

Annex D-1: Application of Exeter City Council



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Our ref: RC/BA
Your ref:
Date: 23 March 2016

Dear Caroline

Reference : Application for designation of power to give Harbour Direction

Harbour Directions

Further to our email of the 22nd January and our subsequent correspondence I confirm that Exeter City Council ('the Port Authority') at its meeting on the 23rd February 2016 agreed that the Port Authority for the River Exe (from the City to the sea and including the Exeter Ship Canal) shall apply to the Department for Transport to be designated with the power to make Directions under s.40a to 40d of the Harbours Act 1964 as amended by s.5 of the Marine Navigation Act 2013.

Rationale:

The Port of Exeter ('the Port') has a long history of use and the role of the Port Authority exercising powers over the Port date back to at least 1539 when the City Fathers sought powers from Parliament to remove obstacles on the river Exe by way of an '**Act for the mending of the Port and River of Exeter**' of 1539. That Act contains amongst other things a general power '... to do and make all other thing requisite and necessary whereby the said ships, boats and vessels, may have their sure course and re-course in the said river to and from your said city [Exeter] ...'

The only other powers specific to the Port providing for directions are (a) in the **Exeter Port Dues Act 1840**, providing a power to require the master of a vessel to disclose the nature of the cargo being carried and (b) the **Harbour Bye-laws Petroleum (Consolidation) Act 1928**, issued on the 16th March, 1951, which applies only to vessels carrying petroleum as a cargo.

In addition, the **River Exe and Exe Estuary 1976 Bye-laws**, under the **Exeter Corporation Act 1971 section 31 and Exeter City Council Act 1987 section 27**, provide for speed restrictions and restrictions on activities in certain locations, and the Port Authority could and probably will revisit those in due course. However, on examining the applications already made by other harbour authorities, some of those in the south west of England, for a power to make directions, it is clear that the presence or absence of such powers or bye-laws is not the motivation for seeking the power, but rather to provide the harbour authority with a complete range of powers alongside or to supplement any existing powers. This motivation is shared by this Port Authority.

Office of Assistant Director Public Realm

Civic Centre, Paris Street, Exeter, EX1 1JN [REDACTED]

www.exeter.gov.uk

Exeter City Council's **ArtFundPrize**
Royal Albert Memorial Museum
Museum of the Year 2012

In the last forty years the emphasis of the Port has been predominantly leisure and recreational use with some small inshore fishing interests and tourist boats. The estuary is a renowned wildlife habitat attracting seven National and European protection designations. There is an obvious potential for conflict between the competing interests and uses of the Port and the environment, noting that the estuary is some 2.5 km at its widest point and its use is shared between a significant variety of pursuits and uses such as swimming, kayaking, power boats, sailing boats, and other vessels some of which are in commercial use. The Port Authority, following consultation with the Maritime and Coastguard Agency, consider it essential to utilise the powers to ensure the safe and proper use of the Port. The Port Authority supports the Code of Conduct and recognises within its risk assessment the need for the adoption of appropriate powers to manage its operation of the Port so as to meet the recommendations of the Port Marine Safety Code and Guide to Good Practice.

Amendments/repeal to statutory provisions:

I have set out the statutory background of the Port Authority above and the Port Authority is not of the view that there is a need for amendment or repeal of the above statutes at this time, however, it does intend to review the Bye-laws including those specific to the operation of the Exeter Ship Canal, which forms part of the Port, with a view to amending or repealing any such statutory provision of local application or Bye-law which proves to be inconsistent with the power to give directions or is unnecessary as a result of such power.

Consultation:

The Port Authority is in the process of enabling the setting up of a Port User Group. The pre-existing Waterways Advisory Board which most comprehensively represents the widest body of users, has been asked to engage with this process. There is no constituted body at present that represents the users of the waterway as a whole, although clearly there are many groups with waterways interests. We anticipate a Port User Group being formed through one or more of these bodies.

The notification (appendix A) has been published in the local newspapers, at the Civic Centre and on the Council's website. It will also be published by the Exe Estuary Management Partnership. In addition to this, copies will be sent to the following:

- Lower Exe Mooring Association
- The Powderham Estate
- Topsham Mooring Owners Association
- Topsham River Commissioners
- Topsham Sailing Club
- Powderham Sailing Club
- Starcross Fishing and Cruising Club
- Exe Sailing Club
- RYA.

