



Report No: **173/2010** Public Agenda Item: **Yes**

Title: **Harbour and Marine Services Commissioning**

Wards Affected: **All Wards in Torbay**

To: **Harbour Committee** On: **21st June 2010**

Key Decision: **Yes – Ref X41/2009**

Change to Budget: **No** Change to Policy Framework: **No**

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## **1. What we are trying to achieve and the impact on our customers**

- 1.1 The commissioning of the Council's Harbour Authority function for Tor Bay Harbour is a key outcome of the Council's Transformation Programme. This report seeks to amend the Harbour Committee's previous recommendations to the Environment Commissioner and the Council regarding a commissioning structure that will discharge this important statutory function and secure ongoing maritime benefits for the wider community in Torbay.
- 1.2 Endorsement of, and improvements to, the existing Harbour Committee governance arrangements and the creation of a commissioned Harbour and Marine Services business unit will result in a more coherent delivery of the Council's 'Harbour Authority' function. It will also help to provide further clarity to partners in both the public and private sector and assist with better community development and engagement.

## **2. Recommendations for decision**

- 2.1 **That the Environment Commissioner and the Council be recommended to approve the establishment of a Harbour Board as the Harbour Commissioning Body.**
- 2.2 **That the Council be recommended to delegate to the Environment Commissioner, in consultation with the Chairman of the Harbour Committee and the Executive Head of Harbour and Marine Services, to expand upon the Harbour Committee's constitutional Terms of Reference (see Appendix 1) to establish and negotiate a formal 'Commissioning Agreement' between the Harbour Board and the Council, based on the key principles set out in Appendix 3.**

- 2.3 That the Council be recommended to approve that the Harbour Board (as the Harbour Commissioning Body) will be responsible for the oversight and performance management of the Harbour Authority delivery arm, currently known as the Harbour and Marine Services business unit.**
- 2.4 That, notwithstanding the role of the Overview and Scrutiny Committee, responsibility for the oversight of the Harbour Board's performance against the outcomes set by the Council within the 'Commissioning Agreement' be undertaken by the Pride in the Bay Strategic Commissioning Partnership.**
- 2.5 That the Council be recommended to approve the land, buildings, structures and other assets that will make up the "harbour estate", as detailed in Appendix 4, to enable the Harbour Board to deliver the harbour undertaking and to support the maritime objectives expected by the community of Torbay.**
- 2.6 That the Council be recommended to approve a Harbour Board Structure as set out in Appendix 5 Option A**  
**OR**  
**Appendix 5 Option B.**

**3. Key points and reasons for recommendations**

- 3.1** This report outlines work that has been undertaken by the Executive Head of Harbour and Marine Services in relation to the establishment of the proposal to commission the provision of the existing Harbour and Marine Services business unit via the Harbour Committee, to be renamed the "Harbour Board", along similar lines to the current constitutional arrangements within Torbay Council.
- 3.2** This proposal is an extension of the journey taken by the Council towards good governance for its Harbour Authority function. The proposal is also a response to the Council's continuing transformation programme and it reflects existing Government policy in the context of municipal ports.
- 3.3** This is an example of the Council commissioning a service by way of an 'in-house' business unit working through an established decision making Committee. The Council's current arrangements for governing Tor Bay Harbour already meet the standard for recognition as national best practice and by adopting a commissioning structure that helps to embed this model it will be possible to provide even greater focus on the outcomes required. The Council, as the commissioner of this service, is investing its resources to get the best return on that investment for the Bay Family. For the Harbour Committee (Board) the return will be the potential to maximise the role of Tor Bay Harbour and its economic and social contribution to the community it serves.
- 3.4** The Government expects local authorities to accommodate underlying statutory requirements (both in local government legislation and in specific harbour legislation) in their approach to management of municipal ports. These arrangements should also seek to address stakeholder requirements and take full account of the commercial realities of municipal port operations. Approval of

the recommendations will put in place an effective Harbour Authority delivery vehicle that will improve on the existing Harbour Committee governance arrangements and meet the expectation of national ports policy.

- 3.5 The Harbour Committee's Terms of Reference are set out in full in Appendix 1 and the current Local Protocol for Harbour Committee members is set out in Appendix 2. The principle business of the Harbour Committee is to ***“determine all matters relating to the strategic management of the Council’s function as a Harbour Authority, in line with the Tor Bay Harbour and Maritime Strategy, the Council’s Policy Framework.”***
- 3.6 The specific objectives of the Harbour Committee are to:
- a) ensure the effective financial management of the harbour;
  - b) maintain and develop the harbour infrastructure and environs;
  - c) support the local economy;
  - d) provide a positive contribution towards the character and attraction of Tor Bay;
  - e) comply with legal and regulatory requirements as listed in the Executive Head of Harbour and Marine Services specific delegations;
  - f) have an appropriate awareness and regard for relevant environmental considerations;
  - g) provide open and transparent governance;
  - h) develop harbour employees;
  - i) consider issues relating to risk management; and
  - j) make a positive contribution to the social wellbeing of the local community.
- 3.7 The anticipated additional benefits of a change to a fully commissioned Harbour Authority, governed directly by a newly constituted Harbour Board, as the commissioning body, are:
- a) Achieving the national benchmark in terms of Board composition, appointment, performance and accountability. This will inevitably lead to improved governance of the Harbour Authority.
  - b) Furthering the ‘Harbour Authority’ brand. Stronger performance as a ‘Harbour Authority’ is likely to have a positive impact on the perception of the Council and its role in maritime affairs.
  - c) A more responsive and dynamic management of Tor Bay Harbour. The creation of a Harbour Board will encourage a more entrepreneurial approach that may become less risk adverse and could develop stronger relationships with partners.

