**
- **Harbour authorities should make a clear published commitment to comply with the standards laid down in this Code.**
- **This Code represents the national standard against which the policies, procedures and performance of harbour authorities may be measured.**
- **Executive and operational responsibilities for marine safety must be clearly assigned, and those entrusted with these responsibilities must be answerable for their performance.**
- **A ‘designated person’ must be appointed to provide independent assurance about the operation of its marine safety management system. The designated person must have direct access to the board.**

**2.2** The key to effective discharge of the functions described in this Code is the development and operation of a marine safety management system for marine operations. That in turn depends upon a clear assignment of relevant executive and operational responsibilities to the authority’s officers.

### The duty holder

**2.3** 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. For most harbour authorities, the role of duty holder is undertaken by members of the harbour board who are (both collectively and individually) accountable for marine safety under the Code.

**2.4** If however, the harbour board is not directly accountable for marine safety, or has limited decision-making powers in this respect, it is acceptable for the role of duty holder to reside elsewhere. This might be the position in some municipal ports for example, where accountability for marine safety is overseen by a local authority committee. If the duty

holder is not the harbour board, the harbour authority must publish and confirm who the duty holder is.

**2.5** The role of the duty holder includes:

- maintaining strategic oversight and direction of all aspects of the harbour operation, including marine safety;
- responsibility for the development of policies, plans, systems and procedures for safe navigation;
- ensuring that assessments and reviews are undertaken as required, to maintain and improve marine safety; and
- ensuring that the harbour authority seeks and adopts appropriate powers for the effective enforcement of their regulations, and for setting dues at a level which adequately funds the discharge of all their duties.

**2.6** Harbour authorities have powers to appoint a harbour master, to authorise pilots and may properly entrust the operation of the harbour to such professional people; but the duty holder cannot assign or delegate its accountability for compliance with the Code.

**2.7** All board members should take time to gain an appropriate insight and understanding of the port's marine activities, marine safety management system and supporting systems. This can be accommodated through briefings and operational visits. Serious consideration should be given to appointing a member to the board who has relevant maritime experience, who can act as the initial point of contact for the designated person.

## The designated person

**2.8** Each harbour authority must appoint an individual as the **designated person** to provide independent assurance directly to the duty holder that the marine safety management system, for which the duty holder is responsible, is working effectively. Their main responsibility is to determine, through assessment and audit, the effectiveness of the marine safety management system in ensuring compliance with the Code.

**2.9** In order to fulfil this function the designated person must have a thorough knowledge and understanding of the requirements of this Code (and supporting Guide to Good Practice) and associated port and marine legislation. Their role does not obscure the accountability of the authority and its board members.

## Chief executive

**2.10** The Chief Executive is accountable for the operational and financial control of the authority. They advise the authority on all matters related to



its duties and powers, with appropriate advice from the harbour master and other officers. He or she will:

- a. oversee the implementation of its policies and decisions;
- b. have overall executive responsibility for the safety of operations and staff; and
- c. will oversee the recruitment and training of staff.

## Harbour master

**2.11** The harbour master has day-to-day responsibility for the safe operation of navigation and other marine activities in the harbour and its approaches. The post holder must be competent and a suitably qualified person, with sufficient experience for the role. They must also be competent to undertake other relevant duties, in relation to Health & Safety at Work and Merchant Shipping legislation.

**2.12** The harbour master:

- a. has powers of direction to regulate the time and manner of ships' entry to, departure from and movement within the harbour waters, and related marine safety purposes.
- b. ensures the co-ordination and regulation of all vessels within the harbour and its approaches. He may also be responsible for developing and implementing emergency plans and procedures, for regulating dangerous goods in transit on ships and for counter-pollution and waste disposal plans.

**2.13** In relation to the authority's conservancy duties, the harbour master would normally have overall responsibility for the provision and maintenance of any aids to navigation.

## The authority's officers

**2.14** The appointment of officers is a matter for the authority. Delegations must be clear, formal and must not obscure the accountability of the authority and its board members. It is important that:

- a. executive and operational responsibilities are appropriately assigned to properly trained people;
- b. if some of the functions are combined, a proper separation of safety and commercial activities needs to be maintained; and
- c. all employees must have training that is appropriate for their level of responsibility.

**2.15** Delegations are no substitute for the authority (the duty holder) being directly involved in safety management. Therefore, at least one principal officer, holding delegated responsibilities for safety, should attend board meetings.

