



Friday, 8 March 2013

HARBOUR COMMITTEE

A meeting of **Harbour Committee** will be held on

Monday, 18 March 2013

commencing at **5.30 pm**

The meeting will be held in the Berry Head Hotel, Berry Head Road,
Brixham, TQ5 9AJ

Members of the Committee

Councillor Amil	Councillor McPhail
Councillor Baldrey	Councillor James
Councillor Ellery	Mayor Oliver
Councillor Faulkner (J)	Councillor Richards
Councillor Hytche	

External Advisors

Mr Stewart, Mr Buckpitt, Capt. Curtis and Mr Jennings

Working for a healthy, prosperous and happy Bay

For information relating to this meeting or to request a copy in another format or language please contact:

Kay Heywood, Town Hall, Castle Circus, Torquay, TQ1 3DR
01803 207026

Email: governance.support@torbay.gov.uk



HARBOUR COMMITTEE

AGENDA

1. **Apologies**
To receive apologies for absence, including notifications of any changes to the membership of the Committee.
2. **Minutes** (Pages 1 - 8)
To confirm as a correct record the Minutes of the meeting of the Committee held on 17 December 2012 and 23 January 2013.
3. **Declarations of interest**
 - (a) To receive declarations of non pecuniary interests in respect of items on this agenda
For reference: Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.
 - (b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda
For reference: Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(**Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)
4. **Urgent items**
To consider any other items that the Chairman decides are urgent.
5. **Exemption of the Press and Public**
To consider passing a resolution to exclude the press and public from the meeting prior to consideration of the following item on the agenda on the grounds that exempt information (as defined by the Local Government (Access to Information) Act, 1985) is likely to be disclosed.
6. **Application for Grant** Circulated Separately
To consider an application for a grant.
7. **Review of Delegated Powers** (Pages 9 - 21)
To review the delegated powers of the Executive Head of the Tor Bay Harbour Authority.

8.	Accidents and Statistics Verbal update.	(Verbal Report)
9.	Tor Bay Harbour Business Plan 2013/2014 To consider a report which seeks agreement of the Tor Bay Harbour Authority Business Plan.	(Pages 22 - 49)
10.	Tor Bay Harbour - Operational Moorings and Facilities Policy To consider a report which seeks to amend the operational moorings and facilities policy.	(Pages 50 - 74)
11.	Torquay/Paignton and Brixham Harbour Liaison Forums To note the minutes of Torquay/Paignton and Brixham Harbour Liaison Forums.	(To Follow)
12.	Tor Bay Harbour Authority Budget Monitoring 2012/13 To consider a report on the quarterly Budget Monitoring.	(Pages 75 - 86)
13.	Harbour Committee Work Programme - 2013/2014 To agree the Harbour Committee Work Programme for 2013/14.	(Page 87)
14.	Performance of the Harbour & Marine Services Business Unit To consider a report on the performance of the Harbour and Marine Services Business Unit.	(To Follow)
15.	Annual Review of the Tor Bay Harbour Authority Asset Management Plan To review and approve the Tor Bay Harbour Authority Asset Management Plan.	(Pages 88 - 97)
16.	Tor Bay Harbour Authority Income - Internal Audit Report - November 2012 To note the outcome of the Internal Audit Report on IT System Administration and Security.	(Pages 98 - 108)
17.	MCZ Consultation To agree a response to the MCZ Consultation.	(Pages 109 - 135)



Minutes of the Harbour Committee

17 December 2012

-: Present :-

Councillor Ellery (Chairman)

Councillors Baldrey, Faulkner (J), James and Richards
and Mayor Oliver

External Advisors: Mr Buckpitt, Capt. Curtis and Mr Jennings

38. Apologies

Apologies for absence were received from Councillors Hytche and Amil. Councillor Baldrey left the meeting after Item 7.

39. Minutes

The Minutes of the meeting of the Harbour Committee held on 17 September 2012 were confirmed as a correct record and signed by the Chairman.

40. Appointment of External Advisor

The Committee were advised that following an application and interview process, the Harbour Appointments Sub-Committee had met and were pleased to recommend the appointment of Mike Stewart.

The Chairman advised that due to the cost of placing an advert in local newspapers the position had been advertised through various user groups and on the Council website instead. He further explained that eight applications had been received (nine with one application received one week after the deadline had expired) with two being selected for interview.

Resolved:

That Mike Stewart be appointed as an External Harbour Advisor from 17 December 2012 for a term of 4 years

41. Blue Sea Food

The Chairman advised the Committee that due to the level of public interest in this item and the need for fairness to allow people the opportunity to speak, the item would be deferred to an additional (unscheduled) Harbour Committee meeting to be held in January 2013. Date to be confirmed subject to diary commitments.

The Chairman advised that the meeting should take place at 6pm to allow local businesses to attend, outside of working hours, to allow a proper and balanced debate.

The Chairman also reiterated that the matter to be considered concerned the Council's function as Tor Bay Harbour Authority and as the landlord for the harbour estate at Paignton harbour. He indicated that there should be no blurring of this function with previous decisions that had been made through the separate Development Management Control Meetings concerning planning matters.

Legal advice received prior to today's Harbour Committee had confirmed that the matter to be considered related to Tor Bay Harbour Authority as a landlord and that previous planning decisions should not be part of the discussions taking place during the Harbour Committee.

Clarification would be sought prior the January meeting for Committee Members who sit on both the Harbour and the Development Management Control Committee, who had previously been at the meeting where planning decisions had been made in relation to Blue Sea Food.

42. Tor Bay Harbour Authority Budget Setting and Harbour Charges 2013/14

The Committee considered the report which provided Members with the opportunity to consider the level of harbour charges to be levied by Tor Bay Harbour Authority. The Committee noted that due to the economic climate a deficit budget had been set and were of the view that 'price sensitivity' was very important and a 'balancing act' had to be maintained between keeping customers and increasing income.

Resolved:

- (i) that the Committee, having considered the recommendation from the Harbour Committee's Budget Working Party, agreed to increase the harbour charges for 2013/14, by a representative average increase of 2.8% and approve the schedule of harbour charges set out in Appendix 1 to the report; and
- (ii) that the Tor Bay Harbour Authority budget for 2013/14, based on a 2.8% representative average increase in harbour charges (as set out in Appendix 2 to the report) be approved; and
- (iii) that during 2013/14 the Tor Bay Harbour Budget Working Party continue to review the full range of harbour charges, monitor the revenue budget and recommend a budget for 2014/15; and
- (iv) that, as recommended by the Harbour Committee's Working Party, the Executive Head of Tor Bay Harbour Authority consider using harbour reserve funds to make additional payments against the financing charges of capital projects, provided that the minimum reserve fund level is maintained and such

budget adjustments are approved by the Harbour Committee Chairman and reported to the Harbour Committee through the budget monitoring reports; and

- (v) that, as recommended by the Harbour Committee's Budget Working Party, each harbour reserve fund be split with 20% of budgeted turnover ring-fenced to meet any deficit in the revenue budget or winter storm damage and the balance ring-fenced to fund harbour related capital projects; and
- (vi) that the level of the cash dividend to the Councils general fund be capped at a maximum of 6% of harbour income in future years and that the Executive Head of Financial Services be asked to review the level of support costs to the harbour account to reflect the ongoing reduction in central resources.

43. Port marine Safety Code - Annual Compliance Audit

Members noted a report which provided details of the annual Port Marine Safety Code compliance audit. The audit had been undertaken by Nicholsons Risk Management Ltd who were appointed as the harbour authority's 'Designated Person.'

Members noted that there had been three fatalities (as set out in Appendix 2 to the report). The Executive Head of Tor Bay Harbour Authority was asked to consider amending the coded entry for these incidents to D & A (drowning and alcohol) rather than just D (drowning).

It was reported and noted by Members, that at one of the drowning incidents the recently acquired defibrillator was used within one minute of the alarm being raised.

44. Torquay/Paignton and Brixham Harbour Liaison Forums

Members noted the minutes of the Torquay/Paignton and Brixham Liaison Forum meetings on 28 November 2012.

45. Quarterly Budget Monitoring

Members noted the report which provided them with projections of income and expenditure for the year 2012/13 with approved budgets and identified the overall budgetary position for Tor Bay Harbour Authority.

46. Annual Harbour Users Survey

Members noted the Annual Tor Bay Harbour Users Survey 2012 which had been sent out and had received 135 replies which accounted for approximately 14% of customers.

The information collected from the survey results will be used to make improvements to the provision of services provided by Tor Bay Harbour Authority.

The Chairman advised Members that a Viewpoint Survey had also been undertaken and had included some questions about harbours for the first time, with some interesting results, the highlights being:

That most respondents use harbours within the Bay to walk along (61.5%) and shop (50.3%). 27.7% of respondents stated they did not use the harbours within Torbay.

The greatest number of the respondents who use / visit Torbay's harbours do so every week (29.5%) or at least once a month (26.0%). 20.9% of respondents will have visited or used harbours every 6 months to a year with only 11.1% of respondents stating that they do not use harbours within the Torbay.

That respondents do not tend to use water to commute to work. 36.8% of respondents travel by water for leisure but this tends to be every 6 months to a year.

Most respondents felt harbours overall were very important to them. The appealing harbour views was the category with the greatest response (91.1%).

That respondents were generally satisfied (very or fairly satisfied 62.9%) with the way that the harbours were run in Torbay. However (34.2%) of respondents did not form an opinion on their satisfaction.

47. Performance Report

Members noted the quarterly report on the performance of the Harbour Authority.

48. Tor Bay Harbour Policy Statement for Local Port Services (biennial 2012)

The Committee reviewed the Tor Bay Harbour Authority Local Port Services (LPS) Policy Statement.

Resolved:

- (i) that the Local Port Services (LPS) Policy Statement (as set out in Appendix 1 to the report) be approved.

Chairman



Minutes of the Harbour Committee

23 January 2013

-: Present :-

Councillor Ellery (Chairman)

Councillors Amil, Baldrey, Hytche, McPhail, James and Richards
and Mayor Oliver

External Advisors: Capt. Curtis, Mr Jennings and Mr Stewart

49. Apologies

Apologies for absence were received from Councillors Faulkner (J) and Mr Buckpitt.

50. Blue Sea Food

The Chairman advised the Committee and public present that this Harbour Committee Meeting had been arranged to hear an agenda item relating to Blue Sea Food which had been deferred from the 17 December 2012 Harbour Committee.

This was due to the level of public interest in the item and the need for fairness and transparency to allow people the opportunity to speak and to have a balanced debate and for Members to make an educated decision.

The Chairman advised the Committee that he had decided to exercise his discretion for this item only, to permit all registered parties to have two minutes each to speak for and against the recommendation in the submitted report and then to allow a representative from the Blue Sea Food Company to receive the total time allotted to the other speakers, to state their case and incorporate anything that may have been raised by the speakers.

The Chairman requested that Members resolve to suspend Standing Order B4.1 so that Members registered to speak would also be restricted to two minutes instead of five minutes each for fairness with other speakers.

Resolved:

Not to suspend Standing Order B4.1.

The Chairman reminded Members that today's Harbour Committee had been asked to consider a recommendation in its capacity as a landlord, with due regard to its

responsibility for the safe management of the harbour estate and the overall business of the harbour authority.

The Chairman advised that the legal advice he had been given was that the Harbour Committee was totally separate to the Development Management Committee, which determines planning matters and as such, there was no conflict of interest for members who sat on both Committees as the consideration of the submitted report was in the capacity of the Council acting as the Harbour Authority and as the landlord and not a consideration of any past or future planning issues and asked speakers and members to refrain from referring to these issues.

At the meeting Mr Michael Smith, Managing Director of Doran Packing, Mr David Morgan and Mr Brian Pauley representing South Devon and Channel Shell Fisherman's Organisation, Mr Allan Brown, self appointed spokesman for Paignton Harbour User Group addressed the Committee against the recommendation in the submitted report.

Mr Frank Sobey, representing Harbour Sports, addressed the Committee in support of the recommendation in the submitted report.

Mr Gordon Cowell, representing 6th Torbay Sea Scouts who was registered to speak but unable to attend, asked Mr Allan Brown to read a statement which was against the recommendation in the submitted report but listed various issues causing problems for the children and harbour users.

In accordance with Standing Order B4.1 Councillor Thomas (D) addressed the Committee against the recommendation in the submitted report and Councillor Brooksbank addressed the Committee in support of the recommendation in the submitted report.

Mr David Markham, Sales Director of the Blue Sea Food Company addressed the Committee against the recommendation in the submitted report and responded to representations and answered Members questions. He advised that the Company had been remiss not meeting with other harbour users to sort out issues but was pleased to hear the support of some of the representations.

The Executive Head of Tor Bay Harbour Authority introduced the report to Members and outlined his recommendation and the implications of agreeing and disagreeing with the proposal and why the recommendation had been made. He reminded Members that that the Committee was considering the recommendation in its capacity as the Harbour Authority and as the landlord and in this respect they were required to act in the best interest of Tor Bay Harbour and he, in his role of Executive Head of Tor Bay Harbour Authority was required to look after the interest for the Council in this regard.

He advised that in 2010 a two year excluded lease was granted to the Blue Sea Food Company to enable to siting of a 40ft container and blast freezer. The lease contained a requirement for the tenant to comply with all relevant legislation including the need, if applicable, for Planning permission.

When the short term lease was due to expire in April 2012 the Executive Head of Tor Bay Harbour Authority agreed to renew it for a further 12 months. Planning consent was still in place at the date of the lease renewal. However, applications to renew this consent were refused in May and August 2012 and in October 2012 the Development Management Committee agreed to issue a deferred enforcement notice which would be effective from 31 December 2013.

He advised Members that the lease in question was excluded from the Security of Tenure provisions of the Landlord and Tenant Act 1954 and had no automatic right to be renewed.

The Legal Representative in attendance clarified the details of an excluded lease where the Authority was not bound automatically to renew the lease. He also clarified that the recommendation being considered by Members did not relate to the lease on Blue Sea Food's premises sited at Paignton Harbour.

The Chairman read out a statement from the Paignton Harbour Master outlining ongoing issues at the Harbour relating to traffic, obstruction, parking, odours and health and safety concerns.

Members were supportive of the Blue Sea Food Company and they were concerned about the impact of the recommendation on the company's future. They were also supportive of their aim to move operations from their premises at Paignton Harbour but were concerned over the indefinite timescale when this would occur.

Concerns were also raised over Health and Safety issues at Paignton Harbour with the movement of large vehicles, storage of waste and equipment and the conflict with use of the harbour by members of the public and other harbour users.

The Committee did not vote on the recommendation made by the Executive Head of Tor Bay Harbour Authority. Members considered an amendment to the recommendation which would allow Blue Sea Food Company to keep their 40 ft container on the harbour estate at Paignton until the end of 2013.

Resolved:

That the Executive Head of Tor Bay Harbour Authority be instructed to grant a new lease to the Blue Sea Food Company Ltd for the area of land in front of units 15 and 16 – 18, on the harbour estate at Paignton Harbour but only until 31 December 2013.

51. External Harbour Advisors

1. The Chairman welcomed Mr Michael Stewart on to the Harbour Committee as a new External Harbour Advisor and expressed his thanks for his acceptance of the position.

2. The Chairman advised the Committee that Ms. Elaine Hayes, External Harbour Advisor, had tendered her resignation on the Harbour Committee as she had been appointed Chair of Seafish and had a new role as AONB Manager for North Devon.

Resolved:

The Chairman send a letter to Ms. Hayes, on behalf of the Harbour Committee, to thank her for her dedication and support during her term on the Committee and wish her well in her future career.

Chairman

Agenda Item 7



Meeting: Harbour Committee

Date: 18th March 2013

Wards Affected: All wards in Torbay

Report Title: Review of Delegated Powers

Executive Lead Contact Details: Non-Executive Function

Supporting Officer Contact Details: Kevin Mowat

Executive Head of Tor Bay Harbour Authority

Tor Bay Harbour Master

 **Telephone: 01803 292429**

 **E.mail: Kevin.Mowat@torbay.gov.uk**

1. Purpose

- 1.1 To review the powers delegated to the Executive Head of Tor Bay Harbour Authority – Tor Bay Harbour Master as contained within Torbay Council's Constitution.
- 1.2 Harbour customers and the wider community would expect the harbour authority to be fit for purpose and to review the powers delegated to its senior management.

2. Proposed Decision

- 2.1 **That, having reviewed the powers delegated to the Executive Head of Tor Bay Harbour Authority, as set out in Appendix 1 and Appendix 2, the Harbour Committee finds no reason to refer any proposed changes to the Council for determination.**

3. Action Needed

- 3.1 No further action required.

4. Summary

- 4.1 The Terms of Reference for the Harbour Committee form part of Torbay Council's Constitution.
 - 4.2 It is stated within those Terms of Reference that it is for the Harbour Committee to review annually the powers delegated to the Executive Head of Tor Bay Harbour Authority – Tor Bay Harbour Master and refer any proposed changes to the Council for determination. The Committee itself shall not authorise any changes.
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Supporting Information

5. Position

- 5.1 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.
- 5.2 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**'.
- 5.3 In the review they 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 of the review concerned:-
- 1 Accountability and decision making
 - 2 Strategy and Business Planning
 - 3 Management and Performance Review
 - 4 Municipal Port Finances
- 5.4 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.
- 5.5 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.
- 5.6 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. Later in 2007 the Council adopted the Working Party's recommendations.
- 5.7 It was a recommendation of 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.
- 5.8 Appendix 1 of this report provides a list of the current powers delegated to the Executive Head of Tor Bay Harbour Authority and they remain unchanged since they were last reviewed by the Committee in March 2012. Several delegated powers are generic and they apply to all Executives Heads. The general powers delegated to the Commissioners and Executive Heads and the limitations on delegations to the Chief Executive, Commissioners, Executive Heads and all other officers, are listed in Appendix 2.

6. Possibilities and Options

- 6.1 Not to review the powers delegated to the Executive Head of Tor Bay Harbour Authority – Tor Bay Harbour Master.
- 6.2 To recommend further changes to the powers delegated to the Executive Head of Tor Bay Harbour Authority – Tor Bay Harbour Master.

7. Preferred Solution/Option

- 7.1 Not to refer any proposed changes to the Council regarding the powers delegated to the Executive Head of Tor Bay Harbour Authority.

8. Consultation

- 8.1 There are a number of stakeholder groups which are used to consult on the quality and performance of the harbour service these are the Brixham Harbour Liaison Forum, the Torquay/Paignton Harbour Liaison Forum, various Community Partnerships, individual Harbour User Groups and the community wide Viewpoint Panel.
- 8.2 All of these stakeholder groups have helped to influence the management arrangements in place for Tor Bay Harbour.

9. Risks

- 9.1 There is likely to be a reduction in risk by providing the Executive Head of Tor Bay Harbour Authority – Tor Bay Harbour Master with the appropriate level of delegated powers. If the governance arrangements for the harbour did not include an appropriate level of delegated powers there would be a significant risk that the Council would not have a fit for purpose form of governance that reflects national best practice.
- 9.2 Although the Executive Head of Tor Bay Harbour Authority – Tor Bay Harbour Master has a significant level of delegated powers, the risks associated with the Executive Head of Tor Bay Harbour Authority – Tor Bay Harbour Master making such decisions is minimal as the powers are governed by restrictions as shown in Appendix 2. Also, the delegated powers can be revoked at any time by a revision of the Council's Constitution, although this would be an extreme option as it would go against national best practice.
- 9.3 Any changes to the powers delegated to the Executive Head of Tor Bay Harbour Authority – Tor Bay Harbour Master could delay or disrupt effective decision making and this would impact on the safe and efficient management of Tor Bay Harbour Authority.
- 9.4 The only remaining risk is that the Council could be criticised for not adopting the appropriate level of delegated powers for the Executive Head of Tor Bay Harbour Authority – Tor Bay Harbour Master as recommended by the Municipal Ports Review.

Appendices

- Appendix 1 Powers currently delegated to the Executive Head of Tor Bay Harbour Authority - updated and published on 22 February 2013.
- Appendix 2 General Powers delegated to Commissioners and Executive Heads and Limitations on delegations to the Chief Executive, Commissioners, Executive Heads and all other officers - updated and published on 22 February 2013.

Additional Information

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

Opportunities for Ports in Local Authority Ownership: A Review of Municipal Ports in England and Wales – Dept. for Communities & Local Government/Dept. for Transport (May 2006)

<http://webarchive.nationalarchives.gov.uk/+/http://www.dft.gov.uk/pgr/shippingports/ports/opportunities/>

Modernising Trust Ports: A Guide to Good Governance – Dept. of the Environment, Transport and the Regions (Jan 2000) (Second Edition August 2009)

<https://www.gov.uk/government/publications/modernising-trust-ports>

Torbay Council's Constitution – Officer Scheme of Delegation (last updated and published on 22 February 2013)

Appendix 1

Review of Delegated Powers

	Description	Responsibility delegated by
8.	Delegations to the Executive Head Tor Bay Harbour Authority	
8.1	To serve or receive notices, make orders, authorise any action or the institution, defence or conduct of proceedings and appeals and authorise named employees to enforce specific powers.	
8.2	The following powers in this paragraph are statutory powers which cannot be exercised by any officer other than the Executive Head of Tor Bay Harbour Authority, his/her Deputy or appointed assistants (such appointments being specifically referred to in their job description). Likewise they cannot be withdrawn by the Chief Executive or any other officer.	Statutory delegation
8.2.1	To give general directions to regulate the movement and berthing of ships and the safety of navigation.	
8.2.2	To give directions prohibiting the entry into, or requiring the removal from, the Harbour of any dangerous vessels.	
8.2.3	To prohibit the entry into the Harbour, and to regulate the movement, of any vessel carrying dangerous substances and to control similarly the entry onto the Harbour estate of dangerous substances brought from inland.	
8.2.4	To detain a vessel, if the Executive Head of Tor Bay Harbour Authority has reason to believe that it has committed an offence by discharging oil, or a mixture containing oil, into the waters of the Harbour.	
8.2.5	Only in relation to property forming part of the Harbour Estate and always having first obtained the approval of a fellow or member of the Royal Institute of Charter Surveyors (RICS) as to the value and terms of such disposal :-	

	Description	Responsibility delegated by
8.2.5 Cont.	<ul style="list-style-type: none"> (a) to grant or enter into the terms of leases, sub leases, or licences where the consideration does not exceed £25,000 per annum on any single transaction (or series of linked transactions); (b) To grant or enter into easements, licences, agreements, restrictive covenants or other rights or obligations where the consideration does not exceed £20,000 on any single transaction (or series of linked transactions); (c) To effect freehold disposals of land not required for operational purposes up to £100,000 in value; (d) To renew leases (regardless of the level of rent payable), licences and undertake a review of rents and licence fees when necessary and to agree surrenders, sub-letting and approve assignments; (e) To approve variations to (including the release of) restrictive and other covenants 	
8.2.6	To regulate the time and manner of a ship's entry into, departure from and movement within the Harbour waters and related purposes.	
8.3	<p>To vary (by addition or waiver (in full or as to part)) the approved Schedule of Harbour Charges in such manner as the Executive Head Tor Bay Harbour Authority shall consider reasonable; including for example (without restricting the generality of this power) where:</p> <ul style="list-style-type: none"> (i) the Executive Head Tor Bay Harbour Authority considers the variation to be in the best interest of the Harbour Authority and/or local people; (ii) the Executive Head Tor Bay Harbour Authority considers the variation would fairly reflect actual or part-year usage; 	Council (as part of the budget)

	Description	Responsibility delegated by
8.3 Cont.	<p>(iii) the Executive Head Tor Bay Harbour Authority considers that it would be appropriate where a vessel owner/operator has made use of a facility as a result of what the Executive Head Tor Bay Harbour Authority considers to be extreme or unusual weather conditions, an accident at sea, or other emergency; and</p> <p>(iv) the Executive Head Tor Bay Harbour Authority considers it appropriate to levy a charge above or in addition to those matters contained within the approved Schedule of Charges for anything done or provided by (or on behalf of) the Harbour Authority in accordance with the Harbours Act 1964 and/or Section 24 of the Tor Bay Harbour Act 1970 or any amendments or re-enactments of those Acts.</p>	Council (as part of the budget)

PROVIDED THAT the Executive Head Tor Bay Harbour Authority shall maintain a proper written record of all variations approved under this paragraph and shall, at least twice a year, report to the Harbour Committee the total value of the additional charges levied and the total value of the charges waived under this paragraph.

Updated and published on 22 February 2013

Appendix 2

Review of Delegated Powers

	Description	Responsibility delegated by
	Delegations to Commissioners and Executive Heads	
1.24	In managing the services and functions for which they are responsible Commissioners and Executive Heads shall be authorised to take any decisions (including any Key Decisions) and to exercise all legal powers relevant to those services and functions except Executive Heads shall not be authorised to take any decisions where they are expressly delegated to a specific Commissioner or Executive Head in this Scheme of Delegation unless so expressly delegated to specifically to them	Council/Executive
1.25a	This authorisation shall include (but not be limited to) any decisions in relation to the budget for and resources (including employees) allocated to those service/s and function/s for which they are responsible, from time to time.	
1.25b	This authorisation shall also include (but not be limited to) the service or receipt of notices, the making of orders, the authorisation of any action or the institution, defence or conduct of proceedings and appeals and the authorisation of named employees to enforce specific powers.	
1.26	Where the areas of responsibility and powers of an employee refer to specific Acts of Parliament, Regulations, Orders or guidance any subsequent re-enactment or amendment of the same shall apply.	
1.27	To retain contract staff or appoint consultants on matters related to their areas of responsibility.	
1.28	To make any decisions related to staff matters within their business unit in accordance with Council policy.	
1.29	So far as is lawful, Commissioners and Executive Heads may delegate (in writing) matters within the services and functions for which they are responsible to employees within their portfolio/business unit or to other Commissioners or Executive Heads. Any such delegations may be revoked, varied or subject to such limitations as the delegating Commissioner or Executive Head considers appropriate.	

