

REPORT TO INFRASTRUCTURE SERVICES COMMITTEE – 13 MAY 2021

STATUTORY HARBOUR AUTHORITY – OPTIONS

1 Reason for Report/Summary

1.1 To update the Committee on the management options for the Council's Harbours.

2 Recommendations

The Committee is recommended to:

- 2.1 Consider the management options for the Council's seven Harbours as set out in the report;**
- 2.2 Agree that Option D - Empowered Users and Stakeholders is the preferred option;**
- 2.3 Agree that up to £100,000 to support the production of robust Development Plans for each Harbour is initially identified from the Infrastructure Revenue Budget; and**
- 2.4 Instruct the Head of Roads, Landscape and Waste Services to develop a draft Brief for the engagement of appropriate external support to produce robust development plans for each Harbour.**

3 Purpose and Decision Making Route

3.1 Aberdeenshire Council operates seven Harbours:

- Portsoy Harbour
- Banff Harbour Marina
- Macduff Harbour and Council operated slipway
- Rosehearty Harbour
- Stonehaven Harbour
- Gourdon Harbour
- Johnshaven Harbour

3.2 These seven harbours provide different roles within the portfolio and deliver a different range of services to their Communities. The seven harbours provide commercial services, pleasure craft facilities, leisure facilities and are a focal community asset, particularly in the smaller settlements.

3.3 The Harbours Service is responsible for ensuring that these assets are managed and developed in a way that they continue to support the growth of the economy, the local business community, and are able to meet current and future economic challenges.

- 3.4 The report outlines consideration of a number of options for the future of the harbour portfolio and seeks agreement from this Committee that Option D be the preferred option.
- 3.5 The Head of Roads, Landscape and Waste Services is to develop a Brief for the engagement of appropriate external consultancy support to aid in the preparation of robust Development Plans for each Harbour. The Chair, Vice Chair and Opposition spokesperson from this Committee together with the Harbour Sub Committee are to be engaged in this process.

4 Discussion

- 4.1 Under the terms of the Harbours Act 1964, Aberdeenshire Council is a Statutory Harbour Authority.
- 4.2 The Grampian Regional Council (Harbours) Confirmation Act underpins the local legislative framework, and confirms a range of powers in relation to the management of the Harbours.
- 4.3 Harbour Authorities are responsible for managing safe and efficient harbours. This includes specific responsibilities in relation to the safety of vessels and people within the harbour, efficient navigation and protection of the port environment.
- 4.4 The Port Marine Safety Code provides guidance to Harbour Authorities on how to dispense these duties. Although the Port Marine Safety Code is not legislative in its own right, it pulls together all the responsibilities as required by Marine legislations including the Pilotage Act 1987, the Harbours Act 1986, the Merchant Shipping Act 1995, the Dangerous Vessels Act to name but a few.
- 4.5 The Port Marine Safety Code defines the Duty Holder as: *'members are individually and collectively accountable for compliance with the Code and their performance in ensuring safe marine operations in the harbour and its approaches'*.
- 4.6 The named Duty Holder of Aberdeenshire Council's seven harbours is the Harbours Sub-Committee. The Harbour Sub-Committee currently consists of Cllr Ross Cassie (Chair), Cllr John Cox (Vice Chair), Cllr Dennis Robertson, Cllr Mark Findlater and Cllr Wendy Agnew.
- 4.7 The Marine Navigation Act 2013 allows Scottish Ministers to make an order, under their devolved powers, revoking a Harbour's authority status. These are referred to as either:
- Harbours Closure Order
 - Harbour Empowerment Order
 - Harbour Revision Order

- 4.8 Transport Scotland manages the process for applying for these orders. Once the initial application is submitted to Transport Scotland and they are satisfied it meets the criteria, they consult with a number of bodies inclusive of Ports Industry bodies, Scottish Environment Protection Agency, Maritime Coastguard Agency, Northern Lighthouse Board, Local Authorities, neighbouring Harbour Authorities, Chamber of Shipping and the Royal Yachting Association as well as public consultation.
- 4.9 If no significant objections are received, the process will take between 2 and 5 years to complete.

