



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

Public Agenda Item: **Yes**

Wards Affected: **All wards in Torbay**

To: **Harbour Committee** On: **11th June 2012**

Key Decision: **No**

Change to Budget: **No** Change to Policy Framework: **No**

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1. What we are trying to achieve and the impact on our customers

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. Recommendation(s) for decision

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

3. Key points and reasons for recommendations

3.1 Torbay Council, acting in its capacity as Tor Bay Harbour Authority, has the powers to make harbour Byelaws. The current Tor Bay Harbour Byelaws came into force in November 1994.

3.2 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.

3.3 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.

- 3.4 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.
- 3.4 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.

For more detailed information on this proposal please refer to the supporting information attached.

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

Supporting Information

A1. Introduction and history

A1.1 The original Enforcement and Prosecution Policy was published in 2004 and the current version was approved by the Harbour Committee on 13th June 2011. Appendix 2 shows the existing policy and Appendix 1 shows the revised and proposed policy. Changes are being recommended to the existing Policy to provide a more coherent document and give further clarity over when a decision to prosecute would be appropriate.

A1.2 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.

A1.3 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.

A1.4 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.

A1.5 The Enforcement and Prosecution Policy covers the following areas ;-

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

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

A2.2 There are no key risks associated with taking this decision.

A2.3 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.

A2.4 Remaining risks

A2.5 There are no remaining risks.

A3 Other Options

A3.1 To take no action and continue using the existing Enforcement and Prosecution Policy without any further review.

A4 Summary of resource implications

A4.1 There are no resource implications.

A5 What impact will there be on equalities, environmental sustainability and crime and disorder?

A5.1 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.

A6 Consultation and Customer Focus

A6.1 The Enforcement and Prosecution Policy is a well-established policy that has been available to the public, via the website, for many years. As the latest amendments are only of a minor nature only limited consultation has been undertaken via the Harbour Liaison Forums and the Council's legal section.

A7 Are there any implications for other Business Units?

A7.1 This policy should have no impact on other Business Units.

Appendices

Appendix 1 Proposed Tor Bay Harbour Authority Enforcement and Prosecution Policy – June 2012

Appendix 1 Existing Tor Bay Harbour Authority Enforcement and Prosecution Policy – June 2011

Documents available in members' rooms

None

Background Papers:

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

Tor Bay Harbour Authority Enforcement and Prosecution Policy – June 2011

Torbay Council's Environmental Health and Consumer Protection Enforcement Policy