	Description	Responsibility delegated by
1.30	Commissioners and Executive Heads may agree with the relevant Executive member any appropriate clarification of the "Limitations on Delegations" below.	
1.31	<p>A Commissioner (following consultation with the Chief Executive and the relevant Executive Head) may (by written notice (including email)) withdraw (either permanently or temporarily) any of the above powers delegated to any Executive Head within his/her portfolio and/or impose restrictions or conditions upon the exercise of any of the above powers by that Executive Head. However, this paragraph shall not apply in relation to the following:</p> <ul style="list-style-type: none"> (a) the Council's Chief Finance Officer when acting in that capacity; (b) the Council's Monitoring Officer when acting in that capacity; (c) the Executive Head Tor Bay Harbour Authority when exercising powers or duties expressly reserved to him/her by law; and (d) any other officer when exercising powers or duties expressly reserved to him/her by law. 	
1.32	The Chief Executive, all Commissioners and Executive Heads shall delegate matters within their areas of responsibility to ensure that matters are dealt with at the appropriate level to maintain a proper balance between efficiency and control. The Chief Executive, all Commissioners and Executive Heads shall maintain a written record of the delegations they have made and any limitations they have imposed upon such delegations.	
2.	Limitations on delegations to the Chief Executive, Commissioners, Executive Heads and all other officers.	
2.1	No decision shall be taken by any officer under this Scheme of Delegation if any relevant member or the Chief Executive requests that the matter shall be referred to the Council or the Executive (whichever shall be able to take the decision in question) or to the Chief Executive.	

- 2.2 All decisions shall be in accordance with the law. Whether or not any decision is contrary to the Council's Constitution may, if necessary, be determined by the Council. However, no decision or action shall be taken by any employee if the Executive Head Commercial Services reasonably considers it to be contrary to the law.
- 2.3 All decisions shall be in accordance with the Constitution and the Policy Framework of the Council. Whether or not any decision or action falls within the Policy Framework may, if necessary, be determined by the Council. However, no decision or action shall be taken by any employee if the Deputy Chief Executive (in consultation with the Monitoring Officer) reasonably considers it to be contrary to the Policy Framework.
- 2.4 All decisions shall be in accordance with the Council's Budget and Financial Regulations. Whether or not any decision or action falls within the Budget and Financial Regulations may, if necessary, be determined by the Council. However, no decision or action shall be taken by any employee if the Chief Finance Officer reasonably considers it to be contrary to the Budget or Financial Regulations.

Commissioners and Executive Heads may vire resources between their portfolio/business unit budget heads in accordance with the Council's Standing Orders and Financial Regulations. No such virements shall be made without the prior approval of (and subject to any conditions imposed by) the Chief Finance Officer

- 2.5 All decisions relating to the expenditure of unbudgeted additional grant income in excess of £10,000 shall be the subject of a full written report to the relevant member, setting out details of the financial, legal, property, human resources and other material considerations, together with a proper risk assessment and options appraisal.
- 2.6 All decisions shall be in accordance with the Council's Standing Orders. Whether or not any decision or action is in accordance with the Council's Standing Orders may, if necessary, be determined by the Council. However, no decision or action shall be taken by any employee which the Monitoring Officer reasonably considers to be contrary to the Council's Standing Orders.
- 2.7 In relation to the authorisation of the institution, defence or conduct of legal proceedings no decision shall be taken without prior consultation with the Executive Head Commercial Services and no such action shall be taken that is contrary to or not in accordance with any instruction from the Executive Head Commercial Services.
- 2.8 Before exercising (or deciding not to exercise) any delegated powers all employees shall undertake appropriate internal consultation. This consultation shall normally include (but not be limited to) the following:

- 2.8.1 Where the proposal may have implications relating to the Council's Strategic Plan, consultation with all relevant members and the Commissioner of Communities and Local Democracy;
- 2.8.2 Where the proposal may have any policy implications, or any significant service implications, consultation with all relevant members;
- 2.8.3 Where the proposal might reasonably be regarded as unusual or highly contentious, or involve an uncertain outcome, or has been the subject of (or is likely to result in) an allegation of maladministration being made against the Council, consultation with the relevant member and appropriate senior officers;
- 2.8.4 Where the proposal has any legal implications, consultation with the relevant member and the Executive Head Commercial Services;
- 2.8.5 Where the proposal may have significant implications for any particular Ward, consultation with all the members representing that Ward;
- 2.8.6 Where the proposal may have any financial or audit (whether internal or external) implications, or any property implications, consultation with the Chief Finance Officer;
- 2.8.7 Where the proposal may have any constitutional implications, consultation with the Monitoring Officer;
- 2.8.8 Where the proposal may have any implications relating to the Council's insurance policies (or the ability of the Council to obtain insurance at reasonable rates in the future), consultation with the Chief Finance Officer;
- 2.8.9 Where the proposal may have any health and safety implications for the public or employees, consultation with the Executive Head Community Safety;
- 2.8.10 Where the proposal may have any human resources implications, consultation with the Executive Head Business Services;
- 2.8.11 Where the proposal may have any equalities implications, consultation with the Executive Head Business Services;
- 2.8.12 Where the proposal may have any implications for another Council business unit, consultation with the relevant Commissioner and Executive Head;

- 2.8.13 Where any relevant member or Commissioner has expressed opposition to a proposal, consultation with the Chief Executive. Where any Executive Head has expressed opposition to a proposal, consultation with the relevant Commissioner;
- 2.8.14 Where the proposal is similar to a previous matter that has been the subject of consultation with any member (or which a member has expressed a desire to be consulted about), consultation with that member;
- 2.8.15 Where the delegated power is expressly required to be exercised in consultation with one or more Community Partnership, the Community Partnership(s) specified in the decision to delegate;
- 2.8.16 Where the proposal may have significant implications for one or more Community Partnerships, consultation with those Community Partnerships affected; and
- 2.8.17 In any cases of doubt, consultation with the relevant member.
- 2.9 Property acquisitions and disposals may not be authorised where in the reasonable opinion of a fellow or member of the Royal Institute of Charter Surveyors (RICS) the estimated value of the land or property being acquired or disposed of exceeds £50,000 or (if a transaction is linked to another transaction) where the aggregate estimated value exceeds that amount. But this paragraph shall not prevent the Chief Executive and Commissioners authorising land/property acquisitions and freehold disposals where they are in accordance with the Council's Capital Programme or an express Council decision.
- 2.10 The Chief Executive and Commissioners may not authorise leases if, in the reasonable opinion of a fellow or member of the Royal Institute of Charter Surveyors (RICS), the value of the premium exceeds £25,000 or if the rent (including any service charge) should exceed £10,000 per year, or (if a transaction is linked to another transaction) where the aggregate relevant amounts exceeds those limits. But this paragraph shall not prevent the Chief Executive, Commissioners and Executive Heads authorising leasehold disposals where they are in accordance with the Council's Capital Programme or an express Council decision.
- 2.11 The Chief Executive, all Commissioners and Executive Heads may not authorise the acceptance of any tender for goods or services where the estimated or actual (whichever the higher) total contract value exceeds £50,000 or (if a contract is linked to another contract) where the aggregate estimated or actual (whichever the higher) value exceeds that amount unless otherwise specified within the Financial Regulations. But this paragraph shall not prevent the Chief Executive, Commissioners and Executive Heads authorising the acceptance of any tenders for goods or services where they are pursuant to the Council's approved Capital Programme. Where the

estimated or actual (whichever the higher) total contract value falls between £25,000 and £50,000 Commissioners and Executive Heads may not authorise acceptance of the contract unless they have first consulted with the relevant member and that member has indicated that they do not wish the matter to be referred to the Executive (or Council/Committee), as appropriate for determination.

- 2.12 No decisions shall be taken that is contrary to the terms of any specific delegations whether in this Scheme or made by Council (or a Council Committee or Sub-Committee) or the Executive, or an employee of the Council.

Updated and published on 22 February 2013



Meeting: Harbour Committee

Date: 18th March 2013


Wards Affected: All wards in Torbay

Report Title: Tor Bay Harbour Business Plan 2013/2014

Executive Lead Contact Details: Non-Executive Function

Supporting Officer Contact Details: Kevin Mowat

**Executive Head of Tor Bay Harbour Authority
Tor Bay Harbour Master**

 **Telephone: 01803 292429**

 **E.mail: Kevin.Mowat@torbay.gov.uk**

1. Purpose

- 1.1 To agree the Tor Bay Harbour Business Plan for 2013/14.
- 1.2 Harbour customers and the wider community would expect the harbour authority to have a business plan.
- 1.3 If the Harbour Committee work to an agreed Business Plan it will have a positive impact on our customers.

2. Proposed Decision

- 2.1 **That the draft Tor Bay Harbour Business Plan 2013/2014 as set out in Appendix 1 be approved.**
- 2.2 **That, subject to the views of the Harbour Committee, the Executive Head of Tor Bay Harbour Authority and the Harbour Committee Chairman agree the final detail of the Tor Bay Harbour Business Plan 2013/2014, and sign the Acceptance Statement in Section 9.**

3. Action Needed

- 3.1 To agree the final detail of the Tor Bay Harbour Business Plan 2013/2014, and sign the Acceptance Statement in Section 9.

4. Summary

- 4.1 The Municipal Ports Review recommends that local authority owned ports and harbours should consider producing a business plan that looks at the future prospects of the port/harbour and how it will meet the requirements of stakeholders.

- 4.2 The business plan should review the strategy of the harbour and present measurable objectives.
- 4.3 The Tor Bay Harbour Business Plan 2013/2014 has followed the guidelines set out in the Municipal Ports Review, which also makes reference to *'Modernising Trust Ports: A Guide to Good Governance'*.

Supporting Information

5. Position

- 5.1 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.
- 5.2 In May 2006 the Department for Communities and Local Government and the Department for Transport jointly published **'Opportunities for Ports in Local Authority Ownership; A review of municipal ports in England and Wales'**.
- 5.3 In the review they 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 of the review concerned:-
- 1 Accountability and Decision Making
 - 2 Strategy and Business Planning
 - 3 Management and Performance Review
 - 4 Municipal Port Finances
- 5.4 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.
- 5.5 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.
- 5.6 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. Later in 2007 the Council adopted the Working Party's recommendations.

- 5.7 It was a recommendation of 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.
- 5.8 Once the principle of a Harbour Committee was established a suggested Implementation Schedule was agreed in 2007 and this included the need to draw up and agree a Tor Bay Harbour Business Plan by the end of March each year.
- 5.9 The Municipal Port Review deals with the management of the harbour. It is not a question of ownership as the Council remains the owning authority. It is a matter of what delivers the most appropriate and fit for purpose form of governance that will work best for any particular municipal port.

6. Possibilities and Options

- 6.1 Not to accept the draft Tor Bay Harbour Business Plan 2013/14 and to recommend an alternative layout with alternative content.

7. Preferred Solution/Option

- 7.1 To approve the draft Tor Bay Harbour Business Plan 2013-2014.
- 7.2 Municipal Ports are expected to consider adopting and adapting the recommendations made in '*Modernising Trust Ports: A Guide to Good Governance*'. This sets out the benchmarks in terms of Board composition, appointment, performance and accountability.

8. Consultation

- 8.1 There are a number of stakeholder groups which are used to consult on the quality and performance of the harbour service these are the Brixham Harbour Liaison Forum, the Torquay/Paignton Harbour Liaison Forum, various Community Partnerships, individual Harbour User Groups and the community wide Viewpoint Panel.
- 8.2 All of these stakeholder groups have helped to influence the content of the Tor Bay Harbour Business Plan over recent years. In particular harbour staff and the Liaison Forums have been able to comment on a draft version of the plan.
- 8.3 The Harbour Committee, with its Business Plan, will improve community relations as External Advisors are involved at the heart of the strategic decision-making process for Tor Bay Harbour.

9. Risks

- 9.1 There is likely to be a reduction in risk by having a Business Plan in place. If the Harbour Authority's governance arrangements did not include an appropriate Business Plan there would be a significant risk that the Council would not have a fit for purpose form of governance that reflects national best practice.
- 9.2 Although the Harbour Committee is a decision-making body, the risks associated with the Committee making decisions is minimal as the powers given to it can be

revoked at any time by a revision of the Council's Constitution. However, this would be an extreme option as it would go against national best practice.

- 9.3 The only remaining risk is that the Council could be criticised for not adopting a Tor Bay Harbour Business Plan as recommended by the Municipal Ports Review.

Appendices

Appendix 1 Draft Tor Bay Harbour Business Plan 2013/2014

Additional Information

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

Opportunities for Ports in Local Authority Ownership: A Review of Municipal Ports in England and Wales – Dept. for Communities & Local Government/Dept. for Transport (May 2006)

<http://webarchive.nationalarchives.gov.uk/+/http://www.dft.gov.uk/pgr/shippingports/ports/opportunities/>

Modernising Trust Ports: A Guide to Good Governance – Dept. of the Environment, Transport and the Regions (Jan 2000) (Second Edition August 2009)

<https://www.gov.uk/government/publications/modernising-trust-ports>

Torbay Council's Constitution - updated and published on 22 February 2013.



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1. Executive Summary
2. Introduction
3. SWOT Analysis
4. Compliance with the Municipal Ports Review
5. Strategic Objectives and Core Values
6. Priorities, Outcomes and Actions
7. Budget and Financial Planning
8. Targets and Performance Indicators
9. Business Plan Acceptance Statement

Appendix 1 - Tor Bay Harbour and Maritime Strategy

Appendix 2 – Municipal Ports Review

Appendix 3 – Plan of Tor Bay Harbour

Tor Bay Harbour - Business Plan 2013/14
Business Unit – Tor Bay Harbour Authority

1. Executive Summary

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 how it 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 up to 9 Councillors and up to 6 External Advisors who have been selected following a skills audit. Also, appropriate training is now given to each member of the Committee.

The Harbour Committee deals with all matters relating to the strategic management of the Council's function as the 'harbour authority'. It is a committee of the full council and is both open and accountable. In particular this Committee determines the level of harbour charges and fulfils the Council's role as Duty Holder for the purposes of the Port Marine Safety Code. This fit for purpose Committee sets the budgets for the harbour and, with the assistance of the Tor Bay Harbour Authority business unit, manages Tor Bay Harbour, which includes the harbour estate. This management is undertaken within the framework of Council policy and with special attention being given to the aspirations set out within the Tor Bay Harbour and Maritime Strategy (see Appendix 1).

Given the arrangements described above the Harbour Authority business unit effectively acts like an internally commissioned service. Torbay Council will examine opportunities to further commission its harbour authority function or improve the governance of Tor Bay Harbour, if appropriate.

There is a strong commitment on behalf of Torbay Council both to improve the service provided by the Harbour to its direct users and to develop its role in supporting the local economy and as a focus both for the local community and visitors to the Bay. In 2013/14, for the second consecutive year, the Harbour Authority will pay the Council a cash dividend.

2. Introduction

Tor Bay Harbour has existed successfully as a statutory entity since 1970 and it has served the community well. For more than 40 years it has been shown that Tor Bay Harbour can operate successfully, efficiently and economically, and subsequently not become a burden on Torbay Council's resources. Maintaining this situation will remain a constant challenge.

Torbay Council's role as a strong maritime local authority is enhanced because the jurisdiction of the Harbour Authority mirrors the Council's land boundaries and it includes the Bay's entire coastline. Appendix 3 has a plan showing the limits of Tor Bay Harbour.

In operational terms it allows control over 22 miles of coastline and 16 square miles of open sea. This control has proved to be invaluable when issues of water safety combined with sound marine management, impact so clearly on the image of the Bay, and can be seen as both crucial and integral to the tourism product and wider economy. The Bay wide harbour controls have allowed regulation of shipping, control over the pollution risk, management of the harbour estate and zoning of small craft activity. Marine operations regularly dovetail effortlessly with beach, coast and environmental issues, often with a common aim.

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2009 saw the introduction of the Marine & Coastal Access Act and during 2010 the new Marine Management Organisation became fully operational. These changes are now starting to alter how the UK manages its coastal waters and the marine environment. Consultation commenced at the end of 2012 on a proposed Marine Conservation Zone (MCZ) in Tor Bay. The Harbour Authority already plays an important role with other stakeholders in managing our local coastal zone. The introduction of more Marine Protected Areas within harbour limits are being challenged due to the potential socio-economic impacts.

2013 will see the introduction of marine spatial planning, which implicitly leads to the need for port master planning. This is particularly relevant given the number of quays, piers, buildings and other elements of infrastructure that make up the sizeable harbour estate managed by Tor Bay Harbour Authority. The Tor Bay Harbour Port Masterplan commenced in 2012 and the first edition should be published in 2013.

At a local level Torbay Council has the opportunity to put forward a united front; this is clearly a position of strength. Tor Bay as one harbour is well suited to best serve the needs of all the relevant stakeholders.

The Tor Bay Harbour Authority Vision and Mission Statement are as follows;

Vision - *‘to be a high quality service that is committed to improving Tor Bay Harbour and providing a cleaner and safer environment’.*

- ***“Better Facilities – Safer Harbour – Cleaner Environment”***

Mission Statement – *‘to offer a quality Service to those who live, work and visit Torbay, by continually striving to improve both Marine and Harbour facilities and ensuring a cleaner and safer environment’.*

To help deliver the vision and mission statement the Tor Bay Harbour Authority business unit is dedicated to providing the best value for harbour and marine users. They will continuously challenge the way harbour services are provided to ensure the most cost effective and efficient approach is adopted. Tor Bay Harbour Authority will continue to work with the private sector, external agencies and other organisations to deliver high quality services. The harbour will provide high quality services by ensuring that all staff are well trained, dedicated and well motivated.

The facilities are provided for residents, tourists, day visitors, clubs, organisations and businesses throughout Torbay. The extent to which individual facilities serve different user groups and individuals is dependent upon the facility type and operation. The service is responsive to the unique make up of Torbay's resident and visiting population. Torbay has a higher proportion of retired people than the national average and the percentage of the working age population claiming some kind of benefit, is also higher than the national average. In the summer months the total population can swell by over 40% with an influx of tourists and foreign students. Torbay also has areas of serious social deprivation compounded by a decline in the manufacturing industry since 2000.

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Our main customers and stakeholders include the following :-

- Fishermen, including those from locally based vessels and vessels from other ports (UK and Europe). These include owners, skippers and crew.
- Fish Merchants & Fish Processors.
- Brixham Trawler Agents.
- Ships visiting Tor Bay, including the owners of the vessels, skippers and crew.
- Owners and users of vessels for private pleasure and recreational purposes.
- Owners, skippers and crew of certified passenger carrying pleasure craft, including chartered angling vessels, dive boats, heritage boats, etc.
- Businesses and organisations with tenancy agreements within the Harbour Estate.
- Tourists visiting the resort of Torbay including its enclosed harbours, waterfront and coastline.
- English Riviera Tourism Company Ltd
- Marina operators at Torquay and Brixham - Marina Developments Ltd.
- Royal National Lifeboat Institution (RNLI)
- Marine Management Organisation (MMO)
- Devon & Severn Inshore Fisheries & Conservation Authority (IFCA)
- Maritime & Coastguard Agency (MCA)
- Organisations involved in waterborne sports and activities (e.g. Yacht and sailing clubs, training organisations, Scouts, Sea Cadets, divers, rowing clubs, youth groups etc.).
- Torbay and Brixham Shipping Agents (contracted pilotage service provider).
- Charitable and religious organisations, including various individuals and groups providing entertainment and events within the Harbour Estate.
- Various businesses, organisations and individuals conducting their affairs on the Harbour Estate.
- Torbay Town Centres Co. (Business Improvement Districts)
- The general public and residents of Torbay.

Specific partnership understandings exist with the Maritime & Coastguard Agency (MCA), Torbay & Brixham Shipping Agents, UK Hydrographic Office, Marina Developments Ltd, SeaTorbay, the Torbay Coast and Countryside Trust and other external agencies and Voluntary Sector groups.

A record of complaints and compliments, together with the annual Users Survey and a visitor feedback system, all combine to give a good indication of which services are meeting the customers' expectations and those which might be seen as below the quality expected. Survey results are reported to the Harbour Committee each year.

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3. SWOT Analysis

STRENGTHS	WEAKNESSES
Dedicated and experienced staff	Overprotection of the natural and physical environment – a reluctance to change
Natural harbour and safe anchorage	Extent of physical infrastructure (exposure to storm damage & climate change)
Fit for purpose Harbour Committee	Transport infrastructure
Statutory legislation ensures control	Method and inconsistency of past harbour governance
Comprehensive harbour byelaws	Resources diverted for provision of public amenity facilities
Support of Torbay Council	Very limited commercial/shipping income
Diversity and richness of natural environment	Operational land not 'safeguarded' by the planning system
Extent of and range of property on harbour estate	Ageing infrastructure with a significant repairing liability
Self-financing and policy of ring-fenced harbour accounts	Low profile of harbour authority status
Limited interference in harbour management by Torbay Council	No Harbour Management Plan
Designated sites protecting the natural and physical environment	No Port Masterplan
One of the best race sailing Bays in the UK	
A compulsory pilotage service providing safety and protection	
OPPORTUNITIES	THREATS
Physical environment (Quality of life)	Competition from other ports & harbours
Growing interest in marine based leisure activity	European fishing policies (restrictions with fish quota/depleted fish stocks)
A catalyst for regeneration activity	Climate change – sea level rise
Integrated coastal zone management	Storm damage to quays, piers & breakwaters
Maximise commercial use of assets	Increasing user conflict over a shared and finite resource
Geo-park status	Pollution – especially our sea and coast
Raise external profile and promote success	Change of financial policy (removal of ring-fenced harbour accounts)
Trend for green tourism	Resistance to change i.e. improved governance
External funding opportunities	Loss of operational land to developers
Climate change – sea level rise	Inadequate regional & national ports strategy
Commissioning of Tor Bay Harbour Authority – arms length governance	Too many sites designated for protection in the natural and physical environment
Coastal Partnership – SeaTorbay	New cash dividend to the Council's general fund becoming too much of a burden
Larger sub-regional marine leisure market opened up by the South Devon link road	Disruption to business caused by major redevelopment of adjacent sites

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4. Compliance with the Municipal Ports Review

In 2007 Torbay Council decided to accept the main findings of the Municipal Ports Review (Appendix 2), published the previous year. Consequently the Council made constitutional changes to set up a decision making Committee called the 'Tor Bay Harbour Committee'. The Committee's purpose is to manage and govern Tor Bay Harbour, which includes the enclosed harbours of Brixham, Torquay and Paignton. Although the Committee cannot make decisions outside the Council's policy framework it does set its own budget, determine the level of harbour charges and has a capital spending limit of £25,000.

Up to fifteen people can sit on the Harbour Committee, 9 members of the Council plus up to five external non-voting advisors appointed by the Committee on a four year term (maximum term 8 years) and the option for one non-voting private sector advisor representing the Board of the Economic Development Company (Torbay Development Agency). Political group leaders have been asked to take account of the geographical spread of members and the need for continuity when making appointments to the Harbour Committee. The external non-voting advisors are selected and appointed following a skills audit. Meetings are usually held every quarter with additional meetings as required.

The relationship between the Council as the owning authority and the Harbour Committee as the managing body is determined by detailed Terms of Reference and a Protocol, which forms part of the Council's Constitution. In effect the Tor Bay Harbour Authority business unit is an internally commissioned service.

The Harbour Committee, which, when required, reports directly to the full Council, is also the '**duty holder**' under the Port Marine Safety Code.

There are two bespoke stakeholder groups set up to give advice on day to day operational matters and to provide a conduit on such matters to the Harbour Committee. The two groups, which have formal constitutions, are known as the Brixham Harbour Liaison Forum and the Torquay/Paignton Harbour Liaison Forum. Both Forums meet quarterly, two weeks prior to the Harbour Committee meetings. The Forum minutes are standing agenda items for the Harbour Committee.

Torbay Council may decide to accept more recommendations from the Municipal Ports Review in years to come but for now it has created an accountable, expert and responsive form of governance and the harbour management has an appropriate level of independence and flexibility.

Although currently working well the Council could improve the governance arrangements set out above by considering other commissioning options for its harbour authority function.

5. Strategic Objectives and Core Values

Links to Corporate and Community priorities and objectives.

There are a variety of different and obvious links between this Plan relating to Tor Bay Harbour and the provision of the Tor Bay Harbour Authority business unit, and the

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Council's overall '**Vision**' for Torbay, which is "**Working together for a Healthy, Prosperous and Happy Bay**".

The provision of Tor Bay Harbour Authority, as a statutory function, contributes directly and indirectly to all of the Council's three corporate themes – **A Healthy Bay – A Prosperous Bay – A happy Bay**. In particular two of the key themes link to the operation of Tor Bay Harbour and these are '**A Prosperous Bay**' and '**A Happy Bay**'.

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. Tor Bay Harbour Authority endeavour to keep the enclosed harbours, the harbour estate and the Bay clean, safe, tidy and attractive and by so doing the service remains crucial to the overall feeling of civic pride endorsed within the **Corporate Plan**.

Harbour Authority Objectives

1. Maintain, expand and improve the harbour facilities
2. Enable the safe use of the harbour
3. Maintain self-financing accounts
4. Invest in the present and the future
5. Enhance our self-critical and performance driven culture
6. Enable staff to achieve through development and training
7. Influence, respond and contribute to the economic, voluntary, community, cultural and environmental agendas

Shared Objectives

- Working towards creating a sustainable and flourishing leisure, culture and tourism sector that is open to residents and visitors.
- Creating the right environment for inward investment.
- Making it easier to get around the Bay by developing integrated transport where feasible.

