



Title: **Creation of an Artificial Reef off Torbay**

Public Agenda Item: **Yes**

Wards Affected: **All Wards in Torbay**

To: **Council** On: **29 September 2011**

Key Decision: **No**

Change to Budget: **No** Change to Policy Framework: **No**

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1. What we are trying to achieve and the impact on our customers

1.1 To help facilitate the creation of an artificial reef, by the sinking of a vessel either within the jurisdiction of, or off, Tor Bay Harbour limits, involving agreeing to take a lease of the seabed from the Crown Estate and then granting a sublease to a charitable organisation. This is expected to lead to economic benefits particularly in the Tourism sector.

2. Recommendation for decision

2.1 That, subject to 2.2. below, the Mayor be recommended to authorise the Head of Commercial Services, in consultation with the Chief Executive of the Torbay Development Agency and the Executive Head of Tor Bay Harbour Authority, to accept a 125-year lease for part of the seabed from the Crown Estate on acceptable terms, and that, in determining the acceptable terms, the Mayor is recommended to seek further legal advice as to the level of the Council's risk exposure.

2.2 That the Mayor be recommended to authorise the Head of Commercial Services, in consultation with the Chief Executive of the Torbay Development Agency and the Executive Head of Tor Bay Harbour Authority, to grant a sub-lease (and if considered appropriate an agreement for that lease) for part of the seabed to a local charitable organisation on acceptable terms.

2.3 That the Mayor be recommended to authorise the Head of Commercial Services, in consultation with the Executive Head of Tor Bay Harbour Authority and the Chief Executive of Torbay Development Agency, to enter into such other legal documentation on acceptable terms as deemed

necessary.

2.4 That the exact position of the sinking of any vessel within Tor Bay Harbour limits will be determined by the Executive Head of Tor Bay Harbour Authority in his capacity as Harbour Master, following consultation with harbour users and the Harbour Committee.

3. Key points and reasons for recommendations

3.1 The Council received a request in July of this year from a local charitable organisation for assistance to help create an artificial reef somewhere off Torbay. The Crown Estate will need to grant a lease of part of the seabed and they have indicated that they will only do so to a Local Authority.

3.1.1 The local charitable organisation has therefore asked that the Council take a lease from the Crown Estate with the Council then granting a sub-lease to the organisation.

3.2 The organisation has submitted its own bid to purchase “Ark Royal”, a decommissioned aircraft carrier, from the Ministry of Defence. It is too big to sink within the Bay and its final location is expected to be at least 5 to 6 miles off Tor Bay Harbour limits. If the organisation are unsuccessful with their “Ark Royal” bid then they are still keen to sink another smaller vessel to create an artificial reef, which could be on the edge of the Bay and therefore within Tor Bay Harbour limits. The location of the wreck has therefore not been specified in the recommendation.

3.3 The organisation will also need to obtain a marine licence from the Marine Management Organisation (MMO). Depending upon their requirements the Local Authority may also need to be party to these agreements.

For more detailed information on this proposal please refer to the supporting information attached.

