

## TORBAY COUNCIL

Report No: TDA/4/04

Title: **Arrangements for Licensing Passenger Carrying Pleasure Craft**

To: Executive on 30th March 2004

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### **1. Purpose**

- 1.1 This report provides Members with the opportunity to consider the Council's future policy in respect of licensing passenger carrying 'pleasure craft' operating in Tor Bay Harbour.

### **2. Relationship to Corporate Priorities**

- 2.1 The Marine Services harbour function contributes to the Council's key area of Performance Management by making effective use of resources, as well as contributing to the Jobs and Industry priority. Pleasure Craft licensing is linked to the Council's key area of Risk Management.

### **3. Recommendation**

- 3.1 That, with immediate effect, the Council ceases to exercise its powers contained within Section 22 of the Tor Bay Harbour Act 1970, as amended by the Tor Bay Harbour (Torquay Marina Act &c.) Act 1983, to license pleasure craft and boatmen that are certificated under national standards and/or by alternative legislation.
- 3.2 That the Council continue to license craft if national safety standards do not exist or are not applicable and that in so doing they apply the standards recommended by the South West Regional Standing Committee for the Safety of Small Craft.

### **4. Reason for Recommendation**

- 4.1 To avoid duplication with existing national legislation and standards applied in respect of passenger carrying pleasure craft.
- 4.2 To minimise the Council's risk exposure and liability in the event of an accident involving a passenger craft in Tor Bay Harbour.

### **5. Background**

- 5.1 At the meeting of the Executive held on 27<sup>th</sup> January 2004 it was decided that the Director of Marine Services/Harbour Master report by 31<sup>st</sup> March 2004 to the Executive on the issue of the Council's future arrangements for licensing passenger carrying craft operating from the Harbour.

- 5.2 Section 22 of the Tor Bay Harbour Act 1970 contains an optional power for the Council, as the Harbour Authority, to license pleasure craft and boatmen. Within Section 22 it states the following – ***“The harbour authority may grant upon such terms and conditions as they may think fit licences for pleasure craft to be let for hire or to be used for carrying passengers for hire within the harbour, and to the boatmen or persons assisting in the charge or navigation of such craft, .....”***. Originally Section 22 of the 1970 Act did not provide powers to license any craft which had a passenger certificate issued by the Board of Trade. However, the Tor Bay Harbour (Torquay Marina &c.) Act 1983 made several amendments to Section 22. Significantly the reference to Board of Trade craft changed such that a licence could be required but any terms and conditions of such a licence would, to the extent that they conflict with those applicable to the Board of Trade certificate, be of no effect.
- 5.3 To summarise the above. Section 22 of the Tor Bay Harbour Act 1970 allows the harbour authority to ***grant upon such terms and conditions as they may think fit licences for pleasure craft to be let for hire or to be used for carrying passengers for hire within the harbour***. However, if a vessel already holds a valid passenger certificate issued under Merchant Shipping legislation (old Board of Trade) then the Council cannot enforce any terms or conditions that conflict with those applicable to that certificate.
- 5.4 Torbay Council currently exercises powers given to them under Section 22 of the Tor Bay Harbour Act 1970 to license pleasure craft. These powers are optional. Under the 1970 Act a “pleasure craft” means any vessel of not more than 100 tons gross used wholly or mainly for recreation or for the carriage of passengers for reward and includes pleasure boats. However, at present it is not Policy to license recreational vessels.
- 5.5 In January 2000 the Council approved a revised set of conditions for licensed pleasure craft operating to Merchant Shipping legislation, having given consideration to the views of the pleasure craft owners and operators who were consulted in accordance with Minute 84/5/99. Additionally the Council formally adopted regional safety standards for those craft that were not covered by Merchant Shipping legislation.
- 5.6 The January 2000 report concluded that the Council should continue to license passenger carrying pleasure craft but that the policy should be kept under review. Where national safety standards did not exist it was considered appropriate to apply standards which have been developed within the Region and that have been adopted by many Local Authorities that license pleasure craft in the South West.
- 5.7 In recent years the Government has continued to introduce new legislation affecting commercially operated pleasure boats. The regulations have taken the form of Codes of Practice, initially published by the Marine Safety Agency and more recently by the Maritime & Coastguard Agency (MCA). All of the existing Codes are about to be ‘harmonised’ into one Code. To date the Torbay Council licence conditions have taken account of and been compatible with the latest marine legislation.
- 5.8 A safety certificate issued by the MCA should not be confused with a pleasure craft licence issued by the local authority. The safety standards set by the MCA are not in question and these should not be duplicated locally. Previously, and in the absence of any apparent national enforcement capability, the Council had determined that a locally issued licence, which required MCA certification as a prerequisite, would allow local control to be retained by the Harbour Authority. However, since the last review of Pleasure Craft Licensing in January 2000 the level of the Government’s enforcement activity, through the work of the MCA, has greatly improved.