Delivering on our Core Values

- To maintain and improve the quality of service that we provide to our customers.
- Our services will be tailored to meet the changing needs of our customers.
- Marine and harbour facilities will be made available to as many users as possible.
- To develop a professional and caring service, that is fit for purpose.
- We are committed to the courteous and fair treatment of our customers.
- To consult with all relevant user groups and stakeholders.
- To provide an open, accountable and transparent management of Tor Bay Harbour.
- To provide a prompt reply to correspondence (including letters, faxes and e-mails).
- To carry out our duties in a fair and equitable manner.

Overall Objective

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

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Business Unit – Tor Bay Harbour Authority

6. Priorities, Outcomes and Actions

KEY THEMES – A HEALTHY BAY, A PROSPEROUS BAY AND A HAPPY BAY

PRIORITY No. 1: MAINTAIN SAFETY

The outcomes we want to achieve are:

- **To fulfil the Council's obligations as a statutory and competent harbour authority**
- **To responsibly manage the safety of navigation and overall harbour safety, through the enforcement of applicable byelaws and appropriate legislation**
- **To comply with the Port Marine Safety Code through the use of a robust Safety Management System**
- **A safe haven for all vessels and a safe harbour estate – making people feel safe**

ACTIONS	Timescale	Who
Renew the bi-lateral agreement with the UK Hydrographic Office	Annually	Executive Head
Undertake routine maintenance of harbour infrastructure	Ongoing	Harbour Masters
Pass annual audit/inspection from Trinity House and file quarterly reports	Annually/Quarterly	Executive Head
Issue local Notices to Mariners and enforce Harbour Byelaws	As required	Harbour Masters
Lay seasonal 5-knot buoys & navigational marks	May 2013	AHM Torquay
Manage the seasonal beach/harbour patrol craft	May to September 2013	DHM Torquay
Safety Management System audit completed and improvement plan agreed	December 2013	Harbour Masters
Safety Management System Improvement Plan (2012/13) implemented	November 2013	Harbour Masters
Review and improve the Safety Management System software	June 2013	Executive Head
Review and exercise the Tor Bay Harbour Emergency Response Plan	Annually	Executive Head/TBC
Review the delegated powers of the Executive Head of Tor Bay Harbour Authority	March 2014	Harbour Committee
Review of existing harbour powers (every 5 years)	December 2015	Executive Head & Harbour Committee
Explore provision of new offices for displaced MCA staff	September 2013	Executive Head & TDA

Tor Bay Harbour - Business Plan 2013/14
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KEY THEMES – A HEALTHY BAY, A PROSPEROUS BAY AND A HAPPY BAY

PRIORITY No. 2: IMPROVE CUSTOMER EXPERIENCE

The outcomes we want to achieve are:

- To maintain and improve the quality of service that we provide to our customers
- Tailored services that meet the changing needs of our customers
- Marine and harbour facilities made available to as many users as possible
- Delivery of a professional and caring service, that is fit for purpose
- The courteous and fair treatment of our customers
- To carry out our duties in a fair and equitable manner
- Ensuring equality and diversity in service delivery together with equality of opportunity

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ACTIONS	Timescale	Who
Refresh the Tor Bay Harbour Website	April 2013	DHM Torquay
Supply up to date/live weather and tidal data to the Tor Bay Harbour website	June 2013	AHM Torquay
Undertake a customer satisfaction survey and react to the results	February to May 2013	Executive Head
Continue benchmarking via the British Ports Association, UK Harbour Masters Association, RYA, BMF & SW Regional Ports Association	Ongoing	Harbour Masters
To provide a prompt reply to correspondence (including letters, faxes and e-mails)	Ongoing	All Office Staff
Complete Equality Impact Assessments (Annually)	November 2013	HM Paignton
Implement Equality Impact Assessment Improvement Plans (Annually)	November 2013	Executive Head
Monitor and support staff through induction and appraisal reviews (RADARs)	March 2014	All Managers
Encourage Harbour Masters to fully complete CPD records	Ongoing	Executive Head
Work with the Director of Place & Resources and the Chairman of the Harbour Committee Chairman to consider the impact of the Localism Act and in particular the issues surrounding the 'community right to challenge' – if necessary provide the business case for future service delivery options for Tor Bay Harbour Authority	March 2014	Executive Head, Harbour Committee Chairman & Director of Place & Resources
To review the Tor Bay Harbour Operational Moorings Policy (Annually)	March 2014	Executive Head

Tor Bay Harbour - Business Plan 2013/14
Business Unit – Tor Bay Harbour Authority
KEY THEMES – A HEALTHY BAY, A PROSPEROUS BAY AND A HAPPY BAY

PRIORITY No. 3: STEWARDSHIP OF THE HARBOUR'S BUILT AND NATURAL ENVIRONMENT

The outcomes we want to achieve are:

- **A sustainable approach to harbour management in recognition of climate change**
- **Investment to create high standards in existing and new harbour infrastructure**
- **Increase public awareness of the maritime environment as a valuable environmental, economic and social asset**
- **Minimal environmental impact of harbour activities**
- **A Harbour Management Plan**
- **Improving quality of life by creating a clean and attractive environment that is valued by residents and visitors**

ACTIONS	Timescale	Who
Influence decision making over the management measures of the new Special Area of Conservation in Tor Bay	March 2014	Harbour Masters & SeaTorbay
Influence decision making over the location of Marine Conservation Zones	March 2014	Executive Head, Harbour Committee & TBC
Attend meetings with other coastal zone stakeholders. (Inshore Fisheries and Conservation Authority (IFCA), Torbay Coast & Countryside Trust, SeaTorbay, Devon Maritime Forum)	Ongoing	Harbour Masters
Assist in the collection of spatial mapping data	Ongoing	Harbour Masters
Distribute information on good practice and regulations to boat owners (Green Blue Initiative) – improve recycling and reduce carbon emissions	Ongoing	Harbour Masters
Help provide appropriate sea/flood defences and raise awareness of sea level rise	Ongoing	Harbour Committee, TBC & EA
Deliver the project to replace chain moorings with pontoon berths in Torquay's inner harbour	March 2014	Executive Head
Continue work on a Coastal Zone Management Plan in consultation with stakeholder groups	September 2013	Executive Head & SeaTorbay
Continue to investigate renewable energy projects for use on the harbour estate	October 2013	Executive Head
Deliver improved passenger landing facilities at Torquay & Brixham	June 2013	Executive Head with Transport Planning

Tor Bay Harbour - Business Plan 2013/14
Business Unit – Tor Bay Harbour Authority
KEY THEMES – A HEALTHY BAY, A PROSPEROUS BAY AND A HAPPY BAY

PRIORITY No. 4: ENGAGE WITH THE COMMUNITY AND HARBOUR USERS

The outcomes we want to achieve are:

- **To consult with all relevant user groups and stakeholders**
- **To provide an open, accountable and transparent management of Tor Bay Harbour**
- **A higher percentage of people who feel they can influence harbour management decisions**
- **Influence, respond and contribute to the economic, voluntary, community, cultural and environmental agendas**

ACTIONS	Timescale	Who
Support the development of a Maritime Centre of Excellence	As required	Executive Head
Hold quarterly meetings with harbour users & stakeholders (Liaison Forums)	Quarterly	Harbour Masters
Continue to encourage young people to engage in marine activities	As required	Harbour Masters
Support and engage with Coastal Partnership – SeaTorbay	Ongoing	Harbour Masters
To continue to work with and/or participate with relevant voluntary and community organisations (Community Partnerships, Pride in Brixham)	Ongoing	Harbour Masters
Improve understanding of the work of the Harbour Authority through talks, boat trips, open days, etc.	Ongoing	Executive Head & Harbour Masters

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PRIORITY No. 5: ENCOURAGE LOCAL PROSPERITY

The outcomes we want to achieve are:

- **Capitalise on Torbay's maritime setting**
- **Support for the local economy and economic growth**
- **Regeneration of the enclosed harbours of Brixham, Paignton and Torquay**
- **Enable a strong and sustainable Fishing Industry**

ACTIONS	Timescale	Who
Deliver a "Port Masterplan" for Tor Bay Harbour	September 2013	Executive Head & Harbour Committee
By working with stakeholders investigate options to improve the management of the new Fish Market complex	March 2014	Executive Head
Produce a schedule of Maritime Events (Annually)	January 2014	DHM Torquay
Contribute to tourism by working to support event organisers	Ongoing	All Harbour Staff
Work collaboratively with the English Riviera Tourism Company Ltd, especially in respect of marketing and promoting Tor Bay Harbour	Ongoing	Harbour Masters & ERTC
Contribute to tourism by providing visitor mooring facilities (Annually)	Ongoing (May ~ Oct)	Harbour Masters
Work with the Economic Development Company (TDA), the Mayor and the Council on marine and waterfront projects	Ongoing	Executive Head & Harbour Committee
Work with the Economic Development Company (TDA), the Mayor and the Council to complete a feasibility study for an extension to Torquay harbour	March 2014	Executive Head
Work with the Economic Development Company (TDA), the Mayor, the Council and the Local Enterprise Partnership (LEP) on maximising the potential benefits of the SW Marine Energy Park	March 2014	Executive Head & Harbour Committee Director of Place & Resources
Agree the Tor Bay Harbour Authority Business Plan (Annually)	March 2014	Harbour Committee

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KEY THEMES – A HEALTHY BAY, A PROSPEROUS BAY AND A HAPPY BAY

PRIORITY No. 6: ACHIEVE FINANCIAL STRENGTH

The outcomes we want to achieve are:

- **Effective financial management of the harbour**
- **To operate ‘ring-fenced’ accounts and remain self-financing**
- **Full occupancy of harbour facilities**
- **100% of harbour estate properties let**
- **Effective management of all harbour assets**
- **Effective management of business risks**

ACTIONS	Timescale	Who
Keep existing businesses and attract new activities, including direct and indirect marketing and promotion.	Ongoing	Executive Head & Harbour Committee
Monitor variation on budgeted income	Quarterly	Executive Head & Harbour Committee
Monitor variation on budgeted expenditure	Quarterly	Executive Head & Harbour Committee
Produce an Asset Management Plan for the Business Unit (Annually)	March 2014	Executive Head
Review the Risk Register for the Business Unit (Annually)	September 2013	Executive Head
Review the future use of the Harbour Lights building	September 2013	Executive Head & TDA
Test and review a Business Continuity Plan for the Business Unit	July 2013	Harbour Masters
Maximise harbour estate lettings occupancy	Quarterly	Executive Head & Harbour Committee
Undertake Energy Audits at each enclosed harbour (linked to Priority 3 above to reduce carbon emissions)	November 2013	Harbour Masters
Set the Tor Bay Harbour Charges and Harbour Budget (Annually)	December 2013	Harbour Committee
Analyse our visitor data and explore marketing opportunities (Annually)	January 2014	Harbour Masters
Review the Audit Plan for Tor Bay Harbour Authority (Annually)	June 2013	Harbour Committee

Key

Executive Head
ERTC
TDA

Executive Head of Tor Bay Harbour Authority
English Riviera Tourism Company Ltd
Torbay Development Agency (Economic Development Co.)

TBC
EA

Torbay Borough Council
Environment Agency

Tor Bay Harbour - Business Plan 2013/14
Business Unit – Tor Bay Harbour Authority

7. Budget and Financial Planning

TORQUAY and PAIGNTON HARBOURS

PROJECTED OUTTURN 2012/13 and APPROVED BUDGET 2013/14

Expenditure	OUTTURN 2011/12 £000	PROJECTED OUTTURN 2012/13 £000	APPROVED BUDGET 2013/14 £000
Operations and Maintenance :-			
Harbour Attendants Salaries and Wages	137	140	144
Repairs and Maintenance	150	163	153
Rent Concessions	1	2	2
Other Operating Costs	82	101	105
Town Dock Costs	8	3	5
Management and Administration :-			
Salaries	174	174	181
Internal Support Services	118	105	105
External Support Services		19	19
Other Administration Costs	42	84	48
Capital Charges	183	178	178
Contribution to Patrol Boat Operation	2	5	3
Dividend to General Fund (based on 2.5%/6% of total income)	0	25	59
	897	999	1,002
Income			
Rents and Rights :-			
Property and Other Rents/Rights	246	266	260
Marina Rental	222	222	222
Operating Income :-			
Harbour Dues	64	64	79
Visitor and Slipway	48	44	41
Mooring fees	65	63	69
Town Dock	234	251	250
Boat and Trailer parking	32	37	37
Other Income	44	42	25
Contribution from Reserve	5	30	0
	960	1,019	983
Operating Surplus /(Deficit)	63	20	(19)
Early repayment of Prudential Borrowing	(63)	0	0
Net Deficit to Reserve	0	20	(19)

Tor Bay Harbour - Business Plan 2013/14
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BRIXHAM HARBOUR

PROJECTED OUTTURN 2012/13 and APPROVED BUDGET 2013/14

Expenditure	2011/12 Outturn £ ,000	2012/13 Projected Outturn £ ,000	2013/14 Provisional Budget £ ,000
Operations and Maintenance :-			
Harbour Attendants Salaries and Wages	177	133	228
Repairs and Maintenance	215	200	120
Rent Concessions	4	4	4
Other Operating Costs	313	371	352
Management and Administration :-			
Salaries	135	135	148
Internal Support Services	103	88	88
External Support Services	0	19	19
Other Administration Costs	43	103	37
Capital Charges	300	291	291
Leased properties	20	0	0
Contribution to Patrol Boat Operation	2	5	3
Dividend to General Fund (based on 2.5% of total income)	0	36	81
	1,312	1,385	1,371
Income			
Rents and Rights :-	179	211	215
Rents and Rights	162	162	162
Marina Income			
Operating Income :-			
Harbour Dues	90	87	87
Visitor and Slipway	13	12	13
Mooring fees	142	135	138
Fish Tolls income	739	650	650
Other Income	115	84	91
Contribution from Reserve	17	114	0
	1,457	1,455	1,356
Operating Surplus /(Deficit)	145	70	(15)
Early repayment of Prudential Borrowing	(145)	0	0
Net Surplus/(Deficit) to Reserve	0	70	(15)

Tor Bay Harbour - Business Plan 2013/14
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TORQUAY AND PAIGNTON HARBOURS - FUTURE YEARS

	APPROVED ESTIMATE 2012/13 £000	PROJECTED OUTTURN 2012/13 £000	PROVISIONAL ESTIMATE 2013/14 £000	PROVISIONAL ESTIMATE 2014/15 £000	PROVISIONAL ESTIMATE 2015/16 £000	PROVISIONAL ESTIMATE 2016/17 £000
1. EXPENDITURE						
Employees	314	314	325	330	334	341
Maintenance	153	163	153	157	161	165
Rent Concessions	2	2	2	2	2	2
Other Costs	163	204	172	176	180	185
Town Dock excl Cap Financing	10	3	5	5	5	5
Capital Financing	184	178	168	168	168	168
Patrol Boat Deficit	3	5	3	3	3	3
Support Services	119	105	105	108	111	114
	948	974	943	959	974	993
2. INCOME						
Marina Rent	222	222	222	222	222	222
Rent and Other	246	266	260	260	260	260
User Charges /Other	227	280	251	251	251	251
User Charges - Town Dock	241	251	250	250	250	250
	936	1,019	983	983	983	983
Projected Net Surplus/(Deficit) before charges increases	(35)	20	(19)	(35)	(50)	(69)
<u>Cumulative effects of increasing charges/growth</u>						
User charges 2.5% year on year				6	12	19
				6	12	19
Marina rentals 0% year on year				0	0	0
Potential Net Surplus/(Deficit)	(35)	20	(19)	(23)	(26)	(31)
<i>Revenue Deficit Reserve level at Year End (maintained at minimum level)</i>		204	197	199	201	204
<i>Capital Projects Reserve level at Year End*</i>		392	389	374	357	337
<i>Total Reserve level at Year End</i>		596	586	573	558	541

Tor Bay Harbour - Business Plan 2013/14
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BRIXHAM HARBOUR - FUTURE YEARS

	APPROVED ESTIMATE 2012/13 £000	PROJECTED OUTTURN 2012/13 £000	APPROVED ESTIMATE 2013/14 £000	PROVISIONAL ESTIMATE 2014/15 £000	PROVISIONAL ESTIMATE 2015/16 £000	PROVISIONAL ESTIMATE 2016/17 £000
1. EXPENDITURE						
Employees	353	268	376	382	387	395
Maintenance	120	200	120	123	126	129
Rent Concessions	4	4	4	4	4	4
Other Costs	304	493	408	418	428	439
Patrol Boat Deficit	3	5	3	3	3	3
Support Services	107	88	88	90	92	94
	1,191	1,349	1,290	1,311	1,331	1,355
2. INCOME						
Marina Rent	167	162	162	162	162	162
Rent and Other	213	211	215	225	235	235
Fish Tolls	525	650	650	650	650	650
User Charges	281	432	329	329	329	329
	1,186	1,455	1,356	1,366	1,376	1,376
Projected Net Surplus/(Deficit) before charges increases	(34)	70	(15)	(26)	(36)	(60)
<u>Cumulative effects of increasing charges/growth</u>						
User charges 5% year on year				8	16	24
Marina rentals 0% year on year				0	0	0
Potential Net Surplus/(Deficit)	(34)	70	(15)	(18)	(20)	(36)
Revenue Deficit Reserve level at Year End (maintained at minimum level)						
		291	271	275	278	280
Probable Min Reserve Target levels (before charges increases)						
		216	228	215	201	175
Probable Min Reserve Target levels (including charges increases)						
		507	499	490	479	455

Tor Bay Harbour - Business Plan 2013/14

Business Unit – Tor Bay Harbour Authority

Cash Dividend to the Council's General Fund

Torbay Council's general fund budget is facing a shortfall of approximately £11m for 2013/14 and all council business units have been asked to make savings and/or look at income opportunities to help reduce the deficit. The Chairman of the Harbour Committee and the Executive Head of Tor Bay Harbour Authority therefore agreed to recommend an increase to the cash dividend contribution payable to the general fund from the harbour accounts in 2013/14. On 17th December 2012 the Harbour Committee agreed to contribute a dividend representing 6% of harbour income for 2013/14 and the offer was linked to a clear understanding that "support costs" made by the general fund to the harbour account would not, in normal circumstances, rise above the 2011/12 level. Furthermore, it was indicated that the delivery of a fully commissioned harbour authority service could reduce some of the existing support & fixed costs and that such cost reduction and efficiency gains, if they were achieved, would place the harbour authority in a better position to potentially continue paying a cash dividend in future years. i.e. beyond the current financial crisis. In 2007 Torbay Council decided to accept the main findings of the Municipal Ports Review and the principle of paying a dividend to the "owning authority" is clearly established within this review. However, the contribution for 2013/14 amounts to £140k and this has put considerable pressure on next year's Harbour's budget.

Harbour Reserve Funds

The balance on the Harbour Reserve Funds forms part of the Council's overall cash balances which are invested in line with the annual Treasury Management Strategy approved by Council. The strategy sets out assumptions on interest rates and the controls for maintaining security of cash. Since 2007/08 investments have yielded annual returns of 5.50%, 2.64%, 1.30% and 1.40%. The global economic crisis continues to present a challenge to investment yields with an expected return for 2011/12 of 1.28%. Global economic and market rates continue to subdue investment rates with further downward pressure expected on the UK Bank Rate in 2013/14 and beyond. A return of 1.45% has been budgeted for 2013/14 but with significant risk to the downside.

Torbay Council's current Treasury Management Strategy can be found at:-

http://www.torbay.gov.uk/index/council/financial_services/treasurymanagement.htm

The balances of the Harbour Reserve Fund at 1st April 2012 were;

Torquay and Paignton Harbours	-	£ 621,515
Brixham Harbours	-	£ 543,108

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8. Targets and Performance Indicators

The following are a selection of targets and performances indicators that are tracked on the Council's corporate performance management system – SPAR.NET.

Harbour Users Survey – Overall quality of service recorded as either Average, Good or Excellent. Changed for 2009/10 to Good or Excellent only.

Year	Target	Actual	Status
2006/07	90%	96%	On Target
2007/08	95%	97%	On Target
2008/09	97%	100%	On Target
2009/10	85%	86%	On Target
2010/11	86%	82%	On Target
2011/12	85%	81.6%	On Target
2012/13	85%	Data not due	Data not due

Brixham Harbour Fish Tolls

Year	Target	Actual	Status
2006/07	£410,000	£485,952	Well Above Target
2007/08	£450,000	£526,102	Well Above Target
2008/09	£485,000	£465,778	On Target
2009/10	£485,000	£471,248	On Target
2010/11	£485,000	£556,620	Well Above Target
2011/12	£474,000	£739,192	Well Above Target
2012/13	£525,000		

Navigation Lights Availability

Year	Target	Actual	Status
2006/07	100%	100%	On Target
2007/08	100%	99%	On Target
2008/09	100%	100%	On Target
2009/10	100%	100%	On Target
2010/11	100%	100%	On Target
2011/12	100%	99%	On Target
2012/13	100%		

Harbour estate lettings occupancy

Year	Target	Actual	Status
2006/07	100%	99%	On Target
2007/08	100%	99%	On Target
2008/09	100%	97%	On Target
2009/10	100%	96%	On Target
2010/11	100%	96%	On Target
2011/12	100%	97.5%	On Target
2012/13	100%		

9. Business Plan Acceptance Statement

Business Plan Acceptance

Business Unit - Tor Bay Harbour Authority	Business Plan 2013/14
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Signed and accepted by Executive Head Tor Bay Harbour Authority	<i>Print and Sign</i>
Date	

Signed and accepted by Harbour Committee Chairman	<i>Print and sign</i>
Date	

Tor Bay Harbour - Business Plan 2013/14
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APPENDIX 1

Tor Bay Harbour and Maritime Strategy

Please find a copy at :-

www.tor-bay-harbour.co.uk/index/leisure/harbours/harbourgovernance/harbourpublications.htm

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APPENDIX 2

Municipal Ports Review

“Opportunities for Ports in Local Authority Ownership”

Please find a copy at :-

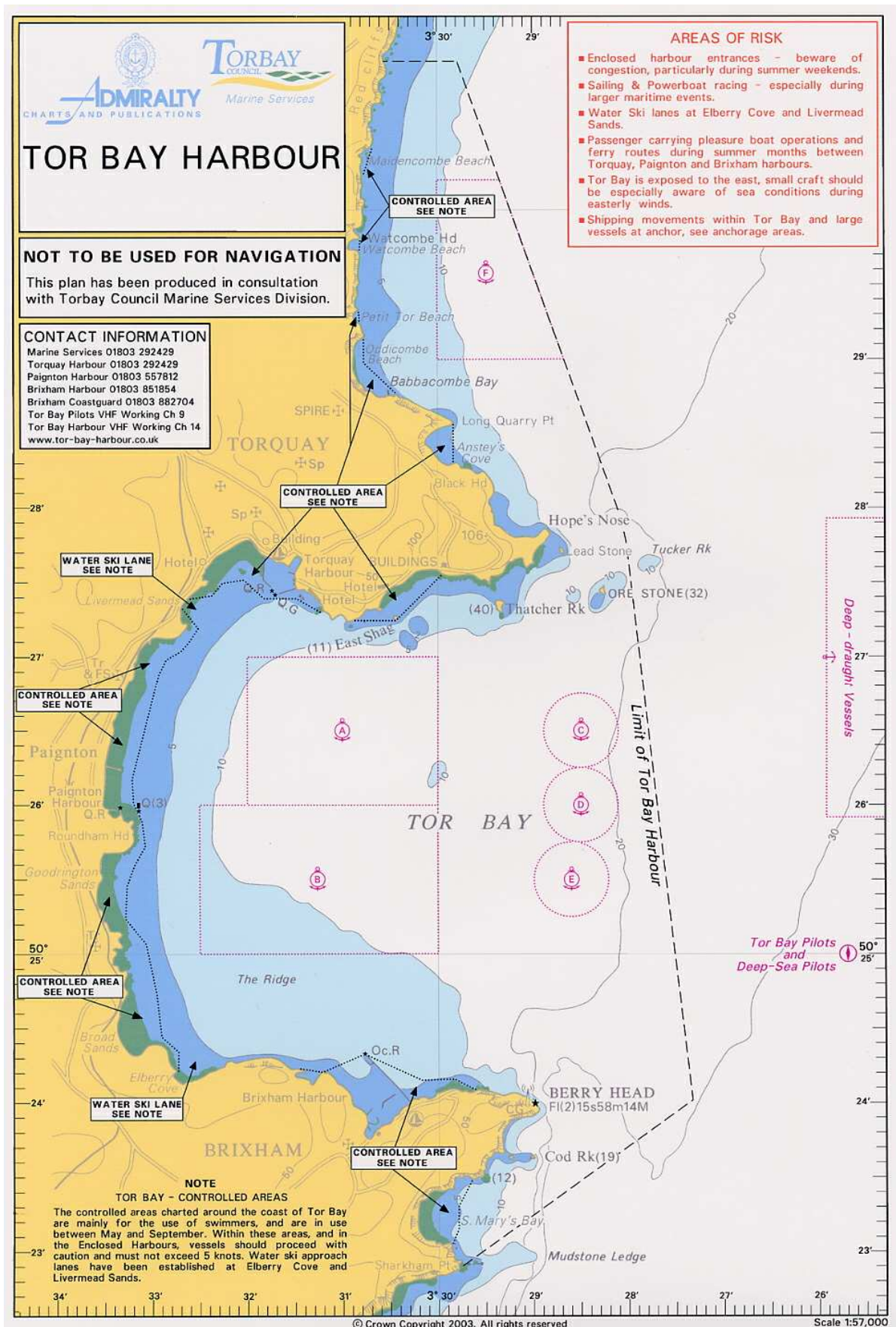
<http://webarchive.nationalarchives.gov.uk/+/http://www.dft.gov.uk/pgr/shippingports/ports/opportunities/>

Tor Bay Harbour - Business Plan 2013/14

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APPENDIX 3

Plan of Tor Bay Harbour





Meeting: Harbour Committee

Date: 18th March 2013

Wards Affected: All wards in Torbay

Report Title: Tor Bay Harbour - Operational Moorings and Facilities Policy

Executive Lead Contact Details: Non-Executive Function

Supporting Officer Contact Details: Kevin Mowat

Executive Head of Tor Bay Harbour Authority

Tor Bay Harbour Master

 **Telephone: 01803 292429**

 **E.mail: Kevin.Mowat@torbay.gov.uk**

1. Purpose

- 1.1 This report is seeking to amend the operational moorings and facilities policy. The impact of this policy is to ensure that a consistent, fair and equitable approach is applied to new, existing and potential facility customers that use Tor Bay Harbour and the harbour estate. It also aims to ensure that the policy and associated conditions are fully understood and recognised as being reasonable.

