

EXETER HARBOUR BOARD

Date: Thursday 20 January 2022

Time: 5.30 pm

Venue: Customer Service Centre, Civic Centre, Exeter

Members are invited to attend the above meeting to consider the items of business.

Due to the current social distancing restrictions brought about by the Corona Virus outbreak, any members of the public wishing to attend the meeting please contact the Democratic Services Team committee.services@exeter.gov.uk in advance as there is limited capacity for public attendance. Priority will be given to those addressing the Board under the Council's public speaking provisions. If you have an enquiry regarding any items on this agenda, please contact Sharon Sissons, Democratic Services Officer on 01392 265115.

Membership -

Councillor Harvey (Chair), Allcock, Buswell, Leadbetter, Pearce and Sparkes and Messrs R Eggleton, A Garratt, A May, O Michaelson, and S Sitch.

Agenda

1 Apologies

2 Declarations of Interest

Members are reminded of the need to declare any disclosable pecuniary interests that relate to business on the agenda and which have not already been included in the register of interests, before any discussion takes place on the item. Unless the interest is sensitive, you must also disclose the nature of the interest. In accordance with the Council's Code of Conduct, you must then leave the room and must not participate in any further discussion of the item. Councillors requiring clarification should seek the advice of the Monitoring Officer prior to the day of the meeting.

3 Local Government (Access to Information) Act 1985 - Exclusion of Press and Public

It is considered that the Board would be unlikely to exclude the press and public during consideration of the items on this agenda, but if it should wish do so, then the following resolution should be passed:

RECOMMENDED that, under Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for the particular item(s) of business on the grounds that it (they) involve the likely disclosure of exempt information as defined in the relevant paragraphs(s) of Part 1, of Schedule 12A of the Act".

4 **Minutes**

(Pages 3 -
6)

To approve the minutes of the meeting of the Exeter Harbour Board held on 27 September 2021.

5 **Public Question Time**

A period of up to 15 minutes is available to deal with questions relating to the business of the Harbour Board from the public.

Details of questions should be notified to the Corporate Manager Democratic and Civic support via the committee.services@exeter.gov.uk email by 10.00am at least three working days prior to the meeting. For this meeting any questions must be submitted by 10.00am on Monday 17 January 2022.

6 **Paul Labistour**

7 **Exeter Port Users Group Update**

To receive a verbal update from the Chair of EPUG – Rex Frost

8 **Harbour Board Visioning Event Review**

(Pages 7 -
8)

To receive a review of the Visioning event from Steve Carnell (Engineering, Waterways and Parking Service Manager)

9 **Harbour Master's Report January 2022**

(Pages 9 -
14)

To receive a quarterly report from the Harbour Master.

Date of Next Meeting

The next scheduled meeting of the Exeter Harbour Board will be held on Monday 14 March 2022 at 5.30 pm.

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EXETER HARBOUR BOARD

Monday 27 September 2021

Present:-

Councillor Harvey (Chair)
Councillors Allcock, Buswell, Leadbetter, Sparkes
Andrew May, Owen Michaelson, Steve Sitch and Anthony Garratt

Apologies:-

Richard Eggleton, Paul Labistour and Councillor Pearce

Also Present

Engineering, Waterways and Parking Service Manager (SC) Harbour Master (GF) and Democratic Services Officer (SLS)

Rex Frost, Chair of Exeter Port Users Group

1

DECLARATIONS OF INTEREST

No declarations of discloseable pecuniary interest were received.

2

PUBLIC QUESTION TIME

No public questions were received.

3

WELCOME

The Chair welcomed members to the first meeting of the Exeter Harbour Board. He was pleased to introduce Rex Frost, Chair of the Exeter Port Users Group who was able to attend the meeting on this occasion. A standing item to allow a verbal update to be made on the Exeter Port Users Group would be included on future agendas.

Mr. Frost referred to the Exeter Port Users Group (PUG) and thanked the Chair for the opportunity to provide some background to the Group, which was a committee made up of 15 representatives from all parts of, and activities, on the river. Their membership was open to all businesses, clubs and associations within the harbour area. A PUG was also a requirement by the Department of Transport (DfT) as a consultative body of local water users. Grahame Forshaw, Exeter's Harbour Master, attended their meetings and they also kept each other up to date informally on activities on the river.

