

Purpose: For Decision



## Committee report

Committee	<b>CABINET</b>
Date	<b>11 MARCH 2021</b>
Title	<b>DISPOSAL OF RYDE HARBOUR AND ADJOINING LAND TO RYDE TOWN COUNCIL</b>
Report of	<b>CABINET MEMBER FOR STRATEGIC FINANCE AND COVID 19 RECOVERY, AND CABINET MEMBER FOR CORPORATE RESOURCES</b>

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### EXECUTIVE SUMMARY

1. To review the market testing exercise undertaken for the future management and operation of Ryde and Ventnor Harbours as agreed in previous delegated papers of December 2018 and November 2019 and as agreed in those papers, to bring this matter before Cabinet.
2. During discussions about the marketing exercise, the Council were approached by Ryde Town Council (RTC) regarding the ownership and management of Ryde Harbour. They formally requested to be treated as a special purchaser. This paper presents an overview of this process and suggests options for the future of both Ryde and Ventnor Harbours.
3. The paper sets out the financial and legal implications of proceeding with a disposal of Ryde Harbour and the process for dealing with Ventnor Harbour given that the key objective set out in the earlier delegated papers was to enable Ryde and Ventnor Harbours to be operated at a net nil cost to the Isle of Wight Council and thereby generate a saving to the authority.

### BACKGROUND

4. In December 2018 the council considered a delegated decision report and agreed to implement the following options: -

Option 1 - To offer the freehold/leasehold of Ryde Harbour on the open market with a restrictive covenant that it only be used as a harbour/marina; such a covenant to only be

removed if an alternative use of the area could generate a significant and sustainable economic benefit to Ryde and/or the Island. Any consideration should include a reversion to allow for any future development of the seafront.

Option 4 - To offer to transfer the management of Ventnor Harbour to a third party through the open market at no cost to the council;

Option 6 - The final agreed terms of any transfer/outsourcing to a third party to be the subject of a further delegated decision of the Cabinet Member, but where no terms are agreed then the council will continue to directly manage the harbour.

### **Ryde Harbour**

5. In January 2019 prior to undertaking the marketing exercise the council received a formal expression of interest from Ryde Town Council for the purchase of Ryde Harbour; following a meeting with the Deputy Leader and senior officers they submitted an expression of intent which requested that they be considered as a special purchaser. The delegated paper of November 2019 agreed to consider this, subject to a full business case being prepared by Ryde Town Council for the future operation of the harbour.
6. Clearly Ryde Town Council required a reasonable period to prepare a robust business case and undertake all necessary due diligence checks; accordingly, it was agreed that they had a maximum period of three months to prepare and submit the business case. During this time, they liaised with the council to clarify all responsibilities and liabilities resulting from taking on the freehold/leasehold of the harbour.
7. Ryde Town Council submitted a full business case on 10 March 2020 and as part of which they sought to negotiate heads of terms for the freehold purchase of the harbour, the lease of two parcels of adjoining land and the existing harbour hospitality suite. The land in question comprises part of the adjacent pay and display car park and esplanade, as well as a section of the Eastern Esplanade Gardens. The latter is unoccupied open space but has a revenue earning potential and a corresponding loss of amenity land hire income to the council. The loss of parking is 10 spaces and the maximum income loss would be £7,717 per annum. Whilst the level of income from amenity land hire fluctuates from year to year it is on average £1,151 per annum. These income levels are budgeted to be achieved so any transfer would result in a loss of revenue income that the council would be required to fund. The areas in question are shown on the plans which form appendix 1.
8. The evaluation of the business case process was disrupted by the pandemic but was eventually completed by a team of three council officers against set criteria which was outlined to RTC prior to submission. The submission initially, did not answer all the requirements and as such a further request for information was made. An officer and member meeting was arranged with RTC on the 21 July 2020 to discuss this and the further information was received on the 27 July. Despite further disruptions from the pandemic a final officer and member meeting was held on the 16 December 2020 and it was agreed that a report would be brought back to Cabinet to enable the necessary decisions to be made to progress the matter.

