

**REPORT TO**

**Date of Meeting: Scrutiny Place 12 January; Executive 14 February; Council 21 February 2017**

**Report of: Assistant Director Public Realm**

**Title: Management of Exeter's Waterways**

**Is this a Key Decision?**

**No**

**Is this an Executive or Council Function?**

**Council**

**1 What is the report about?**

1.1 To progress a solution for the improved management of the Exe Estuary Harbour, canal and waterways and to address specific governance and management issues associated with the waterways.

**2 Recommendations:**

That Place Scrutiny Committee supports and Executive support and recommend to Council the approval of the following:-

- 2.1 that work on a business case to transfer the Exeter Ship Canal to the Canal and River Trust ceases and that a Management Plan for the canal is developed in-house;
- 2.2 that officers be tasked to develop a business case to employ a Harbour Master or similar to deliver Port Marine Safety Code compliance, improve safety and improve operational management on the River Exe;
- 2.3 that, in compliance with the Port Marine Safety Code,:
  - 2.3.1 the Service Manager Business and Commercial Operations be designated as the 'Duty Holder' in respect to the Port of Exeter and the Constitution be amended accordingly;
  - 2.3.2 an external competent body be engaged to fulfil the role of 'Designated Person' as defined by the Port Marine Safety Code to undertake competency and safety audits;
- 2.4 that a budget of £10,000 be identified from within existing resources to engage specialist marketing and business development expertise to support the preparation of a Marketing Plan for the Waterways and to deliver the additional income requirements.
- 2.5 that the Mooring Licence issued since 2013 be applied to all moorings in the Port of Exeter and that, where the licensee is unwilling to accept the new licence conditions, action be taken to remove the vessel from the Port;
- 2.6 that only vessels deemed suitable at the Council's absolute discretion be

permitted into the canal, with responsibility to make such a determination be delegated to the relevant Service Manager; and

- 2.7 where repairs are necessary or 'off season' maintenance is required, these activities be confined to the Eastern side of the Basin or the Boat Park (in Michael Browning Way) and this be cordoned off from public access.

### **3 Reasons for the recommendations:**

- 3.1 To progress a solution for the management of the Exe Estuary Harbour, canal and waterways, to address specific governance and management issues associated with the waterways and to satisfy the requirements of the Port Marine Safety Code by defining a formal structure for the operation of a Statutory Port.

### **4 What are the resource implications including non-financial resources.**

- 4.1 Recognisable improvements to the management of the Exe Estuary Harbour, canal and waterways are hard to achieve within the current level of resources. These are only sufficient to maintain the status quo and to deliver basic compliance with the Port Marine Safety Code. However, these improvements and their resource requirements will be the subject of future reports.

- 4.2 The cost of producing the Management Plan and the development of the new policies and practices as recommended in this report will be reflected mostly in terms of staff time. Additional input in terms of legal advice and compliance work will also be required.

### **5 Section 151 Officer comments:**

- 5.1 There are no additional financial implications for the Council contained within this report. However, waterways income generation is built into the MTFP for 2018/19 and will require some firm proposals to come forward during the next financial year.

### **6 What are the legal aspects?**

- 6.1 None identified.

### **7 Monitoring Officer's comments:**

- 7.1 Complying with the recommendations set out in relation to the Port Marine Safety Code is clearly a priority. However the issue regarding how we might make the waterway more profitable has been without resolution for very many years. As a result the monitoring officer recommends that an officer working group to include legal services to look at this should be set up urgently.

### **8 Waterways Management**

- 8.1 Members will be well aware that the desire to progress a solution for the management of the Exe Estuary Harbour, canal and waterways has been a

corporate objective for some time.

- 8.2 In June 2014, the Council agreed that the proposed Harbour Revision Order, submitted to the Department for Transport in 2008, was not viable and a review of the options available for the future management of the waterways began.
- 8.3 In March 2015, Members agreed to establish a partnership of key stakeholders in Exeter's waterways to help develop and deliver a Waterways Strategy. Exeter Waterways Advisory Board was a very useful sounding board for change and the time, energy and passion of the volunteers was much appreciated, helping to bring some clarity to how Exeter's waterways should be managed. The Board was superseded as the most appropriate vehicle for stakeholder representation and lobbying on the waterways by the new independent Port User Group in September 2016.
- 8.4 In September 2015, the Canal and River Trust was invited to work with the Council to explore the potential for joint future work. Lengthy but productive discussions took place with the Trust about the support that they could offer the Council in managing its waterways. It became clear that the Trust's preferred option was permanent asset transfer of the Exeter Ship Canal, with significant upfront technical survey costs for the council and an estimated upfront dowry requirement of between £2m and £6m.
- 8.5 In addition, in September 2015, the Maritime and Coastguard Agency undertook an audit of the Port of Exeter and in November 2015, Members agreed to work towards compliance with the Port Marine Safety Code.
- 8.6 In February this year, Members agreed to apply to the Department for Transport for the power to make Harbour Directions and in September this year a Port User Group was established as a requirement of that process.
- 8.7 While rather lengthy, this process has been invaluable in better understanding the issues, the needs of the stakeholders and the manner in which the management of the waterways might be improved. Given that Members are keen for improved management of both the Estuary and the Canal, stakeholders are keen for the responsibility for the Canal to be retained by the Council and the Trust solution appeared to have a significant unbudgeted cost to it, the Council's direction was reconsidered. In brief, it is now proposed to:
- cease work on the business case for the transfer of the Exeter Ship Canal to the Canal and River Trust, and
  - develop a Management Plan for the Canal to include new approaches to abandoned boats, live-aboards, moorings, programmed maintenance and improvements in financial control, customer processes and systems, marketing and published information.
  - develop a business case to employ a Harbour Master or similar to deliver Port Marine Safety Code compliance, improve safety and improve operational management on the River Exe

## **Waterways Management Plan**

- 8.8 The Management Plan will direct and prioritise improvements in the management of the Exe Estuary Harbour, canal and waterways and address specific governance and management issues associated with the waterways. It will be developed in house over the next few months and will be the subject of a future report. The cost of producing the Management Plan and the development of the new policies and practices as recommended in this report will be reflected mostly in terms of staff time.

