



**REPORT of  
DIRECTOR OF CUSTOMERS AND COMMUNITY**

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to  
**OVERVIEW AND SCRUTINY COMMITTEE  
10 JANUARY 2018**

**REVIEW OF THE COUNCIL DECISION ON THE PETITION TO REINSTATE  
THE MARINE LAKE, PROMENADE PARK, MALDON**

**1. PURPOSE OF THE REPORT**

1.1 To review the decision made by Council on 2 November 2017 on the petition calling for the reinstatement of the former Marine Lake at Promenade Park submitted by the Prom Swimming Committee.

**2. RECOMMENDATIONS**

- (i) that Members consider if the Council's response and consideration of the petition to reinstate the Marine Lake, Promenade Park, Maldon was carried out in line with its petition scheme;
- (ii) that having reviewed the seven points for review against the decision of the Council as stated by the petition organisers (and set out in sections 3.4.1 – 3.4.7 of this report), Members consider if any of the stated points require further investigation;
- (iii) that Members made recommendations to the Council as required.

**3. AREA FOR DECISION / ACTION**

**3.1 Background**

3.1.1 At the meeting of the Council on 2 November 2017 Members considered the response to the petition calling for the reinstatement of the former Marine Lake at Promenade Park. Council resolved not take the action requested by the Petition (to reinstate Maldon Prom Swimming Lake and Paddle Boats) for the follows reasons:

- the proposal to reinstate the Maldon Swimming Lake and paddle boats would effectively require this Council to construct an artificial lake.
- this would mean that the Council would then fall under the Health and Safety Executive guidance managing Health and Safety in Swimming pools.
- guidance suggests that a higher duty of care is required for children and young adults particularly if they are unsupervised.

- the risk levels associated with the reinstatement of the lake are unacceptable for the public and this Council to manage
- 3.1.2 The organisers of the petition were subsequently informed of the Decision of Council and on the 8 November a complaint was received via email from the organisers. A copy of the email is set out at **APPENDIX 1** to this report.
- 3.1.3 The email complaint was responded to by the Council seeking further clarification into the specific reasons why a review of the decision should be carried out.
- 3.1.4 On 20 November the petition organiser set out their ‘reasons for complaint’ which have been interpreted as reasons for a review of the decision made by the Council. The seven reasons are set out with **APPENDIX 2** to this report.

### 3.2 **Review of the Decision by the Overview and Scrutiny Committee**

- 3.2.1 The Council’s Petition Scheme allows for a review should the organisers feel that the Council has not dealt with a petition properly. The Scheme gives an organiser the right to request that the Council’s Overview and Scrutiny Committee review the steps that the Council has taken in response to a petition.
- 3.2.2 The Petition Scheme specifically states that ‘the petition organiser must provide a short explanation of the reasons why the Council’s response is not considered to be adequate. The Overview and Scrutiny Committee will endeavour to consider your request at its next meeting, although on some occasions this may not be possible and consideration will take place at the following meeting. Should the Committee determine we have not dealt with your petition adequately, it may use its powers to deal with the matter. These powers include instigating an investigation, making recommendations to the Council and arranging for the matter to be considered at a meeting of the full Council’.

### 3.3 **Criteria for Review**

- 3.3.1 Essentially the reasons for review should focus upon whether the Council has followed procedures properly in making a decision and it is not about the merits of a decision itself. The dislike of the decision is not a ground for asking for a review. However, the idea of dealing with the petition properly can go wider than just procedural matters. There are two other reasons where a decision may not have been made properly;
- Where the decision-maker has not considered an important piece of information or has seriously misunderstood it;
  - Where no reasonable decision maker could have made the decision in the light of the information available.
- 3.3.2 Members of the Overview and Scrutiny Committee are advised to look at each of the seven points requested for review to see whether any of them merit a detailed scrutiny in the light of these three reasons stated in paragraph 3.3.1 above.
- 3.4 To assist Members, Officers have applied the three reasons for review against the seven points detailed in **APPENDIX 2** as set out below.

### 3.4.1 **Point 1**

3.4.1.1 *We believe the Council did not read the information provided 2 weeks prior to the meeting, if they had, they would be fully aware that a decision in high court was made in April 2005 in favour of the river and lake swimming association, Richard Holmes assured us the study would be done by them also to satisfy. The questions raised in debate by councillors in the meeting had already been answered by the information sent, therefore proving that it had not been read.*

Officer's view – It is understood that the Petition organisers sent an email directly to Members. This email was also provided for inspection within the Members' Room as background information to the report to the Council on 2 November. On that basis Officers feel Members had the necessary information to reach a proper decision and not highlight any issues for further scrutiny.

