

Executive Report

Ward(s) affected: Friary & St Nicolas

Report of Strategic Director of Place, Dawn Hudd

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## The Tumbling Bay Weir

### **Executive Summary**

The Tumbling Bay Weir collapsed unexpectedly in November 2019, following which the Council and National Trust agreed to commission a temporary solution to restore water flow along the Navigation, sharing the cost equally. This was despite a lack of clarity of ownership and liability for replacing the Weir, so any structure installed as part of the works passed to the owner of the Weir.

There has been significant public interest in the Weir over the past 18 - 24 months, with the Council and National Trust facing criticism for a lack of activity to resolve the ongoing land ownership matters and perhaps more crucially, for the continued closure of the tow path.

The purpose of this report is to consider the mandate (Appendix 1) and recommendations in this report to decide the level of involvement the Council intends to have in reaching a permanent solution to the Weir.

### **Recommendations to Executive**

- (1) To note that the legal research undertaken concludes that the Council does not own the tow path, Weir or bridge, and neither does the Council have any obligations to maintain the assets.
- (2) To progress with "Option 1" as outlined in Section 10 of this report.
- (3) To communicate publicly the Council's rationale for progressing with "Option 1".
- (4) To continue to be available to engage with the National Trust or other Parties should other currently unknown options become available.

Reason(s) for Recommendation:

The Council is receiving continued public criticism and is facing pressure to provide a permanent solution to the collapsed Tumbling Bay Weir and footbridge. A decision is required from Executive to provide clarity on the level of the Council's ongoing involvement in this matter.

**Is the report (or part of it) exempt from publication?**

Yes, Appendix 2, by virtue of paragraph 5 of Part 1 of Schedule 12A of the Local Government Act 1972: "Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings".

The content of Appendix 2 is restricted to all councillors.

The exempt information in Appendix 2 is not expected to be made public because the reasons for the exemption will remain live for the duration of the project. This decision will be reviewed at the end of the project.

The decision to maintain the exemption may be challenged by any person at the point at which the Executive is invited to pass a resolution to exclude the public from the meeting to consider the exempt information.

## **1. Purpose of Report**

- 1.1 The purpose of the report is to outline the options available to the Council regarding the Tumbling Bay Weir and to seek clarity from the Executive on how the Council should progress.

## **2. Strategic Priorities**

- 2.1 The recommendations in this report relate loosely to the following priority in the Council's Corporate Plan 2021-2025:
- Make every effort to protect and enhance our biodiversity and natural environment.

## **3. Background**

- 3.1 The Tumbling Bay Weir (Millbrook Weir) collapsed unexpectedly in November 2019. Subsequently the Council agreed with the National Trust to install a temporary solution at a cost of approximately £800,000 in early 2020, to be funded equally between the two organisations. Whilst land ownership and maintenance responsibilities were not established at this time, the urgency relating to the risk of disruption to the water supply across the town centre was impetus for the Council to support a resolution.

- 3.2 As a consequence of the Weir collapse and temporary solution implemented, the National Trust closed the tow path over the Weir as it is understood this was not supported by the temporary solution. The tow path remains closed until National Trust consider that it can be safely reinstated. It is important to note that the tow path is not a Public Right of Way.
- 3.3 There is significant public interest in the Weir, in part stemming from the loss of footbridge across the Weir which links Millmead to the Meadows and tow path. Pedestrians are currently required to divert through Flower Walk or along Shalford Road (which is not accessible to all). Owing to the Council's previous involvement in the temporary Weir, there is a continued public perception that the Council is responsible, in part or whole, for the structure.
- 3.4 Extensive research has been undertaken by the Council's solicitors exploring ownership and maintenance responsibilities relating to the Weir, footbridge and sluice gates (Appendix 2). This research indicates that the Council is not responsible for this asset.
- 3.5 Following the implementation of the temporary Weir there was little to no ongoing coordination between partners with a potential interest in the asset. Guildford Borough Council therefore coordinated an initial meeting in March 2022 between the National Trust, Thames Water, the Environment Agency and Surrey County Council to restart discussions around options to resolve the Weir.
- 3.6 Following the initial meeting, a report was commissioned by the National Trust on behalf of the various organisations, reviewing the expected longevity of the temporary repair. This is considered – with regular and appropriate maintenance – to exceed the 5-year lifespan originally discussed at the time that the temporary Weir was implemented
- 3.7 Reflecting the legal advice regarding the Council's ownership and responsibilities and the ongoing public interest in the Weir, a mandate has been developed setting out the options on the extent to which the Council could be involved in the Tumbling Bay Weir. This is attached at Appendix 1 for the Executive to review and consider, in alignment with this report recommendation.
- 3.8 The agreement for the works to "temporarily rehabilitate" the Weir is clear that the ownership of any physical property incorporated into the Weir is passed to the legal and beneficial owner of the weir. The Council's position in relation to any further repair and maintenance has been reserved. Therefore, there is no automatic requirement for the Council to deliver any continuing maintenance of the rehabilitation and further legal research conducted indicates that the Council is not responsible.
- 3.9 Fish Pass