2. Proposed Decision

- 2.1 **That the Tor Bay Harbour Operational Moorings and Facilities Policy – Version ~ 7 set out in Appendix 1 to the report be approved.**

3. Action Needed

- 3.1 That the Tor Bay Harbour Operational Moorings and Facilities Policy (Version ~ 7) should be implemented by harbour authority staff and the policy should be published on the harbour website.

4. Summary

- 4.1 Within Tor Bay Harbour a number of discretionary services are provided. Some of the most popular discretionary services are the provision of moorings, berths, boat park spaces, tender racks, storage lockers, etc. The annual use of these various Council owned harbour facilities is governed by a variety of controlling factors. These factors include local harbour legislation, harbour byelaws and the annual Facility Form Agreement terms and conditions.
- 4.2 In June 2007 the Harbour Committee introduced a new operational policy statement to supplement the Tor Bay Harbour Act 1970 (and subsequent amending legislation), the associated Harbour Bye- laws, and the facility agreement conditions. The policy has been subject to routine review and amendment and the

Harbour Committee has agreed to a number of revisions with the latest being Version 6 which was approved in March 2012.

- 4.3 Waiting lists for facilities have existed for many years and local boat owners have been given preference when vacancies have arisen. The Tor Bay Harbour Operational Moorings and Facilities Policy makes it clear how this system works and it sets out the order of priority for facility allocation.
- 4.4 An operational moorings and facilities policy is required to ensure that a consistent, fair and equitable approach is applied to new, existing and potential facility holders that use Tor Bay Harbour and the harbour estate. It also aims to ensure that the policy and associated conditions are fully understood and recognised as being reasonable. The existing operational policy statement serves as a management tool and it was accepted that it would need to be amended from time to time by the Harbour Committee. It therefore does not form part of the strategic policy framework set by Torbay Council.

Supporting Information

5. Position

- 5.1 The Tor Bay Harbour Operational Moorings and Facilities Policy was adopted by the Harbour Committee in June 2007 and amended in December 2007, March 2009, March 2010, March 2011 and March 2012.
- 5.2 All of the amendments in the proposed Tor Bay Harbour Operational Moorings and Facilities Policy – Version 7 (Appendix 1) are shown using the ‘track changes’ tool.
- 5.3 The main changes in the proposed Version 7 are as follows :-
- Clarification on how the Town Dock Waiting List operates – page 8.
 - Clarification on how the Waiting List Priority will operate for the new Torquay Inner Harbour Pontoon berths that will become available from 1st April 2014 – page 8
 - Further clarification has been provided over matters relating to loaned facilities and the maximum period of any consecutive period of borrowing a facility has been capped at 24 months – page 11.

6. Possibilities and Options

- 6.1 To take no action and continue with the existing Tor Bay Harbour Operational Moorings and Facilities Policy (Version 6), which was adopted in March 2012.

7. Preferred Solution/Option

- 7.1 To approve and adopt the Tor Bay Harbour Operational Moorings and Facilities Policy (Version ~ 7) as set out in Appendix 1.

8. Consultation

- 8.1 The moorings and facilities policy includes existing and well-established policy or

terms and conditions of use. However, these latest amendments have been tabled at the recent Harbour Liaison Forums and have been discussed with staff within Tor Bay Harbour Authority.

9. Risks

- 9.1 There are no significant risks associated with the recommendation in this report. However, the absence of such a policy may attract criticism, especially if the Harbour Masters are expected to take operational decisions in the absence of clear guidelines.
- 9.2 The adoption of a clearly stated moorings and facilities policy will enhance the Council's reputation for transparency and accountability in respect of its delivery of its Harbour Authority function.
- 9.3 Adoption of a clearly stated moorings and facilities policy should promote equality of opportunity for people to access services provided by the Harbour Authority. Furthermore it should reduce or eliminate any unlawful discrimination, direct or indirect, regarding the allocation and use of moorings and facilities.
- 9.4 There are no remaining risks.

Appendices

Appendix 1 Tor Bay Harbour – Operational Moorings and Facilities Policy - Version ~ 7

Additional Information

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

A Code of Practice for the Design, Construction and Operation of Coastal and Inland Marinas and Yacht Harbours – British Marine Federation

TOR BAY HARBOUR AUTHORITY

OPERATIONAL MOORINGS AND FACILITIES
POLICY



Version ~ 7 March 2013

Tor Bay Harbour Authority

Operational Moorings and Facilities Policy

Introduction

All moorings and other facilities form part of a discretionary service provided by the Harbour Authority. Each facility is allocated on an annual basis only and is covered by a Facility Form Account/Agreement with associated terms and conditions of use.

The purpose of this policy is to ensure a consistent, fair and equitable approach is applied to new, existing and potential facility holders in Tor Bay Harbour and on the harbour estate. It aims to ensure that the operational policy and associated conditions are fully understood and recognised as fair, reasonable and equitable to all.

This operational policy statement supplements the Tor Bay Harbour Act 1970 (and subsequent amending legislation), the associated Harbour Bye- laws, and the facility agreement conditions. However, as a management tool it does not form part of the strategic policy framework set by Torbay Council.

Subject to the Council's Harbour and Maritime Strategy, nothing within this policy shall interfere with the Harbour Master's overall ability to allocate or regulate the number, location, size and type of facilities being used at any time within Tor Bay Harbour.

We have tried to include all situations and circumstances, however if an issue arises that has not been considered I will undertake to ensure that an open, fair and just resolution is sought.

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

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Definitions (See also the Tor Bay Harbour Act 1970 7 Harbour Byelaws)

1. "Enclosed Harbours" means at Torquay the area of water enclosed by an imaginary line drawn from the western end of Haldon Pier to the south eastern end of Princess Pier; at Paignton the area of water enclosed by an imaginary line drawn from the eastern end of North Quay to the northern end of Eastern Quay; and at Brixham the area of water enclosed by the Breakwater, an imaginary line from the northern end of the Breakwater to Battery Point and the shore.
2. "Harbour" means the limits of Tor Bay Harbour as comprised in the areas in Part I and Part II in the Schedule of Byelaws.
3. "Harbour Estate" means the piers, wharves, quays, jetties, stages, berths, slipways, 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.
4. "Harbour Master" means the Harbour Master appointed by the Council and includes his authorised deputies, assistants and any other person authorised by the Council to act in that capacity.
5. "Inner part of Brixham Enclosed Harbour" means the area of water enclosed by an imaginary line drawn from the eastern end of New Pier to Kings Quay.
6. "Quays" means any quay, wharf, jetty, dolphin, landing stage or structure used for berthing or mooring vessels, and includes any pier, bridge, roadway or footway immediately adjacent and affording access thereto adjoining the Enclosed Harbours.
7. "Master" when used in relation to any vessel, means any person having the command, charge or management of the vessel for the time being.
8. "Vessel" means every description of vessel however propelled or moved including non-displacement craft and everything constructed or used to carry persons or goods by water.
9. "Council" means Torbay Council.
10. "Authority" means Tor Bay Harbour Authority
11. "Facility" means mooring, berth, boat park space, tender rack, locker, store, etc.
12. "Facility holder" means the person or persons given the allocated use of a facility subject to the conditions of use of a Facility Form Agreement.

13. "Loss, injury or damage" means any loss, injury or damage, which may occur to any person, vessel, vehicle or their contents, or to any other goods or things whatsoever.
14. "Facility Form Agreement and conditions" shown in Appendix 1.

Types of Mooring/Facilities

“Swinging Mooring” - the vessel is secured to a heavy ground chain on the seabed, via a single riser chain. The arrangement allows the vessel to move so that it will head into the wind or the tide – whichever is the stronger.

“Trot Mooring” - the vessel is secured fore and aft (front and back), via separate riser chains. This arrangement does not allow the craft to move freely with the wind/tide and this enables many more boats to be moored in the same area. The fore and aft element of the mooring is tied together, via a single pick-up buoy, even when the facility is unoccupied.

“Pontoon Mooring” - that the vessel is tied fore and aft to pontoons. Pontoons can be single or have “finger” pontoons coming off them. It is common for large pontoons that have heavy vessels on them to be “piled” i.e. secured by steel piles driven into the seabed. Some pontoons are connected to the shore and are known as “walk ashore” pontoons.

“Running/Outhaul Moorings” - used for small craft (currently up to 16ft) where the boat is tethered to a looped line running from the shore to a fixing, on a riser chain, secured to the harbour bed. The boat can be pulled in and out using the running line.

“Tender rack” – used for tenders/dinghies, these are racks, normally made from tubular steel into which light craft may be stored on end.

“Boat Park Space” - an allocated space on the harbour side where boats/dinghies are kept on trolleys/trailers and launched via a slipway. Dry storage on hard-standing.

“Berthing” means tying up against a harbour wall or pontoon.

Facility Charges

All matters related to the application of charges for moorings, berths, boat park spaces and other facilities can be found in the current ‘Tor Bay Harbour Authority Schedule of Charges, Dues & Fees’.

Facilities Allocation

Private Moorings/Facilities Waiting List

A mooring/facility can only be offered and allocated to the person whose name is next on the appropriate waiting list subject to the priority definitions below. A £25 non-refundable deposit is required to join the waiting list and lists will be closed if they are over subscribed. A procedure covering the waiting list and the application of deposits can be found in Appendix 2.

Waiting List Priority

The waiting list is segregated into the following categories/order of priority :-

- 1st Council tax payers whose main or principle residence is within the Torbay Council area of residence.
- 2nd Council tax payers who pay 90% of the Torbay Council tax. i.e. second home owners.
- 3rd All others

Torquay Town Dock & Inner Harbour Pontoons Priority

Other than those persons already on the Town Dock waiting list on 1st December 2007, berths will only be allocated to Council tax payers who have a primary address in the TQ1 to TQ5 postcode areas, to be confirmed by a check of Council Tax records and/or Electoral Register information.

The Town Dock and Inner Harbour Pontoon waiting lists are closed when 20 names are registered for each band of berth size and when they are re-opened, names will only be accepted from those people with a primary address in the TQ1 to TQ5 postcode areas, on a first come first served basis. Town Dock and Torquay Inner Harbour Pontoon berths will only be allocated to people outside the TQ1 to TQ5 postcode areas if no waiting list exists.

Mooring Exchange Scheme - Town Dock

Customers with existing 6 metre, 8 metre, 10 metre and 12 metre berths on the Town Dock may be able to exchange their facility for an alternative sized berth. Further details including eligibility criteria can be found in Appendix 3.

Commercial Moorings - Waiting List

A waiting list exists for a number of specified commercial moorings. Currently these can be split into specific numbers of facilities for passenger carrying pleasure craft and other moorings identified for commercial craft such as fishing vessels. To avoid over capacity the Council has an established policy to restrict the number of moorings for passenger carrying pleasure craft at each of the enclosed harbours. Furthermore this is the only policy that allows the transfer of use of a mooring facility to the new owner of a passenger boat. i.e. where a pleasure boat ceases to operate at any Harbour and the operator sells his/her business, the Harbour Master is authorised to transfer the mooring facilities to the new owner.

This commercial moorings waiting list does not require a deposit.

Given the obvious demand for this type of mooring and the significant contribution made by passenger carrying pleasure boats to the English Riviera tourism product, the Harbour Authority will operate a "use it or lose it" policy. If a commercial boat owner does not put a vessel on the allocated mooring facility for two consecutive years or does not operate a vessel commercially, that has use of a mooring, for two consecutive years, then the mooring facility will be allocated to the next appropriate applicant on the waiting list.

Facilities for Heritage Vessels

A limited number of 'Heritage' vessels are permitted, with the Harbour Master's consent, to berth on the Town Pontoon in Brixham Harbour. The Council's agreed criteria against which vessels could be measured for inclusion within the "fleet" of heritage boats based at Brixham Harbour is as follows :-

"that a heritage boat in Torbay be defined as a vessel which is British built, 40 feet or more in length and built prior to 31st December 1935 and that, at the absolute discretion of the Council, is considered to have an historical relevance to Tor Bay and its operation and general activity is considered to be beneficial to the local community; and that compliance with the approved definition of a heritage boat should form the basic criteria against which vessels can be measured for inclusion within the "fleet".

Boat Park Spaces

Certain boat park spaces contain racking. Racks provided by the Harbour Authority will be charged per rack in accordance with the current 'Tor Bay Harbour Authority Schedule of Charges, Dues & Fees'. Recognised Youth Groups may apply to the Harbour Master for approval to erect their own racking and in these circumstances, if consent is granted, the charges will only apply to the quay space occupied by the racking.

Duration of Facility Agreement

These run for a maximum of 12 months commencing on the 1st of April and expiring on the 31st March of the following year. However, vacancies that arise after 1st April will be filled from the waiting list and run from the acceptance date up to the 31st March. The Harbour Master reserves the right to determine whether to renew an allocated facility and will review such allocation on an annual basis.

Renewal of Allocated Facility

Each year the Council will send each existing facility holder a Facility Form Agreement, together with an invoice requesting a Facility Form Agreement fee. If the facility holder returns the form/invoice indicating they does not wish to renew the Facility Form Agreement, it will be allocated to the next person on the appropriate waiting list.

The Council will, upon receipt of payment allocate a facility to the applicant as described in the Facility Charge Details in a location in Tor Bay Harbour determined at the discretion of the Harbour Master. The Harbour Master may at any time designate to the facility holder an alternative location for such a facility, whereupon the applicant will move their vessel and/or any other possessions or chattels from the previous location to the appointed new location for such a facility forthwith.

Cancellation of Facility Form Agreement

The facility holder may terminate the Facility Form Agreement by giving 14 days notice in writing to the Council. However, the fee and/or deposit already paid shall be retained by the Council.

The Council may terminate the Facility Form Agreement at any time by giving 1 months notice in writing to the facility holders last known address. For the avoidance of doubt, the Harbour Master has delegated authority to terminate Facility Form Agreements on behalf of the Council. A facility may be terminated for a number of reasons and these may include but are not limited to; bad debt, failure to comply with harbour regulations, abuse towards harbour staff and a discretionary facility being discontinued.

Risk, Liability, Insurance Requirements and Recommendations
(Facility Agreement Conditions 1, 2, 3, 4 & 5)

All reasonable care will be taken of the facility holder's property but whilst precautions will be taken to prevent loss and/or damage all vessels are berthed, moored, launched, moved and hauled out at the risk of the applicant. The applicant is therefore required to make sure that his/her vessel and property are adequately insured against all risks.

If the vessel sinks at the mooring it will have to be recovered and removed from the harbour by the vessel's owner. Failure to remove such a vessel from the harbour in such a period as shall be specified by the Harbour Master in his absolute discretion (including immediate notice) will result in the Council recovering and removing the vessel and the appropriate charges being made. Such charges shall be a debt due from the Facility Form Agreement holder to the Authority. It is therefore strongly recommended that your insurance policy includes a 'wreck removal' clause.

The facility holder shall indemnify the Council, their servants and agents against all actions, claims, costs and demands in respect of any injury or death of any person and any damage to any property which may arise out of the applicant's occupation and use of the harbour facilities including slipways, steps, jetties and staging and for this purpose shall maintain a Public Liability policy against such risks. Failure to maintain the appropriate insurance cover will result in the withdrawal of the mooring, launching and other facilities.

All facility holders using any part of the harbour facilities including slipways, steps, jetties and staging, for whatever purpose in connection with this application and whether by the Council's invitation or not, are expected to have due regard for their own safety and do so at their own risk.

The facility holder shall at all times be responsible for the safety of his/her vessel and shall be liable for any damage occasioned to the Council's property, howsoever caused, during the navigation of any vessel by the applicant or his/her servant or agents, or whilst the applicant's vessel is berthed, moored, or launched, or by the vessel slipping her berth, mooring or being cast adrift and will pay to the Council on demand any claim for reasonable compensation in respect of such damage.

The Council's Harbour Master and other authorised officers and servants, whilst acting in the course of their duty, shall not be responsible for any loss or damage which may occur as a result of compliance, or attempted compliance, with any lawful order or directions given by the Harbour Master, or such other

officers or servants, nor shall the Council be liable for any loss or damage arising out of compliance, or attempted compliance, with the officers' lawful orders. The Council, its servants, agents or employees shall not be liable for injury to any person, except where such injury arises through the negligence of the Council.

Vessels Injurious to the Amenity of the Harbour (see Section 23 – Tor Bay Harbour Act 1970)

If at any time the Harbour Authority are satisfied that a derelict vessel or structure moored in or lying in the water or on the foreshore of the harbour is in such a condition as to be seriously injurious to the amenity of that part of the harbour in which it is moored or lying, the Harbour Authority may by notice require the owner thereof within such time as may be specified in the notice (the period being not less than six weeks) to take such steps as may be necessary to abate the injury to amenity. A vessel may be considered to be injurious to the amenity of the harbour if it is badly dilapidated, seriously unkempt, unseaworthy and/or in danger of sinking, etc.)

For the avoidance of doubt, the Harbour Master is empowered, on behalf of the Harbour Authority, to determine whether a vessel is seriously injurious to the amenity of the harbour.

Failure to comply with such a notice issued by the Harbour Authority may result in the necessary action being taken directly by the Harbour Authority.

Prohibition on Assignment/Sub Letting of Facilities (Facility Agreement Conditions 12)

The facility is personal to facility holder and may not be shared, assigned, transferred, sub let or otherwise used or made available to anyone other than the facility holder. In the event that it is discovered that a facility holder is subletting the facility will be withdrawn with immediate effect.

The facility granted may not be loaned without prior notification to, and agreement of the Harbour Master in writing. Written notification must also be provided to the Harbour Master from both parties to the loan. If the Harbour Master's consent is obtained in no circumstances will this be given for a period greater than 12 months. In agreed loan circumstances the owner of the vessel borrowing the facility must confirm that he holds the necessary required insurance, confirm acceptance of all conditions and Byelaws and be liable for the appropriate level of harbour dues.

Any individual boat owner will only be permitted to borrow a facility for two consecutive years, assuming that two separate facility holders and the Harbour Master are agreeable to such an arrangement. i.e. the maximum stay without a properly allocated facility is 24 months.

Size of Vessel (Facility Agreement Conditions 17)

No vessel shall be placed on a facility of a different size than applied for. The facility is allocated according to the size of the vessel and the facility holder must not increase the size of his/her boat without ascertaining whether or not there is a suitable alternative mooring space available. The facility holder may lose the mooring without being offered a replacement. A vessel will be charged based on overall length, which includes any bowsprit, pushpit, stern davit, bathing platform and/or bumkin etc. etc.

Inheritance

The facility granted will be for one vessel only and is not transferable. Where a member of a family wishes to continue using the facility after the death or incapacity of the existing holder he/she must join the appropriate waiting list. The use of harbour facilities cannot be inherited other than by a legitimate 'partner' who meets the requirements of a partnership arrangement as set out elsewhere within this document.

Vessel Identification (Byelaw 35)

All boats, trailers and tenders used within the harbour must have their names and current Harbour Authority plaques displayed to the satisfaction of the Harbour Master. The facility holder should also ensure that the name of the vessel or mooring number is clearly displayed on any mooring buoy not provided by the Council.

Change of Vessel (Byelaw 33)

In the event of the facility holder selling or otherwise disposing of the vessel authorised to use the facility, the parties to the change shall ensure that immediate written notification is given to the Harbour Master.

Vessel Not On Facility

If the facility holder does not have his/her own vessel on the authorised facility for a period of one year then the facility will be forfeit and reassigned from the waiting list.

Partnerships

Partnerships must have been registered with the Harbour Authority when the facility was first allocated. Any subsequent changes of ownership or partnership buy out **will not be recognised** or count towards facility allocation. The Harbour Authority will not recognise shared ownership beyond one third. i.e. a maximum of three partners inclusive of the applicant. All partners must be over the age of 18 and meet the local residence requirements detailed in this policy with regard to facility allocation priority.

Use of Facilities

Facilities must only be used for the purposes stated in the original application. Vessels using facilities must not be used for residential purposes. i.e. no living on board is permitted and boats must not serve as the sole or main residence of any individual or group. Customers are not expected to sleep on board their craft unless that vessel has a suitable manufacturers holding tank for grey

water and sewage. Facilities will be withdrawn from those customers who regularly breach this expectation.

Privately owned vessels paying harbour charges as private craft must not operate their craft on a commercial basis. The number of available commercial moorings is restricted under this policy (please refer to the 'Facilities Allocation' section in this document under the heading 'Commercial Moorings – Waiting List').

Fuel and Re fuelling

No fuel or combustible material is permitted to be kept on or within the allocated facility save in authorised storage tanks and containers.

No petrol refuelling from cans or containers is permitted on the harbour side, pontoons, steps, slipways, or moorings. The only exception being by way of an approved siphoning/pumping device agreed specifically with the Harbour Master or at Paignton Harbour where petrol refuelling is permitted from cans onto moored vessels when the harbour has dried.

Any fuel spillage must be reported to the Harbour Master

Pollution (Byelaw 91 and Byelaw 102)

Facility holders must not pollute the harbour by spillage, dumping of waste, effluent, human waste, detergent and/or fuel or otherwise deposit refuse or scrap on the harbour estate, in the waters of the harbour or on the harbour bed.

Moorings and Vessel Protection

Fixing (Facility Agreement Condition 16)

Any swivel, riser chain, mooring rope or buoy, not provided by the Council, shall comply with the Council's specification in that behalf and shall only be fitted by a person licensed by the Council to do such work or by the facility holder personally in respect of his/her allocated mooring. The Facility Holder shall as soon as any swivel, riser chain, mooring rope or buoy has become fitted, immediately notify the Harbour Master of the fact. The applicant shall also arrange for regular inspection and maintenance of such equipment not provided by the Council.

Buoyant Rope (Byelaw 98)

No person shall within any enclosed Harbour use buoyant pick-up ropes on moorings.

Removal of Moorings (Byelaw 100)

A mooring, buoy or similar tackle shall as soon as reasonably practicable be removed by its owner or any other person claiming possession of it if the Harbour Master so directs.

Vessel Monitoring

All vessels should be monitored by the owner or owner's agent, on a regular basis, particularly during periods of bad weather.

Propeller Covers (Facility Agreement Conditions 22)

When moored outboard engines in the raised position must have the propeller and skeg covered with a plastic bucket or other approved protective cover in order to prevent damage to other boats.

Provision of Proper Fenders (Byelaw 46)

The facility holder shall ensure that his/her vessel is provided with a sufficient number of fenders adequate for the size of the vessel, and when berthing or leaving, or lying at a quay or against other vessels, the master shall cause the vessel to be fendered off from that quay or those other vessels so as to prevent damage to that quay, those other vessels or other property.

Mooring, Berthing, Anchoring in the Harbour**Vessels to be moored etc as directed**

Masters of vessels in the harbour shall moor, anchor, berth and/or cease to moor, berth or anchor and be moved in accordance with directions given from time to time by the Harbour Master.

Vessels not to Anchor in a Fairway (Byelaws 11 & 18)

No person shall anchor so as to obstruct a fairway.

Vessels not to be made fast to unauthorised objects, Navigational Buoys or Seasonal 5 Knot Buoys (Byelaws 13 & 50)

The master of a vessel shall not make fast his/her vessel to or lie against any buoy, beacon or mark used for navigation. No person shall make a vessel fast to or interfere with any post, quay, ring, fender or any other thing or place not assigned for that purpose.

Vessels not to Obstruct Free Passage

The master of a vessel shall not cause or permit the vessel to manoeuvre, come to anchor or be moored or placed so as to intentionally obstruct in any manner whatsoever the passage of vessels in the harbour.

Vessels to be Properly Secured

No vessel shall be insecurely moored or improperly made fast within the harbour.

Vessels Not to Obstruct Steps, Slipways (Byelaw 26)

No person shall allow any vessel to obstruct any pontoons, steps or slipways or to lie at any pontoons steps or slipways without the permission of the Harbour Master.

Reckless Conduct and Disorderly Behaviour

The facility holder shall not use the mooring facility in a reckless manner so as to cause danger to other users of the Harbour or damage to their property.

The facility holder (including any persons on board a vessel on the harbour facility) shall not cause unreasonable noise, nuisance or annoyance to other users of the Harbour.

Compliance with Statute, Byelaws and Directions of the Harbour Master

The facility holder and all persons having control or having charge of or being aboard his/her vessel shall observe and perform all statutory and other obligations relating to the Harbour including all Byelaws and Regulations made by the Council and Directions given by the Harbour Master.