He raised a number of issues regularly considered by the PUG including:-

- an issue of sand drifting from Dawlish Warren coming into the river and causing silting up of the channel. Despite numerous meetings with various parties there was no satisfactory solution at present.
- poor water quality presented problems for swimmers and surfers caused by an overflow of sewage after heavy rain and run off from fields. There was currently no 'live reporting' of pollution levels, but he noted this was being considered nationally by Government.
- during the summer, he had accompanied the Harbour Master and Simon Jupp, East Devon MP, out to view the river. He was very interested in the issues raised. He hoped to invite Ben Bradshaw, Exeter MP on the water

for a similar information visit next season.

- registration of boats remained a continuing problem, and currently the only registration was via the mooring authorities, who were bound by data protection. He understood the Harbour Authority hoped to establish their own database of boats and owners.
- the presence of the Harbour Master, volunteers and patrol boat was very welcome, and whilst most water users adhered to the rules, there were some offenders such as jet skis which continued to be a source of aggravation, and a national move to control their use was awaited.

The Chair thanked Mr Frost for the update and he looked forward to seeing him at the next meeting.

4

INTRODUCTION

The Engineering, Waterways and Parking Service Manager, Steve Carnell outlined a number of issues relating to the Exeter Harbour Board which had held an informal session, via zoom, to introduce members to each other, to the officers and to the nature of the harbour. He also set out the appointment process which included the position of Chair who would be the serving Elected Member with Portfolio Holder responsibilities for waterways, and which was currently Councillor Harvey. The Chair, along with five other Members from the City Council were appointed at the Annual Council meeting in May. The Board would also always include two of the Elected Members for the Topsham Ward given the maritime nature of that particular area.

The six external Board members were also appointed following a recruitment campaign, seeking individuals with extensive experience across a range of criteria, including harbour management, health and safety, finance and law, marine heritage, tourism and leisure etc. Each external member was scored based on the evidence supplied and as a result two members were appointed for an initial one year term, two for two years and two for three years. The process had been undertaken with the Harbour Master and oversight by the Director responsible for Waterways. It should be noted that all subsequent appointments will be for a three year period and the maximum number of terms to be served will be two. The initial staggered approach would ensure continuity going forward.

The report was noted.

5

TERMS OF REFERENCE

The Chair referred to the terms of reference which were agreed at Council, as part of a report on Port Marine Safety Code, Pathway to Compliance. At the request of the Chair, a map was circulated to Members, (attached) depicting the areas of responsibility of the Board. The Harbour Master confirmed the area of responsibility as being from the Mill on the Exe at Blackwaller Weir, including the waters in the River Clyst from the railway bridge, extending to Turf lock and canal, Starcross, Dawlish Warren to Exmouth. The final demarcation point was the East Exe buoy which currently lay to the east of the current safety water mark. There had been some movement due to the river delta and general passage of the sea, but the demarcation point was set out in legislation and covered the most southern point. The Harbour Master agreed to research unalterable definitions of the limits of responsibility which would account for moving of the marker buoys. It was important to establish the position of the most southern limited for speed enforcement and should a Harbour Revision Order be made in the future.

The Chair thanked the Harbour Master for the clear explanation.

The terms of reference were noted.

6

HARBOUR BOARD PURPOSE

The Engineering, Waterways and Parking Service Manager had been requested by the Chair to outline the Harbour Board's purpose and function. It was suggested that a facilitated half-day workshop be held, attended by all Board members to contribute towards a consensus regarding purpose and function and a move towards more regulation of the waterways. An invitation would be sent to the Board Members for the facilitated workshop.

The Chair referred to issues for discussion which might include the Port Marine Safety Code, the many external influences such as the Exeter Canal and Quay Trust and commercial activities operating to take a view of what is happening in and around the waterways, as well as other bodies and organisations such as the County Council, Teignbridge District Council, East Devon District Council, the Topsham River Commissioners, and the Exeter Port Users Group who will all have an influence.

Members noted the opportunity for further discussion on the Board's purpose and aspirations.