## 3. Key measures needed for compliance

- 3.1** In addition to carrying out duties and applying the powers outlined in chapters four and five of this Code, harbour authorities must also develop and maintain an effective marine safety management system. Plans and reports should also be published as a means of improving the transparency and accountability of harbour authorities, as well as providing reassurance to the users of port facilities. Harbour authorities may find it useful to consider past events and incidents; to recognise potential dangers and the means of avoiding them.
- **Powers, policies, plans and procedures should be based on a formal assessment of hazards and risks, and harbour authorities should have a formal marine safety management system.**
  - **The marine safety management system should be in place to ensure that all risks are controlled – the more severe ones must either be eliminated or kept “as low as reasonably practicable” (ALARP).**
  - **All parties involved in the safety of navigation must be competent and qualified up to a minimum national standard.**
  - **Harbour authorities should monitor, review and audit the marine safety management system on a regular basis.**
  - **Harbour authorities should publish plans and an assessment of their performance in meeting their obligations at least once every three years.**
- 3.2** In order to comply with the Code, harbour authorities need to follow these steps below.

### Review existing powers

- 3.3** Existing powers should be reviewed on a periodic basis by harbour authorities, to avoid a failure in discharging its duties or risk exceeding its powers. A summary of the main duties and powers for harbour authorities are included under chapters four & five of this Code; not all of these are relevant to every harbour authority.
- 3.4** Harbour authorities must understand their local legislation -harbour acts, harbour orders and byelaws - as well as the procedures and systems that are in place. Additional powers should be sought by the harbour

authority, if a risk assessment concludes that this would be the best means of meeting its safety obligations. Harbour authorities would be well advised to secure powers of general direction to support the effective management of vessels in their harbour waters, if they do not have them already.

## Use formal risk assessment

**3.5** The risks associated with marine operations need to be assessed and a means of controlling them needs to be deployed. The aim of this process is to eliminate the risk or, failing that, to reduce risks to as low as reasonably practicable. Formal risk assessments should be used to:

- identify hazards and analyse risks;
- assess those risks against an appropriate standard of acceptability; and
- where appropriate, consider a cost-benefit assessment of risk reducing measures.

**3.6** Risk assessments should be undertaken by people who are qualified or appropriately skilled to do so, especially when deciding which techniques to use and when interpreting the results. Risks should be judged against objective criteria, without being influenced by the financial position of the authority, to ensure they are kept as low as reasonably practicable (ALARP). The greater the risk, the more likely it is that it is reasonable to go to the expense, trouble and invention to reduce it. There is a preferred hierarchy of risk control principles

- eliminate risks - by avoiding a hazardous procedure, or substituting a less dangerous one;
- combat risks - by taking protective measures to prevent risk;
- minimise risk - by suitable systems of working.

**3.7** The process of assessment is continuous, so that new hazards to navigation and marine operations and changed risks are properly identified and addressed. Where appropriate, harbour authorities should consider publishing relevant details of their risk assessments.

## Implement a marine safety management system

**3.8** A safety management system - which manages the hazards and risks along with any preparations for emergencies – must be developed, implemented and maintained. This should be operated effectively and revised periodically.

**3.9** This system should incorporate safety policies and procedures to:

- ensure there is proper control of ship movements by regulating the safe arrival, departure and movement within the harbour of all vessels;
- protect the general public from dangers arising from marine activities within the harbour;
- carry out all its functions with special regard to the possible environmental impact; and
- prevent acts or omissions that may cause personal injury to employees or others.

It should also:

- confirm the roles and responsibilities of key personnel at the harbour authority;
- outline present procedures for marine safety within the harbour (including the port approaches);
- measure performance against targets (harbour authorities must have a database or system to record incidents, including near misses);
- refer to emergency plans that would need to be exercised; and
- be audited (internally) on an annual basis.

**3.10** A statement about the standard of the port's performance should be included in the authorities' annual report.

**3.11** Where appropriate, the marine safety management system should assign responsibility for associated matters - such as the safety of berths; for maintaining channels; hydrographic surveys; environmental monitoring; and the provision of appropriate engineering and environmental advice.

## Consultation

**3.12** Harbour authorities should consult, as appropriate, those likely to be involved in or affected by the marine safety management system they adopt. This opportunity should be taken to develop a consensus about safe navigation in the harbour.

## Competence standards

**3.13** Under the Code, all persons involved in the management and execution of marine services should be qualified and trained to the appropriate national standard<sup>3</sup>. Harbour authorities must assess the fitness and competence of all persons appointed to positions with responsibility for safe navigation. Achieving marine port safety is a team operation and people in these roles must be competent and adequately trained.

