

Municipal Ports Training Seminar: Board Governance Issues

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June 2007

Structure

- Trust Port / Municipal Port: Key Differences
- Influence of Local Government legislation
- Local Authority Constitution and Code of Conduct
- The Harbour Board
- Stakeholder Relationships
- Summary

Trust Port / Municipal Port

Trust Ports	Municipal Ports
Directly responsible under local Acts / Orders, and national legislation such as Harbours Act 1964.	Some delegation of full Council's obligations under local and national Acts / Orders. Must also be compliant with relevant local government legislation, and Local Authority's (LA) constitution.
Purpose, powers, and modus operandi set out in the above.	Purpose, and modus operandi set out in MOU between full Council and the Board.
All appointed by open selection procedures.	Two classes of Board member: <ul style="list-style-type: none"> • Council members: Directly nominated by Council. • Co-opted members: Appointed by full Council following open selection procedure.
Chief Executive (and possibly other management) members of the Board.	Equivalent are Council Officers, and therefore not permitted on the Board.

Local Government Legislation

- Local Government Act 1972, Section 102: permits Councils to delegate responsibility for all matters relating to harbours to a Committee reporting to full Council, and allows co-opted members who are not Members of the Council to be appointed to this.
- Local Government and Housing Act 1989, Sections 13 and 14: permits such co-opted members to have full voting rights. However, this does not apply to matters of policy or finance.
- Local Government and Housing Act 1989, Sections 15 to 17: sets out proportionality rules, and exceptions to these.
- Local Government Act 2000: implies that a Committee with operational powers could not be established in respect of an executive function.

Constitution

- Sets out the rights of citizens, how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people.
- The law requires some of these processes, while others are a matter for the Council to choose.
- Direct impact on the Board e.g.:
 - Level of delegation permitted.
 - Making of “key decisions”.
 - Extent that co-opted members can make financial decisions.

Code of Conduct

- Sets out policies on conflict of interest, financial interest etc.
- Local Authorities (Model Code of Conduct) Order 2007:
 - Sets out circumstances where members would have a personal interest (8)
 - Requirement to declare a personal interest where necessary (9)
 - Personal interest CAN become a prejudicial interest (10) → This does not apply where the business of the authority under consideration "does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8"
- The business of Municipal Harbours Boards is primarily be about management and operation of the harbours according to Orders → presumably prejudicial interest should apply very rarely?

Municipal Harbour Board: Legal Basis

- Committee of Council reporting to full Council.
- Harbours reserved as a non-executive function.
- Strong on accountability.
- Full Council remains the duty holder under the Port Marine Safety Code.

Municipal Harbour Board: Constitution

- The establishment of the Board.
- Membership of the Board.
- The appointments process including transitional arrangements if relevant.
- Resignation of members.
- Meetings.
- Declaration of interests.
- Payments to Members.
- Recognised Stakeholders Forums.

Relationship with Full Council: MOU

- Key elements (refer to appendix):
 - Purpose of the MOU.
 - Statement of Council' s policy (e.g. harbour strategy etc).
 - Commitments of Board.
 - Commitments of Council.
 - Financial information: accounts, assets, budgets.
- Must be consistent with Council' s constitution.

Types of Board Member

- Council Members.
- Co-opted members.
- Temporary appointed co-opted members.
- Each bring different skills and backgrounds:
critical requirement to work together and
function as a group.

Appointment Process 1

- **Skills Audit:** consider in terms of the skills that members possess individually, and the complement of skills that the Board possesses as an entity. The skills of members can be represented by three skill sets:
 - The knowledge individuals have of their constituencies, e.g. harbour planning / management / operations; the public sector environment; environmental issues etc.
 - The functional / professional skills possessed, e.g. legal / financial / environmental expertise; entrepreneurial / management / business experience.
 - The personal skills and competencies that make a Board work e.g. co-operative working, influencing, leadership, and communication.

