



SOUTHWOLD HARBOUR MANAGEMENT COMMITTEE

Thursday, 11 November 2021

Subject	REVIEW OF HEALTH AND SAFETY RESPONSIBILITIES – SOUTHWOLD HARBOUR
Supporting Officer	Kerry Blair Head of Operations Kerry.blair@eastsoffolk.gov.uk

Is the report Open or Exempt?	OPEN
Category of Exempt Information and reason why it is NOT in the public interest to disclose the exempt information.	Not applicable

Wards Affected:	Southwold
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Purpose and high-level overview

Purpose of Report:

To provide information on the Health and Safety management arrangements at Southwold Harbour – and the implications on these of newly formed Harbour Management Committee (HMC).

Recommendation/s:

That the Harbour Management Committee:

- Note that ESC will remain the duty holder
- Support the setting up of a Working Group to look at Compliance, including Health and Safety
- Agree to appoint an independent Designated Person

Impact Assessment

Governance:

No impact.

Environmental:

The HMC must act in the best interests of the Port, which includes ensuring its long term sustainability and success. Environmental factors will be taken into account in the decisions which the HMC will make.

Equalities and Diversity:

No impact.

Financial:

No impact.

Legal:

No impact.

Risk:

The risk of not ensuring that the health and safety duties are adequately carried out are that the council could receive a sanction from the Health and Safety Executive, and that public safety could be compromised.

Harbour Business Plan Priorities

To be added when the plan is in place.

East Suffolk Council Strategic Plan Priorities

Select the themes of the [Strategic Plan](#) which are supported by this proposal:

T01 Growing our Economy



T02	Enabling our Communities	<input checked="" type="checkbox"/>
T03	Maintaining Financial Sustainability	<input checked="" type="checkbox"/>
T04	Delivering Digital Transformation	<input type="checkbox"/>
T05	Caring for our Environment	<input type="checkbox"/>

Background and Justification for Recommendation

1 Background facts	
1.1	East Suffolk Council (ESC) has responsibilities under the Health and Safety at Work etc. Act 1974 for the activities that are carried out on its land and by its employees
1.2	The council also has responsibility for marine safety for those activities that are carried out in Southwold Harbour.
1.3	With the formation of the HMC, ESC has sought clarification of its responsibilities in relation to the harbour operation. The council has consulted with Ashfords to identify where legal responsibility sits for activities taking place in the harbour lands, and to identify how to make best use of the skills and expertise of the members of the HMC.

2 Current position	
2.1	<p>Southwold Harbour Management Committee</p> <p>When considering health and safety in relation to Southwold Harbour and associated land there are two distinct strands which have overlap but are not synonymous:</p> <ul style="list-style-type: none"> • Health and safety at work • Marine safety
2.2	<p>Health and safety at work</p> <p>The Council is the owner and Statutory Harbour Authority for Southwold Harbour. The Southwold Harbour Management Committee (HMC) is a Committee of the Cabinet of the Council and is not run or operated through any separate legal entity; HMC has no separate status from the Council in health and safety law.</p> <p>The Council is an employer, and it is therefore the duty holder under the key sections of the Health and Safety at Work etc. Act 1974 (HSWA). It is also the legal entity against which enforcement action would be taken in the event of breaches of the legislation.</p> <p>As the employer of the harbourmaster and the staff who work at the harbour and caravan site the Council is responsible for compliance with s.2 of HSWA <i>“It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.”</i></p> <p>The Council will also be responsible for compliance with s.3 HSWA <i>‘It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be</i></p>

