

WEST DUNBARTONSHIRE COUNCIL

Report by Head of Legal, Democratic & Regulatory Services

Licensing Committee: 28 August 2013

Subject: Proposed licensing scheme for boat hirers

1. Purpose

- 1.1** To inform the committee about a report by the Marine Accident Investigation Branch, and to recommend a response to the recommendation contained within it.

2. Recommendations

- 2.1** The committee is asked to agree in principle that it is minded to introduce a licensing scheme for boat hirers throughout West Dunbartonshire, subject to a final decision being made at a later date when a report would be presented to the committee describing how such a scheme might operate.

3. Background

- 3.1** On 19 September 2012, a small passenger ferry called the *Vixen* sank in Loch Lomond while crossing from Ardlui (in Argyll & Bute) to Ardleish (in Stirling Council's area).
- 3.2** *Vixen* foundered because the weight of the passengers, bilge water and the dynamic effect of propulsion was sufficient to submerge the corroded weed hatch, which was sited above the rudder and propeller. *Vixen* sank quickly, around 50m from the shore. Five of the six passengers donned lifejackets and jumped out of the boat. One passenger, who was a weak swimmer, was not provided with a lifejacket; she and the skipper remained on board as the boat sank beneath them. They were dragged underwater, but managed to swim back to the surface. Some of the passengers swam ashore; the remainder, and the skipper, were quickly rescued by a member of the public who was in another boat nearby.
- 3.3** An investigation carried out by the Marine Accident Investigation Branch (MAIB) found that *Vixen* was in poor condition. The investigation found that there was no effective regulatory oversight of small commercial passenger vessels on Loch Lomond because the available legislation, and the Inland Waters Small Passenger Boat Code, were not being applied.
- 3.4** The Maritime & Coastguard Agency's (MCA) principal focus is on vessels that go to sea. The MCA can prohibit the use of boats on inland waters that are dangerously unsafe, however each year only about 31 small passenger boats are inspected by the MCA on inland waters in Scotland and Northern Ireland.

- 3.5** Loch Lomond & The Trossachs National Park Authority (the NPA) have byelaws which set the standards required for the type and use of lifejackets and for navigation safety on the loch. The byelaws also require owners of power-driven craft to register their boats. NPA officers can inspect boats to check that the registration details are correct.
- 3.6** The Civic Government (Scotland) Act 1982 allows Councils to require a licence *“for the use of a vessel, in the course of a trade or business carried on from any place within the area of the licensing authority, for the purpose of (a) letting it for hire; or (b) carrying for reward 12 or fewer passengers, for pleasure, recreational, educational or sporting purposes”*.
- 3.7** There are exceptions where such a licensing scheme cannot apply, for example any vessel with a passenger certificate under the Merchant Shipping Act 1995; any vessel used exclusively for fishing in non-tidal waters; or any vessel on any inland waterway or harbour owned or managed by the British Waterways Board.
- 3.8** The Civic Government (Scotland) Act 1982 does not apply a mandatory licensing scheme to boat hirers. Such a licensing scheme only comes into effect if the Council makes a resolution to implement such a scheme. Clydebank District Council passed such a resolution but Dumbarton District Council did not. West Dunbartonshire Council has not passed such a resolution; neither has Stirling Council. Argyll & Bute Council did have a boat hirer licensing scheme at the time of the *Vixen* accident, although the *Vixen* did not have a licence. However, according to MAIB, *“(Argyll & Bute) Council had no mechanism for inspecting the condition of vessels or checking the qualifications held by operators before it issued boat hire licences; it relied solely on the information supplied by the operators. Similarly, the Council relied on others, such as the police, the Park authorities and the MCA, to alert them to any problems with their licensed boats”*.
- 3.9** The Inland Waters Small Passenger Boat Code (the ‘Inland Waters Code’) was published jointly by the Association of Inland Waters Navigation Authorities and the Maritime & Coastguard Agency in 2007. The Inland Waters Code sets out standards for the construction, equipment, stability, operation, manning and maintenance of small passenger boats.
- 3.10** Regarding the *Vixen*, MAIB found that *“if the vessel had been surveyed by a competent person, the numerous defects identified during this investigation would probably have been detected”*. The MAIB report summarises the reasons for the sinking of the *Vixen* and concludes that *“All of these shortcomings would have been identified if the vessel had been required to meet the standards of the Inland Waters Code.”*

4. Main Issues

- 4.1 The MAIB report lists various recommendations aimed at different organisations. The MAIB wrote to West Dunbartonshire Council on 18 June 2013 recommending that this Council (and Stirling Council):

“Take action to:

- Establish a boat licensing system for inland waters falling under the Council’s area of responsibility and which adopts the Inland Waters Small Passenger Boat Code as the standard applied for small passenger boats carrying fewer than 12 passengers on its categorised waters.*
- Require such boats to be regularly surveyed by a competent person employed by a Certifying Authority or similar organisation as may be recommended by the Maritime and Coastguard Agency.”*

The report recommends that Argyll & Bute Council brings its existing licensing scheme up to this standard.

