

REPORT TO: Place Scrutiny, Executive Committee and Council
Date of Meeting: 14 June, 10 July and 24 July 2018
Report of: Service Manager Community Safety & Enforcement
Title: Managing Harbour Authority Responsibilities

Is this a Key Decision? *

No

**One that affects finances over £1m or significantly affects two or more wards. If this is a key decision then the item must be on the appropriate forward plan of key decisions.*

Is this an Executive or Council Function?

Council.

1. What is the report about?

The options for discharging the Council's Harbour Authority duties to an appropriate standard.

2. Recommendations:

- 2.1 To create a new Harbourmaster post within the Waterways establishment and recruit a suitably experienced and qualified candidate to the role.
- 2.2 To create two new Harbour Patroller posts within the Waterways establishment and recruit suitably experienced and qualified candidates to the roles.
- 2.3 In compliance with the Port Marine safety Code the Harbourmaster be designated as the 'Duty Holder' in respect of the Port of Exeter and the Constitution be amended accordingly.
- 2.4 The options for a Harbour Revision Order are explored with the Port User Group.

3. Reasons for the recommendations:

- 3.1 To ensure the Council adequately meets its duties as a Port Authority as soon as reasonably practicable.

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

- 4.1 Annual revenue costs estimated at £110,600 for salaries (1 x FTE at indicative Grade 10 and 2 x FTE at indicative Grade 5) plus on-costs and £10,000 for clothing and equipment.
- 4.2 Capital costs of £50,000 to provide Harbourmaster office within existing buoy-store.

5. Section 151 Officer comments:

The Council's revenue and capital budgets for 2018/19 will be increased to accommodate the additional costs, if approved, and the medium term financial plans updated accordingly. The additional annual revenue costs represent a recurring budget pressure and its impact will need to be factored into future budget reduction plans, in order to ensure the Council delivers a balanced budget.

6. What are the legal aspects?

The Council's Organisational Change Policy must be complied with in relation to the creation of new posts. Further consideration needs to be given to the future management by the Council as Harbour Authority, as set out below under the Monitoring Officer's comments.

7. Monitoring Officer's comments:

The option of a Harbour Closure Order is referred to in paragraph 9.2 as a means of divesting the Council from its responsibilities. The alternative option of a Harbour Revision Order is referred to at paragraph 8.22. This would give the Council more extensive powers such as the ability to charge users of the estuary thus generating a new Revenue stream.

The report sets out a number of concerns regarding user's safety. The Council has the legal means to deal with some of these issues by way of adopting Harbour Directions. These new powers have been in place for a number of years now.

Finally, given the recommendation to create a number of new posts, the Council's Organisation Change policy applies.

8. Report Details:

8.1 The Council is the Harbour Authority for the Exe Estuary from Blackaller Weir (outside Mill on the Exe) to the 'Safe Water Mark', one mile out to sea off Exmouth beach.

8.2 As such, the responsibilities include:-

- a) Providing and maintaining lights and buoys to ensure safe navigation
- b) Exercising functions with regard to nature conservation and other environmental considerations
- c) Conserving the harbour so that it is reasonably fit for use as a port and in such condition for a vessel to utilise it safely
- d) Complying with the Port Marine Safety Code
- e) Complying with Environmental Protection legislation
- f) Keeping the canal open, maintained and navigable for commercial vessels

