

**Meeting:** Harbour Committee

**Date:** 24 September 2019

**Wards Affected:** All wards in Torbay

**Report Title:** Port Marine Safety Code

**Is the decision a key decision?** No

**When does the decision need to be implemented?**

**Cabinet Member Contact Details:** Councillor Mike Morey, Cabinet Member for Infrastructure, Environment and Culture

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## 1. Proposal and Introduction

- 1.1 The Port Marine Safety Code (“the Code”) sets out a national standard for every aspect of port marine safety. Compliance is not statutory but there is a strong expectation that all harbour authorities will abide by the Code, which has been reinforced in case law.
- 1.2 Torbay Council is the statutory Harbour Authority for Tor Bay Harbour. The Code requires harbour authorities to formally identify and designate a 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.
- 1.3. The Council has appointed the Harbour Committee as the Duty Holder.
- 1.4 This report, which is a standing agenda item, updates Members on topical Port Marine Safety Code matters including accident or incident data.

## 2. Reason for Proposal and associated financial commitments

- 2.1 This report, which is a standing agenda item, updates Members on topical Port Marine Safety Code matters including accident or incident data.
  - 2.2 The proposals contained in this report does not commit the Council financially over and above the already-agreed Harbour revenue budget.
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### **3. Recommendation(s) / Proposed Decision**

3.1 The Harbour Committee is invited to:

- a. Note and approve the contents of the draft Maritime and Coastguard Agency PMSC Health Check report (Appendix 1) and the proposed response contained therein;
- b. Establish a Marine Safety sub-committee as recommended by the MCA; and'
- c. Note the contents of the MarNIS report.

### **Appendices**

Appendix 1: MCA letter dated 29 August 2019 (PMSC Health Check Report), including proposed Tor Bay Harbour Authority response

Appendix 2: MarNIS report of incidents and accidents as at 13 Sept 19.

### **Background Documents**

DfT, Port Marine Safety Code

Tor Bay Harbour Authority, Safety and Environmental Management System

## Section 1: Background Information

1.	<p><b>What is the proposal / issue?</b></p> <p>The Port Marine Safety Code (“the Code”) sets out a national standard for every aspect of port marine safety. Compliance is not statutory but there is a strong expectation that all harbour authorities will abide by the Code, which has been reinforced in case law where non-compliance was cited as “failing to implement a Safe System of Work” contrary to the Health and Safety at Work Act 1974.</p>
2.	<p><b>What is the current situation?</b></p> <p>Port Marine Safety Code issues, including an update on accidents, incidents and near-misses are presented as a standing agenda item to each Harbour Committee meeting.</p> <p>Additionally, Brixham harbour was recently visited by Maritime and Coastguard Agency (MCA) representatives who conducted a ‘health check’. They ordinarily select up to 8 statutory ports or harbours annually but Brixham was specifically targeted following undisclosed “safety concerns raised in relation to Brixham Harbour.”</p> <p>The health-check was conducted over 22/23 August and a draft post-visit report issued 29 August with several items highlighted for consideration (Appendix 1).</p>
3.	<p><b>What options have been considered?</b></p> <p>The Harbour Authority undertakes to comply with the Port Marine Safety Code and thus the only sensible option would be to rectify any issues identified during the health-check. To do otherwise could be cited as grounds for non-compliance. Accordingly, the Harbour Committee Chair and the Harbour Master have agreed a plan to fully implement the health-check’s findings.</p>
4.	<p><b>What is the relationship with the priorities within the Partnership Memorandum and the Council’s Principles?</b></p> <p>Compliance with the Code ensures that the Harbour Authority meet their statutory and regulatory obligations as well as contributing to a safe and efficient harbour which contributes directly to the Council’s priorities of a thriving economy and a climate fit for the future.</p>
5.	

	<p><b>How does this proposal/issue contribute towards the Council's responsibilities as corporate parents?</b></p> <p>Not applicable</p>
6.	<p><b>How does this proposal/issue tackle poverty, deprivation and vulnerability?</b></p> <p>Ensuring a safe and efficient harbour will enable marine industry to thrive thereby indirectly tackling poverty and deprivation</p>
7.	<p><b>How does the proposal/issue impact on people with learning disabilities?</b></p> <p>Not applicable</p>
8.	<p><b>Who will be affected by this proposal and who do you need to consult with? How will the Council engage with the community? How can the Council empower the community?</b></p> <p>The plan developed in response to the health-check requires the Harbour Authority to implement some minor changes but more importantly will require some behavioural change from harbour users which may take time to 'bed in'. These include greater use of VHF and the issuing of Pilot Exemption Certificates (where appropriate) to ferry operators.</p>

## Section 2: Implications and Impact Assessment

<b>9.</b>	<b>What are the financial and legal implications?</b>  Additional staff training and the administration of issuing additional Pilot Exemption Certificates will accrue a minor cost to the Harbour Authority but this is insignificant compared to the potential legal and compensation costs if a serious incident were to occur. These costs can be absorbed from within the existing Harbour revenue budget  There are no legal implications of undertaking this proposal
<b>10.</b>	<b>What are the risks?</b>  If not implemented then there is an increased risk of an accident or incident occurring, the consequences of which would be compounded by deliberate non-compliance with the recommendations which would be cited as the Authority not providing a safe system of work. This could accrue unwanted adverse reputational effects, harm to persons property or planet, and financial losses
<b>11.</b>	<b>Public Services Value (Social Value) Act 2012</b>  Not applicable
<b>12.</b>	<b>What evidence / data / research have you gathered in relation to this proposal?</b>  See report
<b>13.</b>	<b>What are key findings from the consultation you have carried out?</b>  Not applicable
<b>14.</b>	<b>Amendments to Proposal / Mitigating Actions</b>  See enclosure to appendix 1