

4th December 2014

Paper Title	Appointment of Dee Conservancy Duty Holder
Paper Reference:	Paper NRW B B 87.14
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Purpose of Paper:	Decision
Recommendation:	The Board is recommended to: Appoint Executive Director North & Mid Wales, as the Duty Holder for the Dee Conservancy.
Decision Required:	The new Duty Holder is formally appointed to the role from 1st December 2014.

Impact: To note – all headings might not be applicable to the topic	<p>Impact on the Environment: Compliance with the requirements of the Port Marine Safety Code and effective management of maritime activity within the Dee Conservancy, safeguards shipping and minimises the potential for marine pollution incidents within the Estuary.</p> <p>Impact on the Economy: Safe maritime activity in the Dee Conservancy will support current and projected activity associated with the Port of Mostyn, RWE wind farm Regional Maintenance Base operations and Airbus A380 wing exports. Total value of goods and services moving through our area of responsibility exceeds €1 billion per annum.</p> <p>Impact on Community: Safe maritime operations facilitates the sustainability of over 2000 local and regional full time jobs directly linked to industry dependant on the safe use of the Conservancy area.</p> <p>Impact on Knowledge: Not directly impacting.</p>
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Issue

1. The Port Marine Safety Code (DfT 2012) requires that Statutory Harbour Authorities appoint a Duty Holder, at an appropriate level of authority, to ensure that the requirements of the Code are met.
2. The Chief Executive Officer has undertaken this position since the role was approved by the Board in its meeting of 22/02/2013.
3. It is now proposed that this role be transferred to Tim Jones, Executive Director North & Mid Wales which will bring oversight directly into the local Directorate

Summary

4. The NRW (Functions) Order 2012 transferred the role of the Dee Conservancy including responsibilities of the statutory harbour authority and local lighthouse authority to NRW. The Port Marine Safety Code (PMSC) explicitly requires that a Duty Holder be appointed with responsibility for ensuring compliance with the requirements of the code. This post is currently held by the CEO. The requirements of the code are currently being satisfied and there is sufficient technical expertise locally to support the post holder.

Background

5. The PMSC applies to all harbour authorities in the UK that have statutory powers and duties. It is not a statutory code but sets the standard against which all harbour authorities are measured. Compliance with the code is generally recognised as demonstration that the authority has discharged its obligation to ensure safe navigation through good operational practice within its jurisdiction. The NRW Board members are both collectively and individually accountable for marine safety within the Dee Conservancy. They may appoint a Duty Holder who is accountable on their behalf for managing safe and efficient operations within the harbour.
6. The day to day management of the Conservancy operations and delivery of our statutory responsibilities lies currently with the Waterways manager. Technical maritime advice and Properly Qualified Harbour Master services are provided on a contracted-in basis by Strategic Marine Services. Routine and non-routine emergency maintenance, services for the 60 aids to navigation located throughout the conservancy area are similarly provided by Marland Marine Services.
7. The key requirement of the code is development and operation of a marine safety management system (MSMS) for operations within the harbour. The code requires the appointment of a duty holder who is accountable for managing operations safely, and a Designated Person to provide independent assurance to the duty holder about the effective operation of the management system. The Duty Holder will formally report to the Board that the authority is compliant with the Code and satisfactorily discharging its legal responsibilities. There is no proposed change to the Designated Person position which is currently delivered by the Regional Health & Safety Advisor.

Next Steps

8. The transfer of the Duty Holder role to Executive Director North & Mid Wales will maintain a level of responsibility appropriate to the requirements of the Code and the

necessary level of authority to ensure sufficient resources for the effective delivery of the NRW statutory duty as Dee Conservancy. It will also bring that responsibility closer to the day to day operations within the Conservancy.

Risks

9. The Dee Conservancy Safety management system (DCSMS) is an effective system that has been in place for some years and has been subject to audit. The overall marine safety risks are well managed and there are no major problems expected if the current arrangements continue. However, if the recommended appointment is not made then NRW will be in breach of the PMSC. This would immediately represent a major reputational risk and would, over time, erode the effectiveness of the current DCSMS with a resultant risk to marine safety. It may also result in sanctions being applied to NRW by the Marine and Coastguard Agency as the National maritime safety regulating body.
10. There is a clear non-compliance with the requirements of the Code if there is no Duty Holder appointed. The proposed change in Duty Holder will allow NRW to sustain the appropriate level of oversight and authority to fully deliver our statutory duties as SHA and the non-statutory (but nevertheless *de facto*) requirement to comply with the PMSC in its role as Conservancy and Local Lighthouse Authority for the Dee estuary.

Financial Implications

11. There are no additional financial implications, over those associated with the current arrangements, arising directly from the proposal.

Communications

12. There is a requirement that we publish fully our compliance with the requirements of the Code, including confirmation of who is the Duty Holder. This requirement is summarised in 'A guide to good practice on port marine operations' (DfT 2013).
13. We currently publish our compliance with the PMSC on our web site and will revise the existing document on confirmation of the transfer of Duty Holder role by the Board.

Equality impact assessment (EqIA)

14. The requirements of the Code, as illustrated above in extract 2.2.19, limit potential appointees to those at Director level.

Index of Annex

1. Extract from the Port Marine Safety Code

Annex 1 – Extract from the Port Marine Safety Code

Section 2 Port Marine Safety Code: 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.

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

1.14. 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.