- 4.2 The Council was legally required to respond to MAIB’s recommendation within 30 days of receipt of their letter i.e. by 18 July. The response by the Section Head (Trading Standards & Licensing) was as follows:

Your response to the recommendation above including the action taken or will be taking

In consultation with senior managers, I have fully considered your report about the sinking of the Vixen. We accept your finding that a boat hirer licensing scheme based on the Inland Waters Code (and which requires regular surveys by competent persons) would reduce the likelihood of any similar accidents occurring on inland waters. We are therefore minded to establish a boat hirer licensing scheme that meets those criteria. I will submit a report to the Council’s Licensing Committee recommending that the committee agree that it is minded to implement such a licensing scheme in principle. If the committee agrees that general recommendation, we will investigate the issues in more depth before submitting a further report with more detailed recommendations and asking the committee to make a final decision. The detailed issues we will need to consider include:

- (1) the types of vessels that would be included within such a licensing scheme,*
- (2) consultation with boat hirers to determine the impact on them, in particular the economic impact of paying for regular surveys by independent competent persons, and*
- (3) the need to work closely with Argyll + Bute Council and Stirling Council to avoid any unnecessary inconsistency in approach on Loch Lomond.*

Details of your timetable to implement the recommendation

The first report to the Licensing Committee will be on 28 August 2013. Assuming the committee agrees to consider a later detailed report, we expect that will be submitted to the committee in or before April 2014.

- 4.3** The practical details referred to in para 4.3 above will need to be fully investigated by officers. It is proposed that a further report will be provided to the committee at a later date describing how the details of how such a scheme might operate, and the type of vessels it should apply to. In particular, the Council needs to balance the safety of the travelling public against the economic impact of a licensing scheme on boat hire operators.
- 4.4** Referring to the different licensing requirements by the three Councils that regulate Loch Lomond, the MAIB report states “*This difference in licensing requirements, if allowed to persist, could have the effect of encouraging any sub-standard operators to move their operations to parts of Loch Lomond where no licensing is required*”. The licence is required from the local authority for the place where the passengers embark on their journey. If the committee agrees in principle to introduce a licensing scheme, officers will work closely with the other two Councils with the aim of achieving a consistent approach across Loch Lomond prior to the committee being asked to make a final decision.
- 4.5** Although the MAIB report refers to an incident on Loch Lomond, there are other waters within West Dunbartonshire where boats may be hired and where accidents could occur. Therefore it is recommended that any licensing scheme should apply throughout West Dunbartonshire.

5. People Implications

- 5.1** The extra work involved in administering a boat hirer licensing scheme would have to be absorbed within the workload of the Licensing Team.

6. Financial Implications

- 6.1** The Council should aim to recover the costs of administering a licensing scheme from the licence fees that would be charged to boat hire operators. Members should refer to the separate report on ‘Review of licence fees’ which explains in general how fees relate to costs. Boat hire operators would also be required to reimburse the Council for the cost of the independent inspection of their boats by a competent person recommended by the Maritime & Coastguard Agency.

7. Risk Analysis

- 7.1** There is a risk that the Council could be publicly criticised for not complying with the MAIB’s recommendation, especially if any further accidents were to happen on Loch Lomond, possibly involving the loss of life. Loch Lomond is perhaps unique in being a popular inland water boating area that is regulated

by three different Councils. Unless the Councils act consistently, there is a risk that boat operators could move their operations around the loch to evade regulatory oversight.

8. Equalities Impact Assessment (EIA)

- 8.1** An equalities impact assessment identified that a licensing scheme should take account of the need to ensure the safety of people with disabilities or age-related infirmities. If the committee agrees the recommendation, these issues would be fully considered prior to a report being presented to the committee describing how such a scheme might operate.

9. Consultation

- 9.1** Consultation with Argyll & Bute and Stirling Councils is at an early stage. Boat hirers have not been consulted at this stage, but this will be done before the committee is asked to make a final decision on any scheme.

10. Strategic Assessment

- 10.1** A licensing scheme will improve the wellbeing of communities and protect the welfare of vulnerable people.

Peter Hessett

Date:

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Appendices:	None
Background Papers:	Report on the investigation of the foundering of the small passenger ferry Vixen in Ardlui Marina, Loch Lomond, on 19 September 2012 (<i>Marine Accident Investigation Branch, June 2013</i>)
Wards Affected:	All