## Incident investigation

- 3.14** However effective the safety management regime is, marine incidents do occur in harbours. Such incidents may involve death, serious injury, pollution and other undesirable outcomes and they may involve breaches of national or local laws.
- 3.15** Investigations by the harbour master of marine incidents have two essential purposes:
- a. to determine the cause of the incident, with a view to preventing a recurrence of that incident (or similar); and
  - b. to determine if an offence has been committed: if so, there may be the need on the part of a harbour authority to initiate enforcement action that may lead to prosecution in their own right or through an agency of another authority such as the Police or the MCA.
- 3.16** It is, therefore, essential that the marine safety management system addresses the potential for incidents to occur and to provide instruction and guidance on any investigations and enforcement action that may be required as a result. By ensuring that a robust, rigorous, independent investigation has been carried out, the board and the duty holder can be assured that their obligations for compliance have been addressed.

## Statutory reporting requirements

- 3.17** Harbour authorities should report any accident which meets the criteria established by the MAIB, to the chief inspector and any other appropriate authorities, by the quickest means available<sup>4</sup>.

## Monitoring performance and auditing

- 3.18** The marine safety management system must have a regular and systematic review of its performance. This should be based on information from monitoring the system itself and from independent audits of the whole system. Performance of the system should be assessed against internal performance indicators and where appropriate, by benchmarking against other ports that have adopted good practice.

## Enforcement

- 3.19** Harbour authorities must demonstrate that all policies and procedures are properly and effectively enforced, and that adequate resources are available for this purpose.

## Publication of plans and reports

- 3.20** To demonstrate the authority's commitment to maritime safety and ensure the involvement of harbour users, a safety plan for marine operations should be published at least once every three years. The plan should illustrate how the policies and procedures will be developed to satisfy the requirements under the Code. It should commit the authority to undertake and regulate marine operations in a way that safeguards the harbour, its users, the public and the environment. It should refer to commercial activities in the harbour; the efficient provision of specified services and the effective regulation of shipping. It should also explain how commercial pressures would be managed without undermining the safe provision of services and the efficient discharge of its duties.
- 3.21** The duty holder must also publish an assessment of the harbour authority's performance against the plan. Information gathered from the monitoring and auditing of the marine safety management system, should be used to support the analysis and conclusions.
- 3.22** The form of each authority's plan and report will be for it to determine, so long as it covers properly the requirements of the Code. As a minimum, plans and reports should be published once every three years.

## Monitoring compliance

- 3.23** Once every three years all authorities and facilities/berths/terminals and marinas that fall under the Code shall undertake a compliance exercise. This will come in the form of a letter, stating they are compliant with the Code, from the duty holder to the MCA .
- 3.24** The next round of compliance letters is due on or before the **31st March 2015**. Letters should be sent to Navigation Safety ,Maritime and Coastguard Agency, Spring Place, Southampton, SO15 1EG.
- 3.25** Where necessary the MCA may undertake a health check. These health checks are usually arranged following an MAIB investigation into an incident, but could also be triggered by other indicators of non-compliance. The aim of the visit is encourage compliance, rather than to take formal action.

## 4. General Duties and Powers

**4.1** For the purposes of this Code, the duty holder should ensure that the harbour authority discharges its responsibilities to:

- **Take reasonable care, so long as the harbour is open for the public use, that all who may choose to navigate in it may do so without danger to their lives or property.**
- **Conserve and promote the safe use of the harbour; and prevent loss or injury caused by the authority's negligence.**
- **Have regard to efficiency, economy and safety of operation as respects the services and facilities provided.**
- **Take such action that is necessary or desirable for the maintenance, operation, improvement or conservancy of the harbour.**

In addition, the duty holder must ensure that enough resources are available to discharge their marine safety obligations and set the level of dues accordingly<sup>5</sup>.

Such actions will in some cases - for example the erection of works or the placing of aids to navigation - be subject to consents or other authorisations.

### 'Open port duty'

**4.2** Almost every harbour authority's statutory powers are subject to what is called the 'open port duty'. This means that the harbour, dock, or pier must be open to anyone for the shipping and unshipping of goods and the embarking and landing of passengers, on payment of the rates and other conditions set by the local legislation for that port<sup>6</sup>.