Whilst not part of the recommendations in this report, it is also worth noting that with any significant works to weir structures there is a legal requirement on the owner or occupier to install fish and eel passes. This requirement was set out and conditioned as part of the permissions from the Environment Agency (EA) for the temporary rebuild of Millbrook Weir. A 2-year timescale was set for the fish and eel passes to be constructed.

- 3.10 Prior to the collapse of the weir the Council had agreed to provide £60,000 to the EA to support their delivery of Millmead Island fish pass, which is on already on the provisional programme. This was on the basis that the project directly supported the objective in Guildford's Corporate Plan at that time: "Support the River Wey Catchment Management Partnership to improve the water quality of the river and the management of its catchment." The fish pass at Millmead Island is part of a series of works to improve fish migration between the Thames and Tilford. It is a critical flagship project in an urban area to improve river habitats and interpretation. The EA will derive most of the funding and lead and deliver the project.
- 3.11 With the EA's subsequent works to the Millmead Weir there is now also a requirement on them to install fish passage. A proposal was put forward by the EA to deliver a fish and eel pass beside the Millmead weir that could be jointly funded by all.
- 3.12 Detailed design is underway by the EA with an intention to build next financial year. To enable delivery of the fish pass next year, the EA is seeking an equal share of the costs in the region of £200,000 from the Council and the National Trust.
- 3.13 The successful delivery of the fish and eel passes alongside Millmead Weir would remove the legal obligation and any restrictions under these regulations from decisions about the future of Millbrook weir. The Council's contribution of £60,000 towards this is already included within the provisional Capital Programme, and the borrowing implications incorporated into the Medium-Term Financial Plan (MTFP), it was approved by Executive in January 2018. A further report will need to be brought forward to Executive in relation to any contribution to the Fish Pass.

#### **4. Consultations**

- 4.1 As outlined above, Officers have reinitiated dialogue between the National Trust, Environment Agency, Surrey County Council and Thames Water with several meetings and a site visit having taken place between March and July 2022.

- 4.2 In parallel, several discussions have been held with the National Trust who have indicated an interest in working with the Council to seek a resolution to the Weir and sharing responsibility to resolve this, as well as the ongoing operation and maintenance. Officers have also had discussions with the Environment Agency regarding their works to Millmead Weir (upstream of the Tumbling Bay Weir) and work to design a fish and eel pass linked to both.
- 4.3 Strategy and Resources Executive Advisory Board discussed the Weir mandate on 10 October 2022 and agreed a number of recommendations to the Executive:

*“In conclusion, the EAB agreed that, although the recommended option in the mandate was to ‘Do Nothing’ to reflect the Council’s lack of resources and absence of responsibility for the maintenance or repair of Millbrook Weir, footbridge and sluice gates, this option was not supported.*

*As an alternative, the Board decided to recommend to the Executive that the Council undertake a public relations exercise to inform residents of the Council’s position in this regard and its intention to represent them by acting as a convenor to persuade the relevant parties to fulfil their obligations to implement a permanent resolution to the Millbrook Weir issue and restore public access in the area. This public communication could be in the form of an open letter from the Joint Chief Executive, possibly referring to the fish pass financial commitment, together with letters to the relevant agencies explaining the Council’s proposed stance in this matter”.*

- 4.4 With regard to the latter part of the recommendation outlined above, it may be more appropriate for an open letter to be issued from the Leader or Lead Councillor rather than the Joint Chief Executive.

