

EXETER CITY COUNCIL

**EXECUTIVE
16 SEPTEMBER 2008**

EXE ESTUARY HARBOUR REVISION ORDER REVIEW OF EXETER CITY COUNCIL POLICY IN THE LIGHT OF PROPOSALS FROM THE BOUNDARY COMMITTEE AND OTHER DEVELOPMENTS

1. PURPOSE OF REPORT

- 1.1 To review the City Council's policy of seeking to set up a Trust Port to carry out the responsibilities of Harbour Authority for the Exe Estuary, following the interim proposals of the Boundary Committee with respect to the establishment of a unitary local government system for Devon, government consultation on municipal ports and the change in administration of the City Council.

2. BACKGROUND

- 2.1 Exeter City Council is sponsoring an application to the Secretary of State for Transport to alter the arrangements for managing navigation on the Exe. Since the 16th Century the City Council has been the Harbour Authority, but for some 18 years or so the City Council has been investigating how it might divest itself of the cost and responsibility of this role. Divestment has been a formally declared policy since 1999. When the City had a thriving port, with a great deal of commercial traffic, it made sense to control navigation to ensure that shipping reached the port safely and efficiently. Since the closure of Exmouth Docks to commercial traffic in 1989, the majority of traffic on the river is leisure related. There are some ferries and a few fishing vessels, but the remainder consists of dinghies, yachts, canoes, windsurfers and some powered vessels.
- 2.2 It is a quirk of this particular waterway that the Council has the power to set harbour dues, but no special powers outside the civil debt system to collect them. This is largely because the City Council made income on loading and unloading dues, and did not need to set harbour dues as well – all long before there was such a thing as leisure.

3. SEEKING A SOLUTION

- The process the City Council has gone through to reach the present situation has been long and complex. Briefly however it has consisted of:
- The commissioning of a report by Adams Hendry to set out the options for the future, both preceded and followed by extensive consultation with the marine and other interests around the harbour. This included seeking the views of the surrounding local authorities, in particular their willingness to share the costs and control of the harbour. They were not willing to do so.
- The selection of one option to pursue, the Trust Port, which would entail the creation of a new trust, whose directors would be unpaid and appointed on Nolan principles, to take over all management of the navigation on the tidal areas of the estuary. The City Council would continue to be the Harbour Authority for the upper navigable reaches of the river (within the city above St James' Weir) and for the canal, while Exmouth Docks Company would also retain its current powers at Exmouth.

- Further detailed consultation on this proposal, with a draft business plan to demonstrate the level of fees and expenditure. There was almost unanimous opposition to a proposal which was seen to be heavy handed and expensive, and this led to the City Council agreeing with the Exe Estuary Users' Association (which includes all the major sailing and boating interests on the Exe) a much smaller and more flexible solution, in which the active involvement of those interests that already collect mooring fees and club membership subscriptions etc is a crucial part of the process.
- A final draft Harbour Revision Order to set up the Exe Estuary Navigation Authority, which had the full support and participation of the Exe Estuary Users' Association. This was submitted to the Secretary of State in December 2006, and is to be tested at a public inquiry in the first weeks of September.

3.2 The decision to submit the order was made by Executive on 28 March 2006.

4. SUBSEQUENT DEVELOPMENTS

4.1 Since the decision to move forward with the Trust Port proposals, there have been three developments, which have prompted this brief report to confirm the City Council's policy.

4.2 Firstly the Council has a new administration since May 2008. While all groups supported the initial proposals, the arrival of a new Leader and a new Portfolio Holder for Community and Leisure represents a good opportunity to confirm policy.

4.3 Secondly, since the original decision, the Government has published another consultative document, ' Opportunities for Ports in Local Ownership' (May 2006), about the future of municipal ports, of which Exeter of course is currently one.

4.4 Thirdly, the Boundary Committee published on 7 July 2008 its preferred option for unitary local government in Devon, along with a second option for consultation. The former is for a single unitary council covering the whole of Devon (except the existing unitaries of Torbay and Plymouth), and the second is for two unitary councils, one for an enlarged Exeter with Exmouth, and one for the rest of the county. Whereas Exeter on its current boundaries includes very little of the estuary, both these proposals, should one of them be implemented, would give the successor to the City Council a considerable length of river bank.

4.5 Objectors to the Council's HRO application have sought to persuade the Government's inspector that the inquiry should now be cancelled or postponed on the grounds that any new council will have extensive riparian interests. One of them has also suggested that the fact that the Council has not considered the municipal port proposals is grounds for refusing the order.

5. IMPLICATIONS OF THE BOUNDARY COMMITTEE PROPOSALS

5.1 While it is the case that the reasons the Council is putting forward for seeking to relinquish its harbour responsibilities include its physical separation from the estuary and the fact that most of the estuary is outside the Council's area of jurisdiction, these are only some of the grounds it is putting forward. The others are

- The costs of the service are not borne by its beneficiaries
- Lack of accountability for the service

- The harbour is governed by outdated legislation
- Inability of the Council to collect dues effectively under its current powers
- The opportunity to move from a minimum to an enhanced service
- Reintroduction of a harbour patrol service
- More dedicated time by professionals
- More dedicated time by board members with particular skills and interests
- More stakeholder involvement

5.2 Given the City Council's experience of seeking to promote involvement in the harbour by neighbouring councils, the possibility of any successor council wishing to assume the existing responsibilities without change seem remote. However in the event that this were to be the case, we have established that once a Harbour Revision Order is granted, there is no obligation to implement it. The timing of the local government review in Devon means that the decision to implement the Harbour Revision Order, if made, could, and indeed should, be placed before the shadow unitary authority as soon as practicable; it could then decide to allow the scheme to go forward, to stop it, or to put it on hold while it considered the implications. As the City Council has already put considerable resources into bringing the project this far, it would not be sensible to abandon it just as the public enquiry is due.

6. THE MUNICIPAL PORTS REVIEW

6.1 This is only a guidance document at this stage. The Municipal Ports Review raised the option of converting municipal ports to trust ports, providing guidance on how this might be achieved. Officers took the decision not to revisit the overall policy of the Council to create a trust port because that policy was very firmly that the Council did not wish to be a municipal port. Other options raised in the review, such as the possibility of a semi-autonomous board, or a wholly owned company, had already been considered earlier, but had been rejected, since under all of them the local authority still remains the ultimate responsible body.

7. THE NEW ADMINISTRATION

7.1 The original decision to progress the Harbour Revision Order was taken when the Labour group had overall control of the Council. The Liberal Democrats took control in May 2008. The mechanism to confirm the Council policy is to submit this report to Executive at the earliest opportunity. However since the first available meeting was not until the inquiry is sitting, this report was presented to the Leader of the Council and the Portfolio Holder for Environment and Leisure under the delegated powers procedure. They formally considered its contents and agreed them with the Chief Executive and the Director of Community and Environment.

8. RECOMMENDED

That Executive resolves to:

- a) Note the decision taken under delegated powers to confirm the existing policy of seeking a Harbour Revision Order to set up a Trust to manage navigation on the Exe.
- b) Refer the decision of the Secretary of State to the shadow authority of any successor council, and not to implement any order without the express agreement of the shadow authority, or, if the latter so wishes, the successor council.

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COMMUNITY & ENVIRONMENT DIRECTORATE

Local Government (Access to Information) Act 1985 (as amended)
Background papers used in compiling this report: