



Delegated decision report

Committee **DECISION UNDER DELEGATED POWERS**

DECISION CANNOT BE TAKEN BEFORE 15 NOVEMBER 2019

Title **REVIEW OF COUNCIL ASSETS – RYDE/VENTNOR HARBOURS**

Report Author **DEPUTY LEADER AND CABINET MEMBER FOR RESOURCES**

EXECUTIVE SUMMARY

1. To further consider the market testing exercise for the future management and operation of Ryde and Ventnor Harbours.
2. This includes an approach from Ryde Town Council for the ownership and management of Ryde Harbour, to be treated as a special purchaser arrangement.
3. A key objective is that Ryde and Ventnor harbours are operated at a net nil cost to the Isle of Wight Council and therefore generate a saving to the authority.

BACKGROUND

4. In December 2018 the council considered a delegated decision report and agreed to implement the following options: -

Option 1 - To offer the freehold/leasehold of Ryde Harbour on the open market with a restrictive covenant that it be only used as a harbour/marina; such covenant to only be removed if an alternative use of the area could generate a significant and sustainable economic benefit to Ryde and/or the Island. Any consideration should include a reversion to allow for any future development of the seafront.

Option 4 - To offer to transfer the management of Ventnor Harbour to a third party through the open market at no cost to the council;

Option 6 - The final agreed terms of any transfer/outsourcing to a third party to be the subject of a further delegated decision of the Cabinet Member, but where no terms are agreed then the council will continue to directly manage the harbour

Ryde Harbour

5. In January 2019 the council received a formal expression of interest from Ryde Town Council for the purchase of Ryde Harbour; following a meeting with the Deputy Leader and senior officers they have since submitted an expression of intent which requested that they are considered as a special purchaser (see Property Implications below).
6. If agreed, Ryde Town Council will be required to prepare a full business case and seek to negotiate heads of terms for the freehold purchase of the harbour and the lease of two parcels of adjoining land. The land in question comprises part of the adjacent pay and display car park and esplanade as well as a section of the Eastern Esplanade Gardens. The latter is unoccupied open space but has a revenue earning potential and a corresponding loss of income to the council; whilst the level of income from amenity land hire fluctuates from year to year it is typically £2,500 per annum. The areas in question are shown on the plans which form appendix 1.
7. Clearly Ryde Town Council would require a reasonable period to prepare a robust business case and undertake all necessary due diligence checks; accordingly, it is suggested that, if this approach is agreed they have a maximum period of three months to prepare and submit the business case. During this time, they will need to liaise with the council to clarify all responsibilities and liabilities resulting from taking on the leasehold of the harbour and two parcels of land.
8. The request to take over the two separate parcels of land would be subject to considerations on types of activities and development and would need to be agreed by the council. If, following scrutiny of the business plan and land proposals by the council it is agreed to recommend a disposal to Ryde Town Council then this would be subject to a decision by Cabinet. If agreed by Cabinet, the new arrangements with Ryde Town Council would be effective from a mutually agreed acceptable date.

Ventnor Harbour

9. If Ryde Town Council were to take on these additional responsibilities Ventnor Harbour would then be subject to a separate market testing exercise. It is anticipated that, subject to a suitable offer being received a new management contract could be in place from 1 April 2021.
10. As reported in the previous delegated decision report the council has received a small number of expressions of interest from private sector marine operators, and recently initial interest from Ventnor Town Council. Whilst the indication is that the commercial third parties would consider either of the harbours individually the preference is for the management of both facilities.
11. Ventnor Harbour currently operates at a cost to the council, which for 2018/19 was a £69k operating loss before depreciation. This is driven by the annual cost for the removal and disposal of sea weed (macroalgae), of £75,000 per annum. Whilst there may be opportunities for a private operator or other party to improve its trading position in taking on ownership of the harbour it is unlikely that they

would take on the facility on a standalone basis, without the benefit of a subsidy from the council.

12. Other factors which need to be considered as part of any market test and subsequent management agreement for Ventnor Harbour include: -
 - The commercial operators have a 125-year lease which runs until 28 February 2129
 - The council is required to maintain a right of navigational access to the commercial operators premises for the duration of their lease
 - The council has a duty to remove and dispose of the macroalgae to prevent a statutory nuisance being created through its accumulation and decay;
 - The council has a licence from the Marine Management Organisation for the disposal of sediment and macroalgae from Ventnor Haven; this expires on 24 March 2026
13. The current contract for the removal of macroalgae was re-let on 1 April 2018 and will expire on 31 March 2020; should the decision be made to adopt Ryde Town Council as a special purchaser and then proceed with marketing Ventnor Haven it would be necessary to implement a new contract from 1 April 2020. It is currently proposed to let a further two-year contract, albeit this might be at a higher cost to the council than at present.