Potential Options

A. Close the Harbours

- 4.10 Where the harbour is no longer viable (commercially or otherwise) because of varying reasons, a Statutory Harbour Authority can apply for a Harbour Closure Order if it wishes to be relieved of its statutory functions. A Harbour Closure Order does not mean that a harbour will physically close or cease to exist, but it does mean that a Harbour Authority would be relieved of its statutory duties.
- 4.11 One test of whether a harbour is no longer viable is if it is no longer used. All Aberdeenshire Council's harbours are still currently used, to varying degrees. It is therefore unlikely that an application for a Harbour Closure Order would be supported, as it could be seen as walking away from a liability.
- 4.12 All Harbour Closure Orders are publicly consulted, and as the seven harbours are still used it is likely that the number of objections would be significant.
- 4.13 When applying for a Harbour Closure Order, the Statutory Harbour Authority needs to explain what happens to their statutory functions in relation to who will take them on. Some of these statutory functions include:
- Lighting and buoying responsibilities
 - Oil Pollution
 - Wrecks
 - Pensions
- 4.14 A Harbour Closure Order can remove statutory duties, but general common law duties and fiduciary duties remain.
- 4.15 A consequence of a Harbour Closure order is that the Council may no longer be able to charge for the use of the harbour, but it is likely that people will still use it.
- 4.16 The Council would also remain the owners of the harbour and have obligations under other legislation like Health and Safety.
- 4.17 Officers are of the view that it is unlikely that Transport Scotland would support a Harbour Closure Order.

B. Sell the Harbours

- 4.18 Aberdeenshire Council could sell/give away the harbours. This would require a Harbour Revision Order to be granted by Scottish Ministers.
- 4.19 For a Revision Order to be granted Transport Scotland would need to be assured that the person/group taking on the statutory obligations have sufficient financial reserves, and technical/professional capacity to make them a viable option.
- 4.20 Detailed Business Plans/Ownership Models for the potential buyer would need to be submitted as part of the Harbour Revision Order. The new owners would also need to demonstrate they have a significant understanding of the Statutory Duties and demonstrate they will be able to fulfil these.
- 4.21 By way of example, a Harbour Empowerment Order was granted by Scottish Ministers for Tobermory Harbour. Tobermory Harbour Association were granted the Order in 2017 after the group initially formed in 1983. One of the main issues faced currently by Tobermory Harbour Association is the insurance costs for the harbour.
- 4.22 If the person/group abandoned the harbours, ownership and responsibilities (not necessarily the Statutory duties) would go back to the Local Authority and the harbour structures may have significantly deteriorated.
- 4.23 Given the significant financial investment, and the specialist knowledge, required to manage safe and efficient harbours in compliance with the Port Marine Safety Code and relevant legislation, it is unlikely that there would be a market for the sale of the harbours as going concerns.
- 4.24 Officers therefore do not consider this a viable option at this time.

C. Partnership with Communities

- 4.25 As mentioned above, one of the biggest difficulties for communities would be to afford the insurance required.
- 4.26 An alternative model would be for the Council to lease the Harbour structure to a community group. A lease could be prepared and Aberdeenshire Council as part of the terms of that lease could offer to continue to cover the insurance costs as part of the Council's general insurances. Another potential requirement of the lease would be to place a requirement on the Group to maintain the structure in good condition and carryout maintenance works inclusive of dredging.
- 4.27 A Harbour Revision Order could then be promoted to delegate the Statutory Duties and functions of the Statutory Harbour Authority to a Community Group.

- 4.28 Even if the Statutory Duties are delegated, Aberdeenshire Council still maintains the common law and fiduciary responsibilities. There is the potential if the Community Group does not maintain the structure, Aberdeenshire Council would need to potentially spend more to reinstate the structure to a safe state.
- 4.29 There would appear to be potential to support a Community Group/Individual taking on a long-term lease of the harbour, assuming that a Harbour Empowerment Order is granted by Scottish Ministers.
- 4.30 Robust Business Plans and thorough knowledge and understanding of the requirement to fulfil the delegated Statutory Harbour Authorities duties would need to be demonstrated before such a transfer could proceed. It is also likely that Aberdeenshire Council would have to continue to provide support, perhaps including financially for at least a reasonable transition period.
- 4.31 This would be a complex procedure with significant input from colleagues in Legal and People and Property Services. There is also the risk, that in the event that the Community Group disband, the responsibilities would revert back to Aberdeenshire Council.
- 4.32 On balance, Officers do not consider this to be a viable option at this time

