

Rother District Council

Report to	-	Cabinet
Date	-	29 July 2019
Report of the	-	Executive Director
Subject	-	Launching and Landing of Personal Watercraft at Herbrand Walk, Bexhill

Recommendation: It be RESOLVED: That:

- 1) the removal of the temporary designation of Herbrand Walk boat lane as a launch and recovery site for personal watercraft be noted; and
 - 2) the actions outlined at paragraph 13 be noted.
-

Head of Service: Joe Powell

Lead Cabinet Member: Councillor Brewerton

Background

1. In September 2018, Cabinet noted the temporary designation of the boat lane at Herbrand Walk as a launch and recovery site for personal watercraft (PWC) (Minute CB18/22 refers). This was made on the condition that officers consult with key stakeholders, review the situation and report back to Cabinet in 2019.
2. As many Members will be aware the decision to temporarily approve Herbrand Walk as a launch and recovery site for PWC was taken in response to the impact of some PWC users choosing to launch and recover from the beach in contravention of the byelaws. The launch and recovery of PWC poses a risk of injury to bathers who might be in the water with them and causes a noise disturbance to some local residents and beach hut owners.
3. It should be noted that during the summer of 2018 we saw a higher than usual number of swimmers at Herbrand Walk. As a result, health and safety concerns were raised regarding an increased risk of a PWC injuring a bather. The concerns prompted officers to seek legal advice. The legal advice at that time indicated that - despite the bylaw outlawing PWC at Herbrand Walk - should a bather be injured by a PWC, the Council may be held liable; particularly as it could be considered unreasonable to expect PWC users at Herbrand Walk to travel to Rye Harbour, where the only designated launch and recovery site in Rother is located.

Introduction

4. The purpose of this report is to provide Members with a summary of the investigation into possible options for managing the use of Herbrand Walk as a launch and recovery site for PWC. Officers have consulted with other local authority areas operating launch and recovery sites for PWC while also considering a number of pieces of correspondence received from local

residents and other stakeholders.

5. The criteria for a solution have not changed since Members were last consulted on this subject in 2018: the Council wishes to minimise the risk of injury posed to bathers by PWC at Herbrand Walk and also to minimise any noise disturbance to local residents and beach hut owners.
6. It is important to note that it is not within the power of the Council to prevent people from using PWC on the open sea; the Council is only able to deter the launch and recovery of PWC on the foreshore, as per the byelaw.
7. The decision in 2018 to temporarily designate the boat lane at Herbrand Walk as a launch and recovery site for PWC enabled the activity to be confined to the boat lane, reducing the risk to bathers. The temporary designation allows bathers to make an informed choice to avoid PWC by swimming safely outside the boat lane. The temporary designation also mitigates the risk of the Council being held liable for injury to bathers due to a failure to provide an alternative launch and recovery site within a reasonable distance of Herbrand Walk. The temporary designation does nothing to minimise the noise disturbance to some local residents and beach hut owners.
8. It is important to recognise that in any scenario, compliance from the public is challenging to achieve as persons have to be caught by council officers in the act of launching or recovering PWC. The Council's resources to support compliance with the byelaw, at all times, are limited and any solution will need to be reasonably practicable to deliver.

Alternative Launch and Recovery Sites

9. There is a PWC launch and recovery site within Rother District, situated at Rye Harbour some twenty miles from Herbrand Walk and some 45 to 60 minutes traveling time during the peak summer season. PWC users must purchase a permit to launch from the Rye Harbourmaster at a cost of £14 per day or £145 per year. As already highlighted, it may be considered unreasonable to expect PWC users choosing to use Herbrand Walk as a launch and recovery site to travel to Rye Harbour in order to access an alternative site.
10. As part of the review of options for this report officers have established that there is a launch and recovery site in Eastbourne which operates a permit based registration system at a cost of £70 per annum which is enforced by Eastbourne coastal office. The PWC site is approximately seven miles from Herbrand Walk.

Options

11. Legal advice indicates that it is acceptable to direct PWC users at Herbrand Walk to the alternative provision in Eastbourne as the site is within a reasonable distance of Herbrand Walk and has suitable access. The consequence of this advice is that it removes the need to pursue the option of making permanent the existing temporary designation of the boat lane at Herbrand Walk as a launch and recovery site for PWC and that temporary designation can now be removed.

12. The principle risk remains that the Council may not be able to support compliance with the byelaw that prevents PWC from launching and recovering from Herbrand Walk beach at all times. Past experience shows that it is highly likely that on occasions PWC users will continue to launch and recover from the beach, in contravention of the byelaw, resulting in a residual risk to bathers, and a continuing noise nuisance.
13. The Council will adopt measures which are reasonably practicable in order to ensure compliance with the byelaw and mitigate the risk of any residual liability for injury to a bather caused by a PWC, these include:
 - increasing signage to deter PWC users from launching and recovering at Herbrand Walk;
 - new signage to redirect PWC users to alternative launch and recovery sites; and
 - implementing a ‘crackdown’ on select occasions during the summer to educate PWC users and swimmers as to the correct use of the beach and boat lane.

Conclusion

14. The temporary designation of Herbrand Walk boat lane as a launch and recovery site for personal watercraft has now been removed. Enforcement, however, will not be a simple matter due to the nature of the activity. Any person(s) using a PWC at Herbrand Walk has to be caught in the act of launching or recovering and an individual accurately identified.
15. The Council has a duty under the Health and Safety at Work etc. Act 1974 to take all reasonably practicable steps to minimise any risks posed to the public. While it may not be practicable within the Council’s limited resources to regularly and proactively police Herbrand Walk and ensure compliance with the byelaw, it is felt that the implementation of a crackdown on select occasions over the summer is reasonable and achievable.
16. The ‘crackdown’ will involve a council officer being on-site at Herbrand Walk beach on pre-agreed days during the summer months to support compliance with the byelaws, educate PWC users, and direct them to alternative sites. When relevant, the officer will pursue enforcement action with the support of the police as required.
17. The Council will continue to monitor reports of any PWC launching or recovering from Herbrand Walk and provide a reactive service, where resources allow.

Malcolm Johnston
Executive Director

Risk Assessment Statement

The risks and proposed mitigation of those risks are contained within the report.