

## REPORT TO INFRASTRUCTURE SERVICES COMMITTEE – 12 MARCH 2020

### PORT MARINE SAFETY CODE – ESTABLISHMENT OF HARBOURS SUB COMMITTEE

#### 1 Reason for Report / Summary

- 1.1 At its meeting on 16 January 2020 (Item 7), Full Council agreed the recommendation from this Committee to appoint a Harbours Sub-Committee as Duty Holder under the Port Marine Safety Code. The Committee is now asked to formally establish the Sub-Committee, with an agreed Terms of Reference and membership.

#### 2 Recommendations

The Committee is recommended to:

- 2.1 **Establish a sub-committee to be known as the Harbours Sub-Committee;**
- 2.2 **Agree the Terms of Reference for the Sub-Committee at Appendix 1;**
- 2.3 **Appoint members, and substitute members if appropriate, to the Sub-Committee as required based on the proportionality models approved by Aberdeenshire Council on 18 May 2017 as detailed in Section 4.3; and**
- 2.4 **Agree to the disestablishment of the Harbours Steering Group.**

#### 3 Purpose and Decision-Making Route

- 3.1 At its meeting on 14 March 2019 (Item 17), the Committee considered a report on the findings of a Maritime and Coastguard Agency (“MCA”) Health Check ([link](#)). The Committee subsequently requested officers explore alternative options for the Duty Holder role due to concerns expressed by the MCA regarding the present hierarchy. At the same time, the Committee instructed officers to establish a Harbours Steering Group to improve communication between officers and the Committee as Duty Holder. The terms of reference were agreed at a subsequent meeting of the Committee on 20 June 2019 (Item 13) and the Harbours Steering Group formally established.
- 3.2 On 28 November 2019 (Item 12) the Committee considered a report on options for the Duty Holder. The Committee subsequently agreed to recommend to Full Council that the Duty Holder role be delegated to a Sub-Committee. At its meeting on 16 January 2020 (Item 7), Full Council agreed the recommendation.

3.3 The Committee must now formally establish the Sub-Committee. This includes agreeing a Terms of Reference and appointing Members. Further detail is contained in the Discussion section of this report.

3.4 A date for the first meeting of the Sub-Committee shall be identified in due course, once Members have been appointed. The Sub-Committee shall also be asked to appoint a Chair and Vice Chair at its first meeting.

## 4 Discussion

4.1 In terms of the Scheme of Governance the Committee has the delegated authority to establish sub-committees. The Committee is now asked to establish a Harbours Sub-Committee with the Terms of Reference at **Appendix 1**. The Terms of Reference have been drafted to reflect the requirements of the Duty Holder role under the Port Marine Safety Code and include specific delegations to the Sub-Committee to enable it to fulfil that role. The most significant of these delegations are:

- To exercise the function of the Duty Holder under the Port Marine Safety Code on behalf of Aberdeenshire Council by maintaining strategic oversight and direction of harbour operations.
- To give direction to officers on operational matters arising from harbour operations, and in particular the Council's compliance with the Port Marine Safety Code.
- To review the adequacy of systems, policies and procedures, including risk management and risk assessment arrangements and procedures, employed to ensure compliance with the Port Marine Safety Code.
- To develop, approve and review Council policy to ensure compliance with the Port Marine Safety Code.
- To take decisions on resource matters within agreed budgets relating to harbour operations on behalf of Infrastructure Services Committee and in accordance with the powers delegated to that Committee under Section F.2 of Part 2A of the List of Committee Powers under Aberdeenshire Council's Scheme of Governance.

4.2 It is recommended that the Sub-Committee has a membership of five, with Elected Members appointed who have a special interest in, or knowledge of, harbours. This will ensure a focused approach to the Duty Holder role. The previous reports to Committee on 20 June 2019 ([link](#)) and 28 November 2019 ([link](#)) both give further detail on the responsibilities the Sub-Committee will have in the role of Duty Holder.