- 5.9 In January 2000 the Harbour Masters were concerned about the MCA's level of enforcement in respect of pleasure craft safety standards. It was understood that the standards set by the Merchant Shipping legislation required monitoring and, where necessary, enforcement action should be taken by the MCA. At the time the Officers believed that local authority licensing should continue until the MCA had sufficient resources to demonstrate an appropriate level of control. The Harbour Masters now believe that the MCA are demonstrating the appropriate level of monitoring and enforcement in respect of small passenger vessels. Indeed there is clear evidence of additional MCA resources being directed at this area of activity. It has always been possible to control certain aspects of the safe operation of pleasure craft by using Tor Bay Harbour byelaws and this situation will not change.
- 5.10 By continuing to license passenger carrying craft the Council will remain exposed to possible litigation that could result from an accident involving a vessel holding a Torbay Council pleasure craft 'licence'. In view of the very obvious and mandatory safety requirements imposed by the Merchant Shipping legislation, in respect of the standards applied to the craft and the competencies demanded of the crew, it is only sensible to risk assess the existing arrangements. In simple risk management terms it is inappropriate for the Council to be exposed to unnecessary risk. The passenger carrying pleasure will not become less safe if it no longer holds a Torbay Council 'licence'.
- 5.11 The issue of insurance and the Council's duty of care need to be considered. Under the existing arrangements the Council can ask for evidence of adequate insurance cover from the boat operator. In practice the insurance documents are not routinely sighted but the operator is asked to sign a declaration indicating that insurance cover has been provided. With the exception of one or two visiting boats all of the passenger carrying craft are moored in the harbour and the same insurance declaration is required as part of the facility agreement. This arrangement should continue to provide a level of comfort in respect of insurance cover. The issue of a duty of care can be satisfied by the numerous control mechanisms that remain at the disposal of the Harbour Authority. These include Harbour Byelaws and powers of direction. Also, there is the option to inform the MCA of any potential problems or issues related to passenger vessels and the ability for them to act swiftly in response to information provided directly from a Harbour Master.
- 5.12 Powers contained in Section 22 of the Tor Bay Harbour Act 1970 also allow the Council to charge annual fees for licences issued to these pleasure craft and to boatmen. The annual revenue income generated by these fees would be approximately £600 in total across the three enclosed harbours. This income would be lost if the recommendations in 3.1 and 3.2 were accepted. However, the burden of administering the licences would also be lost.
- 5.13 At any time in the future the Harbour Authority can choose to amend its policy on pleasure craft licensing and exercise its powers to license under Section 22 of the Tor Bay Harbour Act 1970.
- 5.14 The Council's External Auditor received an objection to the Council Accounts for 2000/2001 relating to fees and charges at Brixham Harbour. As a result of this challenge he undertook an investigation. Report MD/2/04 and F/11/04, taken to the Executive on 27<sup>th</sup> January 2004, aimed to determine what actions the Council should take in response to the External Auditor's Statement of Reasons and Management Letter arising from his investigation. The recommendations in this report help to address the issues contained within the 'Conclusions and Recommendations' section of the Auditor's Management Letter.