- d) The ability to respond to customer needs and expectations by seeking to improve the quality and value of harbour services in a climate of limited resources.
  - e) Potential savings over time with the Harbour Authority having the option to become less dependent on in-house Council support services. Like other commissioned services it is expected that use of Council support services will continue for at least the next three years but after this period real savings may be possible with both flexibility and choice.
  - f) A “Commissioning Agreement” that provides for a more formal understanding between the Council as the owning authority and the Harbour Board. This new relationship will ensure that the Board seeks to play its full role, along with other partners, in the delivery of the Community Plan, the Local Area Agreement and the Council’s Corporate Plan.
  - g) The establishment of clear stakeholder benefits that show a ‘pay back’ to the local community (see section A3). This would include participation in the ‘Closing the Gap’ joint project, which is dedicated to reducing social, economic and health inequalities within communities and groups in Torbay. The aim of the project is to improve the situation for those in our most disadvantaged communities by concentrating on improving access to services and collaborative working across organisations within Torbay’s public sector.
  - h) Individual Board members can be assigned specific areas of responsibility such as health & safety, finance, risk management, customer relationships, legislation, tourism (Geopark), etc.
- 3.8 The challenge for the Harbour Board will be to deliver these anticipated additional benefits within the confines of the need to be financially self-sufficient, to comply with applicable legal and regulatory requirements and to adhere to best practice of open, accountable and transparent governance.
- 3.9 In the longer term the Harbour Board and the Harbour Authority will seek to develop and implement the Tor Bay Harbour and Maritime Strategy 2007-2017. This strategy forms part of the Council’s policy framework.

**For more detailed information on this proposal please refer to the supporting information attached.**

**Capt. Kevin Mowat**  
**Executive Head of Harbour and Marine Services**

## Supporting information to Report 173/2010

### A1. Introduction and history

- A1.1 In November 2000, in '**Modern Ports – A UK Policy**', the Department for Transport promised a review of municipal ports management structures and practices to ensure that municipal ports were playing a full and accountable part in the local and regional economy.
- A1.2 In May 2006 the Department for Communities and Local Government and Department for Transport jointly published '**Opportunities for Ports in Local Authority Ownership; A review of municipal ports in England and Wales**'.
- A1.3 In the 2006 report they have stated that within the current framework for decision-making in local government there is scope for responsive and dynamic management of municipal ports. The key findings identified in the Executive Summary (Annex 6) concerned:-
- 1 Accountability and decision making
  - 2 Strategy and Business Planning
  - 3 Management and Performance Review
  - 4 Municipal Port Finances

The considered way forward stated in the document was:

*'We believe that the trust port model as described in 'Modernising Trust Ports : A Guide to Good Governance' now offers many tried and tested benefits which are readily transferable to the municipal ports sector and offer a real opportunity to provide municipal ports with an accountable, expert and more responsive form of governance.*

*We recommend that all local authorities carefully consider whether the experience of Canterbury City Council (Whitstable) and Cumbria County Council (Workington) could bring similar benefits to their own ports.*

*Municipal ports should consider adopting and adapting the recommendations made in the 'Modernising Trust Ports – A Guide to Good Governance'. This sets out the benchmarks in terms of Board composition, appointment, performance and accountability.*

*The Municipal ports sector should consider establishing a similar scheme to run in parallel with the beacon scheme that has been established by ODPM. This would provide recognition of ports that have adopted the recommendations made within this review.*

*Department for Transport Ports Division will welcome future opportunities to discuss with local authorities the ways forward for municipal ports'*

- A1.4 Furthermore the Review document states that decisions relating to the Harbour are based on advice from officers who have a clear understanding of the special

requirements of the Harbour.

- A1.5 Following a report to the Harbour Committee in June 2006 it was resolved that a Municipal Ports Review Working Party be established to prepare an implementation schedule for review in relation to the review of Municipal Ports.
- A1.6 This Working Party met on five occasions with the last meeting being held on 22 January 2007. The Working Party agreed and recommended that the best way forward to meet the requirements of the Municipal Ports Review is to have a fit for purpose Harbour Committee working for Tor Bay Harbour under new and more detailed Terms of Reference and a Protocol set by the Council, making it effectively a decision-making committee of the Council.
- A1.7 It was agreed by the Working Party that the new Committee should be protected against short-term thinking and be subject to a coherent and consistent treatment by the Council. Furthermore they believed the Committee should be apolitical.
- A1.8 It was recommended by the Working Party that all members of the Harbour Committee, voting and non-voting, should be required to undertake appropriate training. This training should cover port operation, statutory and regulatory obligations, the role of the Duty Holder under the Port Marine Safety Code and governance issues.
- A1.9 The Working Party agreed that the relationship between the Council and the Harbour Committee should be set out in revised and more detailed Terms of Reference which would perform the same function as the Memorandum of Understanding, as recommended by the Municipal Ports Review document.
- A1.10 At the time the Working Party considered that the whole debate about the Municipal Port Review was really one about the management of the harbour. It was not a question of ownership as the Council would still be the owning authority. It was a matter of what delivers the most appropriate and fit for purpose form of governance that will work best for any particular municipal port. This principle has not changed.
- A1.11 On the 8<sup>th</sup> February 2007 the Harbour Committee considered the recommendations of the Municipal Ports Review Working Party and the way forward for the governance arrangements of Tor Bay Harbour.
- A1.12 Later in February 2007 the Constitution Working Party considered the recommendations of the Harbour Committee on the governance arrangements for Tor Bay Harbour.
- A1.13 The Constitution Working Party accepted the main findings of the Municipal Ports Review and the recommendations of the Harbour Committee. Consequently the Council's Constitution was amended to establish a decision-making Committee (to be known as the Harbour Committee), including non-councillor advisors to become the effective managers of Tor Bay Harbour. Furthermore it was decided that the relationship between the Council as the owning authority and the Harbour Committee as the managing body be determined by detailed Terms of Reference and a Protocol forming part of the Council's Constitution.