Yours sincerely



Appendix A

Exeter City Council

Harbours Act 1964 – Harbour Directions Consultation

Exeter City Council as Statutory Harbour Authority is applying to the Department for Transport to be designated with powers to make Harbour Directions.

Harbour Directions

The Harbours Act 1964 provides a mechanism by which the Secretary of State may designate harbour authorities with the power to make harbour directions in order to better regulate shipping and improve overall safety in the area of responsibility of the Statutory Harbour Authority. Such harbour authorities are called 'designated harbour authorities'.

Harbour directions will only apply to 'ships' as defined in the Harbours Act 1964. The Act defines a ship as including every description of vessel used in navigation, seaplanes (on the surface) and hovercraft.

Harbour directions may be used to regulate ships entering, leaving or navigating within a designated harbour authority's area. The directions may relate to, for example, speed limits, reporting of collisions, provision of equipment and manning of ships.

This consultation seeks the views of harbour users with respect to the suitability of Exeter City Council as Harbour Authority to be designated with the power to make Harbour Directions. The consultation period is open for 28 days from 21st March 2016. Representations should be forwarded to harbour.directions@exeter.gov.uk or by post to Roger Crane, Public Realm, Exeter City Council, EX1 1JN by the 19th April 2016.

A copy of the consultation document, Harbour Directions Guidance, Code of Conduct and Port Marine Safety Code is available on the Exeter City Council website <http://exeter.gov.uk/council-and-democracy/consultations-and-petitions/> and for inspection at the Civic Centre, Paris Street, Exeter, EX1 1JN.

HARBOUR DIRECTIONS: SUMMARY OF EXETER CITY COUNCIL'S INFORMAL CONSULTATION WITH HARBOUR USERS ON ITS APPLICATION

Exe Estuary Users Association (EEUA)

A Special General Meeting of the EEUA was held on 4 April 2016. Short notice but individuals representing 19 different user groups attended covering a diverse range of leisure and commercial activities.

Following discussion it was proposed that EEUA work with ECC in order to form a PUG from a representative subset of EEUA members, together with other interested parties whom we may not represent, but where we recognise the need for the PUG to be of a manageable size. As EEUA represents most Users and Businesses on the Exe it would be an essential member of the proposed PUG.

Exe Netsmen Association

Navigation authority embedded in ECC lacks any strategic plan for the future of the Exe and what it is trying to achieve. Can see little to gain over existing held powers. Jet skis are exempted by law.

Powers that can lead directly to the criminalisation of river users must be properly managed
Code of Conduct not legally binding

Allows for time period restrictions

Manning and Equipment and Mooring – allows for dangerous mission creep.

Communication – how and by whom and at what cost?

“The harbour authority must make a new set of byelaws that revokes earlier byelaws either fully or partially.”

“Introduction should only take place after consideration of alternatives”. What alternatives have been considered.

“Consultation” which we know is flawed.

You have to pay to object.

Think that the ECC would be the preferred controlling body if this HD route is pursued

Port User Group (PUG) should have as few as possible on board. Fishermen and all other river/water user groups should have a chance of representation

Exe Power Boat and Ski Club (EPBSC)

ESPBC reply 1: ECC's intention to apply for harbour directions powers was considered by the membership of EPBSC at its AGM.

There do seem to be some issues with harbour directions such as conflict with existing byelaws and maintenance of agreed areas.

We all need to consider what benefits, if any, the harbour directions power would give over the historic legislation proven over centuries. Do we need to change?

We look forward to working with you to determine, what, if anything, harbour directions powers might offer ECC, our members and other river users.

We were astonished to learn through your consultation e-mail on harbour directions that the harbour revision order (HRO) application made by ECC in 2008 had been withdrawn. The

July 2014 Executive Minutes to which you refer said that the HRO had been withdrawn as it did not satisfy Statutory Requirements.

In our letter of We consider it very discourteous that the need to withdraw the HRO application was communicated to ECC as applicant but not to objectors of whom EPBSC was one and arguably the principle objector.

EPBSC incurred considerable costs in time and money and is submitting a claim to ECC.

ESPBC reply 2: EBPSC has been in existence for over 40 years and is a founder member of the Exe Estuary Association and has held the office of vice-chairman in the past. However EBPSC was not advised of ECC's intention to apply for the harbour directions power.

