



Briefing Report No: **292/2010**

Public Agenda Item: **Yes**

Title: **Review of existing harbour powers**

Wards Affected: **All Wards in Torbay**

To: **Harbour Committee** On: **6 December 2010**

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1. Key points and Summary

- 1.1 In order to comply with the Port Marine Safety Code, the Harbour Committee, as the duty holder, on behalf of the Harbour Authority must review and be aware of their existing powers based on local and national legislation.
- 1.2 A review of existing legislation was formally undertaken by Marine Enforcement Limited in October 2002. An extract from the 2002 Review report is shown in Appendix 1.
- 1.3 The Executive Head of Tor Bay Harbour Authority has reviewed the 2002 report and has identified a number of areas that have been subject to more recent amending legislation.
- 1.4 The Committee is asked to note the following:
 - a) that all harbour legislation applicable to Tor Bay Harbour, including byelaws and directions, has effectively been reviewed for 2010;
 - b) Tor Bay Harbour's legal responsibilities can be discharged effectively using its existing powers;
 - c) the Harbour Authority has the ability to seek and amend its powers in the future; and
 - d) no additional powers are currently necessary and no obsolete legal functions were found.

2. Introduction

- 2.1 All Harbour Authorities are expected by the Government to comply with the Port Marine Safety Code. The Code requires that a Harbour Authority assesses the risks associated with marine operations and manages those risks so that they are kept as low as reasonably practical (ALARP). The Code recognises that a

Harbour Authority may need to review its power to regulate marine operations and whether its powers are appropriate for maintaining the overall safety of the harbour. A Harbour Authority is expected to promote changes where necessary. The Code requires that each Harbour Authority seeks and adopts appropriate powers for the effective enforcement of their regulations and adopts a policy on both enforcement and prosecution.

- 2.2 All legislation, including byelaws and directions, should be reviewed on a regular basis, preferably annually, to ensure that it remains fit for purpose in changing circumstances. The Code provides that the requirements for marine safety will be determined by risk assessment. If the legal responsibilities cannot be discharged effectively using available powers and other measures, and that an authority does not have the powers to rectify the situation, then it should seek the necessary additional powers. In addition, it is good practice to dispense with redundant or obsolete legal functions.
- 2.2 It is essential that all Harbour Authorities are aware of their local duties and powers, and are well versed in all local legislation. Harbour Authority Boards and managers must understand clearly the meaning of all the relevant legislation which affects their harbour in order to avoid failing to discharge their duties or exceeding their powers.
- 2.3 The first step for the Harbour Authority is to take stock of the powers, policies, systems and procedures that are in place having regard to an overall assessment of the risks to be managed. This taking stock exercise was undertaken full and formally in 2002. The detail required for the 2010 Review reflects the extent to which appropriate systems are already in place, but it has also been shaped by the level of ongoing stakeholder consultation, industry networking and the annual publication of Tor Bay Harbour's various safety policies. It is a requirement of the Code that each Authority's policies and procedures should demonstrate that they are based upon a full assessment of the hazards which have to be managed to ensure the safety of the harbour and its users.
- 2.4 The Harbours Act 1964 enables a Harbour Authority to amend statutory powers in their local legislation. It can be used to achieve various outcomes one of which is to impose or confer additional duties or powers on a Harbour Authority (including powers to make byelaws). It can also be used in the context of the Port Marine Safety Code to substitute or amend existing duties and powers. It could be used for the purpose of (but not limited to):
 - a) improving, maintaining or managing the harbour (including harbour reorganisation schemes);
 - b) marking or lighting the harbour, raising wrecks therein or otherwise making safe the navigation thereof; or
 - c) regulating the activities of other individuals and groups in connection with the harbour and the marine/shore-side interface;
 - d) extending controls into the approaches of a harbour (for example, to extend compulsory pilotage beyond the harbour).

Kevin Mowat
Executive Head of Tor Bay Harbour Authority
Tor Bay Harbour Master

Appendices

None

Documents available in members' rooms

Appendix 1 Extract from the Tor Bay Harbour Review of Existing Legislation – October 2002

Background Papers:

Review of Existing Legislation – October 2002
Port Marine Safety Code – October 2009
A Guide to Good Practice on Port Marine Operations – September 2009