### Conservancy duty

**4.3** A harbour authority has a duty to conserve the harbour so that it is fit for use as a port, and a duty of reasonable care to see that the harbour is in a fit condition for a vessel to utilise it safely. They should provide users with adequate information about conditions in the harbour. This duty covers several specific requirements:

- a. to survey as regularly as necessary and find the best navigable channels;
- b. to place and maintain navigation marks in the optimum positions, which are suitable for all conditions;
- c. to keep a 'vigilant watch' for any changes in the sea or river bed affecting the channel or channels and move or renew navigation marks as appropriate;
- d. to keep proper hydrographic and hydrological records;
- e. to ensure that hydrographic information is published in a timely manner; and
- f. to provide regular returns and other information about the authorities' local aids to navigation as the General Lighthouse Authority may require<sup>7</sup>.

- 4.4** Where a harbour authority establishes that there is a certain depth of water at a part of the harbour over which vessels may be obliged to pass, it must use reasonable care to provide that the approaches to that part are sufficient, under normal conditions, or give warning that the advertised depth has not been maintained. Harbour authorities should supply the UK Hydrographic Office (UKHO) with information that may be needed for their Admiralty charts and other publications.

## Environmental duty

- 4.5** Harbour authorities have a general duty to exercise their functions with regard to nature conservation and other related environmental considerations<sup>8</sup>. They may now seek additional powers for these purposes. They also have an obligation, where a Special Protection Area for Birds or a Special Area of Conservation has been designated under the Wild Birds or Habitats Directives, to have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions<sup>9</sup>. Harbour authorities also have to comply with The Natural Environment and Rural Communities Act 2006 which strengthened the requirement for public bodies, including statutory undertakers<sup>10</sup>, to have regard for bio-diversity in undertaking their activities<sup>11</sup>.

## Civil contingencies duty

- 4.6** The Civil Contingencies Act 2004 provides a framework for civil protection in the event of an emergency that threatens serious damage to human welfare, the environment or security. Harbour authorities are classified as category 2 "cooperating bodies". They will be involved in the associated planning work, and heavily involved in incidents that affect their sector. They are responsible for co-operating and sharing relevant information with category 1 (emergency services and local authorities) and other category 2 responders<sup>12</sup>.



## Harbour authority powers

- 4.7** Every authority has the power to make the use of services and facilities provided by them at a harbour subject to the terms and conditions as they think fit<sup>13</sup>.
- 4.8** Each harbour authority should keep their powers, and the extent of their jurisdiction, under review.

## Revising duties and powers

- 4.9** A harbour revision order can be used to amend statutory powers in an authority's local legislation. It can be used to achieve various outcomes,<sup>14</sup> one of which is to impose or confer additional duties or powers on a harbour authority (including powers to make byelaws). It can also be used in the context of the Code to substitute or amend existing duties and powers. It could be used for the purpose of (but not limited to):
- a. improving, maintaining or managing the harbour (including harbour reorganisation schemes);
  - b. marking or lighting the harbour, raising wrecks or otherwise making navigation safer;
  - c. regulating the activities of other individuals and groups in connection with the harbour and the marine/shoreside interface; or
  - d. extending controls into the approaches of a harbour (for example, to extend compulsory pilotage beyond the harbour<sup>15</sup>).
- 4.10** Harbour orders are made by the Secretary of State or the relevant devolved authority. Before making an order, the appropriate Minister will need to be satisfied that the order would:
- a. secure the improvement, maintenance or management of the harbour in an efficient and economical manner; or
  - b. facilitate the efficient and economic transport of goods by sea; or
  - c. be in the interests of sea-going leisure vessels.

There are similar provisions for varying or abolishing such powers.

## Byelaws

- 4.11** Byelaws can be made by any authority that has the powers to do so, as laid down in its local Acts and Orders<sup>16</sup>. The procedure for making and confirming byelaws is modelled on the one used for local authority byelaws<sup>17</sup>.

- 4.12** Byelaws empower harbour authorities to regulate activities for specific purposes, reflecting the local circumstances and enabling business to be conducted efficiently and safely. They are generally available to regulate rather than prohibit: therefore, an activity cannot be banned from the entire harbour unless the appropriate byelaw-making power so specifies. This power goes beyond simple management to include a power to create and prosecute in the Courts for offences in which fines may be levied<sup>18</sup>.
- 4.13** Harbour authorities need to consult users, before advertising sealed byelaws and seek approval from the relevant Minister.