In the circumstances I wish to make a formal objection to ECC's application for harbour directions. We feel this is another attempt to restrict uses in the river via the back door, EC having lost its 8 year battle to impose a harbour revision order.

We understand there is no recourse to a public inquiry in the case of applications for the harbour directions power.

There must be no changes to restrict the areas set aside for power boating and skiing because this would mean the strong arguments placed before the public inquiry into the HRO will have been overridden without proper consultation.

Despite claims that the HRO was critical it does not seem critical considering 8 years have passed since the application was made.

There is no evidence that adding harbour directions powers to ECC's powers in existing legislation is going to deliver any benefit for river-users – and potentially quite the reverse. We note particularly the ability to zone (having fought for the speed-derestricted zones we have currently in the 1970s).

Please can ECC give us a specific set of reasons for the application and the powers it would introduce.

We are also concerned that if the harbour directions power is approved, those users of the river who are prosecuted for any reason will have a criminal conviction rather than a civil one.

We note the proposed establishment of a PUG but also note that the recommendations of that PUG can, and we suggest from experience, will be ignored.

Exe Sailing Club (ESC)

ESC is affiliated to the Royal Yachting Association and has been advised by its legal department concerning the implications of Harbour directions.

ESC represents ca. 1,500 recreational sailing members, mainly from in and around Exmouth who use the river for sailing, canoeing and yachting.

We will encourage any coherent initiatives by local authorities to support aims that are in sympathy with our own, foremost among which is the maintenance of safe access and safe navigation by all vessels in the river. We would very much like to work constructively with ECC to achieve these ends. ESC would like to be represented on the PUG.

Lower Exe Mooring Administration Ltd (LEMA Ltd)

Further to a recent attended meeting of the Exe Estuary Users Association, writing to express LEMA Ltd's wish to be represented on the new proposed Port User Group.

LEMA Ltd administrate and manage around 750 moorings (involving over 2,000 local residents) in the Lower Exe from Exmouth to Cockwood under an agreement with East

Devon District Council. PUG representation for LEMA Ltd would be conducive to good management and enable them to represent their licence holders interests who use the river for commercial or leisure purposes.

Retreat Boatyard

Exeter City Council's (ECC) consultation does not include much information on the context, scope or overall requirements for a harbour authority to be designated with the harbour directions power.

More information should have been provided on the Council's existing powers and legal framework, and qualified any proposed changes in context and hopefully in agreement with harbour users.

The application should also have given more information on the Port Marine Safety Code which recommends that harbour authorities review and be aware of existing powers, and that additional powers should be sought if a risk assessment indicates that would be advisable.

Royal Yachting Association (RYA)

We have no objection in principle to Exeter City Council (ECC) applying to be designated under section 40A of the Harbours Act 1964. We would, however, wish there to be an RYA representative on the Port User Group.

[7 April response from ECC to RYA confirmed happy to offer a place on the PUG]

Starcross Yacht Club

We were not sent notification of ECC's intention to apply for the power to give harbour directions and only learned when we were informed by our RYA representative.

This club has no objection as regards the suitability of ECC, as harbour authority, being designated with the power to give harbour directions. This is subject to the understanding that the Exe Ship Canal and the River Exe Estuary are totally separate entities with the club having no view or opinion on how the former is directed or operated.

Harbour directions should be confined to replacing existing harbour byelaws as written until a totally independent PUG is formed and full consultation available. It is essential that a PUG is recognised and accepted as totally independent of the Council. Noting that the Port Authority has already approached the Waterways Advisory Board to engage with this process already brings this in to dispute. This body was formed in haste with insufficient time for some candidates to be nominated and brings this into dispute.

The Club is of the view that the existing Exe Estuary Users Association would be that would fit the bill as the PUG which we strongly recommend. . It would be recognised as being totally independent and represents all users of the estuary.

11 August 2016

Update from Exeter City Council on work to establish the Port User Group (PUG)

The core group have held a number of meetings to establish the makeup of the PUG. Their intention is to take representatives from all the existing interest groups and form them into a PUG committee. There have even been elections such is the desire to be a part of the representative committee. The first committee meeting is arranged for September.

The committee will be formatted as 'n' members from each geographic location or specific interest (the boatyards for example have a rep). Each of the 'specific interests' within the geographic area will feed into their representatives on the committee.