



**REPORT of
DIRECTOR OF CUSTOMERS AND COMMUNITY**

**to
COUNCIL
2 NOVEMBER 2017**

**PETITION TO REINSTATE THE MARINE LAKE, PROMENADE PARK,
MALDON**

1. PURPOSE OF THE REPORT

- 1.1 To consider a petition calling for the reinstatement of the former Marine Lake at Promenade Park submitted by the Prom Swimming Committee.

2. RECOMMENDATIONS

- (i) that Members note the Petition as submitted by the Prom Swimming Committee;
- (ii) that a Promenade Lake Working Group of the Council be formed to consider the response to the petition;
- (iii) that the draft terms of reference for the Working Group appended to this report be agreed;
- (iv) that the Promenade Lake Working Group reports back to the Council in December with recommendations for the Council to consider.

3. AREA FOR DECISION / ACTION

3.1 Background

- 3.2 A petition containing 3,352 signatures has now been officially received by the Council. Whilst the format of the petition (electronic and paper) does not meet the requirements of the Petitions Scheme fully (lack of detail verifying the home addresses of this signing); on this occasion it has been accepted. The reason Officers accepted the petition was that those signing acted in good faith and were not aware the organisers had not structured the petition to meet the Council's requirements. A review of the guidance published by the Council online is not as clear as it could be which perhaps led to a misunderstanding / misinterpretation of the Council's requirements by the organisers. The advice given to the public will be reviewed to ensure greater clarity is achieved in future.

- 3.3 Given the above, in accordance with the Council's Petitions Scheme, this matter has been brought to the Council to decide how to respond.

3.4 The petition received asks the Council to ‘*Reinstate Maldon Prom Swimming Lake and Paddle Boats*’. A copy of the petition has been provided for inspection within the Members’ Room.

3.4.1 The adopted Petitions Scheme indicates that at the meeting of the Council to which the matter is brought, the Council will decide how to respond to the petition. It may decide to:

- take the action the petition requests;
- not to take the action requested for reasons put forward in the debate; or
- commission further investigation into the matter, for example by a relevant committee.

3.5 In addition to the petition the Council was asked by the office of John Whittingdale MP on 21 July to respond to an enquiry from a representative of the Promenade Park Swimming Committee representing the campaign to reinstate the Marine Lake. The content of the enquiry and the subsequent response has been provided within the Member’s Room.

3.6 On 20 September 2017 an email was sent to Members by the Prom Swimming Committee which contains greater detail on the proposal to reinstate the former Marine Lake. A copy of the email has also been provided as background information in the Members’ Room.

3.7 **Implications of the petition**

3.7.1 The decision to close the Marine Lake was taken by Members of this Council on 19 October 2004 (Minute No. 353 refers) this decision was further confirmed in light of an alternative proposal put forward by the Friends of Promenade Park (known at the time as option 5) at the meeting of the Council on 16 December 2004 (Minute No. 505 refers).

3.7.2 Following the Council decision, Promenade Park has been re developed in accordance with the approved development plan funded by the Liveability fund (2004 - 2006). The Promenade Lake is now an established fresh water ornamental lake and the valley includes extensive children’s play equipment and the ever popular Splash Park.

3.7.3 The information provided by the Prom Swimming committee argues ‘*there is minimal risk of any further prosecution and that the Ornamental Lake could be converted back to join many other natural swimming lakes in the country*’. In order for Members to consider how to respond to the petition as detailed in 3.4.1 above the following questions need to be answered:

- Has the legislation relating to the management of open water changed since 2004?
- Does the Council believe it can meet its obligations as land owner (occupiers liability) if it were to agree to the reinstatement of the Marine Lake with particular regard to public safety?
- Has the Council’s position relating to risk changed since 2004?

3.7.3.1 Depending upon the above the Council must also consider:

- Does the Council wish to commit time and resources to seek formal legal advice on the legislative position relating to the management of water facilities?
- Does the Council wish to formally invest resources into evaluating the proposal to establish the viability and costs of the extensive works necessary to the Promenade Lake in both capital and revenue terms?
- Does the Council wish to invest resources in developing a solution to meet the aims of the petition which could be used for future funding bids?

