



Meeting: Harbour Committee

Date: 27th June 2016


Wards Affected: All wards in Torbay

Report Title: Tor Bay Harbour Authority - Enforcement and Prosecution Policy

Executive Lead Contact Details: Non-Executive Function

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1. Purpose

- 1.1 Tor Bay Harbour Authority has an Enforcement and Prosecution Policy. The Harbour Committee is asked to review and endorse the Enforcement and Prosecution Policy. Our customers will benefit from a clear and concise Enforcement and Prosecution Policy that is regularly reviewed by the Harbour Committee.

2. Proposed Decision

- 2.1 **That the Enforcement and Prosecution Policy shown in Appendix 1 to this report is approved.**

3. Action Needed

- 3.1 The Harbour Committee need to approve the Enforcement and Prosecution Policy and the Executive Head of Business Services/Tor Bay Harbour Master will ensure that the Policy is understood by officers and promulgated to the public and harbour users as appropriate.

4. Summary

- 4.1 Torbay Council, acting in its capacity as Tor Bay Harbour Authority, has the powers to make harbour Byelaws. The current set of Tor Bay Harbour Byelaws came into force in November 1994.
- 4.2 Byelaws empower harbour authorities to regulate activities for specific purposes, reflecting local circumstances and enabling the business of the harbour to be conducted efficiently and safely.

- 4.3 The safe and proper use of the harbour is also regulated directly via the Tor Bay Harbour Act 1970 and subsequent local harbour acts and/or Orders.
 - 4.4 Reviews of the Council's harbour powers and legislation were undertaken in 2002, 2010 and 2015. In 2013, the Harbours Act 1964 was amended by the Marine Navigation Act 2013, and this introduced a new 'power of harbour direction'. As a consequence of the most recent review of legislation and as part of its compliance with the Port Marine Safety Code, the Council has now applied for powers of harbour direction.
 - 4.5 Occasionally marine incidents occur in the harbour. Such incidents may involve death, serious injury, pollution and other undesirable outcomes and they may involve breaches of national or local laws. There may be the need on the part of the harbour authority to initiate enforcement action that may lead to prosecution in their own right or through an agency of another authority such as the Police, the Environment Agency or the Maritime and Coastguard Agency.
 - 4.6 It is therefore essential that Tor Bay Harbour Authority has a fit for purpose Enforcement and Prosecution Policy. Keeping such a policy under regular review reflects national best practice.
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Supporting Information

5. Position

- 5.1 The original Enforcement and Prosecution Policy was published in 2004 and the current version was approved by the Harbour Committee on 23rd June 2014. Appendix 1 shows the existing policy and following a review of this policy, no amendments have been identified and no changes are proposed.
- 5.2 The Harbour Authority has statutory powers to regulate the conduct of vessels in the harbour's jurisdiction and to assist in managing the risks of marine operations. To these ends, enforcement action will sometimes be appropriate.
- 5.3 The Harbour Authority recognises that most harbour users want to comply with the law. Therefore, where it can, the Harbour Authority will help users to meet their legal obligations without unnecessary expense, while taking firm action – including prosecution where appropriate – against those who flout the law or act irresponsibly.
- 5.4 The purpose of any enforcement action is to protect the safety of residents, harbour users and visitors to Tor Bay Harbour. The Harbour Authority has the options of negotiation, education and persuasion and, where a criminal offence has occurred, of cautioning or prosecuting the offender.
- 5.5 The Enforcement and Prosecution Policy covers the following areas :-

- Aims of the Policy
- Guiding Principles
- Clear Standards
- Consistency
- Targeting & Proportionality
- Monitoring

5.6 Adoption of a clearly stated Enforcement and Prosecution Policy should help our community to understand our approach to crime and disorder within the limits of the harbour. Furthermore it should reduce or eliminate any unlawful discrimination, direct or indirect, regarding enforcement and prosecution action undertaken by the harbour authority.

5.7 There are no resource implications associated with this recommendation and this policy should have no impact on other Business Units.

6. Possibilities and Options

6.1 To take no action and continue using the existing Enforcement and Prosecution Policy without recording that a review has been undertaken.

7. Preferred Solution/Option

7.1 To approve the recommendation set out in 2.1 above.

8. Consultation

8.1 The Enforcement and Prosecution Policy is a well-established policy that has been available to the public, via the website, for many years. Members of the Harbour Liaison Forums and harbour staff were asked to participate in the review of this policy.

9. Risks

9.1 There are no key risks associated with taking this decision.

9.2 The adoption of a clearly stated Enforcement and Prosecution Policy will enhance the Council's reputation for transparency and accountability in respect of its delivery of its harbour authority function.

9.1 There are no remaining risks.

Appendices

Appendix 1 Proposed Tor Bay Harbour Authority Enforcement and Prosecution Policy – June 2016

Additional Information

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

Tor Bay Harbour Authority Enforcement and Prosecution Policy – June 2014

Torbay Council's Community Safety Enforcement Policy