### **Ventnor Harbour**

9. If Ryde Town Council were to take on these additional responsibilities, Ventnor Harbour would then if required be subject to a separate market testing exercise. The delegated decision of November 2019 anticipated that, subject to a suitable offer being received a new management contract could be in place from 1 April 2021 for Ventnor. This deadline will not be achieved as a result of the pandemic and the resultant delay in the evaluation and subsequent decision-making process.
10. As reported in the previous delegated decision reports the council has received a small number of expressions of interest from private sector marine operators, and initial interest from Ventnor Town Council. Whilst the indication is that commercial third parties might consider either of the harbours individually (see comment below regarding probable need for a subsidy for Ventnor) there has been stronger interest in operating both.
11. Ventnor Harbour currently has a budgeted operating cost to the council of £58,030 in 20/21. This is driven by the annual cost for the removal and disposal of seaweed (macroalgae), of £87,420 per annum. Whilst there may be opportunities for a private operator or other party to improve its trading position in taking on ownership of the harbour it is unlikely that they would take on the facility on a standalone basis, without the benefit of a subsidy from the council.
12. Other factors which need to be considered as part of any market test and subsequent management agreement for Ventnor Harbour include: -
  - The commercial operators using the harbour has a 125-year lease which runs until 28 February 2129
  - The council is required to maintain a right of navigational access to the commercial operators' premises for the duration of their lease
  - The council has a duty to remove and dispose of the macroalgae to prevent a statutory nuisance being created through its accumulation and decay;
  - The council has a licence from the Marine Management Organisation for the disposal of sediment and macroalgae from Ventnor Haven; this expires on 24 March 2026
  - The current contract for the removal of macroalgae was re-let on 1 April 2020 and will expire on 31 March 2022.

## STRATEGIC CONTEXT

13. The potential to outsource the harbours may create new opportunities and protect the assets in addition to and improving the council's future financial position. It will support the following commitments in the Corporate plan 2019 - 2022; namely: -
  - Deliver economic growth and prosperity
  - Plan for our future needs
  - Provide sound financial management
14. The provision of harbours is not a strategic function of the Council, the facility in Ryde was constructed 1991 and Ventnor in 1994, and the council as such, has legal duties in the ongoing running of these facilities particularly with regards to health and safety

## CONSULTATION

15. All interested stakeholders, namely the Town and Parish Council and users of the Harbours together with local members, will be able to make representations through the normal processes in the consideration of this paper.

## FINANCIAL / BUDGET IMPLICATIONS

16. In terms of future capital costs Ryde harbour will require capital dredging, estimated at £300,000 to £400,000; in addition, the gabions that form part of the construction of the harbour arm will require replacement at an estimated cost of £1,062,000. These figures were obtained in 2006 from a report commissioned by Royal Haskoning so are likely to be higher in the present day.
17. If Ryde Town Council were to include the additional parcels of land, as identified within its expression of intent, this is likely to cause financial loss to council with a loss of revenue income from the car park and amenity land hire. At full occupancy this would be estimated at £7,717 for parking and £1,151 from the hire of Eastern Esplanade Gardens. The total combined losses are estimated to be in the region of £8,868 per annum. The total loss of income from the disposal being in the region of £11,166 when the annual revenue position of the harbour is included
18. Ryde Town Council is seeking to acquire the freehold interest in the harbour and two associated parcels of land on a leasehold basis. Whilst, without a marketing exercise, it is impossible to predict what a private operator might be willing to pay for Ryde Harbour and the management of Ventnor Harbour, it is virtually certain that this would result in the council avoiding the capital cost identified in section 16 above
19. The current financial pressure at Ventnor relates to the ongoing costs of clearing seaweed from the harbour. The disposal of Ryde Harbour would leave this pressure unresolved. The original intention was to market the harbours together in the hope that opportunities would come forward for each and there was always the possibility of interest being shown for both harbours.
20. If consideration is given to deal with Ryde as a special purchaser and an off-market transaction is to be undertaken then a section 123 valuation is required from an independent valuer, so that the Council can prove that it has achieved best consideration. A valuation of such a facility will require the appointment of a specialist valuer with expertise in such matters, and there are likely to be very few of these. The cost of such a valuation could be substantial (potentially anywhere between £5,000 and £15,000) and may take time to obtain.