	<p><i>affected thereby are not thereby exposed to risks to their health or safety</i>’ because the Council controls and manages the harbour.</p> <p>The duty under section 3 only applies to risks arising from the conduct of an employer’s undertaking and, in theory, there might be risks arising in the harbour which do not arise from the Council’s undertaking. However, in practice, most risks in the harbour are likely to arise to some degree from the conduct of the Council’s undertaking.</p> <p>In law East Suffolk Council’s undertaking will include both its own activities and the activities of contractors and third parties carried-out on its behalf. Risks to visitors, members of the public, harbour users, contractors and tenants must be controlled “so far as is reasonably practicable” i.e. weighing a risk against the trouble, time and money needed to control it.</p> <p>HSWA s.4 places a duty on the Council in relation to persons who use the non-domestic premises made available to them as a place of work and requires that access and egress along with plant and equipment provided to them is safe and without risks to health e.g. the fishermen’s compound.</p>
2.3	<p>Marine Safety</p> <p>The Government, other regulatory authorities and the industry associations expect that all statutory harbour authorities will comply with the Code.</p> <p>However:</p> <ul style="list-style-type: none"> • The Code does not contain any new legal obligations but includes references to the main legal duties which already exist. • Failure to comply is not an offence in itself although the Code represents good practice as recognised by a wide range of industry stakeholders and a failure to adhere to good practice may be indicative of a harbour authority being in breach of certain legal duties. • The organisation may suffer reputational damage if it has publicly committed to the Code’s standards and then fails to meet them. • Periodically and/or following a major incident or accident, the regulatory authorities will seek assurance that organisations are complying with the Code. The Government will monitor levels of compliance to assess its effectiveness in delivering improved safety performance. <p>A link may be drawn between a failure to implement the principles of the Code and prosecution under Health and Safety legislation.</p>
2.4	<p>The Marine Safety Code does not relate to duties and responsibilities deriving from health and safety legislation or, 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 other duties and responsibilities.</p>
2.5	<p>The Marine Safety Code indicates that a harbour management committee may act as the ‘duty holder’ for marine safety although the role of internal duty holder is designed to allow for accountability and good governance and should not be confused with the Council’s role as the legal duty holder.</p>
2.6	<p>The Marine Safety Code also refers to a ‘Designated Person’ whose role is to provide independent assurance directly to the ‘duty holder’ that the safety management system is working effectively. A safety management system should</p>

	include proper record procedures so that the duty holder and designated person can be satisfied that the system is functioning properly.
2.7	<p>Sources of advice</p> <p>The following documents contain information on the specific duties, hazards and risk controls that are likely to apply in respect of harbours but they also contain guidance on leadership and management arrangements.</p> <ol style="list-style-type: none"> 1. Safety in Docks - Approved Code of Practice (https://www.hse.gov.uk/pubns/books/l148.htm) 2. A quick guide to health and safety in ports (https://www.hse.gov.uk/pubns/indg446.pdf) 3. Port Marine Safety Code (https://www.gov.uk/government/publications/port-marine-safety-code) 4. Leading health and safety at work (https://www.hse.gov.uk/leadership/) 5. Managing for health and safety (https://www.hse.gov.uk/pubns/books/hsg65.htm)
2.8	<p>East Suffolk Council has a Health and Safety Policy which contains a statement of intent along with the organisation and arrangements for carrying out that policy.</p> <p>The Corporate Health and Safety Team can provide advice and carry out audits in relation to the Council's management of health and safety at work for the harbour, caravan site and surrounding land.</p> <p>The Corporate Health and Safety Team does not have either the knowledge or the independence to fulfil the criteria for the 'designated person' in relation to marine safety.</p>
2.9	Given the recent formation of the HMC, and the recruitment of several co-opted members with specific expertise in the management of port health and safety, it is considered that the role of the HMC is to provide expertise and oversight, and to review the KPIs and safety data that is available to the council, and provide feedback to – where necessary – improve the management of health and safety,

3 How to address current situation

3.1	<p>That the HMC forms a working group with responsibility for compliance and health and safety, in order to:</p> <ul style="list-style-type: none"> • Review the current health and safety risk assessments for the harbour and associated caravan site. • Draft a specification for the Designated Person in order to carry out a recruitment process. • Review existing KPIs and management information and make recommendations for improvements.
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3.2	Arrange a rota of emergency cover from other ESC Harbour in Oulton Broad.
3.3	Agree a set of KPI data to be shared with the HMC.

4 Reason/s for recommendation	
4.1	That ESC retains responsibility as Duty Holder for health and safety at Southold Harbour. This reason for this is that ESC retains legal responsibility under the Health and Safety at Work Act for activity carried out by its employees on its property. In addition, the council has the staff, and the resources to manage health and safety matters where members of the HMC may not.
4.2	HMC members have a wealth of expertise on the management of port safety. Therefore, they have an invaluable advisory and oversight role in this area, providing recommendations for ESC to guide its management of the harbour.
4.3	A working group should be formed to provide the focus necessary to deliver the actions in point 3.1 and Membership should be drawn from the HMC with support from the Council's Health and Safety function.
4.4	An independent Designated Person is good practice – and it should be a priority of the HMC working group to draft a specification and commence a recruitment process to fill this role.

Appendices

Appendices:
None.

Background reference papers:
None.