- 8.3 The basic functions are undertaken well, in so far as an annual hydrographical survey is commissioned to determine the deepest navigational channel. This channel is then marked by buoys and other lit/unlit navigational aids to safely guide vessels navigating the Estuary.
- 8.4 Preventative and reactive maintenance of both buoys and navigational aids is carried out under an annual agreement by a local contractor working out of an Exmouth waterside buoy-store rented by the Council for that use.
- 8.5 The above operation is monitored and inspected by the independent General Lighthouse Authority (Trinity House) who rated our performance in this discipline as 'good' following their 2017 inspection.
- 8.6 We work closely with organisations such as Natural England and the Environment Agency to help ensure responsibilities towards nature, conservation and the environment are met.
- 8.7 We are currently pursuing Port Marine Safety Code (PMSC) compliance. The code is explicit in stating the requirement to use competent people (who are trained, qualified and experienced) in positions of responsibility for managing marine and navigational safety.
- 8.8 Compliance cannot be achieved with current resources in terms of both competency and capacity.
- 8.9 Although the PMSC is not mandatory all Harbour Authorities are expected to comply and failure to do so can lead to prosecution under other relevant legislation such as the Health and Safety at Work Act (maximum penalty 2 years imprisonment and/or unlimited fine) in the event of serious incident or accident.
- 8.10 The Port User Group, comprising various Estuary stakeholders, has consistently reported that the Estuary is increasingly experiencing unsafe behaviour with speeding vessels (in excess of the 10 knot limit) and irresponsible use of jet-skis.
- 8.11 The Port User Group has advised us that, in their opinion, Exeter City Council are failing in their responsibilities by not enforcing our own byelaws designed to reduce the risk of accidents within the Harbour.
- 8.12 As Harbour Authority we owe a duty of care to users of the Estuary. A breach of that duty resulting in a subsequent incident or accident could lead to a civil action against the Council for negligence.
- 8.13 Our current presence on the water in an advisory, educational and enforcement role is minimal and involves volunteers crewing an outdated Harbour Patrol boat over a number of weekends during high season. This is insufficient to adequately challenge and change unsafe behaviours which have gone relatively unchecked for many years.
- 8.14 Capital funds of £50,000 have been provided to purchase a new Harbour Patrol boat but this needs to be viewed as just part of the investment required to run a safe Harbour.

- 8.15 Current management for this area is undertaken by Council staff with no formal training or qualifications in marine matters, although the Council has access to paid advice from the highly experienced and qualified Teignmouth Docks Harbour Master.
- 8.16 The Service Manager for Community Safety & Enforcement inherited additional management responsibility for Waterways following the resignation of the Service Manager Business & Commercial Operations in 2017. The Waterways Operations Manager is heavily focused on issues affecting the Exeter Ship Canal and is expected to lead on delivering commercialisation initiatives for the Canal and Basin.
- 8.17 Creating a Harbourmaster role will allow the Council to appoint a trained, qualified and experienced person to provide a suitable level of authority and presence on the Estuary and in dealings with the many stakeholders. This role is also crucial in completing the remaining steps to achieve and maintain Port Marine Safety Code compliance.
- 8.18 An appropriately experienced and qualified team of two Harbour Patrollers would be required to crew the new Harbour Patrol boat and begin a drive towards improving behaviour within the Harbour for the benefit of all.
- 8.19 The crew have scope to work out of the Exmouth buoy-store without any additional accommodation costs to the Council.
- 8.20 The buoy-store could also provide a base for the Harbourmaster but would require some capital costs for internal alterations to create a sufficient office space.
- 8.21 Legal Officers advise that the Council is currently unable to levy Harbour Dues from any non-commercial vessel. The Estuary is predominantly used by recreational vessels.
- 8.22 A Harbour Revision Order could be explored to consolidate various Harbour Authority powers in a single order and provide the means to levy harbour dues on recreational vessels.
- 8.23 This process would involve a large public consultation and possibly a public enquiry. Estimates from Legal Officers based on previous experience are that this would be a 3 year process costing in the region of £150,000, without considering internal officer time.
- 8.24 The level of income recreational harbour dues would raise is difficult to predict. Previous work by the Exe Estuary User Association suggests that an annual fee of between £7.00 and £10.00 per metre per vessel would not be unreasonable and could raise between £100,000 and £150,000.

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?

Helps safeguard those using the Estuary by working to help reduce to likelihood of accidents attributable to speeding or similar unsafe behaviour.

9. Are there any other options?

- 9.1 Continue to manage the Harbour as at present and accept the risk of non-compliance with the Port Marine Safety Code.
- 9.2 Pursue a Harbour Closure Order which would enable the Council to relinquish some of its responsibilities for the Harbour. Although alternative means of delivering these responsibilities would have to be agreed with other groups/bodies.
- 9.3 This process would be as per 8.23.

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

Background papers used in compiling this report:-

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