## CARBON EMISSIONS

21. There are no direct implications for the council's carbon management plan arising from the recommendations in this paper. There may be a potential increase in the Island's overall carbon footprint if the harbour is developed in the long term to provide a greater economic benefit to the Island.

## LEGAL IMPLICATIONS

22. The Council has the power to dispose of property under section 123 of the Local Government Act 1972, which requires it to achieve 'best consideration' in any disposal. The council must follow the statutory open space disposal procedure as set out in section 123 (2A) of the Local Government Act 1972.
23. Ryde Harbour and the identified parcels of land are owned freehold by the Isle of Wight Council, but may be subject to constraints that would impact regeneration such as restrictive covenants in favour of the Brigstocke and Lind estates. The covenant primarily restricts the height of any potential development and states not to be higher than twenty-five feet above esplanade level; however, it will be necessary to check all such titles to understand the presence, and indeed nature of any other covenants that may exist.
24. Ventnor is a Statutory Harbour and approval in the form of a new Harbour Revision Order (HRO) will be required from the Marine Management Organisation (MMO) before the statutory functions could be outsourced. We are able to apply to close the harbour as a statutory harbour, however the closure would require an application to be made to the Department for Transport
25. Without MMO approval (via an HRO) to transfer certain functions we would need to continue to meet our statutory obligations to manage the harbour. Therefore, the only way to operate Ventnor with no cost would be via a HRO – either to divest ourselves in total (and that would need further consideration in terms of what that would actually require) or to divest ourselves of some of our responsibilities such that the harbour could be managed to include some of the statutory functions.
26. As has been experienced at Newport the order process is time consuming and takes an undefined period – so any decision to put the management out to tender will need to take this into account. Accordingly, until we have a new HRO this option cannot be achieved.
27. The Monktonmead outfall was created by the Environment Agency and flows into the Harbour. On that basis the following applies to the owner of the harbour as stated

*The structures created or improved will form part of the property on which they stand and unless otherwise set out in this Agreement, they will in accordance with the normal presumption be in the ownership of the owner of the Land. The Environment Agency does not promise, warrant or make any representation by this agreement that it will maintain or repair the Works or any part of them but it may in its sole discretion maintain or repair such Works in accordance with its statutory powers. A £50,000 from the Contribution shall be treated by the Environment Agency as a commuted sum representing 4% towards the future costs (which includes maintenance, repairs, operating and all other associated future costs).*

## EQUALITY AND DIVERSITY

28. The Council as a public body is subject to general and specific duties under equality and diversity legislation and as such has a duty to impact assess its service, policies/strategies and decisions with regards to diversity legislation and the nine

protected characteristics (race, gender reassignment, disability, age, sex and sexual orientation, religion or belief, pregnancy and maternity, marriage and civil partnership). There are no direct implications for the Council's duties under the terms of the Equality Act 2010 arising from the recommendations in this paper.

