

Title of meeting: Culture, Leisure and Sport Decision

Date of meeting: 12 October 2012

Subject: Milton Common Memorial
(also known as the 'People's Memorial')

Report by: Head of Environment and Transport

Wards affected: Baffins

Key decision: No

Full Council decision: No

1. Purpose of report

- 1.1 To update and inform the Cabinet Member for Culture, Leisure and Sport on matters relating the memorial at Milton Common, also known as the 'People's Memorial'.
- 1.2 To review the retrospective permission granted by the Cabinet Member for Culture, Leisure and Sport on 20 October 2011 and give further opportunity to consider public comment on the memorial site.

2. Recommendations

- 2.1 That the retrospective permission granted on 20 October 2011 is approved and confirmed.
- 2.2 That this permission allows the memorial to remain on Milton Common and Langstone Harbour foreshore provided the extent of works and their boundary do not exceed those recorded on Drawing MCM-02 dated 26 October 2011.
- 2.3 That the city council undertakes to survey the site on an annual basis to ensure the conditions of approval are adhered to.
- 2.4 That the city council undertakes to monitor the site to ensure vermin are not encouraged by irresponsible feeding of other wildlife (birds).
- 2.5 That the city council and Coastal Defence Partnership continue to monitor the site and maintain the city council's duty of care to the general public. Should the memorial structure show signs of risk of collapse at any time in the future, that authority be given to take all reasonable steps to maintain that duty of care.

3. Background

3.1 Origins of the memorial

- 3.1.1 The city council were first made aware of a memorial structure being built along the shoreline bordering Milton Common and Langstone Harbour in October 2009 following a report from a member of the public and article in The News.
- 3.1.2 The memorial is constructed from materials sourced from the shoreline on Langstone Harbour. The original construction consisted of a circular wall of assorted stone material and was susceptible to coastal erosion and potential to become unstable. It has since been rebuilt with wider base, filled with shingle and haunched on the eastern face.
- 3.1.3 Surrounding shoreline and land has gradually been incorporated into the memorial site. This has included removing natural vegetation, constructing steps within the shoreline bank and placing seats, signs and dovecotes in a new gravel area.
- 3.1.4 The memorial was constructed and is maintained on a regular basis by Mr Wilfie Cummings, also known as Willie Goldfinch. The memorial is intended to honour British Service personnel, with several signs expressing the views of Mr Cummings.
- 3.1.5 Mr Cummings has named the structure the 'People's Memorial' and this has been adopted by members of the public and the media as a term of reference.

3.2 Land ownership

- 3.2.1 The memorial is sited on city council owned land, with Milton Common the responsibility of the Culture, Leisure and Sport portfolio (maintained by the Parks and Recreation Service) and Langstone Harbour the responsibility of the Planning, Regeneration and Economic Development portfolio.
- 3.2.2 Langstone Harbour is leased to Langstone Harbour Board up to the line of Mean High Tide. Whilst it is difficult to ascertain this exact line on the shoreline, the site has been visited at a tide of 4.35m (an estimated average of Spring and Neap High Tides) and the structure has been surrounded by water. The structure is therefore considered to be within the area leased to Langstone Harbour Board.

3.3 Landowner permission

- 3.3.1 No application for landowner permission to erect the memorial was received by the city council or Langstone Harbour Board from Mr Cummings prior to construction of the structure.

3.3.2 The matter and extent of retrospective permission has been discussed between the city council and Mr Cummings since its origination and are further described in Section 3.7 of this report.

3.3.3 Legal Services consulted with Langstone Harbour Board, who have stated the memorial structure does not present a danger to navigation in its current form.

3.4 Byelaw

3.4.1 Milton Common (formerly known as Milton Lake) is included within the 1978 Byelaw for Pleasure Grounds and Open Spaces. The byelaw states that a person may not erect any post, rail fence, pole, tent, booth, stand, building or other structure unless there is an application to the council and permission has been granted.

3.5 Other permissions

3.5.1 As landowner, the city council could have undertaken these works under permitted development rights, without the need for planning permission.

However, planning permission was required as the works were not carried out by, or on behalf of, the landowner (the city council). Given the circumstances and in the absence of a planning application to regularise the situation, the Head of Planning Services considered whether it was expedient to take enforcement action. He concluded that it was not expedient to take action against the works that had taken place but that any further works could be unacceptable.

3.5.2 The matter and extent of retrospective landowner permission has been discussed between the city council and Mr Cummings since its origination and are further described in Section 3.7 of this report.

3.5.3 The Coastal Defence Partnership have surveyed the area and do not believe the memorial will have any significant effect on the natural coastal processes or increase existing erosion along the shoreline. The materials removed from the bank, used to construct the memorial walls, are not a long-term solution to coastal defences.

3.6 Safety considerations

3.6.1 Risk Management have advised that the city council have a duty of care to the public to protect them from any hazard the memorial site may present. This would involve taking reasonable steps, such as regular inspections or erecting appropriate signage.