- A1.14 Following the elections in May 2007, the Council tendered for partners for change to consider reshaping the Council to make it more fit for purpose. A report issued by consultants Grant Thornton at the end of September 2007 proposed a radical new model for service delivery – The Commissioning Model – and set out a Commissioning Framework as a basis for the future structure of the Council. In October 2007 the Council adopted a Commissioning Framework and it was agreed that Harbour and Marine Services would be best operated within the Environment Commissioner quadrant as a stand-alone but integrated operation.
- A1.15 On 11<sup>th</sup> January 2010 the Harbour Committee considered Report 5/2010 on the proposals for the commissioning of the Council's Harbour Authority function. Although the Harbour Committee resolved to make a number of recommendations to Council (Minute 383/2010) these have not been pursued. Following further internal consultation it was considered appropriate to revisit the earlier recommendations to ensure that sufficient support would be forthcoming when the final recommendations are made to Council.
- A1.16 The challenge now is to fully commission the service and to better realise the opportunity to ensure that service delivery is fit for purpose and therefore better able to respond to customer needs and expectations by seeking to improve the quality and value of the service in a climate of limited resources.

## **A2. The Harbour Committee and the Harbour and Marine Services Business Unit**

- A2.1 Torbay Council is the 'harbour authority' for Tor Bay Harbour. In 2007 Torbay Council made a significant change to the way it manages Tor Bay Harbour and fulfils its function as a harbour authority. As a direct result of the Municipal Port Review, (a joint initiative by the Department for Communities and Local Government and the Department for Transport), the Council now manages Tor Bay Harbour through a dedicated committee called the Tor Bay Harbour Committee. This Committee consists of 8 Councillors and 5 Harbour Advisors who have been selected following a skills audit. Also, appropriate training is now given to each member of the Committee.
- A2.2 The Harbour Committee has gone on to become a great success with the award of "Leading Lights" status in October 2007. This recognition highlighted the achievements and commitment to good practise demonstrated by Tor Bay Harbour as a municipal port. The award scheme concentrated on accountability and decision making, strategy and business planning, management and performance review and finances.
- A2.3 In 2009, as part of the commissioning process and the drive for continuous improvement it is realised that the opportunity existed to allow the Harbour Committee to evolve into a more appropriately named 'Harbour Board'. Similarly the Harbour and Marine Services business unit should be renamed 'Tor Bay Harbour Authority'.
- A2.4 The creation of a new Harbour Board to directly oversee the Harbour Authority workforce is an excellent practical example of how the Council is putting commissioning into practice and it is another significant example of how the

Council is commissioning a service to deliver the outcomes needed by the Bay Family.

### **A3. Stakeholder Benefit**

A3.1 In August 2009 the Department for Transport (DfT) published the second edition of “Modernising Trust Ports: A Guide to Good Governance”. This publication introduced the concept of the ‘Stakeholder Benefit’.

A3.2 Although not an exhaustive list, the following may all be considered stakeholders or 'beneficiaries' of a trust port:

- § Harbour Users
- § The local community
- § Local and regional economies and authorities
- § Harbour employees
- § Related interest groups
- § The national economy and Central Government
- § Local and regional businesses

A3.3 Tor Bay Harbour is set up to trade on a self-financing basis. It operates ring-fenced accounts and ring-fenced reserve funds. From time to time the Harbour Authority can expect to generate a surplus. In a private company, after deducting strategic investments and contingencies, that return would be distributed among shareholders in the form of a dividend. Municipal harbours, having no shareholders, must use any profits generated to support the long term viability of the port and thus for the benefit of the whole community of stakeholders.

A3.4 The DfT has indicated that there are a range of ways in which a municipal port's surpluses may be, and are, justifiably employed. Rather than a direct dividend, these uses constitute a stakeholder benefit, and may include any of the following, subject to the important caveat that some may be outside a harbour's legislative powers:

- (a) investing in infrastructure with a longer-term view than might be expected of a private port company, which may need to generate a return over a shorter period;
- (b) investing in infrastructure, or another good such as environmental protection, to a higher standard or greater extent than might maximise profits, but where this brings direct quantifiable benefits to stakeholders;
- (c) undertaking activities that have a lower commercial return than might be acceptable to a private port company, but which have other benefits for stakeholders. e.g. for the local community;
- (d) making charitable grants or donations of time. e.g. foregone income and support for maritime events;