**Steve Parrock
Chief Executive, Torbay Development Agency**

**Kevin Mowat
Executive Head of Tor Bay Harbour Authority
Tor Bay Harbour Master**

Supporting information to Report

A1. Introduction and history

- A1.1 In March 2004 HMS Scylla was sunk in Whitsand Bay off Plymouth and this generated a boost to the local economy of Plymouth and the surrounding area.
- A1.2 A local charitable organisation has submitted a bid for the purchase of the “Ark Royal”, which was once one of the Royal Navy’s main aircraft carriers. It is 211 metres (693 ft) in length and has a maximum beam of 35 metres (115 ft), with a displacement of 20,235 tonnes. They believe that, since it was such an iconic vessel, it will attract huge interest from both divers and non-divers bringing in an estimated £10 million into the local economy of South Devon.
- A1.3 Appendix 1 shows the Appraisal submitted by the organisation setting out their Economic Impact Assessment. Officers are of the view that some work needs to be done to this appraisal. The main benefits they have outlined are as follows:-
- a) Economic benefit – this has been assessed at £10m+ per annum to the Bay’s economy using Riviera International Conference Centre numbers, which have been adjusted downwards to be pessimistic.
 - b) Social benefit - through charitable status at £1.5m - £5m over 5 years.
- A1.4 Notwithstanding the down grade of the benefits by the organisation, the benefits set out in the appraisal appear optimistic. However, there is strong evidence that there will be new and appreciable economic benefits that can be achieved through this project, particularly if the required infrastructure to support this is in place. e.g. improved access to the water, a dive centre, collaboration from boat charters and accommodation providers, etc. There is the potential that Torbay might not gain the most benefit from the project with divers leaving from other locations in the South Devon area. If they are unsuccessful in their bid then they will wish to purchase another smaller vessel. This may not have such an appeal as the “Ark Royal”, especially to non-divers but it is still considered by the organisation that it will generate a similar level of interest as HMS Scylla.
- A1.5 In the Council’s policy document ***A Tor Bay Harbour and Maritime Strategy (2007 – 2017) ~ ‘Catching the Wave’*** it states “we will consider the possibilities of developing facilities for recreational diving to ensure that Tor Bay has the widest offer for all water based recreation. Options could include the strategic placement of man-made wrecks and/or artificial reefs”. This proposal fits in with this aspiration and with the other approved strategies which seek to improve the breadth of experiences that Torbay offers to visitors.
- A1.6 The Council has the power to acquire land outside its area by virtue of s120 of the Local Government Act 1972. This states that, for any of their functions under this or any other enactment or for the benefit, improvement or development of their area, a Council may acquire by agreement any land, whether situated inside or outside their area.
- A1.7 This matter was discussed at the Council’s Harbour Committee on 12 September 2011 and it was resolved that the Mayor should be recommended to accept the recommendations as set out in this report.

A2. Risk Assessment

A2.1 Outline of significant key risks

A2.1.1 The Crown Estate wishes to grant the main (head) lease of the seabed to the Local Authority so that, if the charitable organisation ceased to operate, then there is an accountable body that will be liable under the terms of that lease. i.e. the Council.

A2.1.2 The Council should also be aware that, even with the sub-lease in place, if there is an accident / incident / fatality, then the Council could have a claim made against it especially if the claimant considers that the organisation or any visitor to the site has insufficient financial resources to settle the claim. To be successful the claimant would need to show that the Council had been negligent. Whilst the sub-lease is in place this risk is considered to be manageable but, should the sub-lease come to an end and the Council became fully liable, then the Council would need to put in place such measures / procedures to minimise this risk and such would have cost implications.

A2.1.3 The Council could also be exposed to a claim if the organisation's insurance arrangements fail for some reason or the limit of indemnity for any one event is exhausted.

A2.1.4 Due to the nature of diving there is always an element of risk that an accident could happen. The organisation itself is to take certain measures to ensure that this risk is minimised. Such measures include:-

- i) Drilling over 100 new holes into the vessel to create extra escape routes, this will also mean that divers should be able to see light from virtually every room.
- ii) Having reflective triangles on ropes running on every deck leading to exit points.
- iii) Having signage on each deck indicating safety information and shot lines from the surface. These will be a visual reference for the divers who will also be able to use them as a guide rope if the current is too strong. The shot lines will act as a mooring point for the pick up / drop off for the divers.

A2.1.5 The organisation is of the view that there is a minimal chance of a claim being made against them or the Council. We are advised that all divers are expected to comply with guidance and rules issued by the Professional Association of Diving Instructors (PADI) or the British Sub-Aqua Club (BSAC) and diving schools would be members of these organisations. All individual divers, outside those who go with a chartered company, are responsible themselves when they enter a wreck. Provided that the organisation can demonstrate that they have taken appropriate safety measures (as per above) then the organisation anticipate that a claim for negligence is minimised.

If the public use a chartered company to dive with then any liability would rest with this company, who should be PADI or BSAC registered and should have their own liability insurance.

