



# Cabinet Report

Committee	<b>CABINET</b>
Date	<b>16 DECEMBER 2021</b>
Title	<b>DISPOSAL OF RYDE HARBOUR AND ADJOINING LAND TO RYDE TOWN COUNCIL</b>
Report of	<b>CABINET MEMBER FOR REGENERATION BUSINESS DEVELOPMENT AND TOURISM</b>

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## EXECUTIVE SUMMARY

1. To report back on the actions arising from the report presented to Cabinet on 11 March 2021 (listed below) and to make recommendations on the disposal of Ryde Harbour and adjoining land to Ryde Town Council (RTC).
2. The March 2021 Cabinet paper outlined the full range of options for the disposal of the harbour and provided an evaluation of each one. Councillors agreed to the transfer of the harbour subject to the outcome of the following:

*That Ryde Town Council are treated as a special purchaser for Ryde Harbour and the two parcels of land and the hospitality suite as detailed in their business case subject to:*

- *An independent section 123 valuation of all of the land proposed to be transferred to Ryde Town Council; each party to fund 50 percent of the costs of the valuation.*
- *There being no material objections to the disposal of the land parcels following advertisements placed in accordance with section 123(2A) of the Local Government Act 1972.*
- *Confirmation of how the anticipated loss of budgeted income of up to £11,166 per annum is to be accommodated within the council's overall revenue budget.*

## RECOMMENDATION

3. Agree to the freehold transfer of the Ryde Harbour and the hospitality suite; and the lease transfer of the two parcels of land and hospitality suite to Ryde

Town Council from the 1 April 2022. The transfer to be at nil value and subject to final details to be agreed by the Cabinet member.

## BACKGROUND

4. In December 2018 the council considered a delegated decision report and agreed to a range of options regarding the disposal of Ryde harbour.
5. In January 2019 prior to undertaking a marketing exercise 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 submitted an expression of intent which requested that they be considered as a special purchaser. The delegated paper of November 2019 agreed to consider this, subject to a full business case being prepared by Ryde Town Council for the future operation of the harbour.
6. Ryde Town Council submitted a full business case on 10 March 2020 within which they sought to negotiate heads of terms for the freehold purchase of the harbour and hospitality suite, and the lease of two parcels of adjoining land. The land in question comprises part of the adjacent pay and display car park and adjoining esplanade, as well as Eastern Gardens. The areas in question are shown on the plans which form appendix 1.
7. Despite disruptions from the pandemic a final council staff and councillor meeting was held on the 16 December 2020 and it was agreed that a report would be brought back to Cabinet in March 2021, as referred to above.
8. Since then, a working group has been put together consisting of staff from the Isle of Wight Council and Ryde Town Council to work through the recommendations from the March 2021 Cabinet report. The group has met monthly and has had legal and property input to work through the actions.
9. An independent section 123 valuation of all of the land proposed to be transferred to Ryde Town Council; each party to fund 50 percent of the costs of the valuation

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). It is usual practice that a special purchaser will normally 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 the council has a fiduciary duty when disposing of property, in some circumstances best consideration can also reflect well-being (social, economic, or environmental), but assessing the 'value' of this against any loss of capital value can be very tricky. If an off-market transaction is to be undertaken then a section 123 valuation is required from an independent valuer, so that the Council can prove that it has achieved best consideration.

The Council procured the specialist marine department at Vail Williams to undertake this valuation, Staff have reviewed the valuation of £50,000 (See below \*1) and believe that proceeding with a transfer for a lesser price can be recommended as best consideration on the basis of the economic savings to be realised from not having to undertake future dredging and works to the harbour walls in the future

10. There being no material objections to the disposal of the land parcels following advertisements placed in accordance with section 123(2A) of the Local Government Act 1972.

If a Local Authority wishes to dispose of land from within its portfolio which is designated as open space it must follow the statutory process set out in section 123 (2A) of the Local Government Act 1972. This legislation requires an advert to be placed in 2 successive editions of the local newspaper, the County Press (IWCP) within the Public Notices section, and that the community has sufficient time to object, if they are so inclined.

Accordingly, as advert was placed in the IWCP on 9 and 16 of July respectively, giving until 6 August to respond in writing. No objections were received.

11. Confirmation of how the anticipated loss of budgeted income of up to £11,166 per annum is to be accommodated within the council's overall revenue budget

This is a small sum of money given the consideration of the monies involved with the future management of the harbour outlined in 15 below. These funds have been discussed with finance and will be recovered from resetting the budget.

## STRATEGIC CONTEXT

12. The potential to outsource the harbour to RTC may create new opportunities and protect the assets in addition to and improving the council's future Capital financial position. It will support the following commitments in the Corporate plan 2021 – 2025 to meet the values of working together and to be effective and efficient and to meet the aspiration namely: -

*The council has a great many assets that could be put to better use by the community and at the same time save money for the council. We will review all of these assets and work with local town, parish and community councils to find better ways for these assets to work positively for the community.*

13. The provision of harbours is not a strategic function of the Council. Whilst Ryde is not a statutory harbour it should be operated in accordance with the requirements of the Port Marine Safety Code. The Council, therefore, has legal duties in the ongoing running of this facility, particularly with regards to health and safety.

## CONSULTATION

14. All interested stakeholders, namely Ryde Town Council, users of the harbour together with local councillors have been consulted and also will be able to make representations through the normal processes in the consideration of this paper.