- (e) making modest financial investments, for example in local enterprises or community projects, with social as well as economic returns.
- A3.5 The benefits that accrue to stakeholders, including the Bay Family, should be actively determined by the Board after consultation with stakeholders, and transparently recorded. After consultation with stakeholders the Harbour Board and the Environment Commissioner should consider and decide upon the nature of stakeholder benefit. The details of the agreed stakeholder benefit should form part of the 'Commissioning Agreement'.
- A3.6 There must be a clear rationale for the choices made, and they should be aligned with the commercial expectations. In other words the stakeholder benefit should not be directed towards practices which threaten to distort the market in which the harbour operates.
- A3.7 Undoubtedly, some uses of the stakeholder benefit will be difficult to quantify. For example, identifying a marginal increase in standards sought by a harbour investment will be more difficult than pointing to a proportion of foregone income diverted towards charitable grants. Nonetheless, the 'Commissioning Agreement' should aim to describe the extent of the stakeholder benefit as fully as possible.
- A3.8 A good example of stakeholder benefit is how the Harbour Board will support where it can the delivery of the Local Area Agreement and assist with the targets which that agreement contains. Some of the benefits can be seen within the accompanying work plan for the Harbour Committee (Appendix 6), which shows the key themes, priorities, outcomes and actions set by the Harbour Authority for 2009/10.
- A3.9 There are a variety of different and obvious links between the work of a Harbour Board and a Harbour Authority, and the Council's overall '**Vision**' for Torbay, which is "**A cleaner, safer, prosperous Bay**", and the Council's '**Mission**', which is "**Public service is our business**". The provision of a well managed harbour and harbour facilities will contribute directly and indirectly to all of the Council's four corporate themes – **The New Economy, Stronger Communities, Pride in the Bay and Learning and Skills for the Future**. In particular the operation of Tor Bay Harbour links to the **New Economy** and **Pride in the Bay**.
- A3.10 Tor Bay Harbour, the waterfront, the three enclosed harbours, the piers and the coastline all form a central part of our built and natural environment. The Harbour Authority will endeavour to keep the harbours and the Bay clean, safe, tidy and attractive and by so doing the service would remain crucial to the overall feeling of civic pride endorsed within the **Community Plan**.
- A3.11 As well as helping to deliver some of the outcomes and associated priorities set out in the Corporate Plan the new Harbour Board would also support the Council with the following shared objectives :-

- § Building on and developing our traditional industries of fishing and tourism
- § Creating and maintaining quality environments that are clean and safe, accessible and pleasant
- § Making it easier to get around the Bay
- § Making people feel safe

A3.12 In respect of the Local Area Agreement the Harbour Board can clearly assist with the targets associated with the National Indicators set out in the table below.

NI Number	Definition
004	% of people who feel they can influence decisions in their locality
007	Environment for a thriving third sector
008	Adult participation in sport
39	Rate of Hospital Admissions per 100,000 for Alcohol Related Harm
57	Children and young people's participation in high quality PE and sport
110	Young peoples participation in positive activities
175	Access to services and facilities by public transport, walking and cycling
186	Per capita CO2 Emissions in the Local Authority Area
193	Municipal waste land filled – the percentage of municipal waste which is sent to landfill.

A3.13 As part of the 'Closing the Gap' project it is expected that further community benefits will be delivered by way of the following :-

- Restriction on alcohol consumption around the harbour and on the water
- Cleaner harbour estates by a reduction of littering, with litter and dog bins in the right place
- Controlling anti-social behaviour on the harbour estate and on the water – using Harbour Byelaws and Council CCTV
- A safer harbour environment by designing out crime where possible i.e. the erection of new lamp posts and the removal of shrubbery
- Making people feel safe on the harbour estate and on the water, including working closely with the police and other partners to improve public confidence.
- Increasing the number of people who feel they can influence decisions in their harbour
- Assisting and facilitating the number of young people participating in positive activities by supporting youth groups on the harbour estate

## A4. The Commissioning Cycle



Figure 1- The Commissioning Cycle

**Analysis** – In 2007 the Municipal Ports Review Working Party undertook some excellent work to review the provision of harbour services in line with national guidance and harbour legislation. Consequently the Harbour Authority has an excellent understanding of the requirements of our Bay as a single statutory harbour. This has been examined in the local, regional and national context. Not only have we reviewed our current service provision but we know that it already reflects best practice within the municipal ports sector. We are therefore well placed to meet the needs of our beneficiary stakeholders and the maritime aspirations of our community and the Bay Family. The needs of the local population have been analysed in the Joint Strategic Needs Assessment (JSNA) for Torbay 2008. The JSNA will form a reference document for commissioners across all public service agencies (including the Harbour Board), providing them with the evidence needed to agree and shape service delivery across Torbay.

**Plan** – The Harbour Committee has developed a Business Plan and a Balanced Scorecard that identifies actions and projects to improve service delivery and provide clear community benefits. The specification for the 'Commissioning Agreement' between the owning authority (the Council) and the Harbour Authority (Harbour Board) will now need to be more fully developed to

incorporate additional stakeholder benefits. The desired outcome is to maintain, protect and enhance the harbour whilst at the same time deriving the range of sustainable benefits, environmental, economic and social; as outlined in the Tor Bay Harbour and Maritime Strategy. This can be achieved through good business planning and a robust 'Commissioning Agreement'.

**Do** – The employees that work under the governance of the Harbour Board will be known as the Harbour Authority. They will deliver the operational function of the Harbour Authority in line with the Business Plan agreed by the Harbour Board. Service delivery will continue to be provided by the existing Council staff (Harbour & Marine Services) and the senior officer will be known as the Chief Executive of the Harbour Authority. The strategic direction of the Harbour Authority will be provided by the Harbour Board as is common within the UK port sector. Full day to day operational management responsibility will rest with the Chief Executive of the Harbour Authority. Both the Board and the staff will work together to achieve the outcomes agreed within the 'Commissioning Agreement' and to deliver wider community benefits detailed within this report.