D. Empowered Users and Stakeholders

- 4.33 Rosehearty is Aberdeenshire Council's smallest harbour and generates the lowest income of the seven harbours at around £4,000 a year. At a harbour user meeting, our customers were asking for equipment that we could not justify purchasing due to restricted budgets.
- 4.34 The Harbour Service enlisted support from colleagues in Economic Development to assist the harbour users in setting up the Rosehearty Harbour Inshore Fisherman's Association (RHIFA). Assistance was also given to them to complete a grant application to the European Maritime Fisheries Fund. The grant application was successful, resulting in a grant award circa £70,000. The application was to support the installation of an electric davit, an ice machine, a chill store and additional ladders.
- 4.35 The Harbour Service assisted with costs associated in installing the new equipment and electric connections.
- 4.36 RHIFA have reignited a community spirit by running open days, BBQ's, fetes and Karaoke nights to raise funds for themselves, RNLI and other local charities. They are also now supporting the Rosehearty Boat Club in applying for grants to improve their facilities and encourage more youths to try sailing.
- 4.37 The Harbour Service are trying to encourage other harbour's users to do the same so that improvements can continue at the other 5 smaller harbours.

- 4.38 Historically, Local Authorities are only offered 50% matched funding from Marine Scotland and other external grants, but non-local authority groups can apply for up to 100%. There is therefore untapped potential to access external funding, but that does need users to take a much more active role.
- 4.39 The success at Rosehearty is a good example of what can be achieved if harbour users take a degree of ownership over the improvement and development of their harbour, supported by appropriate teams within the Council.
- 4.40 Officers consider this to be the most appropriate management model to support the future of the Council’s harbour portfolio.

Harbour Development Plans

- 4.41 Assuming that this Committee agrees Option D as the preferred way forward, robust development plans will require to be developed for each harbour. There are a number of individual plans already in existence, of various vintages, so this will not mean that plans have to be developed from scratch.
- 4.42 However, this does provide an opportunity to review the current plans, look to the future, and to ensure the overall harbour portfolio is covered by a set of comprehensive development plans that have user and stakeholder empowerment at their heart. As well as looking at the maritime activity the development plans will consider the “dryside” infrastructure necessary to support future development.
- 4.43 External consultancy support will be required to support the production of these Development Plans. The Harbour Service will develop a draft Brief for this engagement. The development of the brief will include engagement as set out in paragraph 3.5 to ensure that views are accounted for.

5 Council Priorities, Implications and Risk

- 5.1 This report helps deliver the Strategic Priority “Infrastructure” within the Pillar “Our Economy”, by setting out a management approach designed to secure the future of the Council’s harbour portfolio.
- 5.2 The table below shows whether risks and implications apply if the recommendations are agreed.

Subject	Yes	No	N/A
Financial	x		
Staffing	x		
Equalities			x
Fairer Scotland Duty			x
Town Centre First			x
Sustainability			x
Children and Young People’s Rights and Wellbeing			x