In the event of the holder of the Facility Form Agreement failing to comply with the conditions of the Facility Form Agreement the Council may give notice to remove the vessel. Should this notice not be complied with or the conditions of the Facility Form Agreement not met within fourteen days of the sending of the notice to the last known address of the facility holder the Authority may remove the vessel to any place where so ever. The facility holder shall pay the cost of such removal, storage, mooring or berthing and subsequent replacement to the Authority. Such charges shall be a debt due from the facility holder to the Authority.

Disabled Access

The Harbour Authority provide a range of moorings and other facilities, which by their very nature, have various forms of access. Consideration has been given to providing facilities for disabled persons, wherever this is reasonably practicable, in accordance with the Disability Discrimination Act 1995/2005 (DDA). The Harbour Authority is obliged to make such adjustments as is reasonable to prevent disabled persons from being placed at a substantial disadvantage when compared to others.

Anyone who has a disability should assess the most suitable facility that meets their needs and if necessary join the relevant waiting list. The Harbour Authority staff can provide advice to anyone who is uncertain about which facility would be the most appropriate.

Young People

Young people are encouraged to use the harbour facilities and in certain circumstances they will be eligible for a 50% discount on applicable harbour charges. Please see the current 'Tor Bay Harbour Authority Schedule of Charges, Dues & Fees' for details. Unfortunately it is not lawful for the Harbour Authority to enter into a contract with a minor (under 18 years of age) and the facility form agreement will therefore be in the name of a responsible adult. Please note that this discount is discretionary.

Visitor Moorings

To avoid the abuse of visitor moorings by local vessels, all craft using visitor mooring facilities are normally restricted to a maximum stay of three weeks (21 days) with no return within one week 7 days.

Appendix 1

GENERAL CONDITIONS

DUES, TOLLS, LEVY RENTS, FEES AND OTHER CHARGES ARE ONLY ACCEPTED ON THE FOLLOWING CONDITIONS:

1. All reasonable care will be taken of the applicant's property but whilst precautions will be taken to prevent loss and/or damage all vessels are berthed, moored, launched, moved and hauled out at the risk of the applicant. The applicant is therefore strongly advised to make sure that his/her vessel and property are adequately insured against all risks.
2. The applicant shall indemnify the Council, their servants and agents against all actions, claims, costs and demands in respect of any injury or death of any person and any damage to any property which may arise out of the applicant's occupation and use of the harbour facilities including slipways, steps, jetties and staging and for this purpose shall maintain a Public Liability policy against such risks. Failure to maintain the appropriate insurance cover will result in the withdrawal of mooring, launching or other facilities.
3. All applicants using any part of the harbour facilities including slipways, steps, jetties and staging, for whatever purpose in connection with this application and whether by the Council's invitation or not, are expected to have due regard for their own safety and do so at their own risk.
4. The applicant shall at all times be responsible for the safety of his/her vessel and shall be liable for any damage occasioned to the Council's property, howsoever caused, during the navigation of any vessel by the applicant or his/her servant or agents, or whilst the applicant's vessel is berthed, moored or launched, or by the vessel slipping her berth, mooring or being cast adrift and will pay to the Council on demand any claim for compensation in respect of such damage.
5. The Council's Harbour Master and other authorised officers and servants, whilst acting in the course of their duty, shall not be responsible for any loss or damage which may occur as a result of compliance, or attempted compliance, with any lawful order or directions given by the Harbour Master, or such other officers or servants, nor shall the Council be liable for any loss or damage arising out of compliance, or attempted compliance, with the officers' lawful orders. The Council, its servants, agents or employees shall not be liable for injury to any person, except where such injury arises through the negligence of the Council.
6. The phrase "loss, injury or damage" in these conditions means any loss, injury or damage which may occur to any person, vessel, vehicle or their contents, or to any other goods or things whatsoever.

7. The lawful orders or directions of the Council's Harbour Master and other authorised officers must always be obeyed promptly.
8. The Council may determine this agreement at any time during the period of this contract by giving one month's notice in writing to the applicant at their last known address.
9. The Council will, upon receipt of payment in accordance with this account, allocate a facility to the applicant as described in the Facility Charge Details in a location in Tor Bay Harbour determined at the discretion of the Harbour Master and the Harbour Master may at any time designate to the applicant an alternative location for such a facility, whereupon the applicant will move his/her vessel and/or any other possessions or chattels from the previous location to the appointed new location for such facility forthwith.
10. The Council will, upon the commencement of this agreement, allocate a facility to the applicant but the Harbour Master may at any time designate an alternative facility to the applicant, whereupon the applicant must move his/her vessel to the appointed facility forthwith.
11. Following the determination of this agreement, the applicant shall forthwith remove his/her vessel and any other property from the facility.
12. This facility is personal to the applicant and made available on the basis to which the Applicant hereby agrees that it will not be shared, assigned, transferred, sublicensed or otherwise used by or made available to anyone other than the applicant.
13. The facility made available to the applicant shall not be used other than for the purpose described in the Facility Charge details.
14. No facility granted may be shared or *LOANED* without the prior consent of the Harbour Master in writing.
15. The Council have the right to exercise a general lien upon any vessel, and/or her gear and equipment, whilst in or upon the harbour premises, or afloat, until such time as the monies due to the Council from the applicant in respect of such vessel whether on account of storage or mooring charges or otherwise, shall be paid.
16. Any swivel, riser chain, mooring rope or buoy, not provided by the Council, shall comply with the Council's specification in that behalf and shall only be fitted by a person licensed by the Council to do such work or by the applicant personally in respect of his/her allocated mooring. The applicant shall as soon as any swivel, riser chain, mooring rope or buoy has become fitted, immediately notify the Harbour Master of the fact. The applicant shall also arrange for regular inspection and maintenance of such equipment not provided by the Council.

17. The applicant shall not place a vessel on a mooring prescribed in the mooring scheme prepared by the Council for a vessel of a different size than that applied for, without the applicant obtaining the approval of the Harbour Master in writing.
18. All boats and trailers used within the harbour shall have their **names** clearly displayed and to the satisfaction of the Harbour Master. The applicant should also ensure that the name of the vessel or a mooring number is clearly displayed on any mooring buoy not provided by the Council.
19. The mooring shall be in such a position and of such type as shall be allocated by the Harbour Master.
20. In the event of the applicant selling or otherwise disposing of the vessel authorised to use the mooring, the Harbour Master shall be notified in writing.
21. No attachment (e.g. strops) is to be affixed to the mooring chain provided by the Council without the applicant obtaining the prior approval of the Harbour Master.
22. When moored, outboard engines in the raised position **must** have the propeller and skeg covered with a plastic bucket or other approved protective cover in order to prevent damage to other boats.
23. The applicant shall ensure that the vessel is provided with a sufficient number of fenders adequate for the size of vessel, so as to prevent damage to other vessels, quays or other property.

Appendix 2

WAITING LISTS

TOR BAY HARBOUR

WAITING LIST PROCEDURE AND APPLICATION OF DEPOSITS

- 1) The waiting list deposit is **£25**. On receipt of the appropriate fee, your name will be placed on the relevant list. Please make cheques payable to 'Torbay Council'.
- 2) The waiting list entry will be dated the same day the deposit is received.
- 3) The deposit is **NOT REFUNDABLE OR TRANSFERABLE** but will be credited to the facility charges when a facility is obtained.
- 4) Under normal circumstances the applicant will only be given one offer of a facility.
- 5) When a facility is offered and accepted, it can only be allocated to the person whose name is on the waiting list. The facility is **NOT TRANSFERABLE**.
- 6) When a facility is offered and accepted and no boat is immediately available, then the applicant **must pay the full fee** for the size of facility applied for, and then has three months to place their craft on the facility.
- 7) Often a waiting list will be banded dependent on the size of the facility. It is therefore important that applicants are certain about the size of facility required. The length entered on the waiting list form will not be adjusted up at a later date and an adjustment down in size may result in a transfer to a new list with a new entry date.
- 8) Applicants who live locally will be given priority over those applicants who live outside the Torbay area. (see the Tor Bay Harbour Operational Moorings and Facility Policy)
- 9) Unfortunately applicants who have a disability do not have priority over other people on the waiting list.
- 10) From time to time applicants will be asked to provide written confirmation of their wish to stay on a particular waiting list. The applicant's details will be deleted from our records if written confirmation is **not** provided.
- 11) It is the applicant's responsibility to keep us advised of any change in the applicant's details, especially any **change of address**.

- 12) The terms and conditions of use of any facility are shown on the reverse side of any invoice/facility form agreement and are also found within the Tor Bay Harbour Operational Moorings and Facility Policy.
- 13) Partnerships must have been registered with the Harbour Authority when the facility was first allocated. Any subsequent changes of ownership or partnership buy out **will not be recognised** or count towards facility allocation. The Harbour Authority will not recognise shared ownership beyond one third. i.e. a maximum of three partners inclusive of the applicant. All partners must be over the age of 18 and meet the local residence requirements detailed in this policy with regard to facility allocation priority.

Appendix 3

Mooring Exchange Scheme - Town Dock

Customers with existing berths on the Town Dock may be able to exchange their facility for an alternative sized berth.

Customers with 6 metre, 8 metre, 10 metre and 12 metre may be eligible to exchange, so long as they fulfil the following conditions of exchange.

The 13 metre berths will not feature in this scheme.

Exchanged vessels must be appropriate for alternative lengths of berth

Original Partnerships recognised during first allotment will remain exactly the same and cannot be added to.

Exchanges may only occur when 'pairs' are authorised by the Harbour Office. Customers will be notified when an exchange can be made, followed by any account for adjustment.

Requests for exchanges will be treated on a first come first served basis and each exchange will be appraised by the Harbour Authority to ensure correct use of facility and compatibility of vessels features.

An administration charge of £50 will apply per applicant and will feature in the account adjustment, when the exchange has taken place.

The decision to approve or decline an exchange request will be at the Harbour Master's complete discretion.

Step 1

Complete form for existing berth to *move from*

Step 2

Enter details of preferred facility to *move to* – e.g. 6m 8m 10m or 12m

Step 3

Submit form and wait until a suitable 'pair' is made, then await acknowledgement and further details from the Harbour Office

Step 4

Move your boat as directed by the Harbour Authority, then pay the balance or receive a refund for the new facility (subject to the inclusion of the administration charge).

The Harbour Authority will reserve any right to withhold an 'exchange' especially if customers have found to have been sub-letting, not conforming to the local TQ1-5 post code restriction or have a history of late payment.



Mooring Exchange Scheme – Application

(TOWN DOCK ONLY)

Name:

Boat Name:

LOA

Facility Pontoon..... Number.....

I wish to move to a :- (circle)

6m 8m 10m 12m berth.

Signature

Date

Please return completed form to the Harbour Office

Agenda Item 12



Meeting: Harbour Committee

Date: 18th March 2013


Wards Affected: All wards in Torbay

Report Title: Tor Bay Harbour Authority Budget Monitoring 2012/13

Executive Lead Contact Details: Non-Executive Function

Supporting Officer Contact Details: Kevin Mowat

**Executive Head of Tor Bay Harbour Authority
Tor Bay Harbour Master**

 **Telephone: 01803 292429 (Ext 2724)**

 **E.mail: Kevin.Mowat@torbay.gov.uk**

Pete Truman

Principal Accountant

 **Telephone: Ext 7302**

 **E.mail: Pete.Truman@torbay.gov.uk**

1. Purpose

- 1.1 This report provides Members with projections of income and expenditure for the year 2012/13 compared with approved budgets.
- 1.2 This report identifies the overall budgetary position for Tor Bay Harbour Authority as at end of February 2013 to enable appropriate action to contain expenditure and maintain reserves at appropriate levels.
- 1.3 The Committee is asked to note the amended outturn positions of the two harbour accounts and the resulting change in reserve movements shown in Appendix 1.
- 1.4 The Committee is asked to note the Executive Head of Harbour Tor Bay Harbour Authority's use of delegated powers to make decisions in relation to the budget allocated to Tor Bay Harbour.
- 1.5 The Committee is asked to note the Harbour Master's use of delegated powers to waive certain harbour charges, which this financial year amounts to £2488.77 (ex VAT) and which have been spread across both harbour accounts. No additional charges have been levied.

2. Summary

- 2.1 The Tor Bay Harbour Authority budget was approved by the Harbour Committee on 5th December 2011.

- 2.2 This is the final budget monitoring report presented to the Harbour Committee for the financial year 2012/13.
- 2.3 Both Harbour accounts have benefitted from lower Capital Charges following a partial repayment of borrowing. Although reductions are expected in Marina and rental income at Brixham Harbour, the account is showing a surplus due to the higher than expected income from Fish Tolls. The Torquay & Paignton Harbour account is now forecast to make an operational surplus as a result of increase general and rental income.

Supporting Information

3. Position

- 3.1 The projected outturn at Appendix 1 reflects amendments to the budget made within the Executive Head of Tor Bay Harbour Authority's delegated powers. Details of each amendment can be found in the associated note.
- 3.2 The performance against budget is summarised below:

	Original Budget 2012/13	Current Budget 2012/13	Projected Outturn 2012/13
	£000	£000	£000
Torquay and Paignton Harbours Surplus/(Deficit)	(35)	(6)	20
Brixham Harbour Surplus/(Deficit)	(34)	78	70

- 3.3 The current progress of Harbour capital schemes is detailed below:

	Total Budget	Actual to Date (including prior years)	Projected Outturn	Notes
	£000	£000	£000	
Environment Agency grant funding for Torquay Harbour – Haldon & Princess Piers	1,272	317	1,272	(i)
Brixham Harbour – Various Repairs	640	647	649	(ii)
Brixham Breakwater Repairs	150	0	150	(iii)
Fish Market Roof – PV Panels	48	0	48	(iv)
Torquay Inner Harbour Pontoons	800	0	800	(v)

- (i) An initial application for external funding from the Environment Agency was successful and the grant of approximately £1.3m is currently being used for Phase 2 which commenced in the autumn of 2011 and further work followed this winter. Work towards a further bid of approximately £7m of external funding from the Environment Agency is now underway and is expected to be submitted in April 2013.
- (ii) Further repair work is required to the ladders and fenders. Funding for this spend has been approved from the Brixham Harbour reserve but is not currently reflected in the Capital Plan.
- (iii) The Environment Agency approved a grant of £40,000 to produce a more detailed structural report of the breakwater. Officers have now evaluated this new report and work has started on a bid for further Environment Agency funding from their medium-term capital plan. Unfortunately, the additional wave modelling results and economic appraisal has been delayed by new modelling data. A bid for external funding from the Environment Agency is now expected to be submitted in April/May 2013. In the meantime the approved £150k capital work has been postponed.
- (iv) Approximately £48k has been earmarked from the Brixham Harbour reserve to fund a 10kw Photovoltaic solar energy system on the new Fish Market roof. This capital spend has already been approved by Torbay Council. Further evaluation is now underway to determine a clear business case.
- (v) This project was approved by Council in February 2013 for delivery in March 2014.

3.4 The Harbour's liability for prudential borrowing is detailed in the following table

Capital Scheme	Amount Borrowed	Start of Repayments	Principal outstanding at 1st April 2012
Haldon Pier (Torquay Harbour)	£1,200,000	2010/11	£1,144,601
Town Dock (Torquay Harbour)	£1,140,000	2008/09	£920,515
Brixham Harbour New Fish Quay Development	£4,750,000	2011/12	£4,526,876

- 3.5 The Tor Bay harbour Authority debt position at the end of February 2013 is set out in the table below:-

	Corporate Debtor System		HMS	
	Unpaid by up to 60 days	Unpaid over 60 days	Unpaid by up to 60 days	Unpaid over 60 days
Debt outstanding	£17k	£26k	£19k	£20k
Bad Debt Provision	£17k		N/A	N/A

The Harbour Management System (HMS) debt does not have a separate bad debt provision because the income is not credited until it is received. However, following the recent internal audit report the Executive Head of Torbay Harbour Authority has determined that the overall debt position should be shown to the Harbour Committee on each budget monitoring report.

- 3.6 Under the Council's Scheme of Delegation the Harbour Master can vary (by addition or waiver (in full or as to part)) the approved Schedule of Harbour Charges in such manner as shall be considered reasonable. However, the Harbour Master shall maintain a proper written record of all variations approved using the delegated powers and shall, at least twice a year, report to the Harbour Committee the total value of the additional charges levied and the total value of the charges waived (see paragraph 1.5).
- 3.7 Harbour Committee minute 398 (5) from December 2011 states the following :-

"That, as recommended by the Harbour Committee's Budget Working Party, each harbour reserve fund is split with 20% of budgeted turnover ring-fenced to meet any deficit in the revenue budget or winter storm damage and the balance ring-fenced to fund harbours related capital projects."

Consequently the Executive Head of Tor Bay Harbour Authority, in consultation with the Chairman of the Harbour Committee, has produced a list of Harbour Reserve Fund projects attached as Appendix 2. The Committee is asked to note this list and the obvious ongoing need for a healthy Harbour Reserve Fund.

Appendices

- Appendix 1 Harbour Revenue Accounts 2012/13
- Appendix 2 Harbour Reserve Fund Project List

Additional Information

None

Agenda Item 12

Appendix 1

Appendix 1

HARBOUR REVENUE ACCOUNTS 2012/13

TORQUAY and PAIGNTON HARBOURS

Expenditure	2012/13 Original Budget £ ,000	2012/13 Current Budget £ ,000	2012/13 Profiled Budget £ ,000	2012/13 Actual to Date £ ,000	2012/13 Projected Outturn £ ,000	Notes
Operations and Maintenance :-						
Harbour Attendants Salaries and Wages	136	136	125	129	140	1
Repairs and Maintenance	153	153	133	161	163	2
Rent Concessions	2	2	2	2	2	
Other Operating Costs	117	117	110	92	101	3
Town Dock Costs	10	5			3	4
Management and Administration :-						
Salaries	178	178	163	161	174	5
Internal Support Services	119	105	96	96	105	4/6
External Support Services	0	19	0	0	19	6
Other Administration Costs	46	73	67	86	84	7
Capital Charges	184	178	162	162	178	8
Contribution to Patrol Boat Operation	3	5	0	0	5	9
Dividend to General Fund (based on 2.5% of total income)	23	24	0	0	25	
	971	995	858	889	999	
Income						
Rents and Rights :-						
Property and Other Rents/Rights	246	260	238	266	266	10
Marina Rental	222	222	81	81	222	
Operating Income :-						
Harbour Dues	61	64	64	64	64	
Visitor and Slipway	41	43	43	44	44	
Mooring fees	68	58	56	63	63	11
Town Dock	241	250	250	251	251	12
Boat and Trailer parking	34	37	37	37	37	
Other Income	23	28	28	42	42	13
Contribution from Reserve	0	27	27	30	30	14
	936	989	824	878	1,019	
Operating Surplus /(Deficit)	(35)	(6)	(34)	(11)	20	

RESERVE FUND	
Opening Balance as at 1st April	621
Interest Receivable	8
Net Surplus / (Deficit) from Revenue Account	20
Withdrawals - Capital financing	(24)
Contributions to Revenue Account	(30)
Expected Closing Balance as at 31st March	595

Note: In line with Harbour Committee minute 398 (5) the minimum Reserve level is **£187k** based on 20% of budgeted turnover to meet any deficit in the revenue budget or winter storm damage. The balance is earmarked for harbour related capital projects.

HARBOUR REVENUE ACCOUNTS 2012/13

NOTES

TORQUAY & PAIGNTON HARBOURS

- 1 There have been additional costs relating to additional hours worked by the seasonal attendants. The Executive Head for Tor Bay Harbour Authority is currently carrying out a review to ensure payments have been processed correctly.
- 2 Additional work has been carried out on the slipway at Paignton Harbour.
- 3 Savings from Non-Domestic rates following re-evaluation of the Harbour Office have now been taken.
- 4 Insurance costs relating to the Town Dock form part of the overall Harbour assessment and are charged within Internal Support Recharges. There are also anticipated savings in Repairs & Maintenance.
- 5 The anticipated reduction in employee costs due to the waiving of superannuation contributions by some employees is now identified in the Projected Outturn.
- 6 Estates Management and Property Services , previously charged within Internal Support Recharges, are now provided by the Torbay Economic Development Company.
- 7 The Projected Outturn includes the cost of preparing the Port Master Plan to be funded from the Reserve (see notes 14 & 16). Additional costs have subsequently been agreed by the Executive Head for Tor Bay Harbour Authority. The Projected Outturn has been increased further as a result of spending on a new data line at Torquay Harbour and various small overspends.
- 8 Capital borrowing charges have reduced following early repayment of £63k of principal from the 2011/12 operational surplus.
- 9 The Harbour contribution to this service has increased because the General Fund contribution is fixed and operating costs have risen in 2012.
- 10 Increased income from Boat Board Booking sites.
- 11 Income at Torquay is down due to under occupancy in the Inner Harbour. This has been partially offset by income from passenger craft.
- 12 The Town Dock income has exceeded the budget forecast.
- 13 Additional income has been generated in general fees and fish tolls from landings at Torquay Harbour.

- 14 Contributions from the Reserve to fund the Port Master Plan (see notes 7 & 16). A further withdrawal has been approved by the Executive Head for Tor Bay Harbour Authority to fund additional work on the Plan.
- 15 Approved funding of the capital purchase of a new forklift truck.
- 16 Approved withdrawal from the Reserve to fund the Port Master Plan (see notes 7 & 14). A further withdrawal has been approved by the Executive Head for Tor Bay Harbour Authority to fund additional work on the Plan.

HARBOUR REVENUE ACCOUNTS 2012/13

BRIXHAM HARBOUR

Expenditure	2012/13 Original Budget £ ,000	2012/13 Current Budget £ ,000	2012/13 Profiled Budget £ ,000	2012/13 Actual to Date £ ,000	2012/13 Projected Outturn £ ,000	Notes
Operations and Maintenance :-						
Harbour Attendants Salaries and Wages	209	178	164	136	133	1/2
Repairs and Maintenance	120	180	145	134	200	3
Rent Concessions	4	4	0	0	4	
Other Operating Costs	260	311	269	371	371	2/4
Management and Administration :-						
Salaries	144	144	132	125	135	1
Internal Support Services	107	88	81	81	88	5
External Support Services	0	19	0	19	19	5
Other Administration Costs	44	102	92	99	103	6
Capital Charges	300	291	282	282	291	7
Contribution to Patrol Boat Operation	3	5	0	0	5	8
Dividend to General Fund (based on 2.5% of total income)	29	31	0	0	36	9
	1,220	1,353	1,165	1,247	1,385	
Income						
Rents and Rights :-						
Rents and Rights	213	207	189	211	211	10
Marina Income	167	162	82	82	162	11
Operating Income :-						
Harbour Dues	84	86	86	87	87	
Visitor and Slipway	13	11	11	12	12	12
Mooring fees	134	135	135	135	135	
Fish Tolls income	525	650	539	597	650	13
Other Income	50	69	60	84	84	14
Contribution from Reserve	0	111	0	0	114	15
	1,186	1,431	1,102	1,208	1,455	
Operating Surplus /(Deficit)	(34)	78	(63)	(39)	70	

RESERVE FUND	
Opening Balance as at 1st April	543
Interest Receivable	7
Net Surplus / (Deficit) from Revenue Account	70
Withdrawals - Capital financing	(26)
Contributions to Revenue Account	(114)
Closing Balance as at 31st March	480

Note: In line with Harbour Committee minute 398 (5) the minimum Reserve level is **£237k** based on 20% of budgeted turnover to meet any deficit in the revenue budget or winter storm damage. The balance is earmarked for harbour related capital projects.

HARBOUR REVENUE ACCOUNTS 2012/13

NOTES

BRIXHAM HARBOUR

- 1 The anticipated reduction in employee costs due to the waiving of superannuation contributions by some employees is now identified in the Projected Outturn.
- 2 Savings initially occurred through a vacancy in one of the Dockmaster posts. Further vacancies have occurred during the year increasing the direct saving on this heading. These savings have been partially offset by an increase in external security costs.
- 3 An approved new electricity recharge system for the fishing vessel basin has been installed to be funded from the Reserve (see note 15). Further expenditure has been incurred on general mechanical and electrical works.
- 4 Fish market activities continue to significantly increase electricity and water & sewerage charges. A proportion of these costs are being recovered (see note 14). The Projected Outturn also includes expenditure on new signage, booms and crane hire for winter haul outs.
- 5 Estates Management and Property Services, previously charged within Internal Support Recharges, are now provided by the Torbay Economic Development Company.
- 6 The Projected Outturn includes the cost of preparing the Port Master Plan and the Northern Arm Business Case to be funded from the Reserve (see note 15). Additional costs have subsequently been agreed by the Executive Head for Tor Bay Harbour Authority.
- 7 Capital borrowing charges have reduced following early repayment of £145k of principal from the 2011/12 operational surplus.
- 8 The Harbour contribution to this service has increased because the General Fund contribution is fixed and operating costs have risen in 2012.
- 9 The dividend has increased in line with revised income projections.
- 10 The Projected Outturn has been adjusted to reflect more realistic income levels from new facilities which are being monitored and adjusted as required on a regular basis.
- 11 Income at Brixham Marina continued to fall in 2011/12 due to the difficult economic conditions. As a prudent measure the projected rental for 2012/13 has been reduced.

- 12 Visitor numbers were down during the summer although there was a slight recovery later in the season.
- 13 Projections for fish toll income have already been raised based on volumes achieved for the year to date.
- 14 Recovery of increased water and sewerage charges (see note 4).
- 15 Contributions from the Reserve to fund installation of an electricity recharge meter system (£60k - see note 3) and the Port Master Plan (£30k - see note 6) and the Northern Arm Business Case (£24k see note 6). A further withdrawal has been approved by the Executive Head for Tor Bay Harbour Authority to fund additional work on the Plan.
- 16 Approved funding of the capital purchase of a new forklift truck.
- 17 Approved withdrawal from the Reserve to fund the electricity recharge meter system, the Port Master Plan and the Northern Arm Business Case (see notes 3, 6 & 15). A further withdrawal has been approved by the Executive Head for Tor Bay Harbour Authority to fund additional work on the Plan.