## Collecting dues

- 4.14** Harbour authorities have powers to collect dues from users and should raise enough to provide resources to enable them to pay for the discharge of their statutory functions. The level of dues should be properly accounted for and brought to the notice of those persons likely to be interested<sup>19</sup>.
- 4.15** Members of the harbour board are responsible for ensuring that adequate resources are provided to its officers to enable them to operate the policies, procedures and systems effectively. This includes adequate resource for training. There should be no presumption that dues levied on a specific group or type of user should be exclusively reinvested in improving services and facilities on offer to that user.
- 4.16** Pilotage authorities may make reasonable charges in respect of any vessel subject to its pilotage directions. Such charges apply to vessels with an authorised pilot aboard, or to vessels where the master or first mate hold a pilotage exemption certificate in respect of the area and vessel in question<sup>20</sup>.
- 4.17** The harbour authority's power to levy dues and pilotage charges<sup>21</sup> is subject to a statutory right of objection to the relevant Minister<sup>22</sup>.

## 5. Specific Duties and Powers

**5.1** The duty holder should also be aware of other specific duties and powers which are relevant to port safety, including the following:

- **Powers to direct vessels are available and should be used to support safe navigation.**
- **Dangerous vessels and dangerous substances (including pollution) must be effectively managed.**
- **A pilotage service must be provided if required in the interests of safety.**
- **Harbour authorities have duties and powers as local lighthouse authorities. Aids to navigation must be provided (as necessary), properly maintained and any danger to navigation from wrecks or obstructions effectively managed.**

These and other points are discussed in this chapter of the Code.

### Appointment of harbour master

**5.2** A harbour authority has the power to appoint a harbour master.<sup>23</sup> The authority's byelaws may include provisions for regulating the powers and duties of the harbour master<sup>24</sup>. The harbour master is accountable to the authority for the safety of marine operations in the harbour. The harbour master should familiarise himself with the extent of his legal powers, including those set out in general and local legislation, byelaws and general directions.

### Directions (usually referred to as special directions)

**5.3** The harbour master duly appointed by a harbour authority has powers of direction to regulate the time and manner of ships' entry to, departure from and movement within the harbour waters, and related purposes<sup>25</sup>. These powers are given for the purpose of giving specific directions to specific vessels for specific movements, unless the powers have been extended for other purposes. Harbour master's directions may be referred to as 'special directions' to distinguish them from 'general directions' given by the authority itself. Special directions are not for setting general rules but relate to specific vessels – or in an emergency, to a class of vessels - on particular occasions.

- 5.4** The powers of direction may also be exercisable, by a harbour master's assistant, VTS operator - or any other person designated for the purpose in accordance with the authority's statutory powers. It is an offence not to comply with directions<sup>26</sup> but the master - or pilot - of a vessel is not obliged to obey directions if he believes that compliance would endanger the vessel. It is the duty of a harbour master in exercising these powers to consider the interests of all shipping in the harbour. Directions may include the use of tugs and other forms of assistance.

## General directions

- 5.5** Some harbour authorities (but not all) have powers, through their local enabling legislation, to give 'general directions' to regulate the movement and berthing of ships. These are in addition to the powers of a harbour master to give 'special directions'; although some authorities have a combined power to give special and general directions. The power is exercisable by the authority itself, although they are for the harbour master to enforce, and to continue to regulate the movement of vessels. General directions may only be made after users have been consulted this is not a requirement for the harbour master's 'special directions', which are more appropriate for emergencies or short-term use.

## Directions and passage plans

- 5.6** The development of a port passage plan and the continuous monitoring of the vessel's progress during the execution of the plan are essential for safe navigation and protection of the marine environment.<sup>27</sup> Harbour authorities' and harbour masters' powers to regulate the time and manner of ships entry to, departure from and movement within their waters serve to complement port passage planning. Passage plans should therefore, be operated and enforced using the powers of direction.

## Incidents threatening pollution and safety

- 5.7** The Secretary of State has power<sup>28</sup> to give directions to a harbour authority, a harbour master, and certain other persons where an accident has occurred to or in a ship and, in his opinion, there is a risk to safety or that there is a risk of pollution by a hazardous substance. The Secretary of State's Representative (SOSREP) has been appointed to exercise these functions. The person directed may be required to take, or to refrain from taking, such action as may be specified. Among other things, the direction may require that the ship is moved, or not moved to or from a specified area, locality or place, that any oil or cargo should or should not be discharged, or that specified salvage measures should be taken. The Secretary of State also has wide powers to take action or authorise

others to do so where it is considered that issuing directions would not be sufficient.

