

HARBOUR COMMITTEE

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

Monday, 13 June 2011

commencing at **5.30 pm**

The meeting will be held in the Meadfoot Room, Town Hall, Castle Circus,
Torquay, TQ1 3DR

Members of the Committee

Councillor Amil
Councillor Ellery
Councillor Faulkner (J)
Councillor Hytche
Councillor James

Councillor McPhail
Mayor Oliver
Councillor Richards
Councillor Stringer

External Advisors

Mr Butcher, Capt. Curtis, Ms Hayes and Mr Jennings

Our vision is for a cleaner, safer, prosperous Bay

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

Sarah Forsyth, Town Hall, Castle Circus, Torquay, TQ1 3DR
01803 207026

Email: democratic.services@torbay.gov.uk

HARBOUR COMMITTEE AGENDA

1. **Election of Chairman/woman**
To elect a Chairman/woman for the 2011/12 Municipal Year.
2. **Apologies for absence**
Apologies, including notification of any changes to the membership of the Committee.
3. **Election of Vice-Chairman/woman**
To elect a Vice-Chairman/woman for the 2011/12 Municipal Year.
4. **Minutes** (Pages 1 - 4)
To confirm as a correct record the Minutes of the meeting of the Committee held on the 14 March 2011.
5. **Declaration of Interests**
 - (a) To receive declarations of personal interests in respect of items on this agenda.
 - (b) To receive declarations of personal prejudicial interests in respect of items on this agenda.

(**Please note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Democratic Services or Legal Services prior to the meeting. Definitions and procedures in relation to interests are set out at the start of the agenda.)
6. **Urgent Items**
To consider any other items that the Chairman decides are urgent.
7. **Harbour Committee Terms of Reference** (Pages 5 - 6)
To note the Harbour Committee's Terms of Reference as set out in the Council's Constitution.
8. **Harbour Appointments Sub-Committee** (Pages 7 - 8)
To appoint a Harbour Appointments Sub-Committee for the 2011/12 Municipal Year.
9. **Harbour Asset Review Working Party** (Pages 9 - 10)
To appoint the Harbour Asset Review Working Party for the 2011/12 Municipal Year.
10. **Harbour Budget Review Working Party** (Pages 11 - 12)
To appoint the Harbour Budget Review Working Party for the 2011/12 Municipal Year.
11. **Harbour Authority - Outturn 2010/11** (Pages 13 - 22)
To note the Report on the Harbour Authority Outturn for 2010/11.
12. **Torquay/Paignton and Brixham Harbour Liaison Forums**

To note the minutes of the above Harbour Liaison Forums. TO FOLLOW

- | | | |
|------------|---|-----------------|
| 13. | Harbour Authority Budget Monitoring Report
To receive a Report on the Harbour Authority Budget Monitoring for 2011/12. | (Pages 23 - 32) |
| 14. | Harbour Authority Performance
To consider the Report on the performance of the Harbour Authority. | (Pages 33 - 34) |
| 15. | Audit Plan 2011/12
To approve the Audit Plan for the Tor Bay Harbour Authority for 2011/12. | (Pages 35 - 42) |
| 16. | Tor Bay Harbour Enforcement and Prosecution Policy
To consider the Report setting out a revised Enforcement and Prosecution Policy. | (Pages 43 - 52) |

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Minutes of the Harbour Committee

14 March 2011

-: Present :-

Councillor Horne (Chairman)

Councillors Addis (Vice-Chair), Carter (C), Ellery, Faulkner (J), McPhail, Manning and Richards

(Also in attendance: Councillors Hytche and Oliver)

585. Apologies.

Apologies for absence were received from Councillor Bent and External Advisor Gordon Jennings.

586. Minutes.

The Minutes of the meeting of the Harbour Committee held on 8 February 2011 were confirmed as a correct record and signed by the Chairman.

587. Treasury Management Briefing

Members received a briefing from the Principal Accountant as requested by the Harbour Committee on 6 December 2011. He informed the Committee that the Harbour reserves were held within the Council's overall reserves and therefore benefit from a share of the overall revenue return from investments. He further informed the Committee that investment counterparties were robustly evaluated against prescribed criteria taking into account a number of risk factors. He explained that a 1.3% return was expected this year which represented over £1 million revenue return for the authority, with a 1.2% return budgeted for 2011/2012 financial year.

588. Review of Delegated Powers

Members received Report 53/2011 which reviewed the powers delegated to the Executive Head of Tor Bay Harbour Authority. Members requested the Executive Head of Tor Bay Harbour Authority to clarify whether the 'responsibility delegated by' should read Cabinet or Council.

Resolved:

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

589. Tor Bay Harbour Business Plan 2011/12

Members considered Report 54/2011 which provided Members with the opportunity to comment upon the Business Plan for 2011/12 which looked at the future prospects of the harbour and how it would meet the requirements of stakeholders. The Executive Head of Tor Bay Harbour Authority advised Members that the Business Plan had been presented and discussed at the Harbour Liaison Forums. Members noted that the Business Plan listed 'too many sites designated for protection in the natural and physical environment' as a threat and requested a briefing be provided on Marine Conservation Zones at a forthcoming Harbour Committee.

Resolved:

That

- i) the draft Tor Bay Harbour Business Plan 2011/12 as set out in Appendix 1 to Report 54/2011 be approved; and
- ii) 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 2011/12, and sign the Acceptance Statement in Section 9.

590. Tor Bay Harbour – Operational Moorings and Facilities Policy

The Committee considered Report 55/2011 which sought to amend the operational moorings and facilities policy. The Executive Head of Tor Bay Harbour Authority advised Members that the policy ensured 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.