STRATEGIC CONTEXT

14. The potential to outsource the harbours may create new opportunities and protect the assets in addition to and improving the council's future financial position. Namely it will support the following commitments in the Corporate plan 2019-2022; -
 - Deliver economic growth and prosperity
 - Plan for our future needs
 - Provide sound financial management

CONSULTATION

15. The interest registered by both Ryde Town Council and a small number of private sector operators in the harbours presents a significant opportunity for the council.
16. All interested parties will be able to make representations through the normal processes in the consideration of this paper.

FINANCIAL / BUDGET IMPLICATIONS

17. The 2018/19 outturn figure for Ryde shows that it generated an operating surplus (before depreciation) of £15,000 whilst the annual accounts for Ventnor Harbour show that it incurred an operating deficit (before depreciation) of £69,000. A summary of income and expenditure for both harbours' forms appendix 2.

18. In terms of future capital costs the harbour will require capital dredging, currently estimated at £300,000 to £400,000; in addition the gabions that form part of the construction of the harbour arm will require replacement at an estimated cost of £1,062,000.
19. If Ryde Town Council were to include the additional parcels of land, as identified within its expression of intent, this is likely to cause financial loss to council with the loss of revenue income from the car park and the loss of potential revenue from the currently unoccupied part of the Eastern Esplanade Gardens. The total combined losses are estimated to be in the region of £2,500 per annum.
20. Ryde Town Council is seeking to acquire the freehold interest in the harbour and two associated parcels of land. Whilst, without a marketing exercise, it is impossible to predict what a private operator might be willing to pay for Ryde Harbour and the management of Ventnor Harbour, it is virtually certain that this would result in the council forgoing a capital receipt.
21. If the contract for the removal of macroalgae at Ventnor Harbour is re-tendered the indications are that this is likely to result in a higher cost than the current contract.
22. The costs associated with the marketing of the harbours and the evaluation of any proposals received can be contained within existing budgets.

CARBON EMISSIONS

23. There are no direct implications for the council's carbon management plan arising from the recommendations in this paper. There may be a potential increase in the Island's overall carbon footprint if the harbour is developed in the long term to provide a greater economic benefit to the Island.

LEGAL IMPLICATIONS

24. The Council has the power to dispose of property under section 123 of the Local Government Act 1972, which requires it to achieve 'best consideration' in any disposal. This requires the council to follow the statutory open space disposal procedure as set out in section 123 (2A) of the Local Government Act 1972.
25. Ryde Harbour and the identified parcels of land are owned freehold by the Isle of Wight Council, but may be subject to several constraints to regeneration such as restrictive covenants in favour of the Brigstocke and Lind estates. The covenant primarily restricts the height of any potential development and states not to be higher than twenty-five feet above esplanade level; however, it will be necessary to check all such titles to understand the presence, and indeed nature of any other covenants that may exist.
26. Ventnor is a Statutory Harbour and approval in the form of a new Harbour Revision Order (HRO) will be required from the Marine Management Organisation (MMO) before the statutory functions could be outsourced.
27. Without MMO approval (via a HRO) to transfer certain functions we would need to continue to meet our statutory obligations to manage the harbour. Therefore,

the only way to operate Ventnor with no cost would be via a HRO – either to divest ourselves in total (and that would need further consideration in terms of what that would actually require) or to divest ourselves of some of our responsibilities such that the harbour could be managed to include some of the statutory functions.

28. As has been experienced at Newport the HRO process is time consuming and takes an undefined period of time – so any decision to put the management out to tender will need to take this into account. Accordingly, until we have a new HRO this option cannot be achieved.

EQUALITY AND DIVERSITY

29. The Council as a public body is subject to general and specific duties under equality and diversity legislation and as such has a duty to impact assess its service, policies/strategies and decisions with regards to diversity legislation and the nine protected characteristics (race, gender reassignment, disability, age, sex and sexual orientation, religion or belief, pregnancy and maternity, marriage and civil partnership). There are no direct implications for the Council's duties under the terms of the Equality Act 2010 arising from the recommendations in this paper.

PROPERTY IMPLICATIONS

30. A special purchaser is a party with some form of 'interest' in a property, generally being either a legal interest (such as a tenant seeking to buy the freehold, or a party seeking to extinguish a covenant) or a geographical interest (the property adjoins that of the special purchaser and there is a logic to joining the titles). A town council seeking to acquire a property within its area for policy reasons (as is the case with Ryde Harbour) might thus be deemed a special purchaser.
31. Standard practice is that a special purchaser will pay above market value to reflect the added value to them of combining the legal interests, and for being able to buy the property off-market (subject to independent valuation). That said, whilst IWC has a fiduciary duty when disposing of property, in some circumstances best consideration can reflect well-being (social, economic, or environmental), but assessing the 'value' of this against any loss of capital value can be very tricky.
32. The utilities block (known as the hospitality suite) for Ryde harbour provides shower and toilet facilities for harbour users and is located approximately 150m east of the harbour within the Eastern Esplanade public conveniences building which is in part leased out to Ryde Town Council on a 125 years lease at a peppercorn rent. The possible freehold/leasehold transfer of the harbour will need to also include access to this facility and it is envisaged that this would be through a lease of part of the building.
33. In the previous delegated decision one of the agreed options was "to offer the freehold/leasehold of Ryde harbour on the open market with a restrictive covenant that it be only used as a harbour/marina; such covenant to only be removed if an alternative use of the area could generate a significant and sustainable economic benefit to Ryde and/or the Island. Any consideration