4.3 The Committee should also note the requirement for Members to be appointed on the basis of political proportionality, as agreed by Full Council on 18 May 2017. For a standard five member Sub-Committee model, that would mean a membership of 3 from the Conservatives, Liberal Democrats, Aligned

Independents and 2 from the Partnership, with any democratic anomalies identified as part of that process being discussed and addressed at group leader level, as required. Consideration should also be given as to whether substitute members should be appointed, however this is not recommended to retain a focussed Sub-Committee of informed members.

- 4.4 The Sub-Committee will intend to meet formally twice per year although the frequency of meetings will be dictated by volume of business and ad hoc meetings may be scheduled as and when required. Meeting dates shall be identified in due course. In addition, there will be informal briefing sessions between Sub-Committee Members and harbours officers, akin to what was envisaged for the Harbours Steering Group. On that basis, officers consider there will no longer be a requirement for the Harbours Steering Group to meet therefore it is recommended that the Committee agree to formally disestablish that group.

## 5 Council Priorities, Implications and Risk

- 5.1 The report helps deliver Council Priority 10 – Having the right people, in the right place, doing the right thing, at the right time.
- 5.2 The table below shows whether risks and implications apply if the recommendations are agreed.

Subject	Yes	No	N/A
Financial		x	
Staffing	x		
Equalities			x – not relevant to this report
Fairer Scotland Duty			x – not relevant to this report
Town Centre First			x
Sustainability			x
Children and Young People's Rights and Wellbeing			x

- 5.3 There will be staffing implications in terms of the requirement to have officer support from Committee Services for the two formal meetings of the Sub-Committee. It is expected that there will be capacity within the team to cover the two formal meetings however this will be kept under review. If more than two formal meetings are required additional resources may need to be identified. It should be noted that no committee support shall be required for any informal sessions between officers and Sub-Committee members.
- 5.4 An equality impact assessment is not required because there are no direct material outcomes from this report and the proposals do not have a differential impact on any of the protected characteristics.

- 5.5 The following Risks have been identified as relevant to this matter on a Corporate Level:

Operational Risk Management (including health and safety) AC012P009 – through the establishment of the Sub-Committee as Duty Holder, the Council will be best equipped to meet its responsibilities under the Port Marine Safety Code and ensure the safe operation of its harbours”.

## **6 Scheme of Governance**

- 6.1 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and their comments are incorporated within the report and are satisfied that the report complies with the Scheme of Governance and relevant legislation.
- 6.2 The Committee is able to consider and take a decision on this item in terms of Section F.1.1d and F.3.1 of the List of Committee Powers in Part 2A of the Scheme of Governance as the Committee is being asked to establish a Sub-Committee in relation to harbours matters which fall within the remit of Roads, Landscape and Waste Services.

**Stephen Archer**  
**Director of Infrastructure Services**

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Date: 25 February 2020

**List of Appendices** – Appendix 1 – Harbours Duty Holders Sub-Committee – Terms of Reference

Aberdeenshire Council – Infrastructure Services Committee

## Appendix 1

### **Harbours Duty Holders Sub-Committee - Terms of Reference**

#### 1. Purpose

- 1.1 This Sub-Committee is established by and takes its authority from the Infrastructure Services Committee. Infrastructure Services Committee may review and amend this Terms of Reference at any time.
- 1.2 The purpose of the Sub-Committee is to act as the Duty Holder in accordance with the Port Marine Safety Code on behalf of Aberdeenshire Council in relation to the following harbours: -
  - (i) Johnshaven
  - (ii) Gourdon
  - (iii) Stonehaven
  - (iv) Portsoy
  - (v) Rosehearty
  - (vi) Macduff
  - (vii) Banff
- 1.3 The Sub-Committee shall maintain strategic oversight and direction of harbour operations with a view to improving, maintaining and managing the harbours within the Aberdeenshire Council area for the benefit of users who include residents, visitors and businesses and conserving and protecting the harbour environment.

