

Harbour Board report by the Harbour Master – January 2022 Updated to include events up to end February 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/Harbour Revision Order (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 during the summer months. All volunteers undertook training in the early spring of 2021, and have just completed a further days training in February 2022.

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 the 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.

Over the winter of 2021 – spring 2022 we have completed 85% of this work.

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 on the A379.

We have installed the first weights for these extra navigation marks, as soon as we receive the buoys from the manufacturer we can have them installed quickly.

Channel survey

I 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 an unacceptably 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 licence to moor from 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 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, it is likely that the owner could have simply abandoned the boat.

If we had the proper powers that we could obtain via an HRO we would be in a better position to demand that owners of boats act more responsibly and cannot simply abandon a vessel.

In the Ship Canal the MV Strathspey, a former fishing trawler 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 the Waterways teams were involved in this task, and large pumps were hired in to assist.

The owner bought the boat some years ago and there has been little maintenance carried out. Substantial mooring fees are owed as well as a further substantial cost for raising the boat. Again, our limited powers do not help, even though the City Council bailiffs have attempted recovery of the outstanding mooring fees. I am seeking further legal guidance on how we might be able to recover our costs.

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

Unfortunately the Topsham ferry suffered considerable engine damage whilst operating during the last weekend of January. We have engaged a marine engineer to quote for the repair work. Subsequently, we are investigating whether a battery powered motor would work adequately for

the ferry. We are in communication with a supplier, we are going to meet with a business owner that already uses one and if the motor proves to be successful, this will further the aim of the Council towards the carbon Net zero target.

At Starcross jetty, the old ferry that used to work between Exmouth and Starcross sank alongside during the night of the 11th of February. The vessel was taken out of use some years ago and has sat empty of fuel/oil on a mooring just off the jetty. The owner informed me that the vessel had sank, a protective boom has been placed around the boat and a lifting barge is due to come round from Teignmouth towards the end of February to lift it.

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 pedestrian causeway on the canal side has partially collapsed. At present we are working with our engineering 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 February 2022

APPENDIX A

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 Exe...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 the law firm, 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 Solicitors 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 50.35.9N with longitude 3.22.1W 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.