A2.1.6 The location of the wreck is likely to present a risk to navigation and this matter will be dealt with via the consent process associated with the marine licence issued by MMO. As part of the licence application process the MMO will need to consult with a number of bodies (see A6.2 below) and organisations such as the Maritime and Coastguard Agency, Trinity House and the local Harbour Authority will provide significant input into the decision making process. If consent is granted for the wreck it is expected that it will need to be properly marked on the surface and any such navigational marks will need to be adequately maintained throughout the life of the wreck, all the time it presents a hazard to shipping.

A2.1.7 The Council can minimise its risk by checking on a regular basis that the terms of the sub-lease are being adhered to with the process documented but clearly relevant (additional) resources would need to be put in place for this to happen.

A2.1.8 The Crown Estate have requested that it is indemnified against all costs, claims, or demands, actions, proceedings or liabilities which may arise as a result, or in connection with the placing and retention of the vessel on the seabed with the liability being limited to £5 million, linked to RPI. If, for whatever reason, the Council does become liable then its policy is currently for £50 million for any one incident. The Council's liability insurance policy will respond to negligent acts or errors where legal liability exists on the part of the Council.

It is considered that Torbay Council should be more limited than this and only indemnify the Crown in respect of sums which the Council may become legally liable to pay as damages, costs and expenses.

If, however, the Crown insist on the broader wording as they have requested, if the organisation fails then any costs/damages etc, that arise and which are not as a result of the Council's legal liability, will not be funded by an insurance policy but would directly fall on the Council's budget.

A2.1.9 The group behind the charitable organisation have set up the charity for the "Ark Royal" project. It is therefore possible that the charity itself may have limited financial resources and, as with any new business, if their income and expenditure is different than their business plan, the venture may fail.

The sub-lease will be to the charitable organisation. It is currently unclear whether this is an incorporated company. If so, then the Council could require the Directors to act as guarantors. If not, then the sub-lease would be granted to the Trustees of that organisation with them being personally liable. However, it is entirely possible that being a charity the Trustees would prefer not to accept this liability and even if they did then the Council's recourse would be limited to the financial status of those individuals. This type of scenario is not unusual and is often met by asking for a security deposit but the difficulty faced here is ascertaining the level at which this could be set. However, the concept is considered worthy of further investigation.

A2.1.10 The Crown Estate has issued heads of the terms for the lease to the Council. Whilst it is intended that these will be replicated in the sub-lease to the organisation, if the Council become liable, as well as the insurance issues mentioned above, there are a number of other key risks.

Likewise, there are a number of risks if the Council becomes liable under the terms of any marine licence and these risks are set out below:-

- a) Rent – This would be a peppercorn for the first five years with a review to market value. Whilst not an immediate risk, if the rent were increased after five years then the Council would need to identify a budget to fund this payment. Whilst the rent review mechanism has yet to be agreed the Crown Estate has indicated that it may possibly be linked to a percentage of the gross turnover (possibly 10%). Unless resources are identified to manage the 'operation' with the Council then receiving the income, there is a risk that the Council may become liable to pay a rent with the result that the Council would need to identify a financial resource to pay it.
- b) Annual maintenance of buoys and signage – It is understood that the cost may be the region of £4,500 per annum.
- c) Environmental monitoring – It is likely that the Marine Management Organisation will require a ten-year environmental monitoring programme, which could cost in the region of £45,000 over this period.
- d) Any other licences and inspections which may be required.

A.2.1.11 It is considered that the above financial risks could be minimised by the charity organisation providing a capital bond, which the Council could draw upon to cover its revenue costs. The principle of such a bond has been accepted by the organisation with the detail still to be agreed.

A2.1.12 It will be necessary for the organisation to undertake various surveys and procure reports before they are granted permission to sink the vessel which will involve them in the risk of incurring significant expenditure before any documentation is in place and which might cause risks to the Council if it subsequently decided not to enter into the relevant agreements.

This risk could be reduced by a process known as an 'agreement for lease' with the grant of the lease being contingent upon all relevant permissions and consents being obtained. Such a process may also ensure that such permissions are in place before the lease with the Crown is completed. Clearly this process would need to be acceptable to both the Crown and the organisation but nevertheless is considered to be worth investigating and pursuing further.