7

HARBOUR MASTER'S REPORT

The Harbour Master, Grahame Forshaw presented his report and thanked those members of the Board who had been out on the water with him over the summer. He paid tribute to his dedicated team of staff and volunteers, as well as the value of having a patrol, validated by the number of incidents they had supported with other agencies on numerous occasions. He also welcomed the team's higher profile to continue with the approach to improve a pattern of behaviour that had been established by some users on the Estuary in more recent years.

The report was noted.

8

INCIDENTS AND ACCIDENTS

The Harbour Master circulated a list of incidents and accidents for information from the Council's own in-house reporting system. It was important to gather such data to establish any trends and to further an ambition to issue local safety notices to estuary users at some point. It was also intended that the profile of safety could be further raised through talks to a range of different groups.

The report was noted.

9

DESIGNATED PERSON

The Engineering, Waterways and Parking Service Manager stated that as part of the Port Marine Safety Code, a Designated Person should be appointed, to act in a similar role to that of an 'external auditor' in order to review the safety management systems that are in place and report directly and independently to the Harbour Board on such matters. Before employing Exeter's Harbour Master, 'marine advice' had been obtained from Teignmouth Harbour Commission, an arrangement that had worked well. They have expressed an interest in providing a Designated Person if required. However, it is widely regarded as a Harbour Board function to appoint the Delegated Person so he requested direction from the Board as to the approach to adopt in respect of making a further appointment. The anticipated fee

appeared to be well below any formal tender thresholds.

The Board agreed to continue with the current arrangement with the Teignmouth Harbour Commission until further discussion on this matter could take place at the Board's workshop to fully understand the process before making a final decision at the next Board meeting.

(The meeting commenced at 5.30 pm and closed at 6.30 pm)

Chair

DRAFT

REPORT TO EXETER HARBOUR BOARD

Date of Meeting: 20 January 2022

Report of: the Engineering, Waterways and Parking Service Manager

Harbour Board Visioning Event held at the Customs House – Saturday 8 January 2022

This event was as an opportunity for Board Members to more fully explore the background to a number of fundamental issues concerning the Harbour and the role of the Board itself

The key take away points agreed following a morning of lively discussion were as follows:-

1. Vision Statement

To be a safe, friendly and financially sustainable eco-harbour which contributes positively to the wellbeing of residents and visitors, the local economy whilst maintaining the character, beauty and leisure potential of the River Exe and Exeter Ship Canal.

2. Mission Statement

To operate a safe, efficient and sustainable modern eco-harbour that enhances the character of the Exe Estuary and Exeter Ship Canal and meets the needs and expectations of the 21st century harbour users and is an asset to local communities

3. Core Values

- a) We will take responsibility for marine safety.
- b) We will encourage access and promote active and healthy lifestyles on and surrounding the Port waterways.
- c) We will lead on environmental stewardship of the Port whilst working towards the Net Zero Exeter 2030 Plan.
- d) We will take stakeholder engagement seriously.
- e) We will provide value-for-money services despite continuing central government budget reductions
- f) We will enact good governance and act with integrity.

4. Key Objectives

- a) Achieve Port Marine Safety Code compliance
- b) Promote use of the Harbour
- c) Become financially self-sustainable
- d) Maintain the 'green infrastructure' that forms the Harbour

Those present offered numerous views on what was needed to forward the above ambitions and the following actions were agreed

1. Officers to progress a report in support of funding for the Harbour Revision Order recognised as fundamental to enable PMSC compliance
2. Officers to identify funding and progress the appointment of a Designated Person

3. Officers to identify options to deliver a Safety Management System
4. Officers to provide clarity on the relationship between Exeter City Council Executive and the Harbour Board
5. Officers to provide clarity on the 'duty holder' responsibility of the Board
6. Officers and Chair to select new Board Member from previous applicants to best replace skills and experience lost following the passing of Paul Labistour

Steve Carnell

Engineering, Waterways and Parking Service Manager

10 January 2022

REPORT TO EXETER HARBOUR BOARD

Date of Meeting: 20 January 2022

Report of: the Harbour Master for Exeter City Council

Harbour Master's Report– January 2022

Since the last Harbour Board meeting in September of 2021, The River Exe and Ship Canal have moved through the regular autumn and early winter phase, with a markedly down turn in leisure traffic. This has allowed the teams at both locations (Exmouth and the Canal) to concentrate on core work such as maintenance of Aids to Navigation, maintenance of moorings, repairs to canal banks/landing stages as well as the regular convoys of craft up the canal for lifting out at the Basin ready for winter storage.

