

REPORT TO: Scrutiny Committee Economy and Executive
Date of Meeting: Scrutiny Committee Economy - 26 June 2014
Executive – 15 July 2014
Report of: Assistant Director Public Realm
Title: Future of the Waterways

Is this a Key Decision?

Yes

* One that affects finances over £1m or significantly affects two or more wards, This item is on the appropriate forward plan of key decisions.

Is this an Executive or Council Function?

Council

1. What is the report about?

- 1.1 This report sets out the latest position with regard to the management of the Estuary, Quay, Basin and Canal and the outstanding draft Harbour Revision Order

2. Recommendations:

- 2.1 That Members be advised that the draft Harbour Revision Order submitted to the Department for Transport in 2008 is no longer viable and should not be pursued. And that an alternative course of action is now required for management of the Estuary, Quay, Basin and Canal
- 2.2 That a review be undertaken of the options open to the Council in respect of the future management of the Estuary, Quay, Basin and Canal, in consultation with users of the Port of Exeter area.

3. Reasons for the recommendation:

- 3.1 To resolve the outstanding draft Harbour Revision Order and to scope an alternative way forward for the future management of the Estuary, Quay, Basin and Canal.

4. What are the resource implications including non financial resources.

- 4.1 None

5. Section 151 Officer comments:

- 5.1 There are no financial implications contained in the report.

6. What are the legal aspects?

- 6.1 The Department for Transport has advised the Council's application for a Harbour Revision Order would not achieve the statutory objects for which Harbour Revision Orders may lawfully be made.
- 6.2 The Council may wish to make representations on the DFT's position.

7. Monitoring Officer's comments:

- 7.1 Members are reminded that Exeter City Council continues as the Harbour Authority for the estuary and Canal. As such it continues to be subject to Statutory and common law duties which can be summarised as follows:

1. To take reasonable care that all who may choose to navigate may do so without

danger to their lives or property.

2. To conserve the harbour so that it is reasonably fit for use as a port and to see that the harbour is in a fit condition for vessels to resort to it.

3. Lighting and buoying responsibilities.

4. To comply with the Port Marine Safety Code

5. To comply with the Health and Safety etc at work Act.

6. To exercise their function with regard to nature conservation and other related environmental considerations.

8. Report details:

8.1 In 2006, the Executive resolved to submit a Harbour Revision Order to the Department for Transport to allow for the Council's interests in the Exe Estuary to be divested to a Trust Port. The draft Harbour Revision Order (HRO) was submitted to the Department in 2008 but has since then been held in abeyance, by them, until very recently.

8.2 In the meantime, a similar HRO application in the North East sought the transfer of the Immingham Humber Oil Terminal from the existing Harbour Authority, Associated British Ports, to a Trust which was to become the new Harbour Authority for the terminal and the landside infrastructure, leaving the remainder of the port with Associated British Ports. The application was rejected by the Marine Management Organisation (successor, in this respect, to the Department for Transport). This decision was upheld at judicial review in 2012 and the applicant accepted the decision and did not to appeal.

8.3 The basis of the decision rested upon the fact that the HRO would not achieve the statutory objects for which HROs could be made and that therefore it could not be lawfully made.

8.4 As a result of this judicial review; in 2014 the Department for Transport finally responded to Exeter City Council's draft HRO. Its view was that, similar to the Immingham case, our application would also not achieve the statutory objects and that; therefore, the HRO could not be lawfully made. Exeter City Council was given leave to make representations on this position. Having regard to the Humber Oil Terminals Trustee decision, it is considered prudent not to appeal and therefore accept the Department of Transport's view. As a result, it is recommended that the HRO should not be pursued any further.

8.5 Given that this is the case and with a view to the pressure on council budgets in the future, we need to reassess the options open to the Council in respect of the future management of the Estuary, Quay, Basin and Canal. Work will be done on this over the next few months in consultation with users of the Port of Exeter area and other stakeholders and the options will be reported back to Members in due course.

9. What risks are there and how can they be reduced?

9.1 No risks are identified in supporting the recommendations in this report

10. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?

10.1 No impact is identified in supporting the recommendations in this report

11. Are there any other options?

11.1 The options available for the management of the Estuary, Quay, Basin and Canal will be the subject of a future report.

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Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

None

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