

REPORT TO: Cabinet

MEETING DATE: 14 November 2023

BY: Executive Director for Place

SUBJECT: North Berwick Harbour - Budget Transfer of Costs for North Berwick Harbour Master to North Berwick Harbour Trust Association Ltd

1 PURPOSE

- 1.1 The purpose of this report is to advise Cabinet on partnership work between ELC and North Berwick Harbour Trust Association Ltd (NBHTA) and to seek Cabinet approval for the transfer of Harbour Master costs to NBHTA on an annual basis through form of grant payment.

2 RECOMMENDATIONS

- 2.1 Cabinet is recommended to note the partnership working that has taken place in the running of North Berwick Harbour.
- 2.2 Cabinet is recommended to approve the transfer of Harbour Master costs to NBHTA on an annual basis through form of grant payment.
- 2.3 Cabinet is recommended to note the key achievements and improvements that NBHTA has undertaken over the years for the benefit of commercial and pleasure boat users and to locals and tourists alike; and the contribution that the harbour has to the local economy as a tourist destination.

3 BACKGROUND

- 3.1 East Lothian Council and North Berwick Harbour Trust Association [NBHTA] developed and agreed a Management Agreement (attached at Appendix 1) for the running and day to day operations at North Berwick Harbour in June 2007. The Harbour Trust have been undertaking these duties from that date to present day.
- 3.2 NBHTA is a small local charity that aims to provide and support the harbour community, heritage and culture, public participation in marine activities, harbour facilities as well as supporting recreation and leisure and local

businesses and charities. The NBHTA was originally established under its constitution date 18 December 2006 and revised on 20 October 2014. The NBHTA was awarded charitable status by the Office of the Scottish Charity Regulator 29 December 2014, charity number SC044318 and is registered with Companies House and incorporated as a 'Private company limited by guarantee without share capital' on 9 July 2021, company number SC703757.

3.3 The Objectives of the NBHTA, as set out in their constitution are:

- The advancement of citizenship and community development in North Berwick harbour and its environs through trade and industry or otherwise;
- Providing and organising, or assisting with the provision and organisation of facilities in the interests of social welfare for recreation and leisure time occupation with the aim of improving the conditions of life for the inhabitants of North Berwick and its environs;
- For the benefit of the public to repair, maintain, conserve and improve North Berwick Harbour and the harbour facilities in an efficient and economical manner and to facilitate the efficient and economic transport of goods or passengers by sea;
- The advancement of heritage and culture through increased awareness of and greater access to a wide range of activities and events which will be planned to showcase the harbour and its history; and
- The advancement of public participation in sport and related activities e.g., kayaking, rowing and sailing.

3.4 Council officials have liaised closely with representatives of the Harbour Trust Association, who have successfully managed the Harbour area on behalf of the Council since June 2007. During this time there have been a range of projects undertaken to maintain and enhance the Harbour. These have included but not been limited to the following: Galloway's Pier refurbishment, sea walls projects, harbour safety railings, and major storm responses.

3.5 NBHTA has made positive improvements to the harbour management, including closer supervision of the Harbour Master's duties; increased quality control of the harbour area; and improved collection of mooring and dinghy parking fees, all as a result of a locally managed arrangement which is more responsive to day-to-day requirements. In addition, NBHTA has been allowed to retain the annual revenue income generated from the Harbour area to reinvest back in to harbour improvements and activity.

3.6 With the Harbour Master role currently vacant at the harbour, Council officers and NBHTA have been in discussions as to the most appropriate way to replace now and thinking medium to longer term in supporting the Trust in achieving a full Harbour Empowerment Status which requires a

parliamentary order process to achieve. NBHTA remain committed to achieving this and, with that in mind, have advised that their preferred route of replacing the Harbour Master vacancy is to employ directly themselves as a Trust; and for the Council to support by continuing to fund, but by way of annual payment to the Trust to cover employment costs without the Council having to be the employer.

3.7 The purpose of the Harbour Master job is to exercise powers of general supervision over North Berwick Harbour to ensure the safe use of the harbour and its environs.

3.8 Finance colleagues have provided up-to-date costs for the Harbour Master post which is currently grade 6. Costs are set out in Appendix 2. It is proposed that these costs would be transferred to NBHTA through an annual grant payment from the Sport Countryside & Leisure Service budgets.

4 POLICY IMPLICATIONS

4.1 This Report supports the intent of the Council Plan objectives in Grow Our Communities, Grow our Capacity and Grow our Economy.