#### 2 Key Responsibilities

As the Council's Duty Holder, the Sub-Committee has the following key responsibilities: -

- 2.1 **Designated Person:** To appoint a 'designated person' to provide independent assurance about the operation of the Marine Safety Management System. The designated person must have direct access to the duty holder.
- 2.2 **Legislation:** To review and be aware of their existing powers based on local and national legislation, seeking additional powers if required in order to promote safe navigation.
- 2.3 **Duties and Powers:** To comply with the duties and powers under existing legislation, as appropriate.

- 2.4 **Risk Assessment:** To ensure that marine risks are formally assessed and are eliminated or reduced to the lowest possible level, so far as is reasonably practicable, in accordance with good practice.
- 2.5 **Marine Safety Management System (“MSMS”):** To operate an effective MSMS which has been developed after consultation, is based on formal risk assessment and refers to an appropriate approach to incident investigation.
- 2.6 **Review and Audit:** To monitor, review and audit the risk assessment and MSMS on a regular basis – the independent designated person has a key role in providing assurance for the duty holder.
- 2.7 **Competence:** To use competent people (who are trained, qualified and experienced) in positions of responsibility for managing marine and navigation safety.
- 2.8 **Plan:** To publish a safety plan showing how the standards in the Code will be met and produce a report assessing performance against that plan at least every 3 years.
- 2.9 **Aids to Navigation:** To comply with directions from the General Lighthouse Authorities and supply information & returns as required.

### 3 Membership:

- 3.1 The Members of the Sub-Committee shall be appointed by Infrastructure Services Committee. Appointments shall be effective for the full council term.
- 3.2 The Sub-Committee shall comprise of 5 Members. The members of the Sub-Committee may be members of Infrastructure Services Committee but are not required to be. It is a requirement that Members of the Sub-Committee have knowledge of and understand their responsibilities and accountabilities under the requirements of the Port Marine Safety Code.
- 3.3 The Chair and Vice Chair of the Sub-Committee shall be appointed by the Sub-Committee. The Sub-Committee shall determine the term of appointment, which shall be no more than one full Council term.

### 4 Delegations:

The Sub Committee shall have the following powers:-

- 4.1 To exercise the function of the Duty Holder under the Port Marine Safety Code on behalf of Aberdeenshire Council by maintaining strategic oversight and direction of harbour operations.
- 4.2 To give direction to officers on operational matters arising from harbour operations, and in particular the Council’s compliance with the Port Marine Safety Code.

- 4.3 To review the adequacy of systems, policies and procedures, including risk management and risk assessment arrangements and procedures, employed to ensure compliance with the Port Marine Safety Code.
- 4.4 To develop, approve and review Council policy to ensure compliance with the Port Marine Safety Code.
- 4.5 To take decisions on resource matters within agreed budgets relating to harbour operations on behalf of Infrastructure Services Committee and in accordance with the powers delegated to that Committee under Section F.2 of Part 2A of the List of Committee Powers under Aberdeenshire Council's Scheme of Governance.
- 4.6 To approve the Council's report on compliance with the Port Marine Safety Code for submission to the Maritime and Coastguard Agency.
- 4.7 To receive reports on assurance from the Council's Designated Person in relation to compliance with the Port Marine Safety Code, including an annual compliance audit report.
- 4.8 To engage with relevant stakeholders in the performance of the Duty Holder role, including the Council's Designated Person.

## 5 Review

- 5.1 The performance, functionality and terms of reference of the Harbours Sub-Committee will be reviewed annually by the Infrastructure Services Committee.

## 6 Sub-Committee Arrangements:

- 6.1 The Sub-Committee is governed by the Standing Orders in Part 1 of Aberdeenshire Council's Scheme of Governance.
- 6.2 The Sub-Committee shall hold at least two formal meetings per year. The venue and frequency of formal meetings shall be agreed by the Sub-Committee, upon advice of officers and having regard to the volume of business.
- 6.3 Informal briefing sessions may be arranged with Sub-Committee Members to enable officers to undertake consultation with the Duty Holder prior to taking key operational decisions. The Director of Infrastructure Services shall fix the date and time of any informal briefing session following consultation with the Chair of the Sub-Committee. Where there is not sufficient time to call an informal session and an officer decision is required urgently, the said officer may undertake consultation with Sub-Committee Members by email.