- 5.3 An equality impact assessment is not required because at this stage the proposal does not have a differential impact on any of the protected characteristics as there are no changes proposed to the current policies and procedures associated with Harbour activities. As these are developed they will be subject to assessment in the normal manner.
- 5.4 The Harbours Service currently operates at a deficit. In financial year 2020/21, the forecast projected total revenue expenditure is £1,194,000; offset with an income of £521,000, resulting in a net revenue expenditure of £673,000.
- 5.5 Over the past 3 years, the Harbour Service, with some assistance from colleagues in Economic Development have been very successful in applying for external grant funding, particularly from various streams of Marine Scotland.
- 5.6 Since 2018, Harbours have secured in the region of £520,000 from Marine Scotland alone, utilising match funding monies various sources. The table in **Appendix 1** shows the range of projects that have been funded via successful grant applications to various funding streams.
- 5.7 Funding applications can be complex and time-consuming requiring Business Cases, quotations etc. There is not a dedicated Officer within the Harbour Service to apply for grant funding.
- 5.8 The Harbour Service is a small team and at the moment is fully committed delivering a wide range of improvement projects, as well as managing compliance with the Port Marine Safety Code.
- 5.9 The Team does not currently have capacity to produce robust Development Plans for the seven harbours. To develop these plans in a reasonable timeline, and in sufficient detail, will required external consultancy support. It is also like to require some reallocation of internal resource from the wider Projects Team to assist in management of the process.
- 5.10 Overall, it is anticipated that this piece of work will cost in the region of £100,000. Initially this will be funded from the Infrastructure Services Revenue budget. However, if the work proceeds and improvements to Harbours are made and these are of a capital nature then this initial piece of work would be included in the overall capital cost.
- 5.11 The following Risks have been identified as relevant to this matter on a Corporate Level:
- ACORP001 Budget Pressures
 - ACORP003 Workforce
 - ACORP004 Business and organisational change

6 Scheme of Governance

- 6.1 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and are satisfied that the report complies with the Scheme of Governance and relevant legislation.
- 6.2 The appropriateness of this matter being considered by this Committee or the Harbour Sub-Committee was considered in consultation with colleagues from Legal & People. In this instance as the substantive issues of the report relate to the wider role of the Council as a Statutory Harbour Authority, and have budget implications, it was determined that this fell outwith the remit of the Sub-Committee.
- 6.3 Under the terms of Section F 1.1 of the Scheme of Governance Part 2A - List of Committee Powers, Infrastructure Services Committee have full powers to decide on all policy issues and resource matters (within agreed budgets) relating to Roads, Landscape and Waste Services, which includes Harbours.
- 6.4 However, Infrastructure Services Committee established a Harbour Sub-Committee, delegating them responsibility for the following remit:
- The Sub-Committee shall maintain strategic oversight and direction of harbour operations with a view to improving, maintaining and managing the harbours within the Aberdeenshire Council area for the benefit of users who include residents, visitors and businesses and conserving and protecting the harbour environment.*
- 6.5 Therefore, the Harbour Sub-Committee will be consulted on the brief required to engage external support.

Alan Wood
Director of Infrastructure Services

Report prepared by Gavin Penman, Projects Manager and Philip McKay, Head of Service

30 April 2021

List of Appendices –
Appendix 1 – External Funding Secured

Appendix 1 – External Finding Secured

Harbour	Project	Year	Project Total Cost	Funding Stream	% Funding Awarded
Macduff	Expansion/Deepening Study	2016	£25k	ABSHIRE Regeneration Fund	100%
Macduff	Ice Plant Design	2017	£14.5k	ABSHIRE Regeneration Fund	100%
Macduff	Ice Plant Installation	2018	£450k	EMFF	75%
				ABSHIRE Regeneration Fund	25%
Macduff	Shore Power Electric Investigation	2019	£25k	ABSHIRE Carbon Reduction Fund	100%
Macduff	Fishlanding Table	2019	£6k	ABSHIRE Regeneration Fund	100%
Macduff	Mobile Access Stair Tower	2020	£8.2k	CCCF	90%
				Harbours	10%
Banff	10 yr Marina Celebration	2017	£5k	ABSHIRE Regeneration Fund	100%
Banff	Slipway Extension and Boat Hoist	2018	£200k	EMFF	38%
				ABSHIRE Regeneration Fund	62%
Portsoy	Replacement Ladders and Enhancements	2020	£13.5k	CCCF	90%
				Harbours	10%
South Harbours	South Harbours Improvement Plan (SHIP)	2020	£30k	EMFF	75%
				Harbours	25%
South Harbours	Initial SHIP Actions – electric Davits, mooring rings, life rings, ladders etc	2020	£51k	EMFF	100%
Stonehaven, Banff and Macduff	Fabrication of ladders, Electric Davit, Chart Plotter, Installation of ladders, design of access ladder tower	2021	£44K	MMF	100%