



Meeting: Harbour Committee

Date: 5th December 2018

Wards Affected: All wards in Torbay

Report Title: Port Marine Safety Code - Annual Compliance Audit

Executive Lead Contact Details: Non-Executive Function

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1. Purpose

- 1.1 This report provides Members with details of the annual Port Marine Safety Code compliance audit undertaken for the Council, as the Harbour Authority, by the Devon Audit Partnership.
- 1.2 The Harbour Committee, on behalf of the Council, is the 'Duty Holder' under the Port Marine Safety Code (PMSC) and the Devon Audit Partnership are the appointed 'Designated Person'.
- 1.3 The Committee is asked to note the contents of the PMSC Compliance Audit Report for 2017, attached as Appendix 1, including the actions identified for implementation during 2017/18.
- 1.4 A table of Accident/Incident Statistics for the period from December 2016 to November 2017 is attached as Appendix 2. During the same period in the previous year there were 51 accidents/incidents and near misses.
- 1.5 The Committee is asked to note the contents of the revised Tor Bay Harbour Committee Safety Management System – Issue 16, as attached as Appendix 3.

2. Summary

- 2.1 Torbay Council, under their responsibilities as a Harbour Authority, has implemented the requirements of the Port Marine Safety Code (PMSC). The Code offers a national standard for port safety in the UK with the aim to "improve safety for those who use or work in ports, their ships, passengers and cargoes, and the environment". Creation of the Code was prompted by a review of the Pilotage Act 1987 undertaken in 1998 by the Department for Environment, Transport and the Regions in the aftermath of the 1996 Sea Empress disaster. All Harbour Authorities are expected to comply with the Code. As the Code is not statutory, failure to comply is not an offence in itself, but the Code does set out references to legal duties that do exist and not adhering to it may be indicative of a breach of those duties. The Code is subject to a triennial review process by a steering group of maritime organisations. It was last published in December 2012 and last updated in November 2016.
- 2.2 On 3 November 2016, the Department for Transport (DfT) and the Maritime and Coastguard Agency (MCA) released an updated version of the Port Marine Safety Code. It provides additional advice for non-statutory harbour authorities and the introduction of 10 principles designed to assist organisations in focusing on the issues they should be considering to ensure compliance.
- 2.3 In the updated version of the PMSC the Government is now placing a greater emphasis on proportionate compliance with the Code by other marine facilities, berths and terminals in the UK. The PMSC now strongly advises that such organisations should adopt a formal risk assessment process and implement a marine safety management system (MSMS) which complies with the Code or any alternative similar standard applicable to their sector.
- 2.4 The PMSC is not mandatory and does not create any new legal duties. Failure to comply is not an offence, however, the Code represents good practice as recognised by a wide range of industry stakeholders and a failure to adhere to good practice may be indicative of a harbour authority being in breach of certain legal duties.
- 2.5 In order to comply with the PMSC, the Code states that, statutory harbour authorities must consider the following 10 measures. Other organisations are advised to identify which of the items may be applicable to their port marine activities. It is recommended that, at the very minimum, items 4, 5 and 6 below should be considered by all organisations.
1. **Duty holder:** Formally identify and designate the duty holder, whose members are individually and collectively accountable for compliance with the Code, and

their performance in ensuring safe marine operations in the harbour and its approaches.

2. **Designated Person:** A 'designated person' must be appointed to provide independent assurance about the operation of the marine safety management system. The designated person must have direct access to the duty holder.
3. **Legislation:** The duty holder must review and be aware of their existing powers based on local and national legislation, seeking additional powers if required in order to promote safe navigation.
4. **Duties and Powers:** Comply with the duties and powers under existing legislation, as appropriate.
5. **Risk Assessment:** Ensure that marine risks are formally assessed and are eliminated or reduced to the lowest possible level, so far as is reasonably practicable, in accordance with good practice.
6. **Marine Safety Management System:** Operate an effective MSMS which has been developed after consultation, is based on formal risk assessment and refers to an appropriate approach to incident investigation.
7. **Review and Audit:** Monitor, review and audit the risk assessment and MSMS on a regular basis – the independent designated person has a key role in providing assurance for the duty holder.
8. **Competence:** Use competent people (who are trained, qualified and experienced) in positions of responsibility for managing marine and navigation safety.
9. **Plan:** Publish a safety plan showing how the standards in the Code will be met and produce a report assessing performance against that plan at least every 3 years.
10. **Aids to Navigation:** Comply with directions from the General Lighthouse Authorities and supply information & returns as required.

2.6 All the officers involved in marine safety have been instructed to familiarise themselves with the updated PMSC and review any implications for marine operations in Tor Bay Harbour. It is strongly recommended that members of the Harbour Committee, acting as the 'duty holder', should also become familiar with the updated Code by reference to this report and by following the link identified in the Additional Information section below.

Supporting Information

3. Position

- 3.1 The Code states that “Each organisation must appoint an individual as the ‘designated person’ to provide independent assurance directly to the duty holder that the marine safety management system (MSMS), for which the duty holder is responsible, is working effectively. Their main responsibility is to determine, through assessment and audit, the effectiveness of the MSMS in ensuring compliance with the Code.
- 3.2 The Devon Audit Partnership has been appointed the ‘designated person’ to review the Tor Bay Harbour Safety Management System and annually report on compliance with the Port Marine Safety Code.
- 3.3 The last Port Marine Safety Code Compliance Audit Report was dated November 2016 and was presented to the Harbour Committee on 13th December 2016.

Appendices

Appendix 1 - Port Marine Safety Code - Compliance Audit Report - November 2017

Appendix 2 – Table of Accident/Incident Statistics - December 2016 to November 2017

Appendix 3 – Tor Bay Harbour Committee Safety Management System – Issue 16
(30th November 2017)

Additional Information

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

The Port Marine Safety Code – November 2016 (DfT & MCA)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/564723/port-marine-safety-code.pdf

A Guide to Good Practice on Port Marine Operations – February 2017 (DfT & MCA)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/642892/170508_Port_Marine_Guide_To_Good_Practice_Rev_2017.pdf