3.6.2 Since this was identified, the Community Wardens have regularly visited the site to undertake visual checks. Additional monitoring is undertaken by Parks Officers on an ad-hoc basis when visiting the site as part of duties.

3.6.3 The Coastal Defence Partnership have noted that due to it's location in relation to Mean High Water, the structure is vulnerable to wave and tide action, subsequent erosion and consequently its structural integrity. The Coastal Defence Partnership have a monitoring regime which now includes the memorial.

3.7 Actions to date and communication with Mr Cummings

3.7.1 The memorial site has been regularly monitored since the city council was first made aware of the works in October 2009 and any observations, actions and communication with Mr Cummings are summarised in date order as follows:

October 2009 (various dates)

Site visited by officers to determine extent of works and consultation initiated between all relevant PCC departments and third parties. Recognised this would be an emotive matter, considering the intention of any such memorial.

11-12 February 2010

On receipt of reports from members of public that Mr Cummings was driving a car across the Common on repeated occasions. Community Wardens informed Mr Cummings that this was not permitted, who agreed not to do so.

12 February 2010

Site visit and photographic record taken of extent of works, consisting of memorial structure, steps within the shoreline bank, handrail, vegetation clearance to bank and Common, minor planting (annual flowers), wooden seats and 3 sign boards.

15-19 February 2010

Community Wardens reported one further large sign board had been erected on the memorial site titled 'Think About The Thought' and was evaluated to contain potentially offensive and political content. Sign was removed and passed to Legal Services to liaise with Mr Cummings, who had erected the boards and objected to their removal. Mr Cummings agreed not to erect any such worded sign boards on the site.

19 February 2010

Members who had been in consultation with Legal Services to date had indicated they would allow the memorial to remain for the immediate future, whilst further discussion with Mr Cummings was planned.

11 May 2011

Meeting between Mr Cummings and associate, Coastal Defence Partnership and city council officers (from Parks, Community Safety, Asset Management, Planning, Legal Services and Risk Management). All matters relating to the memorial were discussed and the key outcomes were:

- agreement that the boundary of the memorial would not extend any further on this sensitive wildlife site

- additional works to the memorial structure (concrete surround) would raise planning concerns and this would not be pursued by Mr Cummings
- signage such as that removed was not acceptable
- Mr Cummings described his further plans which included wishing to develop a picnic area and children's play area, tea/coffee concessionaire, activities and events in appreciation of the Forces and to install a donations box
- any seating area needed to be safe for members of the public and the city council agreed to install better picnic tables, but did not agree to a children's play area or concessionaire
- a 'No Climbing' sign needed to be installed on the memorial structure and Mr Cummings agreed to fabricate this with wording to be provided by the city council.

14 July 2010

Mr Cummings wished to pursue the idea of a donations box. The city council had no objection in principle but would like to be informed when a robust and secure design was proposed.

17-22 December 2010

Additional sign and minor works to those in place at time of 11 May meeting. Sign wording raised complaint from a member of public for its negative comments to politicians and was removed by Mr Cummings following officer request to do so.

21-29 June 2011

The city council were aware of further works being carried out to the memorial including clearance of natural vegetation, digging and spreading of shingle, installing more seats and erecting a dove cote. Mr Cummings was reminded of his commitment not to carry out additional works.

20 October 2011

Site meeting between Mr Cummings, Cllr Hunt the portfolio holder for Culture, Leisure and Sport, the Parks and Recreation Manager and Senior Landscape Architect. Cllr Hunt agreed that the memorial works could remain on the site but must not extend beyond their current boundary and that a survey would be carried out to formally record this extent.

24 October – 2 November 2011

The site was surveyed on 24 October and a site plan (Appendix 1 Dwg MCM-02, dated 26 October 2011) and photographic survey recorded the extent of works. Mr Cummings was sent a copy of the records and confirmed both their detail and accuracy and his commitment to ensure the memorial site would remain within its present boundaries.

4 January - 23 February 2012

The city council received reports of large number of rats in the vicinity of the memorial. The Pest Control Officer has visited the site on repeated occasions to monitor for the presence of rats, to offer advice on how to avoid bird food falling

on the ground as a potential food source and inform that measures such as rat poison would not be allowed on public land.

20 August 2012

A follow-up survey was undertaken on the memorial site prior to preparing this report. The boundary of the works has not extended beyond that recorded on Dwg MCM-02 dated 26 October 2011, with the main differences observed as:

- a greater amount of loose shingle on the public footpath in comparison to the previously 'swept' surface
- all dove cotes had been removed, with a set of three small bird houses on one of the posts
- the addition of three small planters alongside the existing seating
- variance in the number and variety of flowers and shrubs along the foreshore bank and public footpath (these are not necessarily suited to the salt-laden winds and coastal environment and may not establish or survive as can be seen by trees and shrubs previously planted by Mr Cummings or memorial visitors)

Appendix 1 contains Drawing MCM-03 with these variations recorded, a selection of photos on the two survey occasions and photos of the signs present on site.