## FINANCIAL / BUDGET IMPLICATIONS

15. In terms of future capital costs Ryde harbour will require capital dredging, 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. These figures were obtained in 2006 from a report commissioned by Royal Haskoning so are likely to be higher in the present day.
16. 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 a loss of revenue income from the car park and amenity land hire. At full occupancy this would be estimated at £7,717 for parking and £1,151 from the hire of Eastern Esplanade Gardens. The total combined losses are estimated to be in the region of £8,868 per annum. The total loss of income from the disposal being in the region of £11,166 when the annual revenue position of the harbour is included

## IMPACT ON YOUNG PEOPLE AND FUTURE GENERATIONS

17. The decision preserves the area as an existing harbour, so it will continue to offer recreational benefits for young people and future generations.

## CLIMATE, ENVIRONMENT & UNESCO BIOSPHERE IMPACT

18. There are no direct implications for the council's council climate change and environment strategy. 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

19. 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. The Council must follow the statutory open space disposal procedure as set out in section 123 (2A) of the Local Government Act 1972. As the council will be disposing of the property with a restriction the disposal may be at an undervalue. The council can dispose of property at an undervalue using a general consent of the Secretary of State. The difference between the unrestricted value of the property and the disposal consideration must not exceed £2 million and the purpose of the disposal must be likely to contribute to the achievement of the promotion or improvement of economic well-being; the promotion or improvement of social well-being; and/or the

promotion or improvement of environmental well-being in its area or for residents in its area. Subsidy control implications will also need to be considered.

20. Ryde Harbour and the identified parcels of land are owned by the Isle of Wight Council but some of the land may be subject to constraints, this will be made clear in any transfer.

## EQUALITY AND DIVERSITY

21. 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

22. 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) can therefore be deemed a special purchaser.
23. 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 the council 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. If an off-market transaction is to be undertaken then a section 123 valuation is required from an independent valuer, so that the Council can prove that it has achieved best consideration. This action has been completed.
24. In 2019 the Environment Agency diverted Monktonmead outfall into Ryde harbour although they could not sign up to indefinitely maintain the structure and ultimately this responsibility would fall to the landowner if they were unable to continue to do so. The Environment Agency have added all elements of the outfall structure to their maintenance schedule and while in a position to they will undertake maintenance works as required for structural and safety purposes. Should the Environment Agency be unable to fulfil this

role then they will start withdrawal of maintenance procedures with the council or subsequent owner taking them on.

## OPTIONS

25. The options available to the council are: -
1. Agree to the freehold transfer of the Ryde Harbour and the hospitality suite; and the lease transfer of the two parcels of land and hospitality suite to Ryde Town Council from the 1 April 2022. The transfer to be at nil value and subject to final details to be agreed by the Cabinet member.
  2. Agree to a leasehold transfer of Ryde Harbour, the two parcels and the hospitality suite to Ryde Town Council from the 1st April 2022
  3. Not to agree to transfer of Ryde Harbour to Ryde Town Council and to market both Ryde and Ventnor harbours to ensure that they are managed by third party operators and at no cost to the Council as originally intended.
  4. To cease this exercise and to continue with the direct operation and management of these facilities until a further review of their operation and sustainability can be considered.

## RISK MANAGEMENT

26. In granting Ryde Town Council option 1 or 2 above the risk outlined in the previous cabinet paper for Ventnor Harbour would remain.
27. The implications of the potential transfer of Ryde Harbour and associated land to Ryde Town Council on the regeneration of the esplanade has been considered by council staff in the regeneration and property teams. Furthermore, as part of any transfer council staff will assess the impact of any proposals on the regeneration proposals to ensure that these are not compromised.
28. There is a financial and resource impact on RTC in relation to taking on future maintenance liabilities for Monktonmead outfall, although these are not currently quantifiable.
29. The nature of the disposal of Ryde Harbour (leasehold or freehold) will influence the future financial risk to the council. RTC are seeking a freehold purchase which would mean that all risks associated with the future management, funding, upkeep and legal responsibilities would rest with the town council. This will completely remove any call on council resources for the facility into the future. Ryde Town Council are aware of these issues and the financial risks they would inherit and wish to continue to pursue a freehold purchase. They are also aware that the IWC would need to place a covenant on the disposal of the harbour ensuring that it can only be used as a leisure harbour.

## EVALUATION

30. The provision of Ryde Harbour is not a statutory duty of the council.
31. Refusal of the offer from RTC and the marketing of both harbours together might result in a loss of opportunity from RTC and the marketing exercise may not produce an acceptable offer for either harbour.
32. The valuation has been concluded and it is believed that best consideration has been established. In accordance with section 123(2A) of the Local Government Act 1972, the open spaces have been advertised and no objections have been received. The funds set out in terms of the loss of income have been addressed by finance, due to the long-term positions of capital
  - \*1 No liability is accepted by Vail Williams to/from any third parties (other than IWC and RTC as their clients).

## BACKGROUND PAPERS

Delegated decision report December 18 – Review of Council Assets – Ryde/Ventnor harbours

Delegated decision report November 19 – Review of Council Assets – Ryde/Ventnor harbours

Cabinet Paper March 2021, Disposal of Ryde Harbour and Adjoining Land to Ryde Town Council.

## APPENDICES

Plans showing areas of land requested by Ryde Town Council.

Appendix 1 – Ryde Harbour

Appendix 2 – Ryde Harbour Hospitality Suite

Appendix 3 – Ryde Harbour Car Park

Appendix 4 – Ryde Eastern Gardens

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