3.7.4 Clearly Members will need time to absorb the information provided by the Prom Swimming Committee and to understand the issues and reasons the Council took the decision to close the Marine Lake in 2004 in order to answer the questions raised in 3.7.3 above.

3.7.5 In order to move this matter forward it is proposed that a Member Working Group of the Council is formed to consider the petition and make a recommendation to the Council as to how it should respond to the petition. The Proposed Working Group should be open to all Members of Council with a view to reporting back in December. A proposed Terms of Reference for the Group is set out at **APPENDIX 1**.

3.7.6 To support the Working Group the Director of Customers and Community will ensure adequate officer support is available. Given the short timescales involved Members are asked to commit to a minimum of two day time Working Group meetings.

4. IMPACT ON CORPORATE GOALS

4.1 This report supports the corporate goals of ‘creating opportunities for economic growth and prosperity’ and ‘delivering good quality cost effective services’

5. IMPLICATIONS

- (i) **Impact on Customers** – Promenade Park is visited by hundreds of thousands of people each year. The Promenade Lake is a central feature of the park and enjoyed by many for the vista and wildlife setting. Just over 3,000 persons have expressed a view the lake should change into a bathing facility and Members will consider this proposal.
- (ii) **Impact on Equalities** – None identified.
- (iii) **Impact on Risk** – The decision to introduce an unregulated open area of water within Promenade Park could have serious implications for the Council, Members and Officers alike if it were to be found in any future operation the Council had not met its obligations as land owner to protect the public from harm.

In 2004 this Council felt it could not mitigate the risks identified to enable open water bathing to continue and in mitigation has invested heavily in the

Blackwater Leisure Centre and the Splash Park. At both of the facilities the Council can be confident in its management of risk.

The organisers of the petition argue this Council faces ‘*minimal risk of any further prosecution and that the Ornamental lake could be converted back to join many other natural swimming lakes in the country.* Council, through a Working Group (if agreed by this meeting) will consider its position.

- (iv) **Impact on Resources (financial)** – The Promenade Lake was constructed between 2004 and 2006 utilising funding from this Council and the Office of the Deputy Prime Minister through grant funding (Liveability). In considering whether to reinstate the Promenade Lake into the Marine lake a number of cost issues arise including:
- The costs associated with developing a feasibility scheme which will explore the design, construction and operation of the lake
 - The costs of constructing the new facility and all associated fees and the Council’s commitment to fund or match fund future bids to external funding bodies
 - The revenue implications of implementing a scheme
- (v) **Impact on Resources (human)** – The Council does not have the resources or skills to manage this project internally. As part of the Liveability Project Officers were recruited to oversee the project and external technical support in the form of Water Safety Experts, Civil Engineers, Quantity Surveyors etc. were engaged to deliver the project. The reinstatement of the Marine lake will be complex and require similar levels of support if it is to be managed appropriately.
- (vi) **Impact on the Environment** – The Promenade Lake is now an established wildlife area. In re-creating a Marine Lake habitat will be lost and statutory partners will have to be consulted on the proposal. In addition, extraction and discharge of water from the River Blackwater will need consent and health matters will need to be addressed.

6. CONCLUSIONS

- 6.1 In 2002 a fatal accident occurred within the Marine Lake. Subsequently this Council was prosecuted for a failure to manage Health and Safety despite defending its position robustly.
- 6.2 In 2002 / 03 this Council looked for solutions to enable public bathing to continue. It was clear at the time this Council had responsibility for the safety of users of the lake and had to satisfy itself it could manage the risks. Many of the arguments put forward by the Promenade Park Swimming Committee were considered at the time. It was concluded in 2004 this Authority could not manage an open water facility safely even if revenue funding was made available.
- 6.3 This Council has a responsibility to protect the public against harm and protect itself against action which could arise through not addressing identified risks. Since the

closure of the lake there has been no fundamental change to guidance on swimming and, therefore, the Council's position has remained unchanged.

- 6.4 Based upon the strong local feelings expressed by members of the community, Members now have the chance to re-examine its stance. Subject to the agreement of Council, Officers will assist Members to review the current position with regard to public access to Promenade Lake.

Background Papers: Petition from the Prom Swimming Committee (available for inspection within the Members' Room).

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