- 5.8** Directions may or may not be given in writing (though if not given in writing they will be confirmed in writing as soon as is reasonably practicable). Persons to whom a direction is given must try to comply with the direction in a manner which avoids risk to human life. A person who does not comply with the direction or intentionally obstructs anyone acting on behalf of the Secretary of State is subject, on summary conviction, to a fine of up to £50,000 on summary conviction (there is no limit to the fine following a conviction on indictment)<sup>29</sup>.

## Dangerous vessels

- 5.9** A harbour master may give directions<sup>30</sup> prohibiting the entry into, or requiring the removal from, the harbour of any vessel if, in his opinion, the condition of that vessel, or the nature or condition of anything it contains, is such that its presence in the harbour might involve a grave and imminent danger to the safety of persons or property or risk that the vessel may, by sinking or foundering in the harbour, prevent or seriously prejudice the use of the harbour by other vessels. He must have regard to all the circumstances and to the safety of any person or vessel. Such directions may be over-riden by SOSREP who may issue contrary directions to the harbour master<sup>31</sup>.

## Dangerous substances

- 5.10** A harbour master also has powers to prohibit the entry into a harbour of any vessel carrying dangerous goods, if the condition of those goods, or their packaging, or the vessel carrying them is such as to create a risk to health and safety, and to control similarly the entry on to dock estates of dangerous substances brought from inland<sup>32</sup>. The harbour master also has powers to regulate the movement of vessels carrying dangerous goods. Prior notice must be given to bring dangerous substances into a harbour area from sea or inland. The period of notice is normally 24 hours, although the harbour master has some powers of discretion on both the period and form of the notice. Harbour authorities have a duty to prepare emergency plans for dealing with dangerous substances.

## Prevention of pollution

- 5.11** A harbour master may detain a vessel if he has reason to believe that it has committed an offence by discharging oil, or a mixture containing oil, into the waters of a harbour<sup>33</sup>. Notice must be given to a harbour master before oil is transferred at night to or from a ship in any harbour<sup>34</sup>. This requirement may be supplemented by harbour byelaws regulating transfers at any time. Byelaws may also regulate the offloading of oily water and oil waste residues. All oil spills into harbour waters must be

reported to the harbour authority<sup>35</sup>. Harbour masters have powers to board ships to investigate possible offences<sup>36</sup>.

- 5.12** Harbour authorities' powers are considered to be wide enough to empower them to clear oil spills from their harbour. They have a duty to prepare contingency plans to deal with such spills for approval by the Maritime and Coastguard Agency on behalf of the Secretary of State<sup>37</sup>.

## Vessel traffic monitoring reporting requirements

- 5.13** The owner or master of a ship which is subject to these requirements must provide information about the vessel, cargo and its passage to the harbour authority as required. The port is required to forward this information to the MCA by the quickest possible means<sup>38</sup>.

## Drink and drugs

- 5.14** Under the provisions of the Railways and Transport Safety Act 2003, the harbour master has the power to detain a vessel, if he suspects that a mariner (master, pilot, seaman) has committed a drink or drugs related offence when on duty<sup>39</sup>. The power can be exercised only if the harbour master summons a police officer before, or immediately after the vessel is detained. The power of detention lapses after the police officer has decided whether to administer a preliminary test and has notified the harbour master of that decision.

## Vessel traffic services

- 5.15** Statutory Harbour Authorities have the power to establish Vessel Traffic Services (VTS) to mitigate risk, enhance vessel safety and efficiency and to protect the environment. To be recognised as a VTS, the service must conform to IMO and national standards and operated by personnel trained to the appropriate standard. The VTS must be designated as such by the MCA in its capacity as the National Competent Authority for VTS.
- 5.16** Vessels that enter a harbour authority's VTS area (operated in accordance with the IMO guidelines) must comply with the rules of that service<sup>40</sup>.

## Pilotage

- 5.17** Competent harbour authorities have specific powers under the Pilotage Act to enable them to discharge the duties imposed under that Act<sup>41</sup>.
- 5.18** Authorities should determine, through risk assessment

- a. whether any and, if so, what pilotage services need to be provided to secure the safety of ships (including those carrying dangerous goods or harmful substances) navigating in or in the approaches to its harbour; and
- b. whether in the interests of safety, pilotage should be compulsory for ships navigating in any part of that harbour or its approaches and, if so, for which ships and in which circumstances and what pilotage services need to be provided for those ships.