**Review** – Commissioning is about creating outcomes and the measure of the success of the Harbour Authority will be based on the outcomes that the Harbour Board can create and facilitate. Performance management of the Harbour Authority staff will rest solely with the Harbour Board. However, the review mechanism in place for the work of the Harbour Board is the Pride in the Bay Strategic Commissioning Partnership who will work with and advise the Environment Commissioner. The Harbour Board will report its progress to the Pride in the Bay Strategic Commissioning Partnership and be directly accountable to the Council via the Environment Commissioner with the Chair of the Harbour Board and executive team reporting to the Overview & Scrutiny Committee when required.

## **A5. A new Harbour Board**

- A5.1 As is the current practice, the Harbour Board should not to be profit-motivated and this will be enshrined in the 'Commissioning Agreement'. However, this means that surpluses which the Harbour Board may make will be reinvested in the harbour reserve funds. These reserve funds will continue to be ring-fenced and used to accommodate any operational deficits and to support capital repairs and/or harbour improvement works. The Harbour Board will continue to have the ability to hold and manage assets (the harbour estate) and will have the ability to offer other marine management services to the Authority. It is also possible that the Harbour Board could provide harbour management and/or governance expertise as a service to other harbour authorities within the sub-region.
- A5.2 The business case, as outlined in this report, has been developed with the Harbour Board remaining as a decision making committee of the Council. There are a number of clear advantages to this proposal, including :-
- (i) an easy transition from Harbour Committee to Harbour Board.
  - (ii) the Council remains the owner of the harbour and it retains ultimate strategic control.
  - (iii) there is no need to transfer assets or staff.
  - (iv) it provides a straightforward opportunity to improve on the existing governance arrangements.

- (v) the harbour accounts remain under the stewardship of the Council's financial services.
- (vi) the harbour function can continue to be provided at no cost to the Council.
- (vii) operational profits can continue to be diverted back into the harbour business to allow the Harbour Board's objectives to be met.

A5.3 A critical document will be the 'Commissioning Agreement' and the key principles of the agreement are identified in Appendix 3. The document will set out the matters reserved for the Council. These are matters which will be referred to the authority to give it the chance to object under the call in procedure. This provides a balance between giving the Council protection and leaving the Harbour Board the power to run its own affairs as the Harbour Authority.

A5.4 A new Harbour Board provides the opportunity to improve the governance of Tor Bay Harbour and at the same time meet the national benchmark in terms of Board composition, appointment, performance and accountability. Appendix 5 provides a recommended Board structure. The main changes are the provision of voting rights to the independent members and an enhanced role for the Chief Executive of the Harbour Authority, in line with other commissioned services like the Economic Development Company and the Torbay Care Trust, as well as other comparable ports and harbours. i.e. Teignmouth & Fowey

## **A6. Role of the Council**

A6.1 Under the Tor Bay Harbour Act 1970, the full Council is the Harbour Authority but under section 14 of the Tor Bay Harbour Act (Torquay Marina &c.) Act 1983 those powers can be transferred. Also, under the Local Government Act 2000, a Harbour Board can be constituted as a committee (as per the Council's current constitution) within the current local authority structure, provided that the local authority has chosen its port/harbour to be a function of the full council, and not reserved to the executive.

A6.2 In particular the Council will exercise strategic decision making over the Harbour Board in commissioning its activities and the Harbour Board will be responsible for determining how to deliver the statutory harbour authority function and any other outcomes that Torbay Council requires, through the Environment Commissioner. The Council will also retain decision making power over policy framework documents such as the Tor Bay Harbour & Maritime Strategy.

## **A7. Commissioning and Scrutiny**

A7.1 In determining the outcomes required the Environment Commissioner will be supported by the Pride in the Bay Strategic Commissioning Partnership. The Constitution and Rules for Conducting Business for the commissioning partnerships was approved by the Torbay Strategic Partnership on 12 March 2009 and confirmed at the inaugural meeting of the Pride in the Bay Strategic Commissioning Partnership on 19 June 2009.

A7.2 The Harbour Board will report its progress to that Partnership but remains directly accountable to the Council. The Council's Overview & Scrutiny Committee retains the right to scrutinise the performance of the Harbour Board

although the Board's meetings will continue to be held in public and therefore be subject to continuous scrutiny.

## **A8. Finance**

- A8.1 The harbour budget, with two operational accounts, sits within the Council's overall accounts but is ring fenced as a trading operation. It is proposed that this arrangement should continue.
- A8.2 It will be a key aim of the Harbour Board and a condition within the 'Commissioning Agreement' that the harbour remains financially self-sufficient. This aim will be an ongoing challenge due to the significant repair liability associated with the important infrastructure that serves the needs of the harbour and the community.