Agenda Item 12

Appendix 2

Appendix 2 - Tor Bay Harbour Authority - Reserve Funds Project List

Harbour Committee Minute 398 (5) - December 2011

“That, as recommended by the Harbour Committee’s Budget Working Party, each harbour reserve fund is split with 20% of budgeted turnover ring-fenced to meet any deficit in the revenue budget or winter storm damage and the balance ring-fenced to fund harbours related capital projects.”

	Brixham	Torquay & Paignton
	£	£
Reserve Balance at 31st March 2012	544,000	621,000
Planned withdrawals in year	(140,020)	(54,020)
Projected Surplus/(Deficit) for year	70,000	20,000
Revised Reserve Balance	473,980	586,980
less: 20% of Budgeted Turnover	237,200	187,200
= Balance for Projects	236,780	399,780
Total costs of proposed Projects (as listed below).	535,700	615,300
<i>Shortfall in Reserve funding available</i>	<i>(298,920)</i>	<i>(215,520)</i>

Projects	Brixham	Torquay & Paignton	Timeframe
Tor Bay Harbour - HMS software upgrade	£25,000	£25,000	2012-13
Torquay harbour - Haldon Pier brow		£45,000	2012-13
Torquay harbour - Princess Pier underwater urgent repairs		£50,000	2012-13
Torquay harbour - Beacon Quay Wi-Fi		£7,000	Short
Torquay harbour - Old Fish Quay full structural survey		£10,000	Short
Brixham harbour – capping, fenders & ladder repairs	£170,000		Short
Passenger ferry real-time signage & new shelters *	£18,500	£18,500	Short

Brixham harbour - new work boat	£45,000		Short
Brixham harbour – photo-voltaic solar panels on roof *	£48,000		Medium
Torquay harbour - fishermen's pontoons		£24,900	Medium
Torquay harbour – office/welfare improvements		£24,900	Medium
Torquay harbour - Inner Harbour Slipway repairs		£75,000	Medium
Torquay harbour - South Pier cathodic protection		£30,000	Medium
Tor Bay Harbour Patrol Boat replacement	£25,000	£25,000	Medium
Brixham harbour - Maritime E training programme *	£54,200		Medium
Torquay harbour - new dinghy park & seaward slipway feasibility study		£30,000	Medium
Torquay harbour - Haldon Pier crane		£50,000	Long
Brixham Breakwater	£150,000		Long
Torquay harbour - Fuel Station refurbishment		£100,000	Long
Torquay harbour - New Drying Grid		£100,000	Long
TOTALS	£535,700	£615,300	

Capital Projects over £25k to be listed on the Council's Capital Plan and be approved by full Council.

* Interreg funding opportunity (FLIP)

KEY

Capital
Revenue



Current financial year
0 to 12 months
12 to 24 months
24 to 60 months

2012-13
Short
Medium
Long

Harbour Committee Work Programme – 2013/2014

Agenda Item 13

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Meeting	Standing items to be considered	Type of Report
June	<ul style="list-style-type: none"> ▪ To elect a Chairman for the Municipal Year ▪ To appoint of Vice Chairman for the Municipal Year ▪ To review/note the Harbour Committee's Terms of Reference as per the Council's Constitution ▪ To appoint a Harbour Appointments Sub-Committee ▪ To appoint a Harbour Asset Review Working Party ▪ To appoint a Harbour Budget Review Working Party ▪ To appoint a Pilotage Review Working Party ▪ To consider the Budget Outturn for previous financial year ▪ To note the minutes of Torquay/Paignton and Brixham Harbour Liaison Forums ▪ To consider the quarterly Budget Monitoring Report ▪ To monitor the Performance of the Harbour & Marine Services Business Unit (SPAR.Net) ▪ To approve an Audit Plan for the Tor Bay Harbour Authority Business Unit ▪ To approve the Tor Bay Harbour Enforcement and Prosecution Policy (biennial - 2014) ▪ To note the accounts of the Arts & Crafts Market located on the Old Fish Market, Brixham ▪ To approve the Tor Bay Harbour – Port Masterplan ▪ To consider the Brixham Harbour Northern Arm Business Plan 	Decision Decision To note Decision Decision Decision Decision To note To note To note To note Decision Decision To note Decision Decision
September	<ul style="list-style-type: none"> ▪ To review the Harbour Committee's Appointment of External Advisors (Appointments Sub-Committee) ▪ To note the minutes of Torquay/Paignton and Brixham Harbour Liaison Forums ▪ To review the Harbour Authority Business Risk Register ▪ To receive recommendations from the Harbour Asset Review Working Party ▪ To consider the quarterly Budget Monitoring Report ▪ To monitor the Performance of the Harbour & Marine Services Business Unit (SPAR.Net) ▪ To approve the Tor Bay Harbour Marine Environmental Policy (biennial - 2014) ▪ To approve a Review of the Tor Bay Harbour Pilotage Directions (biennial - 2013) 	Decision To note Decision Decision To note To note Decision Decision
December	<ul style="list-style-type: none"> ▪ To consider the Harbour and Marine Services Budget and Setting of Harbour Charges ▪ To consider the Annual Compliance Audit of the Port Marine Safety Code ▪ To note the minutes of Torquay/Paignton and Brixham Harbour Liaison Forums ▪ To consider the quarterly Budget Monitoring Report ▪ To consider the results of the Annual Harbour Users Survey ▪ To monitor the Performance of the Harbour & Marine Services Business Unit (SPAR.Net) ▪ Review of the powers conferred by national legislation and the appropriateness of local regulation (5 yrs – 2015) ▪ To approve the Tor Bay Harbour policy statement for Local Port Services (LPS) (biennial - 2014) 	Decision Decision To note To note To note To note To note Decision
March	<ul style="list-style-type: none"> ▪ To review the delegated powers of the Executive Head of Tor Bay Harbour Authority ▪ To agree the Tor Bay Harbour Authority Business Plan ▪ To review the Operational Moorings Policy ▪ To note the minutes of Torquay/Paignton and Brixham Harbour Liaison Forums ▪ To consider the quarterly Budget Monitoring Report ▪ To agree the Harbour Committee Work Programme ▪ To monitor the Performance of the Harbour & Marine Services Business Unit (SPAR.Net) ▪ To review and approve the Tor Bay Harbour Asset Management Plan 	Decision Decision Decision To note To note Decision To note Decision

NB Reports on specific matters requiring a decision or to note will be added to this programme as and when required.
 Meeting venues are to be rotated between Brixham, Paignton and Torquay.



Meeting: Harbour Committee

Date: 18th March 2013

Wards Affected: All wards in Torbay

Report Title: Review of the Tor Bay Harbour Authority Asset Management Plan

Executive Lead Contact Details: Non-Executive Function

Supporting Officer Contact Details: Kevin Mowat

**Executive Head of Tor Bay Harbour Authority
Tor Bay Harbour Master**

 **Telephone: 01803 292429**

 **E.mail: Kevin.Mowat@torbay.gov.uk**

1. Purpose

- 1.1 The Harbour Authority uses a large number of assets on behalf of the Council, as the owning authority, to deliver a safe and sustainable harbour. By maintaining harbour assets and the harbour estate efficiently the Harbour Authority can deliver a service to harbour users. A well managed harbour will also serve the needs of our communities and hopefully improve the lives of those who live and work in the Bay, as well as improving and regenerating Torbay as a place for visitors.

2. Proposed Decision

- 2.1 **That the Tor Bay Harbour Authority Asset Management Plan 2013/14 set out in Appendix 1 be approved.**

3. Action Needed

- 3.1 That the Tor Bay Harbour Authority Asset Management Plan 2013/14 should be implemented by the harbour authority.
- 3.2 The policies and future actions highlighted within the plan will help to inform the harbour budget setting process.

4. Summary

- 4.1 The Terms of Reference for the Harbour Committee form part of Torbay Council's Constitution.
- 4.2 It is stated within those Terms of Reference that the Harbour Committee is to provide strategic direction in relation to those assets within Tor Bay Harbour and the harbour estate that are managed by the Tor Bay Harbour Authority business unit.

- 4.3 The existence of a Tor Bay Harbour Authority Asset Management Plan will assist the Harbour Committee to provide the strategic direction indicated in 4.2 above.
- 4.4 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 Corporation (Council) as harbour authority and used for the purpose of the harbour undertaking. (Tor Bay Harbour Act 1970)
- 4.5 An appropriate asset management plan will help the Harbour Asset Review Working Party to monitor all of the harbour estate and ensure that the assets are fit for purpose. The plan will enable the identification of assets that might be inefficient or a liability in terms of backlog or future maintenance. Consequently the Harbour Committee will be able to provide the necessary strategic advice in respect of harbour assets.
- 4.6 A harbour asset maintenance programme is considered on an annual basis with prioritisation influenced by the results of the condition surveys, which are largely held on the Council's asset register (Torbay Online Asset Database [TOAD]).
- 4.7 As indicated in the Council's Constitution the extent of the harbour estate and any asset purchase and disposal over £25,000, is determined by the Mayor.

Supporting Information

5. Position

- 5.1 All of the assets currently managed by the Tor Bay Harbour Authority business unit on behalf of Torbay Council are governed by the Harbour Committee. Many of the assets are critical to the safe operation of the harbour and other assets are essential in terms of the revenue contribution they make to the ring-fenced budget delivered by Tor Bay Harbour Authority for the Harbour Committee. The extent of the harbour estate is fixed by the Council and may be varied from time to time having taken full consideration of the operational requirements of the harbour authority and the Council's policy to deliver a self-funding, financially sustainable harbour service.
- 5.2 In June of each year the Harbour Committee establishes a Harbour Asset Review Working Party to provide strategic direction in relation to those assets within Tor Bay Harbour and the harbour estate that are managed by Tor Bay Harbour Authority. This is in line with the Harbour Committee's Terms of Reference and Minute No. 102 (2008).
- 5.3 The role of the Working Party is to regularly challenge whether all the harbour assets are required, fit for purpose and provide value for money to meet current and future needs. It is also tasked with identifying under-performing or surplus assets so that it can make recommendations about how such may be rationalised or disposed of. To this end, in June 2012 it was resolved that a Harbour Asset Review Working Party be appointed with the following terms of reference:
- (a) to review all assets within Tor Bay Harbour and the Harbour Estate;

- (b) to establish how each asset is performing; and
- (c) to identify any assets that are surplus.

- 5.4 In 2008 under Minute No. 102 it was resolved that the Director of Marine Services (now Executive Head of Tor Bay Harbour Authority), in consultation with the Harbour Asset Review Working Party, be asked to consider the need for a Harbour Asset Management Plan.
- 5.5 Each year since 2008 the Harbour Asset Review Working Party has been re-established with the same Terms of Reference and each year it has discharged its requirements in respect of (a), (b), (c) above. The first Harbour Asset Management Plan was approved by the Harbour Committee in March 2011 following a recommendation from the Harbour Asset Review Working Party, in fulfilment of Minute No. 102 (2008) outlined in 5.4 above.
- 5.6 From a corporate perspective the Committee is reminded that “capital investment” is described as :-

Expenditure on the acquisition, creation or enhancement of “fixed assets”

(Fixed assets are items of land & property which have a useful life of more than 1 year)

“Property” is one of the Council’s major resources alongside “People” and “Pounds”. Improving the management of its land and property assets is key to improving service delivery. The following documents demonstrate how the Council does this within its Corporate Planning process –

- **Capital Strategy** – this is the high level summary of the Council’s approach to capital investment covering all services and expenditure plans for replacement and renewal of land & property, infrastructure, plant & equipment etc. It identifies how the Council prioritises its own resources, supplemented by external funding, to improve its own assets and to support others to provide assets to help deliver Council services.
- **Corporate Asset Management Plan** – this is the overarching plan for managing the Council’s land and property assets. It identifies the Council’s approach to ensuring that its land and buildings are suitable, sufficient and in good condition to support service delivery.

These documents form part of the Council’s Budget & Policy Framework. They require annual review in order to update practices and procedures to seek to improve performance, reflect the latest position on capital resources and the latest demands for investment.

- 5.7 In 2009 Princess Pier (structural repairs to the stone structure) was one of the projects deemed the most important for immediate investment from an **Asset Management and Community Plan perspective** (excluding school and Local Transport Plan improvements which in previous years have been separately funded).

- 5.8 At a corporate level the Council is seeking to reduce the number of assets it holds in order to concentrate resources and provide a more economical but higher quality service. This Council policy has a two-fold benefit -
- Reduction in running costs resulting from inefficient or poorly maintained assets
 - Generation of receipts to fund schemes on the approved Capital Plan or schemes on the Reserve List
- 5.9 Due to the level of capital receipts required to support the Council's capital plan and the uncertainty over future capital funding no change is proposed to the policy of allocating all capital receipts to support schemes on the existing capital plan. Exceptions to this policy are possible as was the case with the recent long lease disposal of the Old Market House at Brixham harbour.
- 5.10 With the expected ongoing significant reductions in central government funding for public sector capital schemes the private sector could have a greater role in providing finance for public sector infrastructure, including new harbour assets or an expansion of privately owned infrastructure within harbour limits or on the harbour estate.
- 5.11 In recent years the Council has recognised the significant issue of repair and maintenance of the property portfolio. This position is particularly important given that the harbour authority manages significant marine infrastructure.
- 5.12 An indication of the repair issues are identified within the rolling programme of condition surveys in the Asset Management Plan. Priority continues to be given to Condition D (condition bad – life expired and or serious risk of imminent failure) and Priority 1 works (urgent work that will prevent immediate closure and or address an immediate high risk to the health and safety of occupiers and or remedy a serious breach of legislation) It is hoped to eliminate these works completely over the next few years.
- 5.13 The intention is to eliminate the backlog of maintenance as quickly as budgetary provision allows and to move to a position in Condition C of a 70:30 split of planned to reactive maintenance. This will be done by continuing with the cycle of maintenance surveys and introducing where possible life cycle costing so that future demand can be predicted and budgeted for in advance.
- 5.14 The Council is the freehold owner of Tor Bay Harbour and the harbour estate. Under the Tor Bay Harbour Act 1970 and 1983, the Council is also the harbour authority for the harbour. Under these Acts the Council, as the harbour authority, has a duty to maintain and improve the harbour and the services and the facilities in it and, under the same Acts, the harbour authority is granted the relevant powers to do so.

6. Possibilities and Options

- 6.1 It is considered to be best practice for a Harbour Authority to produce an Asset Management Plan and it assists the Harbour Committee to provide strategic direction in relation to those assets within Tor Bay Harbour and the harbour estate

that are managed by Tor Bay Harbour Authority. This Council has developed processes to demonstrate good asset management and a strategy for capital investment. This results in more efficient and effective use of its assets and capital resources in support of its Corporate Priorities and service objectives.

- 6.2 The repair and maintenance budget could be increased further to reduce backlog over a shorter timeframe. This has to be considered with regard to other capital and revenue pressures.

7. Preferred Solution/Option

- 7.1 To approve and adopt the Tor Bay Harbour Authority Asset Management Plan 2013/14 as set out in Appendix 1.
- 7.2 Good asset management and a planned approach to capital investment impact on improving the quality of life and creating safer environments for all.

8. Consultation

- 8.1 The Asset Management Plan is designed to assist the Harbour Authority to deliver its Business Plan priorities alongside, and complementary to, the provision of its statutory functions.
- 8.2 The Plan has been developed through officer consultation with support from the Torbay Development Agency. Although this Asset Management Plan broadly follows a corporate template it is expected that further development of the Plan will emerge via the Harbour Asset Review Working Party.
- 8.3 The Tor Bay Harbour Authority Asset Management Plan 2013/14 has been considered by the Harbour Asset Review Working Party.

9. Risks

- 9.1 Failure to deal with urgent structural repair could lead to deterioration of the asset base and additional costs. The identified repair demands in the Plan, although only approximate, are significant and are increasing over time. This is a key challenge given the limited availability of both revenue and capital resources.
- 9.2 A risk to the Plan is that it will not be “fit for purpose” i.e. it will not assist the harbour authority to use its resources economically and efficiently in support of its priorities.
- 9.3 Unforeseen emergency works could disrupt the repairs and maintenance programme. Over the period of the maintenance plan there will inevitably be some unforeseen works which arise and need immediate attention e.g. storm damage etc. This will require periodic revision of the programme with some works having to be deferred.
- 9.4 Existing annual maintenance funding is dependent on sustaining the current levels of harbour income. Also, the financial settlement for the public sector in future years is uncertain and may significantly affect the Council’s ability to implement the Capital Strategy and the corporate Asset Management Plan.

- 9.5 Annual maintenance funding has reduced to meet the Council's need for a cash dividend in 2012/13 and 2013/14.

Appendices

Appendix 1 - Draft Tor Bay Harbour Authority Asset Management Plan 2013/14

Additional Information

None



Tor Bay Harbour Authority - Service Asset Management Plan 2013/14

1. Service Background and Outcomes

Tor Bay 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 up to 9 Councillors and 6 External Harbour Advisors who have been selected following a skills audit. Also, appropriate training is now given to each member of the Committee.

The Harbour Committee deals with all matters relating to the strategic management of the Council's function as the 'harbour authority'. It is a committee of the full council and is both open and accountable. In particular this Committee determines the level of harbour charges and fulfils the Council's role as Duty Holder for the purposes of the Port Marine Safety Code. This fit for purpose Committee sets the budgets for the harbour and, with the assistance of the Tor Bay Harbour Authority business unit, manages Tor Bay Harbour within the framework of Council policy, with special attention being given to the aspirations of the Tor Bay Harbour and Maritime Strategy.

Tor Bay Harbour has existed successfully as a statutory entity since 1970 and it has served the community well. The move, over forty years ago, to create a single new harbour authority was both brave and visionary and since 1970, Tor Bay Harbour has shown that it can operate successfully, efficiently and economically, and subsequently it has not become a burden on Torbay Council resources. In fact in 2012/13 a cash dividend contribution was made to the Council's general fund from the harbour accounts.

There is a strong commitment on behalf of Torbay Council both to improve the service provided by the Harbour to its direct users and to develop its role in supporting the local economy and as a focus both for the local community and visitors to the Bay.

Harbour Estate

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 Corporation (Council) as harbour authority and used for the purpose of the harbour undertaking. (Tor Bay Harbour Act 1970)

All of the assets currently managed by the Tor Bay Harbour Authority business unit on behalf of Torbay Council, as the harbour authority, are governed by the Harbour Committee. Many of the assets are critical to the safe operation of the harbour and other assets are essential in terms of the revenue contribution they make to the ring-fenced budget delivered by the Tor Bay Harbour Authority business unit for the Harbour Committee. The extent of the harbour estate is fixed by the Council and may be varied from time to time having taken full consideration of the operational requirements of the harbour authority and the Council's policy to deliver a self-funding, financially sustainable harbour service.

The accommodation and property that is under the control of the Harbour Committee and Tor Bay Harbour Authority business unit adequately meets the immediate needs of the service. In recent years investment has been made in new quay infrastructure at Brixham with a new fish market, office building, employment units and a new restaurant on the harbour estate. 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.

The maintenance costs for harbour assets are met from the ring-fenced harbour accounts as per Council policy. The agreed budget for repairs & maintenance for 2013/14 are: £110,900 for Torquay, £39,800 for Paignton and £117,400 for Brixham.

Since 2008 the Harbour Committee approved the establishment of a Harbour Asset Review Working Party. The Director of Marine Services (now Executive Head of Tor Bay Harbour Authority) advised Members that the Harbour Committee's Terms of Reference require that the Harbour Committee provide strategic direction in relation to those assets within Tor Bay Harbour and the harbour estate that are managed by Marine Services (now the Tor Bay Harbour Authority business unit). It was suggested that in order to achieve this requirement the Committee should challenge whether all the harbour assets are required, fit for purpose and provide value for money to meet current and future needs. It was also recommended that the Committee should be able to identify under-performing or surplus assets so that it can make recommendations about how such may be rationalised or disposed of. The Harbour Committee felt that to fulfil this role, a Working Party should be established to review those assets managed by the Harbour Authority.

In June 2012 the Harbour Committee resolved that a Harbour Asset Review Working Party, comprising three members of the Harbour Committee (two Conservative Members and one Liberal Democrat Member) and two of the External Advisors to the Committee (Captain Bob Curtis and Mr Gordon Jennings), be appointed with the following terms of reference:

- a) to review all assets within Tor Bay Harbour and the Harbour Estate;
- b) to establish how each asset is performing; and
- c) to identify any assets that are surplus.

The Harbour Asset Review Working Party held a meeting on 4th March 2013 and has worked in consultation with the Executive Head of Tor Bay Harbour Authority to recommend to the Harbour Committee this Harbour Asset Management Plan.

2. Predicted Service Delivery Changes

In September 2012 the Harbour Asset Review Working Party reported to the Harbour Committee that :-

- All assets within Tor Bay Harbour and the Harbour Estate had been successfully reviewed.
- They were satisfied that they could broadly establish how each asset was performing.
- Only one asset was identified as being surplus to the requirements of the Harbour Authority and this was the steel workboat based at Brixham harbour. This craft will be sold and a separate report to the Harbour Committee will cover the procurement of a replacement vessel.

In determining this advice where possible each asset was considered against the following performance criteria :-

- corporate asset number (Torbay Online Asset Database System [TOADS])
- operational status
- leased or vacant
- tenure of lease & rental income
- size of premises
- expected repair & maintenance costs for the next 5 years
- condition category (A to D)
- date of last condition survey
- repairing priority (urgent to long term)
- asset valuation
- alternative use

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PRIORITY 1 = Immediate Action
PRIORITY 2 = Action in the Short Term
PRIORITY 3 = Action in the Medium Term
PRIORITY 4 = Action in the Long Term

3. Scope of Service Asset Management Plan

This Asset Management Plan covers all assets managed and occupied by the Tor Bay Harbour Authority business unit.

4. Identification of Current Property Portfolio

This data is captured in the Excel spreadsheet entitled 'List of Tor Bay Harbour Assets', attached as Annex 1.

5. Identification of Property Surveys

This data is captured in the Excel spreadsheet entitled 'List of Tor Bay Harbour Assets', attached as Annex 1.

6. Preferred Options & Action Plan

Annex 1, entitled 'List of Tor Bay Harbour Assets', shows the current asset/property portfolio under the day to day management of the Tor Bay Harbour Authority business unit, which is subject to strategic advice and direction from Torbay Council's Harbour Committee. The list flags all assets giving their current situation as being Operational (O), Let (L), Empty (MT) or Derelict (D). The Harbour Asset Review Working Party, described in section 1 above, is tasked with reporting to the Harbour Committee on how each asset is performing and identifying any that are surplus. This advice would include indicating what action if any is required to implement any required changes.

7. Implement Audit & Review

Notwithstanding the comments made in sections 2 & 6 above, the following assets have been identified as requiring an ongoing review and/or action.

Asset Ref	Asset Name	Action	Priority Rating	Date for Review
B0082	Brixham Harbour Breakwater	Capital repairs required to the bull-nose end (£150,000) agreed by the Harbour Committee.	1	Underway
B0088AJ	Freshwater Quarry Slipway	Need to determine if this asset is sustainable in an operational state of repair.	1	April 2012
T0004AB	Haldon Pier	Capital repairs commenced in late 2009. Further work is required and this is subject to a flood defence funding bid from the EA.	2 to 3	Underway
P0242	Harbour Lights Building	Fire risk assessment works including fire prevention and detection measures. Agreed to consider options for future use of building.	1 to 4	Underway
T0006AF	Torquay – Town Dock	Investigation required identifying the causes of minor cracking to the structural steelwork on certain pontoons.	1	Underway
T0503	Princess Pier	Capital repairs are required and this is subject to a flood defence funding bid from the EA.	1 to 4	Underway
No data	Auction/Training Room	Agreed to investigate transfer to harbour undertaking as a training room facility.	No data	Actioned
No data	Boat Booking Board Sites 4 & 6	Agreed to discontinue as Boat Booking Board Sites	No data	Actioned
T0006AA15	Compound Store Adjacent Unit 7	Agreed to pursue development opportunity	No data	Underway
T0007AB	Living Coasts site	Agreed to pursue adoption of Council land into the harbour estate.	No data	Underway



Meeting: Harbour Committee

Date: 18th March 2013


Wards Affected: All wards in Torbay

Report Title: Internal Audit Report – IT System Administration and Security

Executive Lead Contact Details: Non-Executive Function

Supporting Officer Contact Details: Kevin Mowat

**Executive Head of Tor Bay Harbour Authority
Tor Bay Harbour Master**

 **Telephone: 01803 292429**

 **E.mail: Kevin.Mowat@torbay.gov.uk**

1. Purpose

- 1.1 This report provides Members with an overview of the results of the Internal Audit Report undertaken for Tor Bay Harbour Authority on the harbour IT System Administration and Security, which was concluded in September 2012.
- 1.2 It is entirely appropriate that the Harbour Committee also receives and notes the main findings of the Internal Audit of the harbour IT System Administration and Security as shown in the Executive Summary - Appendix 1.