**5.19** Each competent harbour authority should provide such pilotage services as is necessary<sup>42</sup>.

## Pilotage directions

**5.20** A competent harbour authority has specific powers and duties for marine pilotage and must issue pilotage directions if it decides, based on its assessment of the risks, that pilotage should be made compulsory. The directions must specify how and to which vessels they apply<sup>43</sup>. Ship owners and any other interested parties who use the port on a regular basis, must be consulted before the directions are implemented.

**5.21** The master of a vessel not subject to pilotage directions has a right to request a pilot. In these circumstances, the authority must decide in the interests of safe navigation, whether pilotage services are applicable.

## Pilotage exemption certificates

**5.22** Authorities must grant a bona fide master or first mate of any vessel a 'pilotage exemption certificate', if they demonstrate they have sufficient skill, experience and local knowledge to pilot the vessel within the harbour. The requirements for granting an exemption must not exceed or be more onerous than those needed for an authorised pilot<sup>44</sup>.

## Authorisation of pilots

**5.23** Each competent harbour authority may authorise suitably qualified pilots in its area<sup>45</sup>. Authorisations may relate to ships of a particular description and to particular parts of the harbour. The authority determines the qualifications for authorisation in respect of medical fitness standards, time of service, local knowledge, skill, character and otherwise. It may also - after giving notice and allowing a reasonable opportunity to make representations - suspend or revoke an authorisation if it appears to the authority that the authorised person is guilty of any incompetence or misconduct affecting his capability as a pilot, or has ceased to have the required qualifications - or failed to provide evidence that he still has them. An authorisation may also be suspended or revoked, on reasonable notice, if any contract or other arrangement under which the services of pilots are provided is terminated.

## Ship towage

- 5.24** While any contract for the use of tugs is formally for the master of a vessel, the use of harbour tugs is one of the principal and most direct means open to a harbour authority to control risk. Authorities should determine, through risk assessment, appropriate guidance on the use of tugs in harbour areas. Recommendations should include the type of tugs and method of tow (where applicable) in addition to the number of tugs also where appropriate. Interested parties, including towage providers, users and pilots should be consulted in the preparation of such guidance.
- 5.25** The guidance should be reflected in directions. There should be procedures for special directions to be used, if necessary, where a master or pilot proposes that the guidelines should not be applied in some respect.

## The General Lighthouse Authorities

- 5.26** The General Lighthouse Authorities are responsible for the superintendence and management of all lighthouses, buoys or beacons within their respective areas<sup>46</sup>. They have a duty to inspect all lighthouses, buoys, beacons and other navigational aids belonging to, or under the management of a local lighthouse authority. They may also give directions concerning the provision and positioning of aids to navigation.

## Local lighthouse authority duties

- 5.27** Each harbour authority is a local lighthouse authority for their area<sup>47</sup>. They have the power to carry out and maintain the marking or lighting of any part of the harbour within the authority's area<sup>48</sup>.
- 5.28** A local lighthouse authority shall not, without the General Lighthouse Authority's consent, erect, remove or vary the character of any lighthouse, buoy or beacon<sup>49</sup>.
- 5.29** All aids to navigation maintained by harbour authorities and any other existing local lighthouse authorities must be maintained in accordance with the availability criteria laid down by the General Lighthouse Authorities, and must be subject to periodic review. The characteristics of these aids to navigation must comply with the 'International Association of Lighthouse Authorities (IALA) Guidelines and Recommendations'. Information and periodic returns must be supplied, when required, to the appropriate General Lighthouse Authority<sup>50</sup>.



## Wrecks

- 5.30** Where there is a wreck in or near the approaches to, a harbour, which is or is likely to become a danger to navigation, the harbour authority may take possession of, remove or destroy it. They may also light or buoy it until it is raised, removed or destroyed<sup>51</sup>.
- 5.31** Harbour authorities must exercise their wreck marking and removal powers where, in their opinion, a wreck is - or is likely to become - an obstruction or danger to navigation. They have a duty to have regard to the environment in the exercise of this and all other duties and powers.