## **5. Financial Implications**

- 5.1 The Council has already spent £440,000 on the temporary Weir repair, with National Trust covering the other 50% cost, which will not be recovered from the owner. This was funded through internal borrowing.
- 5.2 There is no financial allocation within the approved or provisional capital programmes to fund any work on The Weir, including project management and legal costs arising from this. Progressing with the recommendations outlined in this report will not result in the Council incurring additional expenditure.
- 5.3 Should the Executive decide to progress with an option beyond the main recommendations, the Council will need to identify a relevant source of funding, taking into consideration the existing commitments across the capital programme. The Executive will also need to consider the

associated revenue implications of a capital contribution, acknowledging that any financial commitment will need to be funded through borrowing and incur a Minimum Revenue Provision charge on the revenue account. Typically for every £500,000 borrowing the revenue cost is £35,000 per annum.

## **6. Legal Implications**

- 6.1 The Council's internal legal officers have completed an extensive review of existing documentation relating to the sluice gates, weir and footbridge at the site of the collapsed Weir. A privileged legal briefing note is attached at Appendix 2, summarising the outputs of this research and the Council's position with regards to ownership and maintenance liabilities.

## **7. Human Resource Implications**

- 7.1 The Council has an extensive existing Capital Programme being delivered by the Corporate Programmes team, with support from enabling services across the Council e.g., finance, procurement, and legal officers. There is insufficient capacity within the existing staffing establishment to progress with any of the options outlined in the mandate beyond management of communications with the relevant third parties.
- 7.2 Should the Executive decide to progress with a level of involvement in the Weir that extends beyond the recommendation, this will require the appointment of a Project Manager (either interim or recruitment of permanent staff) and allocation of sufficient budget to cover this.

## **8. Equality and Diversity Implications**

- 8.1 The Council has a statutory duty under section 149 of the Equality Act 2010 which provides that a public authority must, in exercise of its functions, have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 8.2 This duty has been considered in the context of this report and it has been concluded that there are no equality and diversity implications arising directly from this report. However, an Equalities Impact Assessment would need to be completed should Executive decide to take a role in seeking a permanent solution to the Weir.

## **9. Climate Change/Sustainability Implications**

- 9.1 There are no climate change implications associated with this report. Regarding sustainability implications, the Tumbling Weir structure is crucial in the management of water levels and flow on the Navigation, particularly during periods of flood.

## **10. Summary of Options**

- 10.1 The Options available to the Council are outlined within the Tumbling Bay Weir mandate. To summarise, these comprise:
- **OPTION 1 (Recommended):** Do nothing as the land and the Tumbling Bay Weir are not owned by the Council. The Council should carry out a public relation exercise to inform residents of the Council's position (as per the Executive Advisory Board recommendation). This will not resolve the ownership and maintenance issues.
  - **OPTION 2:** The Council makes a one off limited financial contribution of £tbc to another organisation leading the work and taking ongoing responsibility, likely to be the National Trust.
  - **OPTION 3:** The Council takes a more active role in the project. In order to do this, the Council would need to recruit a suitable project manager to take the lead in coordinating a collective agreement on next steps with key stakeholders over the next 6 months. This option incurs an initial £50,000 revenue cost and £000's in contributions this and future years. This will be growth in the MTFP and savings will need to be found to cover this cost.
  - **OPTION 4:** Assume full legal responsibility for the Tumbling Bay Weir and agree a transfer of the land and Weir to Guildford Borough Council ownership.

## **11. Conclusion**

- 11.1 The recommendations in this report reflect the Council's position in terms of its land ownership and maintenance responsibilities following extensive legal research. The Council's financial and staffing resources are committed to delivering an existing significant capital programme. Should the Executive decide not to progress with the recommendations outlined, a decision will be required from Executive as to whether these resources should be redirected from the delivery of the capital programme to the Tumbling Bay Weir.

## **12.0 Background Papers**

None.

## **13.0 Appendices**

Appendix 1: Tumbling Bay Weir mandate

Appendix 2: Legal advice relating to the Weir ownership (Exempt)