## PROPERTY IMPLICATIONS

29. A special purchaser is a party with some form of 'interest' in a property, generally being either a legal interest (such as a tenant seeking to buy the freehold, or a party seeking to extinguish a covenant) or a geographical interest (the property adjoins that of the special purchaser and there is a logic to joining the titles). A town council seeking to acquire a property within its area for policy reasons (as is the case with Ryde Harbour) might thus be deemed a special purchaser.
30. Standard practice is that a special purchaser will pay above market value to reflect the added value to them of combining the legal interests, and for being able to buy the property off-market (subject to independent valuation). That said, whilst the council has a fiduciary duty when disposing of property, in some circumstances best consideration can reflect well-being (social, economic, or environmental), but assessing the 'value' of this against any loss of capital value can be very tricky. If an off-market transaction is to be undertaken then a section 123 valuation is required from an independent valuer, so that the Council can prove that it has achieved best consideration. A valuation of such a facility will require the appointment of a specialist valuer with expertise in such matters, and there are likely to be very few of these. The cost of such a valuation could be substantial (potentially anywhere between £5,000 and £15,000) and may take time to obtain.
31. The existing utilities block (known as the hospitality suite) for Ryde harbour provides shower and toilet facilities for harbour users and is located approximately 150m east of the harbour and is situated at the rear of the Eastern Esplanade public conveniences building which is in part leased out to Ryde Town Council on a 125 years lease at a peppercorn rent. The possible freehold/leasehold transfer of the harbour will need to also include access to this facility, and it is envisaged that this would be through a lease of the remaining part of the building.
32. In the previous delegated decision one of the agreed options was "to offer the freehold/leasehold of Ryde harbour on the open market with a restrictive covenant that it be only used as a harbour/marina; such covenant to only be removed if an alternative use of the area could generate a significant and sustainable economic benefit to Ryde and/or the Island. Any consideration should include a reversion to allow for any future development of the seafront." If a transaction is agreed with Ryde Town Council, it is recommended that a similar covenant be negotiated.
33. In 2019 the Environment Agency diverted Monktonmead outfall into Ryde harbour although they could not sign up to indefinitely maintain the structure and ultimately this responsibility would fall to the landowner if they were unable to continue to do so. The Environment Agency have added all elements of the outfall structure to their maintenance schedule and while in a position to they will undertake maintenance works as required for structural and safety purposes. Should the Environment Agency be unable to fulfil this

role then they will start withdrawal of maintenance procedures with the council or subsequent owner taking them on.

## OPTIONS

34. The options available to the council are: -
1. Agree to the freehold transfer of the Ryde Harbour and the lease transfer of the two parcels of land and hospitality suite to Ryde Town Council, recognising a loss of budgeted income of up to £11,166 per annum, but with the avoidance of the future cost of the capital works that would be required to keep the facility operational. In addition to accept the cost of the section 123 valuation and to make the transfer subject to the receipt of this valuation
  2. Agree to a leasehold transfer of Ryde Harbour and the two parcels and building of land, recognising a loss of budgeted income of up to £11,166 per annum, but with the avoidance of the future cost of capital that would be required to keep the facility operational. In addition to accept the cost of the section 123 valuation and to make the transfer subject to the receipt of this valuation
  3. Not to agree to transfer of Ryde Harbour to Ryde Town Council and to market both facilities at no cost to the Council as originally intended.
  4. To offer the management of Ventnor Harbour to a third party through the open market at no cost to the council if option 1 or 2 are agreed.
  5. To cease this exercise and to continue with the direct operation and management of these facilities until a further review of their operation and sustainability can be considered.

## RISK MANAGEMENT

35. In granting Ryde Town Council option 1 or 2 above, Ventnor Harbour would then need to be marketed as a stand-alone facility and private operator interest may be lost. The full cost of maintaining Ventnor Harbour will still fall to the council and is likely to increase in future years. However, rejecting the offer from RTC would result in the marketing of both harbours as originally intended and this may not result in a positive outcome.
36. The implications of the potential transfer of Ryde Harbour and associated land to Ryde Town Council on the regeneration of the esplanade has been considered by officers in the regeneration and property teams. Furthermore, as part of any transfer officers will assess the impact of any proposals on the regeneration proposals to ensure that these are not compromised.
37. There is a financial and resource impact on RTC in relation to taking on future maintenance liabilities for Monktonmead outfall; although these are not currently quantifiable.
38. The nature of the disposal of Ryde Harbour (leasehold or freehold) will influence the future financial risk to the IWC. RTC are seeking a freehold purchase which would mean

that all risks associated with the future management, funding, upkeep and legal responsibilities would rest with the town council. This will completely remove any call on IWC resource for the facility into the future. Ryde Town Council are aware of these issues and the financial risks they would inherit and wish to continue to pursue a freehold purchase. They are also aware that the council would need to place a covenant on the disposal.