5 INTEGRATED IMPACT ASSESSMENT

5.1 The subject of this report does not affect the wellbeing of the community or have significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

6.1 Financial – Budget costs are in place as advised by Finance colleagues and are presented in Appendix 2.

6.2 Personnel – No, as the post is currently vacant and future employment and recruitment would be the responsibility of NBHTA.

6.3 Other – None

7 BACKGROUND PAPERS

7.1 None.

Appendix 1 – Management Agreement

Appendix 2 – Harbour Master Costs

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DATE	27/10 / 2023

Appendix 1

MANAGEMENT AGREEMENT

between

EAST LoTHIAN COUNCIL

**constituted under the Local Government
Etc (Scotland) Act 1994 having its offices
at Council Buildings Haddington, East
Lothian EH41 3HA (“the Council”)**

and

**NORTH BERWICK HARBOUR TRUST
ASSOCIATION established by constitution on 18
December 2006 and having a place of business at The
Harbour Master’s Office, North Berwick (“the
Association”)**

It is agreed by the parties hereto as follows:-

The Association undertakes to take over the management of North Berwick Harbour (shown outlined in red on the plan annexed as relative hereto and incorporating the lands listed in Schedule 1 annexed hereto) in accordance with the terms and conditions set out hereunder to a standard acceptable to the Council acting reasonably.

- 1 The Agreement shall commence on 1 June 2007 or such other date as the parties shall agree in writing and shall have a duration of 12 months. The Agreement may be renewed by mutual agreement between the parties on being given three months written notice of intention by either party prior to 31 May 2008 .The Agreement will terminate when the North Berwick Harbour Revision Order comes into force.
- 2 The Council, with the assistance of or in consultation with the Association, will be responsible for
 - (a) collection of harbour dues (including mooring charges and all other income raised from the harbour) and shall remit the said gross annual income quarterly in arrears to the Association commencing on 1 July 2007. The Association undertakes to apply all such income to the running of the harbour as herein described and shall remit quarterly accounts commencing on 1 October 2007 to the council for approval;
 - (b) Setting of all charges, mooring and dinghy parking policy and costs and assisting in the collection of arrears of mooring and dinghy parking charges.

3 Data Protection Act 1998

Where a party processes ‘personal data’ (as defined in section 1 of the Data Protection Act 1998 (“DPA”)), Principle 7 of the eight data protection principles set out in Schedule 1 of that Act requires that the processor shall take appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

Where the processing of personal data is carried out by one party (a data processor) on behalf of another party (a data controller) paragraph 12(b) of Schedule 1 of the Data Protection Act 1998 imposes additional requirements in respect of the contractual arrangements between the data processor and the data controller.

In compliance with paragraph 12(b) of Schedule 1 of the Data Protection Act 1998, as data processor processing personal data on behalf of the Council the Association warrants that with regard to all information received from the Council it shall only carry out those actions in respect of such data as are expressly authorised by the Council. The Association confirms that it shall take appropriate security measures required for the purposes of Data Protection Principle 7 (referred to above) and that such measures shall be at least equivalent to the security measures taken by the Council in respect of such data to ensure compliance with the Seventh Data Protection Principle.

4. The Association will be responsible for managing the following harbour duties:
 - (a) Allocating moorings and dinghy parking.
 - (b) Implementing the existing rules and regulations of the harbour and proposing revisions thereto.
 - (c) General directions for the Harbourmaster. For the avoidance of doubt the Council will remain the employers and ultimate managers of the Harbour master. The Association will appoint a Harbour Management Team who will elect a Harbour Manager. The Harbour Manager will provide support and give reasonable direction to the Harbourmaster on a day-to-day basis within the current remit of the post.
 - (d) Responsibility with the harbourmaster for the waste management plans.
 - (e) Identifying with the Harbourmaster future maintenance and repair issues, excluding all the items already identified and notified to the Council. All necessary work will need to be approved of by the Association in advance. The Association may assist the Council in carrying out those repairs and the Council will consult with the Association with regard to the implementation of any work.
- 5 The Council will remain responsible for health and safety matters.
- 6 The Council will remain responsible for coastal protection.
- 7 The Council will remain responsible for all insurances including the harbour and employer’s liability insurance.