### **Port Marine Safety Code Compliance – Port Governance**

- 8.9 In September 2015, the Maritime and Coastguard Agency recommended that the Council:

- identify and appoint a Duty Holder who is accountable on behalf of the Harbour Authority for its compliance with the PMSC;
- appoint a Designated Person to provide the duty holder with independent assurance directly to the duty holder that the Marine Safety Management System is working effectively

- 8.10 In order to continue to achieve practicable compliance with the Port Marine Safety Code, and to define a formal structure for the operation of a Statutory Port, the establishment of the Duty Holder and Designated Person needs to be recognised formally. It is proposed that that the Service Manager Business and Commercial Operations be designated as the 'Duty Holder' in respect to the Port of Exeter.

- 8.11 At present, the Council has no resource with the experience and independence necessary to fulfil the role of 'Designated Person,' as defined by the Port Marine Safety Code, to undertake competency and safety audits. As a result it is proposed that an external competent body is engaged to fulfil the role of 'Designated Person', funded from existing budgets.

- 8.12 It is likely that operating the Port in compliance with the Port Marine Safety Code will generate additional costs. Consultation with the Port users has given us a clear indication that their preferred solution to the improved management of the waterways is for the Council to appoint a Harbour Master. This role would enable the Council to deliver Port Marine Safety Code compliance, improve safety and improve operational management on the River Exe. The cost of providing a Harbour Master is estimated at £40,000 per annum, together with a capital funding of around £25,000 for the provision of a suitable boat. A more detailed proposal will be brought forward from the Management Plan and a business case for this additional funding will be the subject of a future report.

### **Income**

- 8.13 The task for the Medium Term Financial Strategy was to determine the scope, cost and feasibility of increasing the income budget by £110,000. The

outcome of this is that there is scope for increasing the income budget by increasing the number of moorings on the canal with only nominal levels of investment needed. However, the canal has lost business over the last two years and it is not feasible to reverse and improve that position without investing in marketing and promotion and not in time for the 2017/18 season. It is proposed that a budget of £10,000 be identified from within existing resources to engage specialist marketing, business development and promotional expertise to support the preparation of a Marketing Plan for the Waterways and to deliver the additional income requirements in 2018/19.

### **Vessels in Disrepair**

- 8.14 Members will be aware that there is a significant issue with vessels berthed within the Harbour that have fallen into disrepair or are close to it. We have a legacy of problem vessels, particularly in the canal, and costs in the region of £15,000, together with associated management time, has been incurred in the last two years for their removal. Improved controls on entry to the Port, berthing and removal from the Port are required to deal with these vessels.
- 8.15 We need to limit access to the canal and basin in order to avoid potential problem vessels reaching the confines of the canal and basin. It is proposed to restrict access to the canal only to vessels that are deemed suitable at the Council's absolute discretion, with responsibility to make such a determination be delegated to the relevant Service Manager.
- 8.16 Berthing of vessels is regulated in the Port of Exeter by Mooring Licences but there are anomalies that make enforcing compliance problematic. Most problematic are the vessels granted a Mooring Licence prior to 2013 that remain in the Harbour. Prior to 2013, Mooring Licences issued by the Council had no expiry date. Consequently, over many years, historic practices and perceived rights have become associated with what should be a simple licence to berth. In 2013, the Mooring Licence was revised and is now time-limited. Holders of this licence have a clear expectation of their tenure and the conditions under which they are permitted to remain within Port.
- 8.17 It is proposed that the terms and conditions of the Mooring Licence issued from 2013 to new vessels entering the Port now be applied to pre-existing moorings and, where the licensee is unwilling to accept the new licence conditions, action be taken to remove the vessel for the Port of Exeter. The termination of the remaining fifty two 'historic' licences and the introduction of the current licences throughout the Port will address this anomaly. This may impact upon a small number of people who are living on their boats, which have not moved from the Port since 2013, if they refuse to accept the new Licence. The issue of living on board on the canal will be addressed in the forthcoming Management Plan and will be the subject of a future report.

### **Repairs to vessels**

- 8.18 Clearly, repairs to vessels are required from time to time to make them ready for sea but in the Port of Exeter this has become confused with the practice of rebuilding vessels, sometimes over many years. The Health and Safety Risk assessment highlights that the storing of timber, working off ladders etc.

is incompatible with the public access to the basin side. In mitigation it is proposed that, where repairs are necessary or 'off season' maintenance is required, these activities will be confined to the eastern side of the Basin or the Boat Park (in Michael Browning Way) and will be cordoned off from public access. The requirement to prevent pollution of the canal as a result of maintenance/ repair activities will limit the availability of space.

**9 How does the decision contribute to the Council's Corporate Plan?**

9.1 The Corporate Plan seeks to provide services that customers need and reduce operating costs by redesigning services and managing our assets effectively.

**10 What risks are there and how can they be reduced?**

10.1 The recommendations seek to reduce the risk of non-compliance with the Port Marine Safety Code, the financial risk of liability for vessels in disrepair and the risk of environmental contamination of the waterway. There is a small reputational risk as some of the management measures may be unpopular and may lead to negative media coverage.

**11 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?**

11.1 These decisions will increase the effective management of the Port and enhance the safe enjoyment of the waterway amenity.

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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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