2. Summary

- 2.1 A 5 year rolling audit plan was taken to the Harbour Committee and approved in June 2011 separating the various operation and strategic elements of the harbour operation into distinct audit areas; this audit is the second audit from the rolling plan and focuses on IT system administration and security.
- 2.2 The audit scope has previously been agreed for 2012/13, as taken to Harbour Committee in June 2012; hence this audit is focussing on IT system administration and security and its associated controls. The audit was undertaken based on the following key risk areas bulleted below using previous audit work and input from Harbour staff to ensure that the programme was relevant to Tor Bay Harbour Authority :-

- Inappropriate use of IT systems
- Unauthorised / inappropriate access to the IT systems
- Data is not reliable
- Loss of data or assets
- Inappropriate use of CCTV

- 2.3 The opinions and recommendations contained within the Internal Audit report are based on an examination of restricted samples of transactions / records and discussions with officers responsible for the processes reviewed.
- 2.4 It is the Audit Report's opinion that improvements are required. The opinion states that there are a number of instances where controls and procedures do not adequately mitigate the risks identified. Existing procedures need to be improved in order to ensure that they are fully reliable. Recommendations have been made within the Report to ensure that organisational objectives are not put at risk.
- 2.5 The findings and recommendations in relation to each of the areas are discussed in the "Detailed Audit Observations and Action Plan" which forms an Appendix to the full report. This Appendix records the action plan agreed by the Executive Head of Tor Bay Harbour Authority to enhance the internal control framework and mitigate identified risks where agreed. The Tor Bay Harbour Authority business unit have already agreed the action plan with the Devon Audit Partnership.
- 2.6 The "Detailed Audit Observations and Action Plan" referred to in 2.5 above has been marked RESTRICTED and therefore does not form part of this report because it contains information or data or documents that should only be shared between a specific group of work staff who have to demonstrate a need to know, because of the sensitive content.

Supporting Information

3. Position

- 3.1 The following table summarises the assurance opinions given on each of the risks covered during the audit.

Risks Covered		Level of Assurance
1	Inappropriate use of IT systems	Fundamental weaknesses
2	Unauthorised / inappropriate access to the IT systems	Improvements Required
3	Data is not reliable	Improvements Required
4	Loss of data or assets	Improvements required
5	Inappropriate use of CCTV	Improvements required

3.2 Assurance opinion levels are defined as follows :-

Assurance	Definition
High Standard.	The system and controls in place adequately mitigate exposure to the risks identified. The system is being adhered to and substantial reliance can be placed upon the procedures in place. We have made only minor recommendations aimed at further enhancing already sound procedures.
Good Standard.	The systems and controls generally mitigate the risk identified but a few weaknesses have been identified and / or mitigating controls may not be fully applied. There are no significant matters arising from the audit and the recommendations made serve to strengthen what are mainly reliable procedures.
Improvements required.	In our opinion there are a number of instances where controls and procedures do not adequately mitigate the risks identified. Existing procedures need to be improved in order to ensure that they are fully reliable. Recommendations have been made to ensure that organisational objectives are not put at risk.
Fundamental Weaknesses Identified.	The risks identified are not being controlled and there is an increased likelihood that risks could occur. The matters arising from the audit are sufficiently significant to place doubt on the reliability of the procedures reviewed, to an extent that the objectives and / or resources of the Council may be at risk, and the ability to deliver the service may be adversely affected. Implementation of the recommendations made is a priority.

3.3 The recommendations are categorised as follows :-

High	A significant finding. A key control is absent or is being compromised; if not acted upon this could result in high exposure to risk. Failure to address could result in internal or external responsibilities and obligations not being met.
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Medium Control arrangements not operating as required resulting in a moderate exposure to risk. This could result in minor disruption of service, undetected errors or inefficiencies in service provision. Important recommendations made to improve internal control arrangements and manage identified risks.

Low Low risk issues, minor system compliance concerns or process inefficiencies where benefit would be gained from improving arrangements. Management should review, make changes if considered necessary or formally agree to accept the risks. These issues may be dealt with outside of the formal report during the course of the audit.

- 3.4 The full report contains 31 recommendations of which 9 are 'High', 18 are 'Medium' and 4 are 'Low'. Some of the agreed actions identified within the Report's Action Plan have already been implemented or are in the process of being implemented. All of the 'High' priority actions will have been taken by April 2013. The Executive Head of Tor Bay Harbour Authority has commenced a procurement process to replace the existing harbour software system and any new software will considerably mitigate many of the risks identified during this audit. Funding for a new IT system has been identified within the "project list" attached as Appendix 2 to the Budget Monitoring Report.

Appendices

Appendix 1 Devon Audit Partnership Internal Audit Report – Tor Bay Harbour Authority ~ IT System Administration and Security (September 2013) – Executive Summary

Additional Information

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

Devon Audit Partnership Internal Audit Report – Tor Bay Harbour Authority ~ IT System Administration and Security (September 2013) RESTRICTED



Draft Internal Audit Report

Torbay Council

**Tor Bay Harbour Authority IT System
Administration and Security**

September 2012

Restricted

Devon Audit Partnership

The Devon Audit Partnership has been formed under a joint committee arrangement comprising of Plymouth, Torbay and Devon councils. We aim to be recognised as a high quality internal audit service in the public sector. We work with our partners by providing a professional internal audit service that will assist them in meeting their challenges, managing their risks and achieving their goals. In carrying out our work we are required to comply with the CIPFA code of practice for Internal Audit and other best practice and professional standards.

The partnership is committed to providing high quality, professional customer services to all; if you have any comments or suggestions on our service, processes or standards, the Head of Partnership would be pleased to receive them at Robert.hutchins@devonaudit.gov.uk

Confidentiality and Disclosure Clause

This report is protectively marked in accordance with the National Protective Marking Scheme. Its contents are confidential and, whilst it is accepted that issues raised may well need to be discussed with other officers within Torbay Council, the report itself should only be copied/circulated/disclosed to anyone outside of the organisation in line with the organisation's disclosure policies.

This report is prepared for the organisation's use. We can take no responsibility to any third party for any reliance they might place upon it.

1 Introduction

Torbay Council as a Harbour Authority operates and manages three enclosed harbours within the statutory harbour of Tor Bay. The statutory responsibilities of a Harbour Authority are considerable and include the provision of moorings and storage for various types of vessels.

A 5 year rolling audit plan was taken to the Harbour Committee and approved in June 2011 separating the various operation and strategic elements of the harbour operation into distinct audit areas; this audit is the second audit from the rolling plan and focuses on IT system administration security.

2 Audit Opinion

Improvements Required - In our opinion there are a number of instances where controls and procedures do not adequately mitigate the risks identified. Existing procedures need to be improved in order to ensure that they are fully reliable. Recommendations have been made to ensure that organisational objectives are not put at risk.

3 Executive Summary

The Harbour Authority utilises a number of IT systems and interfaces to assist with its day to day operation. These include the Harbour Management System (HMS), the weather station, the navigation lights system (PANAR), a visual system for tracking the movement of vessels within its waters (AIS), and the CCTV system. This audit has focussed mainly on the use of HMS, and has identified a number of weaknesses related both to the system's functionality, and knowledge of its use by Harbour officers.

There is no system documentation pertaining to the HMS system, and some officers are unaware of what the system can do, or how to use it properly. We have therefore been unable make an assessment in relation to how it could be used more appropriately or effectively, and have made recommendations that management should support officers in familiarising themselves with system and its capabilities.

The system does not have adequate controls in use to prevent and detect inaccurate data entry, access controls are weak and unenforceable, and there are issues with some of the relationships between items of data within the underlying database. Given these findings, management may wish to liaise with the Council's IT department, and consider whether they are willing to accept the risks associated with the lack of in built controls in these key areas, or whether manual controls could be introduced to mitigate them, before deciding on future system utilisation.

Issues have also been identified in relation to the use by the Harbour Authority of the Council's CCTV system, as there is no up to date guidance in place. This has resulted in the system being used inconsistently across the three offices and confusion over a number of processes and requirements. We understand that procedural documentation is currently revised by the Corporate CCTV team, however there should be liaison with Harbour management and the Information Governance

team, before the document is finalised, and any updates should be clearly communicated to Harbour officers to ensure that risks in relation to data protection breaches are minimised.

The detailed findings and recommendations regarding these issues and less important matters are described in the Appendices. Recommendations have been categorised to aid prioritisation. Definitions of the priority categories the assurance opinion ratings are also given in the Appendices to this report.

4 Assurance Opinion on Specific Sections

The following table summarises our assurance opinions on each of the risks covered during the audit. These combine to provide the overall assurance opinion at Section 2. Definitions of the assurance opinion ratings can be found in the Appendices.

Risks Covered		Level of Assurance
1	Inappropriate use of IT systems	Fundamental weaknesses
2	Unauthorised / inappropriate access to the IT systems	Improvements Required
3	Data is not reliable	Improvements Required
4	Loss of data or assets	Improvements required
5	Inappropriate use of CCTV	Improvements required

The findings and recommendations in relation to each of these risks are discussed in the "Detailed Audit Observations and Action Plan" appendix. This appendix records the action plan agreed by management to enhance the internal control framework and mitigate identified risks where agreed. Management are required to agree an action plan, ideally within three weeks of receiving the draft internal audit report. Written responses should be returned to Carolyn Moody (carolyn.moody@devon.gov.uk) or Lynda Sharp-Woods (lynda.sharp-woods@devonaudit.gov.uk). Alternatively a meeting to discuss the report and agree the action plan should be arranged with the named auditors.

5 Issues for the Annual Governance Statement

The evidence obtained in internal audit reviews can identify issues in respect of risk management, systems and controls that may be relevant to the Annual Governance Statement.

In terms of this review, should the issues in relation to the use of the HMS system not be addressed quickly, we recommend that this be considered for reporting in the Annual Governance Statement at the end of the financial year.

6 Scope and Objectives

The audit scope has previously been agreed for 2012/13, as taken to Harbour Committee in June 2012; hence this audit is focussing on IT system administration and security and its associated controls.

This audit has been undertaken based on the following key risk areas bulleted below using previous audit work and input from Harbour staff to ensure that the programme is relevant to the organisation:

- Inappropriate use of IT systems
- Unauthorised / inappropriate access to the IT systems
- Data is not reliable
- Loss of data or assets
- Inappropriate use of CCTV

7 Inherent Limitations

The opinions and recommendations contained within this report are based on our examination of restricted samples of transactions / records and our discussions with officers responsible for the processes reviewed.

8 Acknowledgements

We would like to express our thanks and appreciation to all those who provided support and assistance during the course of this audit

Robert Hutchins
Head of Audit Partnership

Definitions of Audit Assurance Opinion Levels

Assurance	Definition
High Standard.	The system and controls in place adequately mitigate exposure to the risks identified. The system is being adhered to and substantial reliance can be placed upon the procedures in place. We have made only minor recommendations aimed at further enhancing already sound procedures.
Good Standard.	The systems and controls generally mitigate the risk identified but a few weaknesses have been identified and / or mitigating controls may not be fully applied. There are no significant matters arising from the audit and the recommendations made serve to strengthen what are mainly reliable procedures.
Improvements required.	In our opinion there are a number of instances where controls and procedures do not adequately mitigate the risks identified. Existing procedures need to be improved in order to ensure that they are fully reliable. Recommendations have been made to ensure that organisational objectives are not put at risk.
Fundamental Weaknesses Identified.	The risks identified are not being controlled and there is an increased likelihood that risks could occur. The matters arising from the audit are sufficiently significant to place doubt on the reliability of the procedures reviewed, to an extent that the objectives and / or resources of the Council may be at risk, and the ability to deliver the service may be adversely affected. Implementation of the recommendations made is a priority.

Definition of Recommendation Priority

Priority	Definitions
High	A significant finding. A key control is absent or is being compromised; if not acted upon this could result in high exposure to risk. Failure to address could result in internal or external responsibilities and obligations not being met.
Medium	Control arrangements not operating as required resulting in a moderate exposure to risk. This could result in minor disruption of service, undetected errors or inefficiencies in service provision. Important recommendations made to improve internal control arrangements and manage identified risks.
Low	Low risk issues, minor system compliance concerns or process inefficiencies where benefit would be gained from improving arrangements. Management should review, make changes if considered necessary or formally agree to accept the risks. These issues may be dealt with outside of the formal report during the course of the audit.

Confidentiality under the National Protective Marking Scheme

Marking	Definitions
Not Protectively Marked or Unclassified	Documents, information, data or artefacts that have been prepared for the general public or are for the public web pages or can be given to any member of the public without any exemptions or exceptions to release applying, have the classification NOT PROTECTIVELY MARKED. Some organisations will also use the word UNCLASSIFIED for publicly available information.
Protect	Any material that may cause distress to individuals, breach proper undertakings to maintain the confidence of information provided by third parties, breach statutory restrictions on the disclosure of information, cause financial loss or loss of earning potential, or to facilitate improper gain, give unfair advantage for individuals or companies, prejudice the investigation or facilitate the commission of crime, disadvantage government in commercial or policy negotiations with others should be marked PROTECT.
Restricted	Information or data or documents that should only be shared between a specific group of work staff who have to demonstrate a need to know, because of the sensitive content, then the document must be marked RESTRICTED.
Confidential	Material that is so sensitive that only specific named staff should have access. Special handling rules apply and so CONFIDENTIAL must only be applied to highly sensitive data.
Secret and Top Secret	Information with this sensitivity is unlikely to be available to the Partnership and the Chief Executive of the relevant organisation must make the decision to apply either of these protective markings. These markings are only to be used with information that can only be shared on a strict must know basis, with each party having signed a specific confidentiality agreement.

Agenda Item 17



Meeting: Harbour Committee

Date: 18th March 2013

Wards Affected: All wards in Torbay

Report Title: Response to Defra's Consultation on Marine Conservation Zones

Executive Lead Contact Details: Non-Executive Function

Supporting Officer Contact Details: Kevin Mowat

Executive Head of Tor Bay Harbour Authority

Tor Bay Harbour Master

 **Telephone: 01803 292429**

 **E.mail: Kevin.Mowat@torbay.gov.uk**

1. Purpose

- 1.1 For members of the Harbour Committee to consider a response to the public consultation on the proposals from Defra that up to 31 sites are suitable for designation as Marine Conservation Zones in 2013.
- 1.2 In particular the Harbour Committee is asked to consider a response to the proposal from Defra to set up a Torbay Marine Conservation Zone, which would occupy all of the inshore area within Tor Bay Harbour Limits (20km²).

2. Proposed Decision

- 2.1 **That, the Executive Head of Tor Bay Harbour Authority, in consultation with the Chairman of the Harbour Committee and the Mayor, be asked to respond to the public consultation on behalf of Tor Bay Harbour Authority and Torbay Council.**
- 2.2 **That, in responding to the public consultation, the idea of a Marine Conservation Zone anywhere within Tor Bay Harbour limits is rejected on the grounds that the socio-economic impacts are unquantifiable.**

3. Action Needed

- 3.1 The Executive Head of Tor Bay Harbour Authority, in consultation with the Chairman of the Harbour Committee and the Mayor, needs to respond to the public consultation by midnight on 31 March 2013.

4. Summary

- 4.1 Marine Conservation Zones (MCZs) are a type of Marine Protected Area. Powers to create them to contribute to a network of Marine Protected Areas (MPAs) were provided in Part 5 of the Marine and Coastal Access Act 2009. They will protect areas that are important to conserve the diversity of nationally rare or threatened habitats and/or species and those places containing habitats and/or species that are representative of the biodiversity in our seas. Unlike other marine protected areas, designations of MCZs are supposed to take social and economic factors into account when identifying potential sites, alongside the best available scientific evidence.
- 4.2 In a statement on 13 December 2012, the Government announced the launch of the MCZ consultation. A Marine Conservation Zone is proposed for Tor Bay. A summary of the Torbay recommended MCZ site can be found in Appendix 2. The Appendix shows maps of the area proposed for designation, as well as the site size, the feature types and feature names, along with the conservation objectives, sector impacts and associated best estimate of costs. Information is also provided on the rationale for the decision, a socio-economic statement and comments on data certainty. The summary document states that the socio-economic impact best estimate of cost is £3,000, which is clearly inaccurate.
- 4.3 The public consultation is the opportunity for all stakeholders to make their views known, and to submit any new additional evidence they feel ought to be taken into account by Ministers when making their final decisions.
- 4.4 Defra have yet to decide which sites will become MCZs but they are proposing up to 31 sites for designation in 2013. The consultation is the primary opportunity for people to have their say and influence the decisions on designation. Final decisions on which MCZs to designate in 2013 will be made following consideration of the responses to the consultation.
- 4.5 Defra's aim has been to find the right balance between the strength of the conservation advantages an MCZ offers, relative to the economic and social implications of its likely designation. Where a site's conservation advantages were considered to outweigh the economic and social costs then the MCZ was considered appropriate for designation at some point. Whether an MCZ, and all of its features, are ready for designation in the 2013 tranche depends on the levels of confidence in the scientific evidence.
- 4.6 For the Torbay recommended MCZ many local stakeholders and "sea users" do not accept that the conservation advantages outweigh the economic and social costs of designation. These stakeholders include the Harbour Liaison Forums, Brixham Trawler Agents, the Torquay Fishermen's Association, the yacht clubs, the Mayor, the Chairman of the Harbour Committee and the Executive Head of Tor Bay Harbour Authority.
- 4.7 Opinions are currently being sought from the English Riviera Tourism Company, the Torbay Economic Development Company and the Business Forum and it is expected that these organisations will raise similar concerns regarding the economic and social costs of this rMCZ.

- 4.8 Defra has stated that any new data and analysis will be considered following the consultation, which will also be an opportunity for stakeholders to present any new evidence where this was not previously available. Final decisions on which sites are designated in 2013 will be based on available evidence including any new evidence submitted through this consultation.
- 4.9 Defra has also made it clear that they want to make sound decisions on sites to take forward for designation. They indicate that the science and socio-economic evidence underpinning the choices to be made is key to having sites that are effective and well-managed. It is therefore important that their evidence is reliable and accurate. The Executive Head of Tor Bay Harbour Authority is of the opinion that the socio-economic evidence is not reliable or accurate and it therefore cannot support a sound decision by Defra.
- 4.10 The management measures noted in the Impact Assessment are for illustrative purposes and they are supposed to allow for the calculation of a range of potential cost implications for each site. The sectors identified as being subject to management measures are as set out below :-

- Commercial fishing
- Aquaculture
- Tourism & Leisure – anchoring
- Tourism & Leisure – vessel movement
- Coastal Defence & Development

The management measures have yet to be determined but are expected to include Byelaws, Voluntary Codes, Marine Licences, licence conditions and also prohibition.

- 4.11 However, because the management measures have yet to be determined they are not being consulted on at this stage. The impact assessment accompanying the consultation is meant to indicate the costs and benefits of possible management measures for the site and Defra believe that it provides a good indication of what might be expected. Actual management measures will be drawn up separately and put in place by the relevant 'public authorities' after designation. Defra and their delivery partners are working together to ensure that the management measures that are to be put in place will provide effective protection for designated sites.
- 4.12 The term 'public authority' is defined in section 322 of the Act, and it includes :-
- a) Ministers of the Crown;
 - b) public bodies (including government departments, local authorities, local planning authorities and statutory undertakers (including those authorised by legislation to carry out transport, dock or harbour works) ;
 - c) persons holding a public office.

- 4.13 Once a site has been designated by Government, a 'public authority' is under a general duty to exercise any function which may affect an MCZ in a manner which furthers the conservation objectives stated for the MCZ, and to not undertake or give consent to any activity that would have an adverse effect on achieving the conservation objectives stated for any MCZ. It can therefore be seen that the Council is a 'public authority', under the Act, in more ways than one and this will bring resource challenges in terms of time and cost. (See section 5.15)
- 4.14 When an MCZ is designated it does not automatically mean that economic or recreational activities in that site will be restricted. Restrictions on an activity will depend on the sensitivity of species, habitats and geological/geomorphological features (for which a site is designated) to the activities taking place in that area and on the conservation objectives for those features. Once the site has been designated it will be the duty of the appropriate public authority to determine what management measures if any will be required to protect the features within the MCZ.
- 4.15 Only those activities that are identified by the appropriate authority as having a negative impact on the conservation objectives for the features within the site will be managed. Once the appropriate authority has identified the correct management measures for a site, they will inform the general public of the measures being put in place, where necessary this may involve a public consultation.
- 4.16 The nature of the features that Defra are seeking to protect in Tor Bay Harbour are in many cases located immediately adjacent to our enclosed harbours. Therefore, any development plans beyond the existing footprint of those harbours will clearly impact on those sites and their associated conservation objectives. Furthermore it is unlikely that any meaningful mitigation measures can be put forward to offset the impact and in any event Defra's own consultation document accepts that **'Unknown potentially significant costs of mitigation could arise'**.
- 4.17 Another unknown factor relates to the new Marine Plans. The South Coast Marine Plan process is now underway and this strategic planning document, which applies to the south coast of England, will include any existing and proposed Marine Protected Areas (MPAs) as part of its baseline. Defra have indicated that the planning process may indicate the need for amendment of Marine Conservation Zone boundaries or management measures, or identify possible new Marine Protected Area sites.
- 4.18 In order to balance the Government's obligations to create MCZs and its obligations in respect of renewable energy and the growth agenda, Defra believe they have acted in accordance with the Marine and Coastal Access Act 2009, by including consideration of social and economic factors when designating MCZs. Defra's advice states that implications for developments aimed at meeting the renewable energy and growth objectives can be taken into account in making decisions on sites. Defra will not have been aware of the emerging Tor Bay Harbour Port Masterplan when they made the proposal for an MCZ in Tor Bay.

- 4.19 Defra has also indicated that there won't be any opportunity to appeal any sites that Ministers choose to designate. The public consultation is the only opportunity for stakeholders to review, comment and provide feedback to Government on the proposed MCZ designation decisions before they are finalised, and they are encouraging all interested parties to make their views heard at this stage.

Supporting Information

5. Position

- 5.1 The Government's policy is to implement an ecologically coherent network of Marine Protected Areas (MPAs) whilst minimising adverse socio-economic impacts of the network and its management. The existence of socio-economic interests will not prevent the consideration of an area for designation as an MCZ, nor compromise the achievement of an ecologically coherent MPA network, but will be considered as part of the process.
- 5.2 In taking decisions, Ministers have indicated that they will want to be clear about the choices they have and the impact of the decisions they are being asked to take. The approach to the selection and designation of MCZs therefore was supposed to ensure that environmental and socio-economic information is integrated to provide the best available evidence base for decisions.
- 5.3 The weight to be attached to socio-economic interests will depend on a number of factors and will need to be considered in the light of the particular circumstances that apply in each area. Where areas contain features which are rare, threatened or declining and come with limited options for their location, ecological considerations are likely to carry greater weight in considering the area's suitability for designation as an MCZ. However, where there is a choice of alternative (and comparably-suitable) areas (which could be the case for many representative habitats, including those in the Bay); socio-economic factors are likely to carry increased weight (within the constraints imposed by the network design principles and the conservation objectives for the site).
- 5.4 The Marine and Coastal Access Act 2009 is a piece of legislation that aims to improve the way the UK uses its marine resources and maximises the benefits it gets from them. One of the reasons it was developed is to provide enhanced protection of the marine environment and biodiversity. In particular, Part 5 of the Act provides powers for Ministers to designate Marine Conservation Zones (MCZs) alongside a duty to exercise this power to contribute to the creation of a network of Marine Protected Areas.
- 5.5 With a coastline of over 12,000km the UK has a large marine area, rich in marine life and natural resource. It is important to recognise that our seas are not just places of important biological diversity, they also provide us with a variety of goods and services including, food, carbon capture, climate regulations, pollution control, energy, building materials, recreation and transport. This makes the marine environment key to England's social, economic and environmental well-being and provides significant opportunities for the future that should be protected.

- 5.6 At present the marine environment, in certain areas, is coming under increasing pressure from unsustainable human activity, which is damaging and further threatening marine ecosystems. However, many local stakeholders believe that the current level of human activity in the Bay is sustainable and can certainly be managed using existing designations and regulatory powers.
- 5.7 In comparison to terrestrial conservation, Defra believe that marine conservation is significantly behind and they think it is important that appropriate conservation is introduced in order to protect our marine resources before it is too late. However, the Bay already benefits from a number of significant marine conservation designations. In fact a range of legislative measures are already in place to protect important marine species and habitats. Types of marine protected areas currently established include:
- Sites of special scientific interest (SSSI) – Wildlife and Countryside Act 1981
 - Special Protection Areas (SPAs) – Wild Birds Directive 1979
 - Special Areas of Conservation (SACs) – Habitats Directive 1992
 - National Nature Reserve (NNR)
 - Local Nature Reserve (LNR)
- 5.8 The Statutory Nature Conservation Bodies (SNCBs – Natural England and the Joint Nature Conservation Committee (JNCC)) – are Defra’s delivery partners for MCZs and they set up four regional projects covering the South-West (Finding Sanctuary), Irish Sea, North Sea and Eastern Channel to deliver recommendations on potential MCZ sites. Each project was meant to work closely with sea users and interest groups to recommend sites within their regions. However, many local stakeholders do not believe that this was achieved in a balanced way by Finding Sanctuary, our regional project, who provided the MCZ recommendation for the Torbay area.
- 5.9 The regional projects had access to evidence from a range of resources to develop their recommendations. They used evidence from the scientific literature, extracted relevant information from databases, and brought together some stakeholders with knowledge of the areas who provided data and expert opinion. Through a number of workshops, their members had the opportunity to check the information, highlight problems, and identify the most appropriate set of evidence. That process provided some reassurance about the data and how they were used. The Science Advisory Panel’s review, however, indicated that there were evidence gaps for many of the site recommendations either because information was lacking or because it was not cited by the regional projects. An in depth review of the evidence base for each site recommendation was commissioned to ensure that Government had a good understanding of the evidence base for each one.
- 5.10 On 8 September 2011, Finding Sanctuary (the South west regional project) submitted its final recommendations to the SNCBs and the Science Advisory Panel for independent review. At this stage the Executive Head of Tor Bay Harbour Authority had already raised an objection to the proposed MCZ for the Torbay area. The final recommendations were reviewed by the Marine Protected Areas Science Advisory Panel, who submitted their formal advice to Government on 30 October 2011.