39. A long lease would still place most of the above matters with RTC but could result in the facility returning to IWC as freeholder. A lease would also ensure that any alternative uses or redevelopment proposals could not be approved without agreement by both IWC and RTC, a “double lock” for the benefit of the local and wider island given that Ryde is a key gateway.

## EVALUATION

40. The provision of Ryde Harbour is not a statutory duty of the council, but Ventnor Haven is a Statutory Port and, notwithstanding its lease obligations toward the commercial operator to keep open, the Isle of Wight Council is statutorily obliged to maintain its operation and remove the macroalgae to prevent a statutory nuisance.
41. Securing independent operation of the harbours, through its transfer of the freehold/leasehold to Ryde Town Council and the two parcels of land and outsourcing the management function for Ventnor, would not in the case of Ryde achieve the objective set out of operating at no cost to the Council. There would be a potential revenue loss of £11,166 however there would be an avoidance of the financial commitment in long term maintenance outlined in 16 above
42. Allowing RTC to take on the responsibility for Ryde will therefore require the IWC to seek securing a private sector operator for the management of Ventnor Harbour as a stand-alone facility and at no cost to the council. This could prove to be extremely difficult given the known issues and associated levels of cost. The refusal to allow RTC the lease and market the facility together as originally intended would allow this option to be explored.
43. Refusal of the offer from RTC and the marketing of both options together might result in a loss of opportunity from RTC and the marketing exercise may not produce an acceptable offer for either harbour.

## RECOMMENDATION

Cabinet should consider the options and determine which of those options form the agreed resolution or agree an alternative resolution.

## BACKGROUND PAPERS

- Delegated decision report December 18 – Review of Council Assets – Ryde/Ventnor harbours

- Delegated decision report November 19 – Review of Council Assets – Ryde/Ventnor harbours,

## APPENDICES

Appendix 1 - Plans showing areas of land requested by Ryde Town Council

Appendix 2 - Income and expenditure summary for Ryde and Ventnor harbours.

