

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

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**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.

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**1. Introduction**

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**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:

<b>Option</b>	<b>Advantages</b>	<b>Disadvantages</b>
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  
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Development and Infrastructure Services  
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