A2.2 Remaining risks

A2.2.1 It was thought that there was a possibility that the Crown Estate may have wanted the vessel to be removed from the seabed at some point in the future. They have, however, confirmed that it is not their intention for it ever to be raised with the lease being in place to enable it to become a permanent structure on the seabed.

A2.2.2 There is the risk that the wreck could sit on an existing environmentally important feature or habitat, or it might be sited in a conservation area. In reality there is zero risk of this happening because of the MMO's licensing process. In any event it is anticipated that after 6-12 months corals, fauna and flora will have adhered to the vessel. It is the organisation's view that eventually the vessel will have become a reef and therefore be protected in its own right.

A2.2.3 There could be a perception that the vessel will be a danger to the environment. However, before it can be sunk it needs to go through a process of cleaning and de-polluting. The work will take place at Devonport and be commissioned with Babcock International Ltd. They will adhere to a licence from the Marine Management Organisation who will only allow the vessel to be sunk once this work has been signed off by them. The vessel will therefore be clean and free from contaminants when it is sunk.

A2.2.4 In the event of a diving or wreck related fatality it could result in a long drawn out court battle related either to cause of death or negligence. Such exposure to negative publicity could damage the Council's reputation.

A3. Other Options

A3.1 The Council could decide not to support this initiative.

A4. Summary of resource implications

A4.1 Asset Management of the Torbay Development Agency, the Executive Head of Tor Bay Harbour Authority and Commercial Services would be involved with the negotiation and preparation of the legal documentation.

A4.2 The Council will also be required to monitor the sub-lease to ensure that the sub-tenant is complying with the terms. No budget currently exists for this work.

A4.3 If the sub-lease were to come to an end then the Council will become fully liable and we will need to put in place such measures / procedures to minimise the risk of diving related incidents/accidents and such would have cost implications with no budget currently available.

A4.4 The costs identified in A2.1.10 above will fall to the Council if the sub-lease were to come to an end and no budget currently exists for this work although it is anticipated that any bond provided by the organisation will cover these costs.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

A5.1 It is not considered that the proposal will have an impact on equalities or crime and disorder.

A5.2 Before the vessel can be sunk all possible contaminants will need to be removed. Over time the vessel will deteriorate but a reef should start to form on it, thus enhancing the marine ecology through the creation of a new habitat and ecosystem (see A2.2.2 above).

A6. Consultation and Customer Focus

A6.1 The organisation has presented the proposals for the "Ark Royal" at a public meeting. Since this is not a land-based initiative it does not affect one particular Ward and therefore it is not considered appropriate for formal public consultation via the Community Partnerships. However, the project has been discussed at the two Harbour Liaison Forums.

A6.2 The MMO strongly advise that any proposal is, as far as is practical, the subject of extensive consultation locally. Furthermore the MMO suggest that applicants for a marine licence consult with the MMO's standard consultees prior to making the application. The consultees at present are :-

- Natural England
- Environment Agency
- The Crown Estate
- English Heritage
- Maritime and Coastguard Agency
- Trinity House
- Department for Transport
- Centre for Environment, Fisheries and Aquaculture Science (Cefas)
- Highways Agency
- Network Rail
- local authorities
- neighbouring harbour authorities.

A6.3 The MMO will consult with the bodies listed in A6.2 above, in any event, before considering the granting of a marine licence.

A6.4 The organisation has also consulted with a number of other relevant local businesses, together with the Royal Torbay Yacht Club.

A6.7 The Torbay Coast & Countryside Trust have also been consulted. It supports marine conservation projects that restore and enhance the Bay's marine environment and which aim to engage and inspire people with the Bay's marine environment. The Trust is of the view that, if artificial reefs are done in an appropriate manner then they can provide both biodiversity enhancement and also be a dive attraction. Their initial view is that, unless more detailed impact assessments are carried out then the current proposal is inappropriate for Tor Bay considering the nature conservation designations and the Bay's marine biodiversity.

A7. Are there any implications for other Business Units?

A7.1 No

Appendices

Appendix 1 – Appraisal Submitted by Charitable Organisation

Documents available in members' rooms

None

Background Papers:

The following documents/files were used to compile this report: Misc380