Port Marine Safety Code/HRO

As already briefed and discussed at length previously.

Waterways Teams

Both the Canal team and the Estuary team continue to work closely together, where possible we try to support and interchange personnel when there are specific tasks to be completed.

We have four full-time and one part time staff at the Canal.

At Exmouth the Estuary team is currently four full time staff, with volunteer patrollers in the summer. All volunteer patrol volunteers undertook training in the early spring of 2021.

Navigation Aids

The Estuary team continue to carry out essential maintenance to the Navigation Aids marking the channel into the river and all the way up to Topsham.

There have been occasions where Navigation marks break free from their ground anchors especially in periods of adverse weather conditions. Our aim is to put them back into position as soon as we possibly can but sometimes there is a delay whilst we wait for calmer weather before returning the buoy to the proper position. There may be other delays for example; if we have to make repairs to the buoy or order in some more heavy ground chain then that process can take some time.

Our overall aim is to lift and inspect every Navigation Aid at least every two years, which means lifting the ground anchor and heavy chain, refurbishing the buoy after inspection and replacing worn parts. To carry out this task can take almost the whole day if significant parts of the operation are complex and of course the work is also weather and tide dependent.

Local Notices to Mariners

During 2021, 33 Local Notice to Mariners were issued.

Continuation of the navigation channel to Retreat

We now have an agreement in place with the Topsham Moorings Association for the locations of the new Navigation Aids to mark the channel up past Topsham quay and on to the Retreat boatyard just below the M5 motorway bridge. The new aids are being paid for by the Topsham River Commissioners and once we have final permissions in place from Trinity

House (General Lighthouse Authority) we will make time in our winter programme to install them. The Northern limit to our responsibility for Navigation Aids is the road bridge at Countess Weir.

Channel survey

We have instructed our specialist contractor Shoreline Surveys to conduct a survey of the channel leading up to Topsham for navigation purposes and we have also asked the contractor to carry out a survey of the Ship Canal up as far as the Kings Arms gates.

Notable incidents

There are still a high number of vessels breaking free from moorings in the river. Often due to lack of regular maintenance or the use of poor mooring lines which fray in poor weather. In the period since the Harbour Board last met there have been ten instances where craft have broken free and either drifted down channel and ended up grounded on sandbanks or even worse, onto rocks on the western shoreline. In most cases, we have been able to use our resources to recover these craft.

In the recent storms we have had three yachts break free of their moorings and land on the East side of the river. One has been recovered but two remain on the bank.

To give an example of some of the complexity of the issue, the yacht Leia had broken from its' mooring on the West side of the river and washed up on the shore at Exton. The yacht was in possibly one of the most difficult locations to recover from. The owner lives in Manchester and has not been on board the boat in years. The mooring association that he had a licenced mooring from have washed their hands of him and will not renew any agreement for him and his yacht. The yacht is in very poor condition and practically worthless.

I contacted the owner and gave him an estimated price of £500 to tow the boat off the shore. The owner confirmed by email that the cost and the terms were acceptable. We recovered the yacht at first light on the 5th of January. If I had not pressed the owner to take some responsibility for the craft, I suspect the owner would have simply abandoned the boat and walked away.

If we had the right powers that we could obtain via an HRO we would be in a better position legally to demand that owners of boats in the river cannot simply abandon a vessel.

In the Ship Canal the MV Strathspey which is a large former fishing vessel sank against its' berth in the Ship Canal but was successfully re floated. This happened over the weekend of the 11th-12th of December 2021 and the vessel was pumped out and re floated by the 17th. Both teams were involved in this task, large pumps were hired in to assist.

The owner bought the boat some years ago and again has done little work on it. He already owes nearly 5K in mooring fees and we have yet to work out the bill for raising the boat but I expect it to be in the region of a further 8K. Again, our limited powers do not help even though the City Council bailiffs have attempted recovery of the outstanding mooring fees.