- 8 The council accept that they have received a copy of the “ Summary of Work, which should be carried out before the setting up of the Harbour Trust “ prepared by the Association.
- 9 Either party may terminate the Agreement on giving three months notice in writing. If either party is in material breach of any of the terms of the Agreement or for other good and sufficient reason of which an arbiter to be appointed by the parties shall be the sole judge, the Agreement shall be determined forthwith.
- 10 The Harbour Authority will rest with the Council but the parties hereto agree to use their best endeavours to pursue a revision order necessary to pass authority to the North Berwick Harbour Trust, to be formed hereafter.
- 11 The Parties hereto agree to submit any dispute relating to this Agreement to an arbiter to be agreed between the parties which failing to be nominated, would be nominated by the Sheriff Principal of the Lothian and Borders.

IN WITNESS WHEREOF these presents type written on this and the two preceding pages, and the plan and schedule annexed hereto, are executed as follows

SCHEDULE 1

1. The Harbour including moorings and tackle as owned by the Council.
2. The Harbour walls.
3. All roads from point of access to the Harbour area.
4. The Lower Quay and access thereto.
5. All slipways, including at Fisherman's Store, RLNI slip and Lower Quay slip.
6. All areas surrounding the harbour walls, including boat and car parking areas, but excepting any car parking which is privately owned by residents within the Harbour area.
7. The Harbour Masters Office.
8. The building formerly known as the Sun Lounge, and Water Treatment Plant rooms including the public toilets and steps leading thereto.
9. The pier known as Galloway's Pier and access thereto.
10. Access walkways to the end of Plattcock Rocks, including steps, but excluding the Watch Hut owned by East Lothian Yacht Club.
11. Dinghy Park area (formerly the swimming pool) including all buildings and walkways surrounding same.
12. The area known as The Esplanade and road access thereto, but excluding steps from Anchor Green.
13. All sea defences surrounding the Harbour and Esplanade areas.
14. The area of North Berwick Bay as shown on the attached plan, encompassing low water mark, The Maidens and Maidens Foot Rocks, as far out as Craiganteuch and the line to end of the Plattcock Rocks.
15. Sandy boat access area (beach) running 60 metres from lower quay wall and from low water mark to top of beach.
16. All equipment and buildings, surrounding harbour area in general including ex pump house (on North Harbour Wall), water hose room at ground floor, east end of Granary Building, Fisherman's Store at ground floor, west end of Granary Building, booms and boom crane, seating, railings, gates, Leading Lights (including on The Hope Rooms, Perches on The Maidens and other rocks etc.
17. The area East of the Scottish Seabird Centre to a width of 30 metres and from the end of Plattcock Rocks to the public Road.

Appendix 2

Position	Hours	Weeks	Grade	Start	End	No. of days	2023/24 Budget Planning				2024/25 Budget Planning				2025/26 Budget Planning				2026/27 Budget Planning				2027/28 Budget Planning			
							Total Pay	NI	Pension	Total Cost	Pay	NI	Pension	Total Cost	Pay	NI	Pension	Total Cost	Pay	NI	Pension	Total Cost	Pay	NI	Pension	Total Cost
Harbourmaster-Summer Hours	36.75	52.14	061	01/03/2023	31/10/2023	245.00	£ 18,595.96	£ 1,724.23	£ 4,200.43	£ 24,510.62	£ 18,957.68	£ 1,775.53	£ 4,284.44	£ 25,017.65	£ 19,336.83	£ 1,827.85	£ 4,466.81	£ 25,631.49	£ 19,723.57	£ 1,881.22	£ 4,654.76	£ 26,259.55	£ 20,118.04	£ 1,935.66	£ 4,848.45	£ 26,902.15
Harbourmaster-Winter Hours	10	52.14	061	01/11/2023	28/02/2024	120.00	£ 2,477.10	£ -	£ 559.82	£ 3,036.92	£ 2,526.64	£ -	£ 571.02	£ 3,097.66	£ 2,577.17	£ -	£ 595.33	£ 3,172.50	£ 2,628.71	£ -	£ 620.38	£ 3,249.09	£ 2,681.38	£ -	£ 646.19	£ 3,327.47
							£ 21,063.06	£ 1,724.23	£ 4,760.25	£ 27,547.54	£ 21,484.32	£ 1,775.53	£ 4,855.46	£ 28,115.31	£ 21,914.00	£ 1,827.85	£ 5,062.14	£ 28,803.99	£ 22,352.28	£ 1,881.22	£ 5,275.14	£ 29,508.64	£ 22,799.32	£ 1,935.66	£ 5,494.64	£ 30,229.62