3.8 Public response to the memorial

- 3.8.1 Milton Common is a valuable wildlife site and is designated a Site of Importance for Nature Conservation (SINC). It is highly valued by members of the public, particularly dog owners, for the peace and tranquillity afforded along the coastal footpath and the network of footpaths across this semi-natural open space.
- 3.8.2 Cultural Services have received 12 letters, 15 emails, 2 phones calls and 1 visit in person from 7 different members of the public since October 2009, with two further letters from elected Members on behalf of constituents. The areas of concern and objection raised are:
- impact on the Common and Langstone Harbour foreshore with removal of vegetation and amendment to shoreline coastal defences
 - perceived increase in scope of works and site boundary
 - whether permission had been sought or granted for the memorial site and by what process
 - introduction of associated site furniture, namely seats, bins, signs, dove cotes
 - inappropriate wording to some signage
 - use of personal vehicle over Common
 - evidence of rats and reported use of rat poison
 - conflict between individuals over matters related to the memorial
- 3.8.3 Conversely, the memorial has attracted support from both local visitors and those from a wider audience, with articles and information relating to the 'Peoples Memorial' having been made available in the local press, on social networking sites and a dedicated website.

3.8.4 The city council has dealt with all public enquiries in a timely and sensitive manner over this emotive subject, taking into consideration the concerns expressed by local site users with the wider audience that has now established and who support the intentions of the memorial.

4. Reasons for recommendations

- 4.1.1 No permission was sought from Portsmouth City Council or Langstone Harbour Board prior to the construction of the memorial by Mr Cummings and this unauthorised encroachment on Milton Common and foreshore has become the most significant point of contention with members of the public.
- 4.1.2 The Town and Country Planning Act 1990 allows for different types of formal action where there has been a breach of planning control. Planning Services have confirmed that enforcement action would not be expedient in this instance and that the matter should be dealt with appropriately by the landowner.
- 4.1.3 Since the existence of a memorial first became known, there has been no indication from Members that the memorial should be removed, but rather to monitor and manage any development on site with the concerns expressed by members of the public.
- 4.1.4 Cultural Services and Legal Services have engaged with relevant parties (including Langstone Harbour Board and the Coastal Defence Partnership), the portfolio holder Cllr Hunt and Mr Cummings in establishing and dealing with all related matters to date and have made the views of objection known.
- 4.1.5 In a meeting between Cllr Hunt (the portfolio holder for Culture, Leisure and Sport), Parks Officers and Mr Cummings on 20 October 2011, retrospective permission was granted for the memorial works to remain on site but that they must not extend further and as recorded by a survey carried out on 24 October 2011.
- 4.1.6 A follow-up survey conducted on 20 August concluded that whilst there were minor changes to the content of the memorial site features, the boundary of the memorial had not changed from that agreed on 20 October 2011.
- 4.1.7 It is proposed that this report gives opportunity for the portfolio holder for Culture, Leisure and Sport to further reflect and consider all matters and opinions relating to the memorial and that it serve to give formal approval for the memorial to remain, with the condition it does not extend its content or current boundary any further. This approval will serve to satisfy the requirements of the 1978 Byelaw for Pleasure Grounds and Open Spaces for permission to be granted. Any such approval will be as landowner and is not any form of planning approval.
- 4.1.8 In addition, the city council should further request that Mr Cummings continue to deter rats from being attracted to the site by restricting the number of dove cotes, limiting the availability of bird food and taking all reasonable precautions

to stop rats accessing any food sources and as further advised by the Pest Control Officer.

- 4.1.9 Should the memorial be permitted to remain, there is a requirement on the city council to ensure that the site does not pose any safety risk to members of the public. The integrity of the memorial structure sited in the harbour foreshore will continue to be susceptible to coastal erosion, particularly during extreme storm conditions. The Coastal Defence Partnership have committed to include this site as part of their monitoring regime and it is proposed that the regular checks carried out by the Community Wardens continue, in addition to those carried out independently by Mr Cummings.
- 4.1.10 Should the future condition of the memorial structure deteriorate to such a level that raises concern over its structural integrity or present risk of collapse, the Coastal Defence Partnership and city council would need to take all necessary steps to maintain a duty of care to public safety. It is proposed that should this not be dealt with appropriately by Mr Cummings with immediate attention, that the Coastal Defence Partnership are best placed to arrange for the waste materials to be recovered and disposed along the foreshore embankment.

5. Equality impact assessment (EIA)

A preliminary equality impact assessment is currently being undertaken.

6. Head of legal comments

The comments of legal services are contained within the body of this report.

7. Head of finance's comments

No additional funding has been identified for the future maintenance of the 'People's Memorial site. Monitoring and management of the area has previously been funded from existing budgets and this will continue to be the case.

.....
Signed by:
Simon Moon
Head of Environment and Transport

Appendices:

Appendix 1: Mapped and photographic record of works

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
None	

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by Cabinet Member for Culture, Leisure and Sport on 12 October 2012.

.....
Signed by:
Cabinet Member for Culture, Leisure and Sport