## **A9. Budget Control**

- A9.1 As with the current Harbour Committee the Harbour Board will set its own budget and it will approve the Tor Bay Harbour fees and charges. Maintaining the budget within plan is dependent both upon control of expenditure and achievement of income targets. The Harbour Board will continue to receive quarterly budget monitoring reports from the CEO of the Harbour Authority.
- A9.2 The Harbour Authority through its Harbour Masters and finance support team retains close management of all its activity on a regular basis and performs budget reviews to ensure possible cost overruns are identified promptly and contained.
- A9.3 Particular attention is directed at compliance with the Council's financial regulations to ensure all commitments are recorded as they arise, invoices paid promptly and contracting process followed and documented.
- A9.4 Proper management of the Harbour Authority's budget will be achieved through existing procedures for start of year budget setting, monthly monitoring of spend/income to profiles and reporting of variances. Figures are assessed monthly to predict end of year outcomes and to ensure corrective action is taken to retain net expenditure within plans.
- A9.5 In the event of an overspend the initial risk is borne by the Harbour Authority through use of the harbour reserve funds. However, if the Harbour Board identifies any areas of financial risk that go beyond the control of the harbour revenue budget or reserve fund they will notify the Council through the processes set out in the 'Commissioning Agreement'. The Harbour Board will retain the ability to seek additional external funding and there is no presumption of routine financial support from the Council. Tor Bay Harbour should continue to operate at no cost to the local Council Tax payers although the harbour is ultimately underwritten by the Council as the owning authority.
- A9.6 The Harbour Committee will also be required to follow Financial Standing Orders and regulations, except where agreed with the Council's Section 151 officer. It is anticipated that the 'Commissioning Agreement' may well set agreed targets for efficiency savings.

## **A10. Human Resources**

- A10.1 There are currently 22 staff in the Harbour & Marine Services business unit. These employees deliver the operational services and are based at the three enclosed harbours of Brixham, Torquay and Paignton.
- A10.2 All of the employees currently within the Harbour and Marine Services business unit will staff the new Harbour Authority. They will all remain directly employed by Torbay Council and in this respect they will stay under the auspices of the Council's Chief Executive, who is the Head of the Paid Service. Formal consultation is therefore not considered necessary although harbour staff will continue be kept informed of the progress with the commissioning process.
- A10.3 The existing Executive Head of Harbour and Marine Services will be directly responsible for all of the harbour staff and by way of the current scheme of delegation will effectively become the CEO of the Harbour Authority. Line management of the Harbour Authority's senior officer will be undertaken by the Chairman of the Harbour Committee, which will include target setting, performance management and appraisals.

## **A11. Exit Strategy**

- A11.1 As part of the commissioning cycle the harbour authority service will be subject to review from time to time. It is acknowledged that the 'Commissioning Agreement' will need to be monitored by the Environment Commissioner and the outcomes reviewed by the Council and the Harbour Board. The Council may also undertake a review of the harbour strategy and market performance.
- A11.2 A defined exit strategy in the form of termination conditions will be included within the 'Commissioning Agreement' and such provisions will allow for a change to the Council's constitution to effectively dissolve or reconstitute the Harbour Board at the owning authority's complete discretion.
- A11.3 Such changes might be effected if the Council feels that their harbour authority objectives could be better met through a different vehicle (including returning the functions to the Council).
- A11.4 The Council retain control of this commissioned service at all times.

## **A12. Risk assessment of preferred option**

### **Outline of key risks**

A12.1

Risk	Risk Score	Mitigation
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Risk	Risk Score	Mitigation
That the planned stakeholder benefits are not realised	Medium	The Harbour Board to develop a strong evidence base and workplan to ensure that customers needs drive the activity of the Harbour Authority.  Evaluate activity properly to ensure that desired outcomes are being achieved.
That investment doesn't come forward as planned	High	The Harbour Board and the Harbour Authority to continue to work closely with its partners and especially the Economic Development Company to help deliver investment via the Mayoral Vision and Local Asset Backed Vehicles.
That the costs exceed income	Medium	Close work between the Harbour Authority staff and Torbay Council's financial services to ensure that medium term pressures have been factored in and due regard given to contingency for unforeseen events.
That the Harbour Board does not gain the confidence of community partners	Medium	The proposals build on the work of the existing Harbour Committee and the Harbour & Marine Services staff. The Harbour Authority will work closely with key business and community leaders to raise the profile of the new Harbour Board and its workplan.
That Torbay Council does not derive any benefit from the establishment of a Harbour Board	Low	Development of a clear communication plan which sets out the role of the Council in commissioning the Harbour Authority service through a new Harbour Board.  Raising the profile of the Harbour Authority brand.  Through Council and Independent Members of the Harbour Board communicating their role to the wider community.  Ensure that through the purchase of support services the Harbour Authority function makes a direct financial contribution to the Council's budget.
That Torbay Council loses control over the Harbour Authority and the Harbour Board	Low	Apart from the non-voting Advisors and/or the non-elected Board members the Council will appoint the Harbour Board and will approve its Terms of Reference. Further control can be gained by limiting the number of non-elected Board members and/or introducing a 'golden share' (veto) for the elected Board members.  The Harbour Board will need to have any significant capital works, including further borrowing, approved by the Council and the Board can only act within the Council's Policy Framework.

### Remaining risks

A12.2 As an activity, being a Harbour Authority does carry a number of high level corporate risks for the sponsoring organisation (the Council) however the potential benefits as set out in this report are considerable and they outweigh the risks.



### **A13. Other Options**

A13.1 As part of the work undertaken by the Municipal Ports Review Working Party in 2007 other service delivery options were considered. These options were revisited as part of this report and in line with the requirements of the commissioning cycle. Trust etc see municipal ports review

A13.2 There are three types of port within the UK's port sector :-

- (i) Private Ports
- (ii) Trust Ports
- (iii) Municipal Ports

A13.3 Privatisation was not considered as an option because it was felt that the private sector would show no interest in the significant maintenance liabilities presented by the aging hard infrastructure of the quays, piers and breakwater. Also, there was no reason to recommend that the Council should lose control of such an important area that is so crucially linked to the local economy. i.e. tourism and fishing.