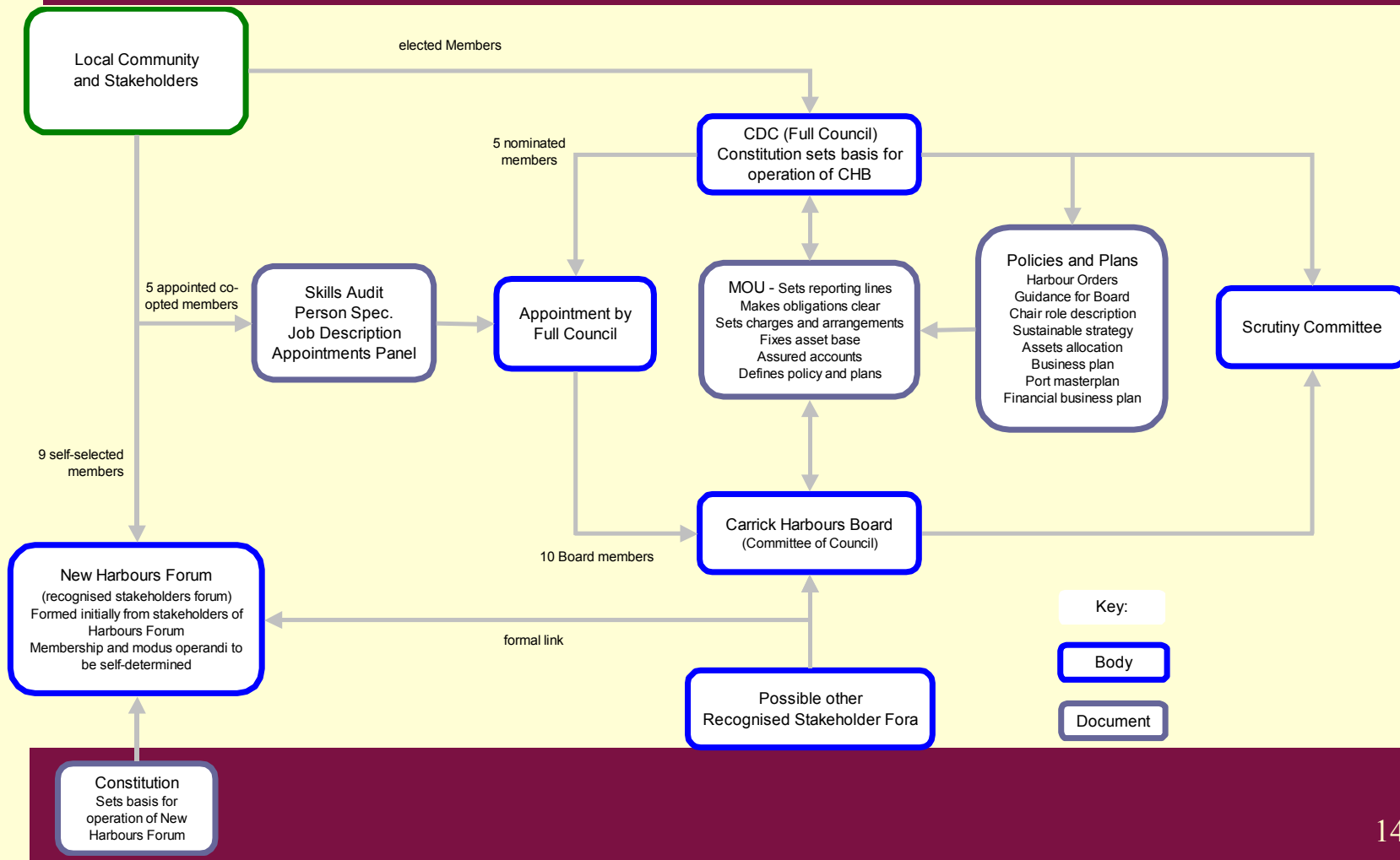
Appointment Process 2

- **Job description and person specification:** should draw directly from the skills audit, and be prepared compliant with the local authority's personnel procedures.
- **Advertising:** locally and regionally.
- **Appointments panel of 3 people:** Chair of Board, stakeholder representative, an independent with background in port governance etc.

Stakeholder Relationships

- Separate stakeholder body or forum running in parallel to the Board.
- Should report issues to the Board preferably based upon unanimous consent.
- Should be independent, but in practical terms can receive administrative support from the LA.
- LA / Board not involved in selection of members of the stakeholder body.
- A Harbour Board member should be tasked with liaison with the stakeholder body – attends meetings as an observer, reports back to Board. Harbour Master should also attend.
- Formal annual meeting between stakeholder group and Board.

Summary



Appendix: MOU

- Proclaims that the functions of the statutory Harbour according to its Acts are delegated to the Harbours Board within the policy and budget approved by the Council.
- Empowers the Board to delegate these functions to the relevant officers.
- Defines the Council's policy on Harbours as set out in key supporting documentation.
- Defines the assets, revenues and liabilities that are within the control of the Harbour Board.
- Requires the Board to periodically review supporting policies and documentation and propose recommendations for modification.

Appendix: MOU

- Requires the Board to:
 - Propose an annual budget.
 - Report quarterly on budget variances.
 - Report annually on the Board's performance against the budget and longer term financial Business Plan.
- Sets out procedures for appointment / reappointment of Board members.
- Defines the Board's status within the Council.
- Sets out the procedure for proposing modification of the Agreement by either the Council or the Board.
- Sets out the Council's financial undertakings wrt the Harbour, and the Board's undertaking to manage the Harbours as an independent financial entity.
- Sets out the services that may be procured by the Board from the Council or external sources.