- 5.15 The Management Letter calls for the Council to clarify the status of heritage vessels, in respect of whether they should be classified as ‘passenger carrying pleasure craft’, and satisfy itself that it is discharging its function as a licensing authority properly in relation to these vessels. In respect of harbour charges, the Executive agreed the new format for the Tor Bay Harbour Schedule of Charges, Dues & Fees for-2004 – 2005 on 27<sup>th</sup> January 2004. Within the new Schedule there is a clear definition provided for “Passenger Vessels” linked to a clear charging structure. A ‘heritage vessel’ either falls within or outside of this definition. With regard to the Councils function as a licensing authority, this function, as it relates to ‘heritage vessels’, will cease to exist if the recommendations within this report are adopted. Any ‘heritage vessel’, operating in Tor Bay, that is engaged in carrying passengers on a commercial basis, must still comply with the relevant Code of Practice issued under Merchant Shipping Regulations and controlled by the Maritime & Coastguard Agency.

**6. Alternative Options (if any)**

- 6.1 Make no changes to the existing arrangements for the licensing of passenger carrying pleasure craft operating within the harbour.
- 6.2 Make changes different to those outlined above.

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**Director of Strategic Services**

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## **IMPLICATIONS, CONSULTATION AND OTHER INFORMATION**

### Part 1

These sections may be completed by the Report author but must be agreed by named officers in the Legal, Finance, Human Resources and Property Divisions. If these are not completed and agreed the Report will not be included on the agenda.

Does the proposal have implications for the following issues?

Insert name of  
Responsible officer

Legal (including Human Rights)	Yes – policy choice not to exercise statutory powers.	Bill Norman
Financial – Revenue	Yes – revenue income from Licence fees will be lost (approx. £600).	Pete Truman
Financial – Capital Plan	No.	Steve Warren
Human resources (including equal opportunities)	No.	Geoff Williams
Property	No.	Sam Partridge

### Part 2

These sections must be completed by the author of the Report.

Does the proposal have implications for the following issues?		
Please give details as appropriate		
Sustainability	Yes or No	No.
Crime and Disorder	Yes or No	No.
*OfSTED Post Inspection Action Plan	Yes or No	No.
*Social Services Action Plan	Yes or No	No.
*Change Management Plan	Yes or No	Yes - contributes to the Council's key area of Performance Management by providing the opportunity to make effective use of resources and practice sound risk management.

*\* not applicable to reports to Licensing, Development Control and Area Development Committees*

### Part 3

These sections must be completed by the author of the Report.

Does the proposal have implications for the following Directorates? If so, please inform the relevant Director.		
Please give details as appropriate		
Chief Executive/Corporate Services	Yes or No	Yes – links to the complaint made to the District Auditor and the related Management Letter.
Education Services	Yes or No	No.
Environment Services	Yes or No	No.
Social Services	Yes or No	No.
Torbay Development Agency	Yes or No	Yes – implications for the provision of Marine Services.

#### Part 4

Is the proposal contrary to or does it propose amendment to the Policy Framework or contrary to (or not wholly in accordance with) the Council's budget?	Yes	Fill in Box 1	No	✓	Fill in Box 2
<p>1. Details of the nature and extent of consultation with stakeholders and relevant select committees.</p> <p>In March 2003 the Head of Marine Services wrote to all the pleasure boat operators working in Tor Bay Harbour to seek their views on the need for future licensing of pleasure boats and boatmen in Tor Bay.</p>					
<p>2. Details and outcome of consultation, as appropriate.</p> <p>Only a handful of responses were received from operators but those that responded generally agreed that there was considerable duplication with the work of the MCA and that the Council should discontinue its licensing function.</p>					

#### Part 5

Is the proposal a Key Decision in relation to an Executive function?	Reference Number	No
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#### Part 6

##### **Wards**

All wards

##### **Appendices**

None

##### **Documents available in Members' Room**

None

##### **Background Papers:**

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

Tor Bay Harbour Act 1970.

Tor Bay Harbour (Torquay Marina Act &c.) Act 1983.

District Auditor's Management Letter – 19<sup>th</sup> January 2004.