We used the opportunity to test our skills at pollution boom drills. Fortunately there was little or no pollution that escaped into the canal.

Exeter Ship Canal

The Ship Canal is an outstanding stretch of water (five and a half miles long) used heavily all year round not only by craft on the water but also by walkers and cyclists. This special length of water so close to the city centre and suburban areas bordering open countryside and the estuary is popular with city residents and used by many.

In fact, the tow paths along the canal are part of the National cycle route and cross all of bridges over the canal. The canal team work hard to keep the waterway in good order, but constant repairs needed to shore up the leaks in the elevated banks, the wear on the tow path and canoe landing stages and of course the lock gates. All this work is part of the normal working practice along with locking in/out craft, maintenance of the quay and basin and controlling the vegetation growth along the banks.

The canal is a unique environment, popular with people just wanting to 'mess about in boats'. At present there are over 130 boats in the canal in various stages of repair or storage. Whilst being an attraction, the canal is also tempting to some people to be a place of residence aboard a boat. Whilst an attractive proposition, the canal is simply not geared up for semi-permanent or permanent residential use. Currently there are between six and ten boats used as either permanent or part-time residences at the canal basin. We do not encourage this and we do point out at the enquiry stage that residence aboard vessels in the canal is not permitted except for visiting boats at the Turf where toilet facilities are provided.

If in the future the facilities existed for a live-aboard community I am sure this would be extremely popular.

The Topsham ferry causeway on the canal side has partially collapsed. At present we are working with our engineer team and contactors to effect repairs. The ferry service continues to be popular in the summer months, and during the winter period the service is maintained at weekends weather permitting. The ferry will be withdrawn from use at the end of February for winter re-fit.

Accidents

To date, there have been no accidents involving staff and no reported accidents from members of the public.

Action from previous minutes set out below as Appendix A

Grahame Forshaw

Harbour Master

12 January 2022

APPENDIX A

1. EXTENT OF THE LIMITS OF THE PORT OF EXETER

The exact extent of the port limits are not clear.

The 1539 Act relates to the River Exe (the canal had not yet been constructed) as between '*the said city*' and '*the high sea*'.

The 1688 Royal Commission describes the Limits of the Port as '*from the southernmost point of land on the east side of the mouth of the river Ex...in a supposed right line of the southernmost point of land on the west side of the Haven of Tingmouth with all the channels, roads, stream river base havens and crooks unto the quay commonly called the quay of Exon*'

The Counsel's advice received by the Authority on 7 May 1996, refers to case law from 1844 *Mayor of Exeter v Warren* (1844) 5 QB 773 which cites the 1688 Commission when referring to the Port Limits.

The 1840 Act in section 31 (for preventing nuisances in the river Exe, and preserving the navigation) uses similar language in respect of the Authority's power to dredge '*cleanse and deepen the channel of any part of the River Exe from said city of Exeter to the high sea*'. However, section 48 (Act not to extend to any place outside Cheekstone Rock) states '*that neither this Act, nor any clause, matter or other thing herein contained, nor any of the tolls, rates or duties specified in the Schedule hereto, shall in any manner extend, or, be applicable, either directly or indirectly, to any creeks or harbours, place or places whatsoever, outside or beyond, the entrance of the River Exe from the sea, commencing at a place or rock called the Cheekstone Rock*'.

As such the 'Port' limits certainly include the River Exe from the city of Exeter to the sea (subject in respect of the 1840 Act to the limitations set out above regarding 'Cheekstone Rock') and potentially the much larger area described in the 1688 Commission.

In relation to the Canal, it is apparent from the previous legal advice that you received from Michelmores in 2013 that it was largely built by the time 1688 Commission was granted (albeit finishing 2 miles further upstream). We also note Michelmores comments which considered that on balance the canal did fall within the Port Limits. As Michelmores made clear, the position is uncertain. Having reviewed the local legislation and in light of challenges Ashfords is aware of elsewhere, since that advice in 2013, we consider that on balance, the canal does not fall within the limits of the Port of Exeter. In part this is because of the provisions of sections 10 and 11 of the 1883 Act which require firstly that the canal revenue is only used for certain purposes and secondly that separate ring fenced accounts are required to be kept in respect of the canal. In addition, section 2 of the 1883 Act, defines the 'canal undertaking' (see further below).