Contact Point: Alex Minns, Assistant Director of Neighbourhoods

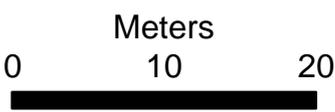
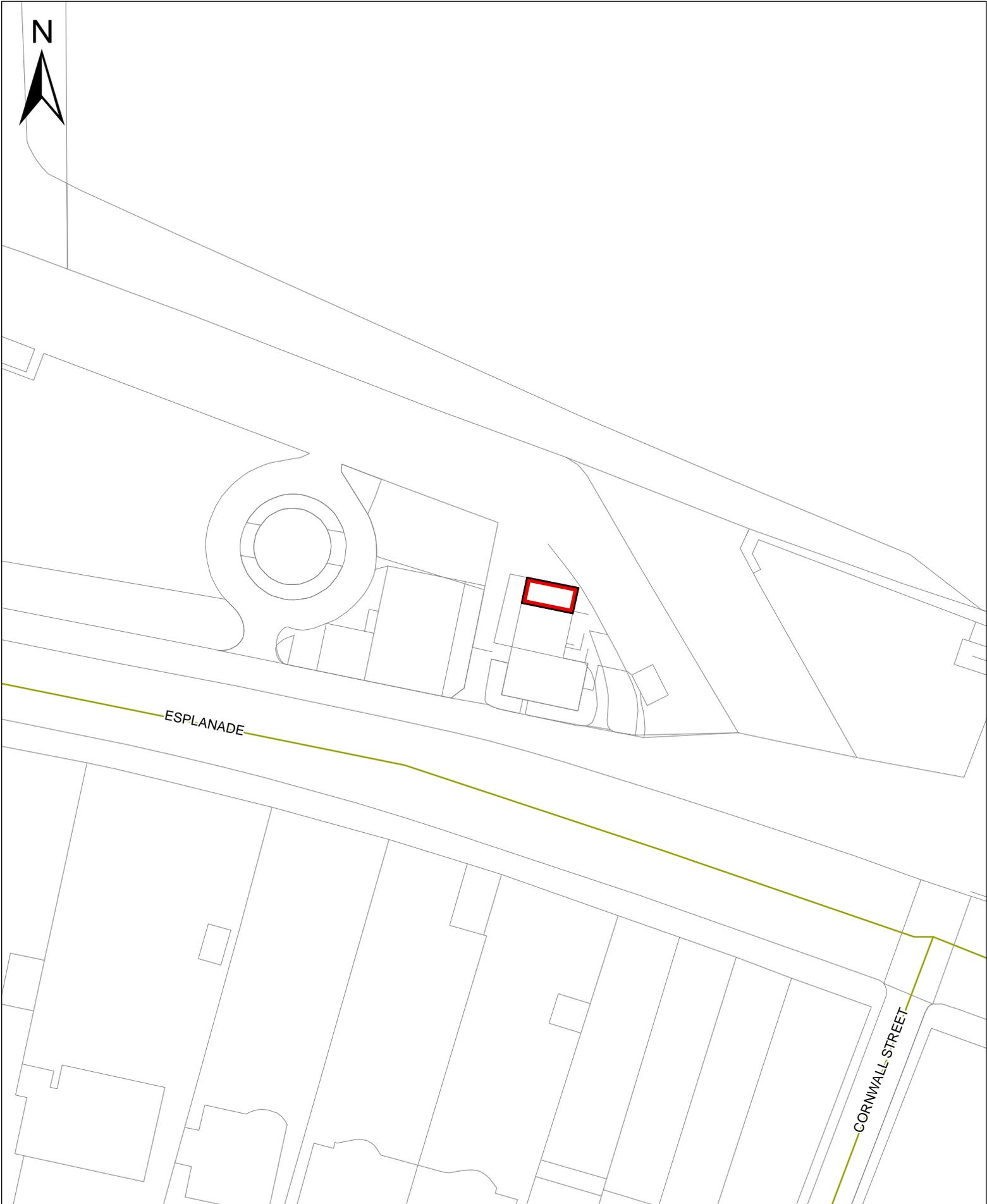
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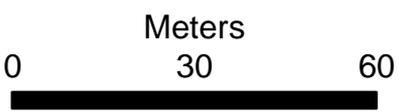
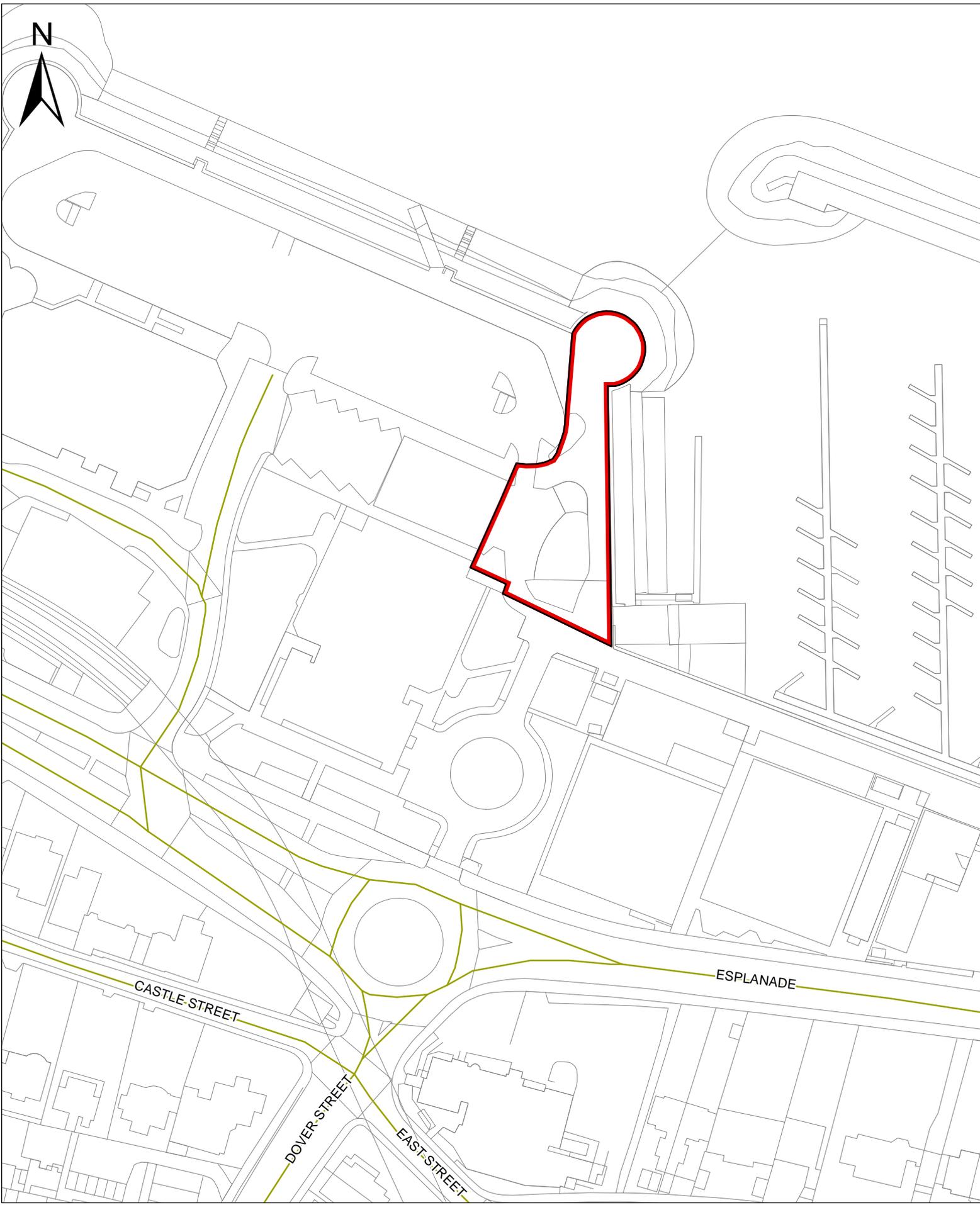
CHRIS ASHMAN  
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CLLR STUART HUTCHINSON  
*Cabinet Member for Strategic Finance  
and COVID19 Recovery*  
CLLR BRIAN TYNDALL  
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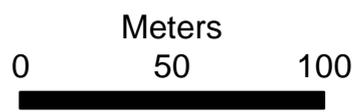
# Ryde Harbour Car Park/Promenade, Quay Road [Scale 1:1250 @ A4]