A13.4 The local authority could consider reconstituting Tor Bay Harbour as a fully independent trust. However, this would also remove the harbour entirely from the Council's control and would require the local authority to divest itself of a potentially valuable asset for no concrete return. It would also require the owning authority to provide the newly established trust with a dowry to underpin its first years of existence. This should be the equivalent to at least two years turnover and this would therefore amount to about £4 million. In addition, the Council would need to ensure that any critical infrastructure problems were addressed in order that the harbour could be transferred in a good operational condition. This could potentially increase the settlement by many millions of pounds.

A13.5 Another option would be the reconstitution of Tor Bay Harbour as a local authority company. This would serve to 'assure' harbour management and finances. However, this would mean that management of the port and its assets became a strictly commercial imperative, whilst a Harbour Board will retain a community focus and is therefore probably a more effective vehicle through which to spark local regeneration and retain community controls.

A13.6 Keeping the status quo and not establishing a Harbour Board. This would miss two opportunities; one for continuous improvement and the second is the chance to commission a service that is already operating on a semi-commissioned basis. To overlook this option would be most unfortunate and it would not reflect well on the Council as a commissioning organisation.

A13.7 The Council still has the local choice option to have the harbour authority role as an executive function of a portfolio holder within the Cabinet structure. However, withdrawing the endorsement for a stand alone decision making Harbour Board (Committee), which is already working well, would represent a significant backward step in terms of harbour governance and would be a fundamental departure away from our award winning national best practice.

### **A14. Summary of resource implications**

A14.1 Ring-fenced harbour trading accounts would continue to operate with stand alone reserve funds. The budget for the Harbour Board in 2010/11 would be the Harbour & Marine Services budget approved by the Harbour Committee in December 2009. A medium term financial plan will be developed by the Harbour Board to ensure that the harbour authority remains financially viable and self-sufficient. Although, as the owning authority the Council will effectively underwrite the harbour authority function it should not become a financial burden for the Council.

## **A15. Assets**

A15.1 The Tor Bay Harbour Act 1970 defines the harbour estate as follows :-

***“The ‘harbour estate’ means the piers, wharves, quays, berths, roads, sheds and other works and conveniences, and the lands, buildings and property of every description, and of whatever nature, which are for the time being vested in or occupied by the Council as harbour authority and used for the purpose of the harbour undertaking”.***

A15.2 All of the assets currently managed by the Harbour and Marine Services business unit on behalf of Torbay Council, as the harbour authority, will continue to be so managed, with support from the Economic Development Company and other support services, with oversight from the Harbour Board. The Harbour Board would still provide strategic advice on harbour assets and this would be in line with the Committee’s existing Terms of Reference i.e. *“To determine all matters relating to the strategic management of the Council’s function as a Harbour Authority and to provide strategic direction in relation to those assets within Tor Bay Harbour and the harbour estate that are managed by Marine Services”.*

A15.3 The 1970 Act means that Torbay Council has complete control over the size of the harbour estate at all times and the extent of the harbour estate may be varied from time to time having taken full consideration of the harbour’s operational requirements, other service requirements and the Council’s policy to deliver a self-funding, financially sustainable harbour service.

Many of the assets listed within the harbour estate are critical to the safe operation of the harbour and several other assets are essential in terms of the revenue contribution they make to the ring-fenced budget to be delivered by the Harbour Authority on behalf of the Board.

When making decisions in respect of harbour assets the CEO of the Harbour Authority and the Harbour Board will be bound by the limits imposed by the Council’s constitution. In the interests of the Councils ‘corporate stewardship’ of all its assets and best practice, such decisions will be made in conjunction with the Head of Estate Management. Approval will be required from the Mayor/Council for any of the following acquisitions and disposals :-

- where the estimated value of the land or property being purchased or sold exceeds £50,000 or (if a transaction is linked to another transaction) where the aggregate estimated value exceeds that amount.
- Leases where the term is for more than 21 years, or if the premium exceeds £25,000 or if the rent (including any service charge) exceeds £10,000 per year,

or (if a transaction is linked to another transaction) where the aggregate relevant amounts exceeds those limits.

- Where the potential disposal is of land deemed to be Public Open Space

A15.4 The accommodation and property that is currently under the operational control of the Harbour Committee and Harbour and Marine Services is deemed to adequately meet the immediate needs of the harbour service. Income derived from property on the harbour estate is critical to the harbour business. The level of rental income received is significantly more than that generated by harbour charges, with the exception of fish toll income. To enable and support the new Harbour Board in delivering its harbour authority function, the wider stakeholder benefits and community objectives, it is proposed that the existing harbour estate continues under the primary management of the Board subject to A15.3. The extent of the current harbour estate has already been agreed by the Council and it includes the assets detailed in Appendix 4.

A15.5 An increasing trend is that the Council is seeking to establish alternative service delivery models or establish new delivery vehicles that will generate investment and capital projects in Torbay without the requirement for a cash support from the Council, although the Council contribution would be in the way of enabling the project and the transfer/strategic lease of assets, including harbour estate assets.

A15.6 Developments in this category could include the creation of a 'Local Authority Asset Backed Vehicle' as part of the Mayoral Vision, transfer of land to the Economic Development Company and the leasing of land and assets to a joint venture company or other developers. In addition developers could be approached to fund or part fund Council projects in return for future income streams.