## End notes

- <sup>1</sup> Section 1 of the Pilotage Act 1987 defines a competent harbour authority
- <sup>2</sup> Further information and guidance can be found on the HSE website at <http://www.hse.gov.uk/business/getting-started.htm>
- <sup>3</sup> National Occupational Standards are available on the Port Skills & Safety website: <http://www.portskillsandsafety.co.uk/skills>
- <sup>4</sup> Marine Guidance Note MGN 289 [M+F] "Accident Reporting and Investigation" is addressed to Harbour Authorities, amongst others and explains the reporting requirements of the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 (SI 2012 No 1743). A copy of MAIB's incident report form is annexed to the Guide.
- <sup>5</sup> Section 26 of the Harbours Act 1964
- <sup>6</sup> Section 33 of the Harbours, Docks and Piers Clauses Act 1847
- <sup>7</sup> Section 198 to the Merchant Shipping Act 1995
- <sup>8</sup> Section 48A of the Harbours Act 1964
- <sup>9</sup> Regulation 3(4) of the Conservation (Natural Habitats &c) Regulations 1994 (SI 1994 No 2716)
- <sup>10</sup> Section 262 of the Town and Country Planning Act 1990
- <sup>11</sup> Section 40 of the Natural Environment and Rural Communities Act 2006.
- <sup>12</sup> Further details can be found in the Act, the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005 (SI 2005/2042) and the guidance document Emergency Preparedness which can be found at: <http://www.cabinetoffice.gov.uk/resource-library/emergency-preparedness>
- <sup>13</sup> Section 40 of the Harbours Act 1964
- <sup>14</sup> Schedule 2 of the Harbours Act 1964
- <sup>15</sup> Section 7(5) of the Pilotage Act 1987
- <sup>16</sup> This is often achieved by incorporating with or without amendments section 83 of the Harbours, Docks and Piers Clauses Act 1847
- <sup>17</sup> Section 236 of the Local Government Act 1972
- <sup>18</sup> Currently a maximum of £2500 (Level 4 on the standard scale)
- <sup>19</sup> Sections 30 & 42 of the Harbours Act 1964 and Sections 10(5) & 14 of the Pilotage Act 1987
- <sup>20</sup> Section 10(3) of the Pilotage Act 1987
- <sup>21</sup> Section 10(6) of the Pilotage Act 1987
- <sup>22</sup> Section 31 of the Harbours Act 1964. Relevant Minister means the Secretary of State for Transport (England/Wales), the Scottish Ministers or the Northern Ireland Ministers
- <sup>23</sup> Section 51 of the Harbours, Docks and Piers Clauses Act 1847
- <sup>24</sup> Section 83 of the Harbours, Docks and Piers Clauses Act 1847
- <sup>25</sup> Section 52 of the Harbours, Docks and Piers Clauses Act 1847
- <sup>26</sup> Section 53 of the Harbours, Docks and Piers Clauses Act 1847
- <sup>27</sup> "Guidelines for voyage planning" IMO Resolution A.893(21) adopted on 25 November 1999
- <sup>28</sup> Schedule 3A of the Merchant Shipping Act 1995 as inserted by the Marine Safety Act 2003
- <sup>29</sup> Paragraph 8 of Schedule 3A to the Merchant Shipping Act 1995
- <sup>30</sup> Section 1 of the Dangerous Vessels Act 1985
- <sup>31</sup> Section 3 of the Dangerous Vessels Act 1985
- <sup>32</sup> The Dangerous Substances in Harbour Areas Regulations 1987 (SI 1987 No 37)
- <sup>33</sup> Section 144 of the Merchant Shipping Act 1995
- <sup>34</sup> Section 135 of the Merchant Shipping Act 1995
- <sup>35</sup> Section 136 of the Merchant Shipping Act 1995
- <sup>36</sup> Section 259(6) of the Merchant Shipping Act 1995
- <sup>37</sup> The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations (SI 1998/1056)
- <sup>38</sup> The Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004 (SI 2004 No 2110)
- <sup>39</sup> Section 84 of the Railways and Transport Safety Act 2003
- <sup>40</sup> Regulation 6 of the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004 (SI 2004 No. 2110)
- <sup>41</sup> Sections 2(1) & (2) of the Pilotage Act 1987
- <sup>42</sup> Section 2(3) of the Pilotage Act 1987

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- <sup>43</sup> Section 7 of the Pilotage Act 1987
- <sup>44</sup> PEC requirements are outlined in Sections 8 and 15 of the Pilotage Act 1987
- <sup>45</sup> Section 3 of the Pilotage Act 1987
- <sup>46</sup> Section 195 of the Merchant Shipping Act 1995
- <sup>47</sup> Section 193 of the Merchant Shipping Act 1995
- <sup>48</sup> Section 201 of the Merchant Shipping Act 1995
- <sup>49</sup> Sections 198 and 199 of the Merchant Shipping Act 1995
- <sup>50</sup> Section 198 of the Merchant Shipping Act 1995
- <sup>51</sup> Section 252 of the Merchant Shipping Act 1995