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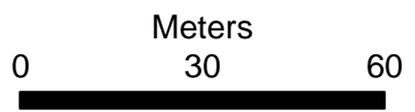
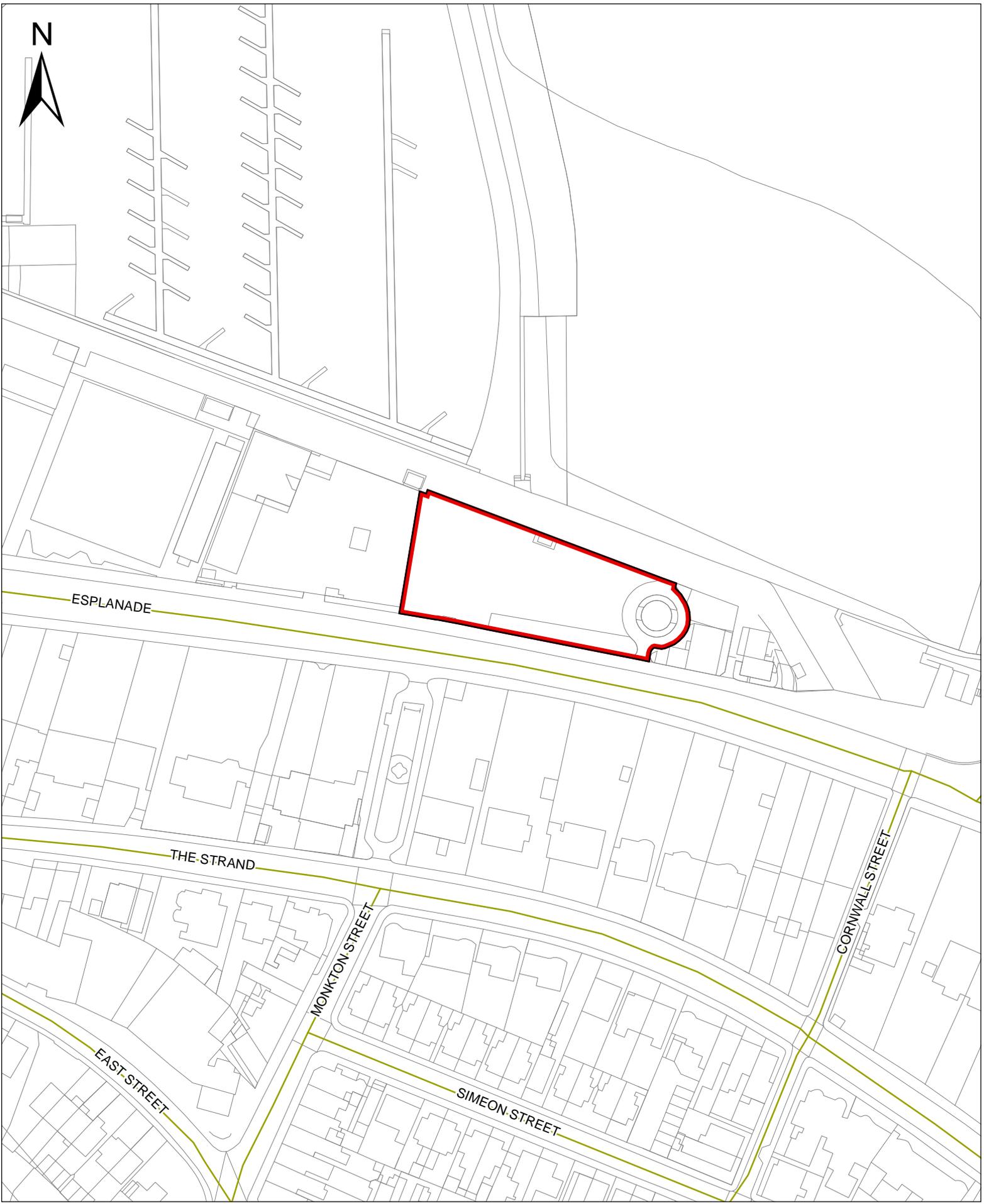
# Ryde Harbour, Quay Road [Scale 1:2500 @ A4]