This points towards the existence of a separate statutory canal undertaking (albeit that the relevant local legislation imposes similar core duties to those that exist in respect of the Port of Exeter) and it is possible that in respect of the canal undertaking, the Authority is also a statutory harbour authority within the meaning of the Harbours Act 1964 (i.e. the Council may be the statutory harbour authority for two separate undertakings)). This is not unique (Ashfords is aware of at least one other Council with more than one statutory harbour undertaking) but it is complicated, and it would be sensible to simplify the position through a Harbour Revision Order next time the Council applies for one.

In terms of the *'limits'* of the Canal, the 1883 Act defines 'the Exeter Canal' or 'The Canal' as follows:

'the existing canal of the Corporation from the place called Turf in the parish of Exminster in the County of Devon to its termination in the river at or near the place called The King's Arms Sluice in the parish of Saint Thomas the Apostle in the same country.'

Ashfords understand that the 'King's Arm Sluice' is near the quay in Exeter, but please inform us if this is incorrect.

Limits for the purpose of the Council's Harbour Directions Powers

In respect of the Council's designation with powers of Harbour Direction, paragraph 1 of Schedule 1 of the 2017 Order defines the Harbour Limits as:

- (a) "The Exeter Canal" and "The Canal" defined in section 2 (interpretation) of The Exeter Canal Act 1883; and
- (b) described in sections 27(1) and (1) of the Exeter City Council Act 1987.

However, this definition of 'limits' only applies to the Council's powers to make Harbour Directions and does not determine the limits of the port / canal for any other purpose.

Limits for the purpose of the Council's Byelaw making powers under section 27 of the 1987 Act

Section 27(1) of the 1987 Act describes the limits within which the Council may make byelaws (relating to river Exe, Exeter Canal and flood channel). These are: *'the channel, the canal and the river and its estuary.'*

In turn, article 27(10) defines these three areas as follows:

"canal" means the Exeter Canal;

"channel" means the flood relief channel in the city commencing at a point 350 metres north of Station Road and terminating at the northern abutment to Blackaller Weir;

"estuary" means that area of the estuary of the river Exe which lies north of an imaginary line projected in an easterly direction from Langstone Point to the point of intersection of latitude 50.35.9'N with longitude 3.22.1'W and then in a north-easterly direction to Straight Point and including all waters of the estuary within the levels of mean high water springs as far to the north as the river and to the weir north of Fishers Bridge on the river Clyst';

"the river" means so much of the river Exe as lies within the city'.

These definitions are not linked back to the 1829 Act, the 1840 Act or the 1883 Act. It is likely that this power is exercisable in the Council's general capacity as the Council instead of, or potentially as well as, in its capacity as statutory harbour authority of one or more undertakings.

Given the uncertainty over the extent of the port limits, the potential that two separate statutory undertakings exist, the fact that different limits apply to different powers and the lack of deposited plan showing the limits, it would be sensible to clearly define the port limits expressly the next time the Council applies for a Harbour Revision Order ("HRO") and to apply this definition to all extant local legislation.

Extent of the undertakings.

Article 2 of the 1883 Act defines 'Canal undertaking':

'Canal undertaking means and includes the said canal and all basins, bridges, locks, quays, wharves, works lands, buildings and conveniences an all tolls rates duties and sums belonging or payable to the Corporation under the Act of 1829 or otherwise for Canal purposes'.

There is no definition of the other 'port' statutory undertaking provided in the local Acts.

Topsham - Fishery Harbour

Under the Sea Fish Industry Act 1951, Topsham was designated a 'fishery harbour'. It can only cease to be a fisheries harbour by an order made under s21 of the Sea Fish Industry Act 1951. Historically fishery harbours, were managed by and harbour revision order applications were made to MAFF. However, the majority of these functions were transferred to the Department for Transport in 2001 and in respect of harbour order functions, later delegated to the MMO in 2010. At this stage we have not researched what the wider implications of Topsham being a fishery harbour are. If you would like us to carry out some further research, please let us know.