### 3.4.2 **Point 2**

3.4.2.1 *Bob Boyce took over half the allotted full council debate time stating reasons to not support the petition that had been covered and answered in our speech and via the documents which answered his questions, thus leaving little time for a full debate within the council - again documents not read*

3.4.2.2 Officer's view – The Chairman of the Council specifically extended the allocated 15 minutes set aside for the debate (as detailed within the Petitions Scheme) to allow for full and proper consideration of the matter before Members. Officers believe this matter was dealt with properly and does not highlight any issues for further scrutiny.

### 3.4.3 **Point 3**

3.4.3.1 *The risk level to the council is proved to be "minimal" when a full honest risk assessment is done and appropriate signage erected as demonstrated by the high court decision (which the council were aware of in 2005) and recent swimming lake incidents (again evidenced in attachments). It was stated as "minimal risk" because if the risk assessment is not done, or the signage is not erected and maintained then there would be risk - as was demonstrated when MDC were prosecuted for failing to remove a broken post; as a risk assessment was not done and all risks were not removed. Therefore why is "risk" being questioned, when it has been proved numerous times now that the swimming lake would not pose a legal risk to the council or councillors, any more than what the council are currently managing*

3.4.3.2 Officer's view – Members had full access to the information necessary to form an opinion on risk therefore Officers believe this matter was dealt with properly and does not highlight any issues for further scrutiny.

### 3.4.4 **Point 4**

3.4.4.1 *The petition was not considered seriously at the meeting as 670 signatures were not counted at all due to being outside the Essex area, even though these people originally came from Maldon; so are the council saying they do not want visitors from outside Maldon?*

3.4.4.2 Officer's view – Whist noting the petition did not fully meet the requirements of the Petition Scheme this petition was accepted by Officers and put before Members in accordance with the requirements of the scheme. Officers believe this matter was dealt with properly and does not highlight any issues for further scrutiny.

### 3.4.5 **Point 5**

3.4.5.1 *How do the council manage the risk and run Wood up at Tollesbury which is exactly the same as Maldon as they DO NOT have lifeguards, (they have signage and regular risk assessments) if they can manage this (via the Parish Council) then I'm sure MDC can manage a swimming lake at the Prom as they have previously done so for nearly 100 years successfully.*

3.4.5.2 Officer's view - This Council has no responsibility for operating the Tollesbury Lake and it is for the owner to satisfy themselves into the safe operation of the facility and not this Council. Officers believe this matter does not highlight any issues for further scrutiny.

### 3.4.6 **Point 6**

3.4.6.1 *We do strongly believe that the MDC should have created the working party to seriously consider the implications and the pros and cons of the lake, and instigated their own thorough research including the revenue potential to the town, before making a decision based on the same reasons as were given in 2002 (without considering changes in guidance or documentation provided to the council) instead it was unfairly majority voted out on the night. A working party would have shown consideration to the views of the Maldon residents, it would offer an opportunity to meet with the Committee to share in depth the proposals they had and to share the research already done, and an opportunity to work together with the committee to come to a resolution, or a way forward with the proposal. Instead the views of the Maldon people have been overruled and ignored which is a dictatorship of the council not a democracy for the people.*

3.4.6.2 Officer's view – The original Officer recommendation was considered by Members of the Council but was not agreed to. Instead following debate the Council decided not to take the action requested by the Petition (to reinstate Maldon Prom Swimming Lake and Paddle Boats) and set out clear reasons for this decision. The decision was one of three which it could have reached. 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.

Officers believe this matter was dealt with properly and does not highlight any issues for further scrutiny.

### 3.4.7 Point 7

3.4.7.1 *There have been more deaths at the indoor swimming pool (Blackwater Leisure Centre) than the one death that closed the lake. How can the council justify that centre to continue operating and remain open; and this is a lifeguarded facility where swimmers do not do so at their own risk? This is double standards of the council.*

3.4.7.2 Officer's view - The operation of the Blackwater Leisure Centre is not comparable with the operation of the former or proposed swimming lake. This fact has no bearing on the decision made by Members and does not highlight any issues for further scrutiny.

## 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.
- (ii) **Impact on Equalities** – None identified.
- (iii) **Impact on Risk** – Members clearly set out in their reasons for not accepting the petition on 2 November that the risk levels associated with the reinstatement of the lake are unacceptable for the public and this Council to manage.
- (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 November 2017 Members considered a petition calling for the reinstatement of the former Marine Lake at Promenade Park submitted by the Prom Swimming Committee. Council resolved not take the action requested.
- 6.2 The Prom Swimming Committee has subsequently called for a review of the decision of Council by the Overview and Scrutiny Committee in accordance with the Council's Petition Scheme.
- 6.3 Officers have reviewed the seven reasons stated by the Prom Swimming Committee and believe this Council has considered the matter properly. Members are asked to review the decision and note the views of officers in compiling this report.

### Background Papers:

Petition from the Prom Swimming Committee and related papers circulated to Members (available for inspection within the Members' Room).

Enquiries to: Richard Holmes, Director of Customers and Community, (Tel: 01621 875752).