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# Eastern Gardens, Esplanade, Ryde [Scale 1:1250 @ A4]



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## APPENDIX 2

Ryde Harbour and Ventnor Haven Budgets for Financial Year 2020/21		
<b><u>Ryde Harbour</u></b>		
<b>Expenditure - Ryde Harbour</b>		<b>2020/21 Budget</b>
	Employees	36,707
	Premises	11,050
	Transport	708
	Supplies and services	3,921
	Contracted services	10,000
	Other	0
	<b>Total</b>	<b>62,386</b>
<b>Income - Ryde Harbour</b>		<b>2020/21 Budget</b>
	Fees & charges	-62,637
	Other income	-2,047
	<b>Total</b>	<b>-64,684</b>
<b>Net position - Ryde Harbour</b>		<b>-2,298</b>

<b>Ventnor Haven</b>		
<b>Expenditure - Ventnor Haven</b>		<b>2020/21 Budget</b>
	Employees	1,416
	Premises	194
	Transport	0
	Supplies and services	1,255
	Contracted services	73,189
	Other	0
	<b>Total</b>	<b>76,054</b>
<b>Income - Ventnor Haven</b>		<b>2020/21 Budget</b>
	Berthing & Mooring	-6,024
	Leases	-12,000
	<b>Total</b>	<b>-18,024</b>
<b>Net position - Ventnor Haven</b>		<b>58,030</b>