A15.7 In view of A15.5 and A15.6 above, and given the significant regeneration schemes that are underway or are being planned, which include assets on the harbour estate, it is critical that the 'Commissioning Agreement' makes proper reference to the Mayoral Vision and the use of 'local asset backed vehicles' that will include harbour land and buildings. It must be explicit within the 'Commissioning Agreement' that the Harbour Board cannot hinder the progress of schemes identified within the Mayoral Vision. However, where such schemes involve the development of assets within the harbour estate, the Harbour Board should be properly consulted to ensure that the Council is in receipt of the appropriate, harbour related, strategic advice. It is also imperative that any project takes full consideration of the operational requirements of the harbour and the Council's policy to deliver a self-funding, financially sustainable harbour service.

A15.8 The harbour account will need to be compensated where corporate developments have an adverse impact on harbour income. These impacts could be detrimental in the short term but could lead to longer term benefits. Such benefits could include the realisation of higher income streams, shares in the 'asset backed vehicle' or the creation/delivery of new assets within a wider harbour estate portfolio.

A15.9 The Harbour and Marine Services business unit currently uses [the Councils TOAD property reference database for the recording of harbour asset data and this process will continue.](#)

**A16. What impact will there be on equalities, environmental sustainability and crime and disorder?**

A16.1 Within the 'Commissioning Agreement' the Council will require that the Harbour Board to be committed to adopting Council equalities policies ensuring no one is discriminated against on the basis of race, disability, gender, age, sexual orientation or religion/faith. The Council recognises the implications of the Race Relations Amendments Act (2000) and other equalities legislation in the delivery of its services. As a Level 3 Equality Standard for Local Government authority we are committed to improving the way people with different needs can access our services. The Torbay Council Inclusion Charter enables all people to have fair access to, and enjoy, high quality services. In order to do this, the Council and its partners will work to:

- Promote equality, inclusion and good relations;
- Reduce disadvantage and poverty; and
- Eliminate unlawful discrimination.

A16.2 The Council will as part of its commitment to equality and diversity require that the Harbour Board undertake Equality Impact Assessments (EIAs) on key policies/ strategies and functions.

**Crime & Disorder:**

A16.3 Within the 'Commissioning Agreement' the Council will require the Harbour Board to have due regard for Section 17 of the Crime and Disorder Act 1998, ensuring that it consider crime and disorder reduction and community safety in the exercise of all of it's duties and activities.

**Environmental Impact:**

A16.4 The activities of the Harbour Board and the harbour authority have the potential for an adverse impact on the environment and within the 'Commissioning Agreement' the Council will require that the Harbour Board ensures that an environmental impact assessment is conducted for those activities as required. This will assess if any harbour activities will have a direct impact on the environment, or if they significantly influence the way, or amount that other people (including households, individuals and businesses) affect the environment during the operation of the harbour.

**A17. Consultation and Customer Focus**

A17.1 There has been regular consultation with harbour staff and the Torquay and Paignton Harbour Liaison Forum and the Brixham Harbour Liaison Forum on the rationale and context for the proposals and to understand the expected benefits from the changes.

A17.2 Presentations have also been given to the Pride in the Bay Strategic Commissioning Partnership, Brixham Town Council and the Commissioning Officers Group (COG). A letter of support has been received from Brixham Town Council.

A17.3 Individual discussions have also been held with the Council's Chief Executive

Officer and the leader of the Conservative group.

#### **A18. Are there any implications for other Business Units?**

A18.1 Operational support services to the Harbour Authority (i.e. legal, human resource, finance, IT etc.) would continue for a minimum period of three years unless termination of the support was mutually agreed.

A18.2 After the three year period the Harbour Board may seek alternative support services but if the Council implements a new corporate support service arrangement that represents value for money this would equally be an option for consideration.

A18.3 The Harbour Board will continue to make a contribution to the Comprehensive Area Assessment, Use of Resources and other similar Council activities to ensure that the Council gains credit for the activities of the Harbour Board and the involvement of the Council in commissioning the work of the Harbour Authority is understood by the authority's partners.

A18.4 The Harbour Board and Harbour Authority staff will be expected to abide by key human resource policies and legal policies and procedures.

#### **Appendices**

- Appendix 1 Harbour Committee's Terms of Reference
- Appendix 2 Local Protocol for Members of the Harbour Committee
- Appendix 3 Key Principles of the Commissioning Agreement
- Appendix 4 Harbour Estate and Assets
- Appendix 5 Harbour Board Structure
- Appendix 6 Tor Bay Harbour Business Plan 2010/2011
- Appendix 7 'Opportunities for Ports in Local Authority Ownership; A review of municipal ports in England and Wales' – Executive Summary

#### **Documents available in members' rooms**

None

#### **Background Papers:**

The following documents/files were used to compile this report:

- Harbour Committee Report 5/2010 - Harbour and Marine Services Commissioning
- Torbay Council Report 28/2007 – Municipal Ports Review
- Torbay Council Constitution
- Reshaping the Council: Phase 1 Final Report Sept 2007
- Torbay Community Plan
- Opportunities for Ports in Local Authority Ownership : A Review of Municipal Ports in England and Wales. DCLG & DfT – May 2006
- Modernising Trust Ports : A Guide to Good Governance – Dept. of the Environment, Transport and the Regions (First edition Jan 2000 & second edition August 2009)