- 5.11 In his statement of 15 November 2011, the Minister referred to the need for further work to be undertaken by Defra to strengthen the evidence base for some of the recommendations put forward by the regional projects. Natural England and the JNCC submitted their formal advice, including the Impact Assessment, to Defra on 18 July 2012.
- 5.12 Ministers examined all the advice and evidence and have consequently proposed that up to 31 sites as being suitable for designation in the first tranche in 2013.
- 5.13 Once a site has been designated by Government, a 'public authority' is under a general duty to exercise any function which may affect an MCZ in a manner which furthers the conservation objectives stated for the MCZ, and to not undertake or give consent to any activity that would have an adverse effect on achieving the conservation objectives stated for any MCZ.
- 5.14 There are two main duties under the Marine and Coastal Access Act 2009 that affect licensing decisions with regard to MCZs. Section 125 requires public authorities to exercise their functions in a manner to best further (or, if not possible, least hinder) the conservation objectives for MCZs. Section 126 requires public authorities to consider the effect of proposed activities on MCZs before granting authorisation to them and imposes restrictions on authorisations.
- 5.15 To fulfil the duty public authorities will have to consider and implement changes in the way they carry out their functions or activities. This is aimed to ensure that they deliver conservation benefits for and minimise adverse effects on, MCZs. The duty applies to a wide range of functions which include:
- the development of new infrastructure;
 - developing and implementing strategies, plans and policies,
 - ownership and management of coastal land (for example coastal defence);
 - management of shipping channels;
 - provision of public information; and
 - administration of consent, regulatory and enforcement regimes.
- 5.16 The four features for designation in the Torbay rMCZ in 2013 are :-
- Subtidal mud
 - Intertidal underboulder communities
 - Seagrass beds
 - Long snouted seahorse (*Hippocampus guttulatus*)
- 5.17 There are a number of regulatory and non-regulatory methods by which sites could be managed to achieve their conservation objectives. In identifying and implementing management measures, it is expected that the following principles should be applied :-
1. Both regulatory and non-regulatory methods should be investigated and assessed
 2. Measures with the least social and economic impact should be implemented where effective in meeting MCZ conservation objectives
 3. Management should be proportionate to the conservation objectives of the feature

5.18 However, Defra have recognised that in some sites they will need to prohibit all extraction, deposition and activities that cause significant disturbance to support the achievement of conservation objectives. This issue is of particular concern in Torbay where such could severely hinder our ambitions for growth.

5.19 A number of beneficial impacts arising from the proposed Torbay MCZ have been identified by Defra and these include the following :-

- Fish for human consumption – may improve
- Angling – may increase
- Diving – may increase
- Wildlife watching – may increase but might just be displaced
- Research & Education – high confidence but still only a maybe
- Regulatory services – low confidence, may increase biodiversity

A number of the above are given low confidence by Defra and given that the benefits are probably attributable to the existing conservation measures this is entirely understandable.

5.20 Information and comments submitted through the consultation will be used by Defra to inform the Ministers' final decision on which sites will be designated in the first tranche in 2013. Information gathered at this stage will also be used as part of the decision making process for determining the designation of sites in later tranches.

6. Possibilities and Options

6.1 The Council and Tor Bay Harbour Authority are duty bound to respond to this consultation especially as they are a 'public authority' under the controlling legislation.

6.2 Any response to the consultation should provide a clear indication of the Council's view on the proposed designation and it should also include any additional socio-economic or environmental data.

7. Preferred Solution/Option

7.1 The idea of a Marine Conservation Zone anywhere within Tor Bay Harbour limits should be rejected because the socio-economic impact will be significant and unquantifiable.

8. Consultation

8.1 The two Harbour Liaison Forums have been kept informed on the development of the MCZ designation process and throughout this period they have consistently raised significant concerns over the likely damaging socio-economic impacts. Similarly, many of the stakeholders who are 'sea users' that sit on the Forums have questioned the benefits of an MCZ designation and have challenged the concept that human activity is currently having an unsustainable impact.

9. Risks

- 9.1 There is a significant risk that human activity in the Bay will be restricted by the management measures introduced with an MCZ.
- 9.2 There is a significant risk that the socio-economic impact of these measures has not been adequately assessed by the Regional Project or by Defra.
- 9.3 There is a very real risk that options within the emerging Port Masterplan will become undeliverable because it will be impossible to produce compensatory measures that are of 'equivalent environmental benefit'. If mitigation is possible then Defra's own reports states that – 'Unknown potentially significant costs of mitigation could arise'.

Appendices

Appendix 1 Defra MCZ Consultation Response Form

Appendix 2 Consultation Site Summary: Torbay rMCZ

Additional Information

The consultation document and annexes can be viewed at
<http://www.defra.gov.uk/consult/open/>.

Department for Environment, Food and Rural Affairs

**Marine Conservation Zones: Consultation
on proposals for designation in 2013**

**Annex H – Consultation response form
and data submission form**

Consultee Information

Please provide the contact details as stated below, in order that we can acknowledge that we have received your response, and inform you once the Government response to the consultation is published.

Name:

Organisation:

Email address:

When providing evidence/data as part of a response to a question please note that:

- When providing environmental or socio-economic evidence/data as part of your consultation response, please complete the Data Submission Form at the end of this document
- Evidence provided as part of consultation responses should meet Defra's definition of Evidence as defined by Defra's Evidence Investment Strategy¹ and be 'reliable and accurate information that Defra can use to support decisions in developing implementing and evaluating policy'. Therefore it is important that all evidence provided should be able to be independently scrutinised and verified.
- As part of the consultation process please consider the questions below. When responding to a site-specific question please state clearly which site(s) you are referring to.
- Although we are only specifically requesting information and responses in respect of those MCZs proposed for designation in 2013, we would welcome your responses to Q2-8 in respect of all other sites recommended by the

¹ <http://www.defra.gov.uk/publications/2011/04/27/pb13471-evidence-investment-strategy/>

Regional MCZ Projects. Any responses or information provided will assist us in decisions and on future MCZ designations which will be subject to full public consultation.

For sites and features proposed in the 2013 tranche

Q1. Do you agree that this site and specified features should be designated in the first tranche? Please explain and provide evidence to support your views as necessary.

A 1.

Site Name:

Q.2 Are there any additional features (not recommended by the Regional MCZ Projects) located within this site that should be protected? Please explain and provide evidence to support your views as necessary.

A.2

Site Name:

Q.3 Do you have any comments on the proposed conservation objective(s)? Please provide evidence to support your comments as necessary.

A.3

Site Name:

Q.4 Are there any significant reasons for alteration of this site's boundary? Please explain and provide evidence to support your views as necessary.

A.4

Site Name:

Q.5 Is there any additional evidence to improve data certainty for features within this site? If yes please provide evidence.

A. 5

Site Name:

Q.6 Are there any additional activities (that may impact the recommended features) occurring within this site that have not been captured within the Impact Assessment? Please provide evidence to support your views.

A.6

Site Name:

Q.7 Do you have any new information on costs to industry not covered in the Impact Assessment, that would be directly attributable to MCZs as opposed to costs stemming from existing regulatory requirements, or evidence that suggests the need for changes to the methodologies or assumptions used in estimating costs (including in relation to fishing displacement)? If yes please provide evidence.

A.7

Site Name:

Q.8 Do you have any new information that was not available or used in the Impact Assessment to inform or quantify the value the benefits of MCZs?

A.8

Site Name:

General Comments

Q.9 You may wish to provide comments on other aspects of this consultation such as evidence requirements, identification and treatment of high risk sites. Where you disagree with the approach taken please provide evidence to support your views.

A.9

Data Submission Form

The submission of data to Defra during the Marine Conservation Zone Consultation confirms the Data Owner's agreement to grant "Defra Marine Family²" permission to access, hold and use the Material for the purposes of further informing the recommendations, designation and management of sites.

We encourage openness and transparency in the provision and use of data and information. Where material may be confidential and/or have commercial value and cannot be made widely available we must still make high level information on the data (e.g. metadata) publically available. Should there be any restrictions on the use of information submitted then please identify these within your response.

For further information on submitting data during the consultation please see the data factsheet on <http://www.defra.gov.uk/environment/marine/protect/mpa/mcz/>.

Please submit the following information in either the environmental or socio-economic sections to accompany any data submitted. **Please note that if the information requested is not provided we may be unable to use the data you submit.**

Contact name:
Email:
Telephone:
MCZ feature, site or regional area data relates to ³ :
Has this information been previously submitted as part of the MCZ process ⁴ ? If so, please give details including dates of when the data was submitted and who to.

² "Defra Marine Family" refers to Department of Environment Food and Rural Affairs ("Defra"); Natural England, Joint Nature Conservation Committee ("JNCC"), Marine Management Organisation, Inshore Fisheries Conservation Authority, Environment Agency and Cefas.

³ If National then please specify this.

⁴ Either to the Regional MCZ Projects or separately to Natural England or JNCC

Please clarify any copyright restrictions or restrictions on use of data provided:

Section 1: Environmental data/evidence

Data Owner:
Type of Survey (e.g. Geophysical/Bathymetric/Geotechnical/Environmental/ SocioEconomic/Cost Information):
Date of Survey:
Survey Co-ordinates OR for full coverage maps, perimeter coordinates or GIS of area:
Survey contractor:
Purpose of survey:

Type(s) of data obtained (e.g. Geophysical/Bathymetric/Geotechnical/Environmental/Aspects of Socio Economic data):
Method(s) of acquisition (e.g. 0.1m ² Hamon Grab samples / Survey Format):
Processing Method(s):
Output(s) (please include file names if possible):
Quality assurance/control Method(s), include reference to standards where possible and / or detail of peer review where relevant:

Section 2: Socio-economic data

Data Owner:
Type of Survey (e.g. SocioEconomic/Cost Information):

Date of Survey:
Type(s) of data obtained (e.g. Aspects of Socio Economic data):
Method(s) of acquisition (Survey Format):
Quality assurance/control Method(s), include reference to standards where possible and / or detail of peer review where relevant:
Non-Survey Socio-Economic Data (please use this space for description of data, how data was derived, any quality assurance process)

Consultation Site Summary: Torbay

Additional information for this site can be found in the SNCB Advice (page 834), Impact Assessment (Annex I2 Option 2, Page 189) and Regional Project recommendations (FS – 4, page 494).

Table 1. General Information on site and all features recommended by Regional Projects

Regional Project: Finding Sanctuary		Site surface area: 20 km ²	Biogeographic Region: JNCC: Western Channel and Celtic Sea OPSAR Region: Region II: Greater North Sea
Site Location: Decimal Degrees – Lat: 50.4335 Long: -3.5117 Degrees Minutes Seconds – Lat: 50°26'0"N Long: 3°30'41"W			
Inshore/Offshore: Inshore			
Feature type	Feature name	Area/no. of records	Conservation Objective
Broad Scale Habitat	Subtidal mud	9 km ²	Recover
Broad Scale Habitat	Intertidal coarse sediment	0.1 km ²	Maintain
Broad Scale Habitat	Intertidal mixed sediment	0.1 km ²	Maintain
Broad Scale Habitat	Intertidal mud	1 km ²	Maintain
Broad Scale Habitat	Intertidal sand and muddy sand	0.03 km ²	Maintain
Broad Scale Habitat	Low energy intertidal rock	0.1 km ²	Maintain

Broad Scale Habitat	Moderate energy intertidal rock	0.1 km ²	Maintain
Habitat FOCI	Intertidal under boulder communities	6 Points Recorded	Maintain
Habitat FOCI	Honeycomb worm (<i>Sabellaria alveolata</i>) reefs	1 Point Recorded	Maintain
Habitat FOCI	Seagrass beds	1 km ² 3 Points Recorded	Recover
Species FOCI	Long snouted seahorse (<i>Hippocampus guttulatus</i>)	1 Point Recorded	Recover ⁵
Species FOCI	Native oyster (<i>Ostrea edulis</i>)	4 Points Recorded	Maintain
Species FOCI	Peacock's tail seaweed (<i>Padina pavonica</i>)	4 Points Recorded	Maintain
Species FOCI	Sea snail ⁶ (<i>Paludina littorina</i>)	1 Point Recorded	Maintain
Mobile Species not listed in ENG	Black throated diver (<i>Gavia arctica</i>)	N/A	Maintain

⁵ Following advice from SNCBs, the Conservation Objective for this feature has changed from the original Regional Project recommendation.

⁶ The sea snail (*Paludina littorina*) has been removed from Schedule 5 of the Wildlife and Countryside Act. This means that it is no longer a Feature of Conservation Importance (FOCI) so has been removed as a feature for designation.

Mobile Species not listed in ENG	Great northern diver (<i>Gavia immer</i>)	N/A	Maintain
Mobile Species not listed in ENG	Great crested grebe (<i>Podiceps cristatus</i>)	N/A	Maintain
Mobile Species not listed in ENG	Black necked grebe (<i>Podiceps nigricollis</i>)	N/A	Maintain
Mobile Species not listed in ENG	Red necked grebe (<i>Podiceps grisegena</i>)	N/A	Maintain
Mobile Species not listed in ENG	Slavonian grebe (<i>Podiceps auritus</i>)	N/A	Maintain
Mobile Species not listed in ENG	Guillemot (<i>Uria aalge</i>)	N/A	Maintain
Mobile Species not listed in ENG	Harbour porpoise (<i>Phocoena phocoena</i>)	N/A	Maintain

Table 2. Sector Impacts and Associated Best Estimate Costs

Sectors Impacted	Best Estimate Costs (£ per year)
Ports, Harbours and Commercial Shipping	1000
Commercial Fishing	2000
Archaeology	Unquantified
Flood and Coastal Erosion Risk Management	Unquantified
Best Estimate Total Cost = £3000	

Table 3. Designation Status of Site and Rationale

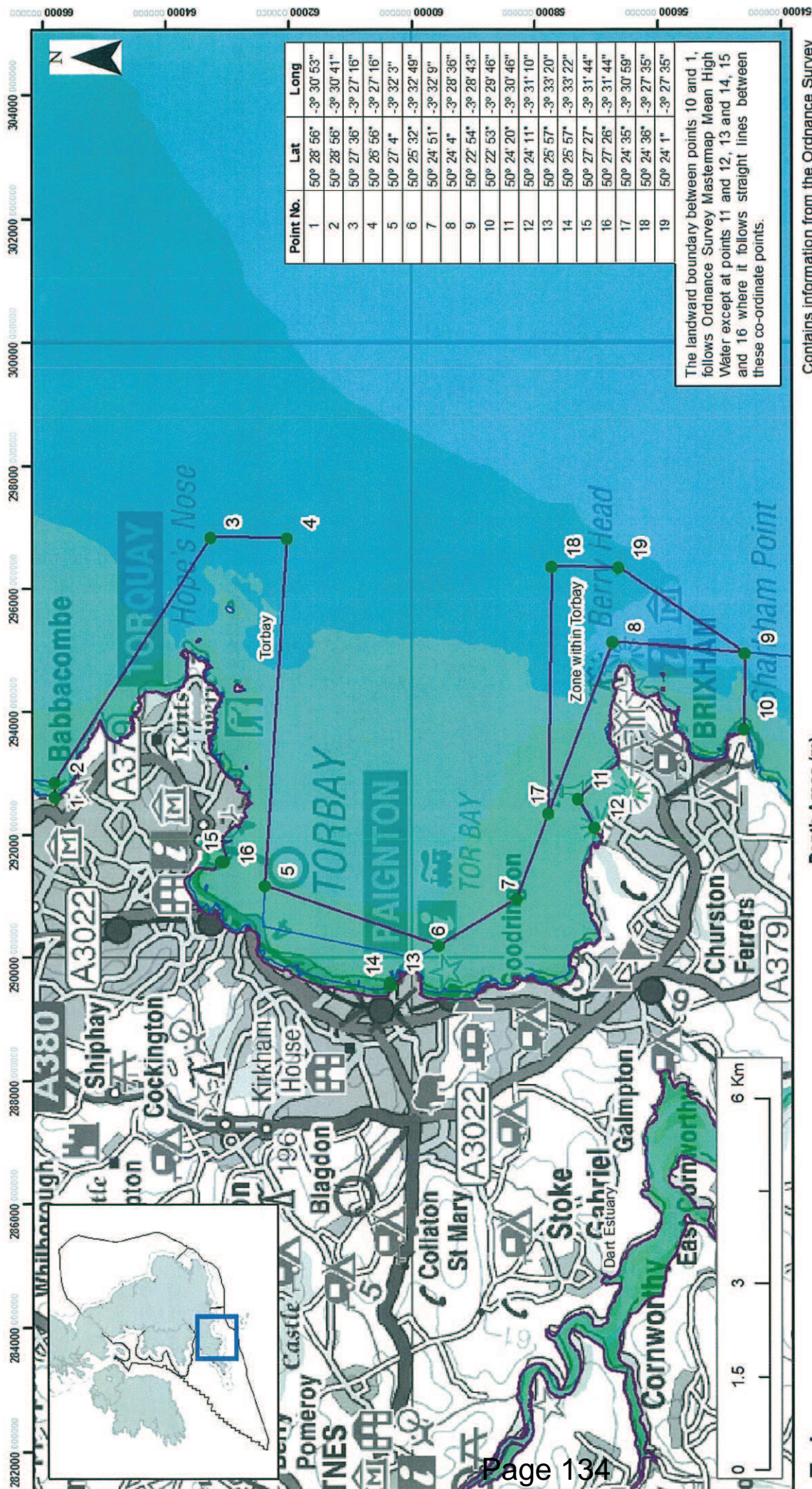
Decision	Designation in 2013 Tranche
Rationale for Decision: Site Advantages <p>The Torbay recommended MCZ is an inshore site measuring 20 km² in size with a wide range of features including seven Broad Scale Habitats, three Habitat FOCI, and three Species FOCI as well as eight Non-ENG features. Of particular interest within this site is the Low energy intertidal rock which contributes the joint second largest area of this feature. Intertidal rock provides a particularly rich source of secondary biomass in the UK. Intertidal boulder communities and Seagrass are BAP habitats. Both Intertidal seagrass and Subtidal seagrass beds are key habitats with high rates of primary production, and are a main source of food for overwintering wildfowl. They also act as nursery grounds for juvenile fish, and provide shelter for a wide range of species. There are currently a significant amount of scientific records for the Seagrass in this site which has very rich faunas associated with it. If this site was not designated there is an increased risk of damage to the seagrass, which plays an important role in stabilising sediment, thus protecting the shallow sublittoral from erosion. Due to the diversity of habitat Torbay has been identified as the second most important area in the South-West for wintering diver and grebe concentrations, an important breeding and nursery area for commercially important fish species, a hotspot for both species of seahorse and well known for visiting Megafauna. Within this site the Long snouted seahorse (<i>Hippocampus guttulatus</i>) is found, which is a WCA, OSPAR and BAP species, and there are too few sites to meet the replication targets for this feature. The Native oyster (<i>Ostrea edulis</i>) which is a BAP and OSPAR feature is located within this site. Peacock's tail seaweed (<i>Padina pavonica</i>) is also found within this site and this feature is currently only just reaching the minimum replication target. This site has also been identified as a site at high risk with the Seagrass beds and Long snouted seahorse (<i>Hippocampus guttulatus</i>) at particularly high risk.</p>	
Socio-Economics	

<p>The Torbay recommended MCZ, has strong support from the conservation and recreation representatives and from Sea Torbay, however there have been concerns from the ports and harbour sector who would prefer an alternative to be found. The main sector impacted by this site is the commercial fishing sector, for which there is a best estimate cost of £2000, associated predominately with dredging and bottom trawl fisheries.</p> <p>Data Certainty</p> <p>The Torbay recommended MCZ has acceptable data certainty for four features, of these features Seagrass beds and Long snouted seahorse (<i>Hippocampus guttulatus</i>) have been identified as higher risk features within this site. Within this site nine features have unacceptable data certainty these include: Low energy intertidal rock, Intertidal coarse sediment, Intertidal sand and muddy sand, Intertidal mud, Intertidal mixed sediment, Honeycomb worm (<i>Sabellaria alveolata</i>) reefs, Native oyster (<i>Ostrea edulis</i>) and Peacock's tail seaweed (<i>Padina pavonica</i>)</p> <p>Conclusion</p> <p>Therefore, as the advantages for this site justify the socio-economic costs, and the SNCBs have highlighted this site as at higher risk, this site has been proposed for designation in 2013 for the features as demonstrated in the table below. Further work will be required to improve the data certainty for features not proposed for designation in 2013 prior to inclusion in future designations.</p> <p>For this site the regional project also proposed eight Non-ENG features and these will also require further consideration</p>
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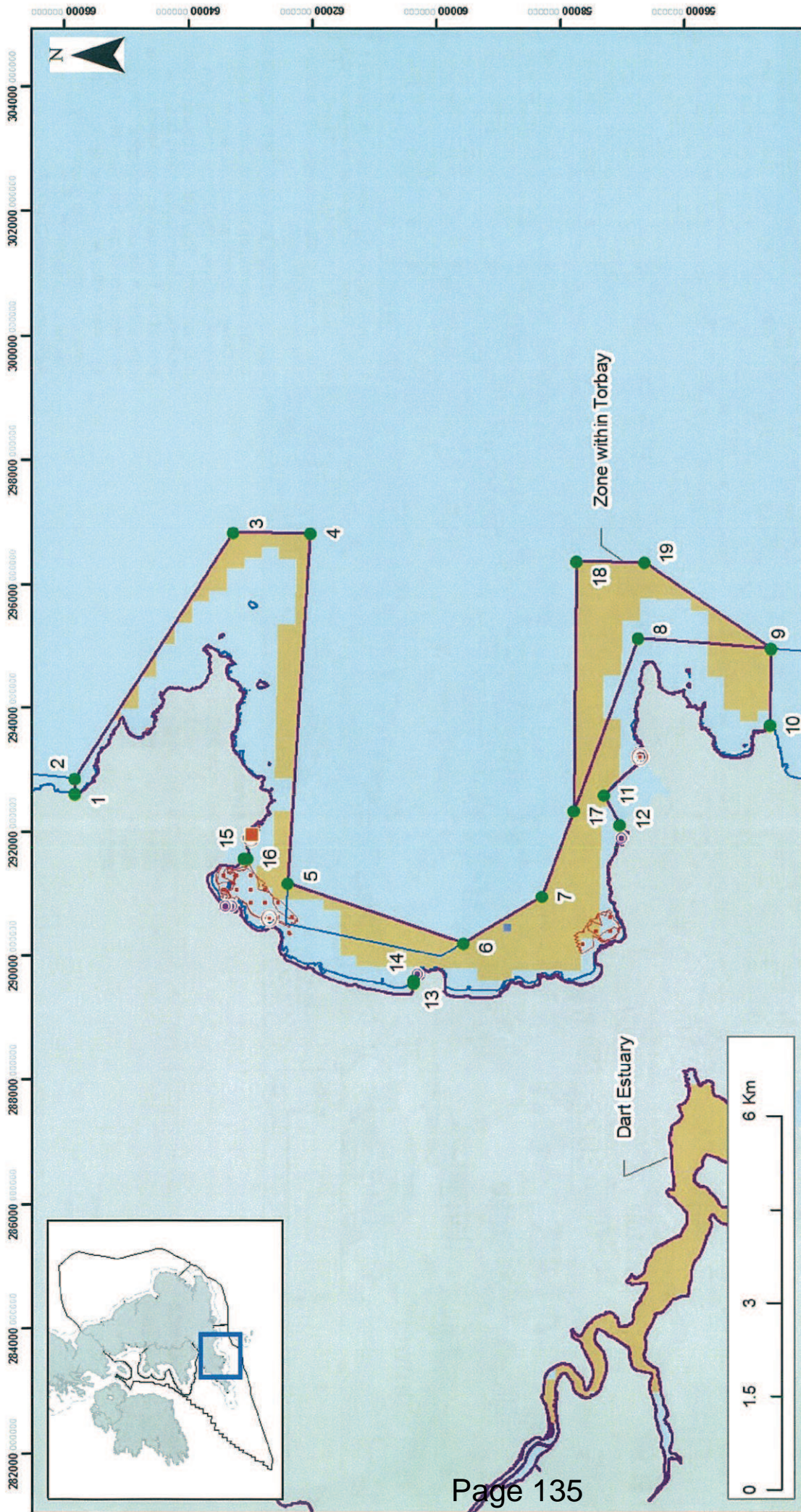
Table 4. Features Proposed for Designation in 2013

Features for designation in 2013	Features requiring improvement in data certainty prior to designation
Subtidal mud	Moderate energy intertidal rock

Intertidal underboulder communities	Low energy intertidal rock
Seagrass beds	Intertidal coarse sediment
Long snouted seahorse (<i>Hippocampus guttulatus</i>)	Intertidal sand and muddy sand
	Intertidal mud
	Intertidal mixed sediments
	Honeycomb worm (<i>Sabellaria alveolata</i>) reefs
	Native oyster (<i>Ostrea edulis</i>)
	Peacock's tail seaweed (<i>Padina pavonica</i>)



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 (www.ukho.gov.uk). Map produced by
 Natural England/JNCC 2012.
 Reference: Theme ID [147643].
 Map Projection: British National Grid

Features proposed for 2013 designation

- Hippocampus guttulatus
- Intertidal underboulder communities
- Seagrass beds
- Seagrass beds
- Subtidal mud (A5.3)
- Subtidal mud (A5.3)

Torbay

- Recommended MCZ
- Recommended MCZ
- rMCZ boundary co-ordinates
- MCZ Regional Projects boundaries
- England 12nM Territorial Seas Limit
- SAC with Marine Components
- Land