should include a reversion to allow for any future development of the seafront.” If a transaction is agreed with Ryde Town Council, it is recommended that a similar covenant be negotiated.

SECTION 17 CRIME AND DISORDER ACT 1998

34. There are no direct crime and disorder implications arising from the recommendations in this paper. If regeneration occurs as a result of this paper this may have a positive impact on crime reduction.

OPTIONS

35. The options available to the council are: -
1. Agree that Ryde Town Council are dealt with as special purchasers for Ryde Harbour. Accordingly, they are required to prepare a full business plan within three months and negotiate heads of terms for the freehold/leasehold purchase of Ryde harbour and the lease of two parcels of adjoining land. Evaluation of the business plan is to be concluded and Ryde Town Council advised of the outcome by 1 April 2020; if accepted a commencement date for the new arrangements is to be agreed.
 2. To offer the management of Ventnor Harbour to a third party through the open market at no cost to the council; this will be after 1 April 2020 when the negotiations with Ryde Town Council have been completed.
 3. The approach from Ryde Town Council is rejected, or if they are unable to produce a business case that is acceptable to the Isle of Wight Council options 1, 4 and 6 from the previous delegated decision made in December 2018 reference 13/18 are implemented with effect from 1 April 2020.

RISK MANAGEMENT

36. Ryde Town Council are unable to submit a business case that is sustainable and under terms acceptable to the council. The council will provide Ryde Town Council with access to all relevant records and data required to ensure their due diligence requirements are met.
37. In granting Ryde Town Council special purchaser status and allowing them to prepare their business case and conclude land negotiations it is sensible not to proceed with marketing Ventnor Harbour until this has been concluded. If this is then marketed after 1 April 2020 as a stand-alone facility any private operator interest may be lost. The full cost of maintaining Ventnor Harbour will still fall to the council and is likely to increase in future years.
38. Remaining costs for the operation of Ventnor Harbour during 2020/21 which are likely to increase due to the removal of the macroalgae becoming more expensive.
39. The implications of the potential transfer of Ryde Harbour and associated land to Ryde Town Council on the regeneration of the esplanade have been considered by officers in the regeneration and property teams. Furthermore, as part of the evaluation of the business case officers will assess the impact of any proposals on the regeneration proposals to ensure that these are not compromised.

EVALUATION

40. The provision of Ryde Harbour is not a statutory duty of the council, but Ventnor Haven is a Statutory Port and, notwithstanding its lease obligations toward the commercial operator to keep open, Isle of Wight Council is statutorily obliged to maintain its operation and remove the macroalgae to prevent a statutory nuisance. Securing independent operation of the harbours, through its transfer of the freehold/leasehold to Ryde Town Council and outsourcing the management function for Ventnor, would permit the harbours to be operated at no cost to the Isle of Wight Council.
41. However, securing a private sector operator for the management of Ventnor Harbour as a stand-alone facility and at no cost to the council could prove to be difficult given the known issues and associated levels of cost.

RECOMMENDATION

- Agree that Ryde Town Council are dealt with as special purchasers for Ryde Harbour. Accordingly, they are required to prepare a full business plan within three months and negotiate heads of terms for the freehold/leasehold purchase of Ryde harbour and the lease of two parcels of adjoining land. Evaluation of the business plan is to be concluded and Ryde Town Council advised of the outcome by 1 April 2020; if accepted a commencement date for the new arrangements is to be agreed.
- To offer the management of Ventnor Harbour to a third party through the open market at no cost to the council; this will be after 1 April 2020 when the negotiations with Ryde Town Council have been completed.
- The approach from Ryde Town Council is rejected, or if they are unable to produce a business case that is acceptable to the Isle of Wight Council; options 1, 4 and 6 from the previous delegated decision made in December 2018 reference 13/18 are implemented with effect from 1 April 2020.

BACKGROUND PAPERS

42. Delegated decision report – Review of Council Assets – Ryde/Ventnor harbours, reference 13/18

APPENDICES

[Appendix 1 – Plans showing areas of land requested by Ryde Town Council](#)
[Appendix 2 - Income and expenditure summary for Ryde and Ventnor harbours](#)

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CLLR STUART HUTCHINSON
*Deputy Leader and Cabinet Member for
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Decision

Signed

Date