Resolved:

That the document set out in Appendix 1 to Report 55/2011 be adopted as the Tor Bay Harbour Operational Moorings and Facilities Policy – Version 5.

591. Torquay/Paignton and Brixham Harbour Liaison Forums

The Committee noted the minutes of the Torquay/Paignton Harbour Liaison Forum held on 1 March 2011 and the Brixham Harbour Liaison Forum held on 2 March 2011.

Members noted that the Transportation Working Party would be meeting on 18 March 2011 to discuss the use of the Beacon Quay Car Park.

592. Tor Bay Harbour Authority Budget Monitoring 2010/11

Members noted Report 57/2011 which provided projections for income and expenditure for the year 2010/11 compared with approved budgets. The Executive Head Tor Bay Harbour Authority advised the Committee that both harbour accounts was projected to

make an operational surplus following increases in income streams and cost savings over various expenditure headings.

Members congratulated the Executive Head of Tor Bay Harbour Authority and his team for ensuring the harbour accounts finish the financial year with a surplus budget.

593. Harbour Committee Work Programme

The Committee noted the Harbour Committee Work Programme for 2011/2012.

594. Performance Report Marine Services

Members noted Report 59/2011 which set out the performance of Marine Services. The Executive Head of Tor Bay Harbour Authority informed Members that the team were meeting the majority of targets, with the exception of staff absence which he believed was indicative of the cold weather during the winter.

The Committee noted and congratulated the Tor Bay Harbour Authority team on the reduction of the number of reportable accidents which had reduced by 50%.

595. Annual Review of the Tor Bay Harbour Authority Asset Management Plan

The Committee considered Report 60/2011 which advised Members of the assets currently managed by the Tor Bay Harbour Authority business unit on behalf of Torbay Council. The Executive Head of Tor Bay Harbour Authority advised the Committee that many of the assets were critical to the safe operation of the harbour and other assets were essential in terms of the revenue contribution they make to the Harbour Authorities ring-fenced budget. He further advised that it was 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.

Resolved:

That the Tor Bay Harbour Authority Asset Management Plan set out in Appendix 1 to Report 60/2011 be approved.

596. Consultation on the Maritime and Coastguard Agency's Proposals for Modernising the Coastguard 2010

Members received Report 61/2011 which advised that the Coastguard's Maritime Rescue Coordination Centre at Brixham was under threat of closure. Report 61/2011 explained that on 16 December 2010 the Maritime and Coastguard Agency (MCA) launched a consultation document entitled 'Protecting Our Seas and Shores in the 21st Century – Consultation on Proposals for Modernising the Coastguard 2010', the Executive Head of Tor Bay Harbour advised that the consultation deadline had been extended from 24 March 2011 to 5 May 2011.

The Executive Head of Tor Bay Harbour informed Members that he had prepared a response to the consultation document which was set out in Appendix 2 to Report 61/2011.

Resolved:

That

- i) the Executive Head of Tor Bay Harbour Authority, in consultation with the Chairman of the Harbour Committee, respond to the Maritime and Coastguard Agency's consultation on the proposals for modernising the Coastguard;
- ii) the Harbour Committee note the draft consultation response set out in Appendix 2 to Report 61/2011 and make any additional recommendations to the Executive Head of Tor Bay Harbour Authority and/or the Chairman of the Harbour Committee.

597. Marine fuel Station Options at Torquay Harbour

Members considered exempt Report 62/2011 which aimed to provide the Harbour Committee with sufficient information to enable them to evaluate the current arrangements and consider the strategic position of marine fuel station options.

Resolved:

That

- i) it is agreed that the Harbour Authority should seek to operate its own marine fuel station;
- ii) the Executive Head of Tor Bay Harbour Authority be authorised to advise the existing tenant of the marine fuel station at Torquay harbour, that the Council will require the demised premises for its own use at the end of the current lease term;
- iii) the Executive Head of Tor Bay Harbour Authority, in consultation with the Chairman of the Harbour Committee, be authorised to accept the surrender of the existing lease or to buy back the lease, if such an opportunity is presented and the terms are considered favourable, having taken appropriate valuation advice from the Torbay Development Agency;
- iv) the principle of a floating fuel station, owned and operated by the Council as the harbour authority be supported; and
- v) the Executive Head of Tor Bay Harbour Authority present a further report to the Harbour Committee detailing the business case for a floating fuel station.

(Note: Prior to consideration of the item in Minute 597 the press and public were formally excluded from the meeting on the grounds that the item involved the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended).)

Chairman

Harbour Committee

Membership

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 one non-voting advisor private sector representative of the Board of Torbay Development Agency Limited (TDAL)/Economic Development Company
Torbay Group Leaders will be asked to take account of the geographical spread of members in making appointments to the Committee)

Terms of Reference

To determine all matters relating to the strategic management of the Council's function as a Harbour Authority, in line with the Tor Bay Harbour and Maritime Strategy, the Council's Policy Framework. Specifically the Committee will :-

1. manage all of the Harbours financial matters in accordance with approved financial procedures and the Council's aspirations for the harbour to be self financing as outlined in the Harbour and maritime strategy and including (but not limited to):
 - (a) the setting of harbour charges from time to time (including in-year changes to the schedule) normally following consultation with the relevant Harbour Liaison Forums;
 - (b) approving the annual revenue budgets within the ring-fenced harbour accounts;
 - (c) receiving quarterly budget monitoring reports and to approve variances as appropriate; and
 - (d) monitoring the harbour reserve funds and to seek to ensure that the funds are kept above an appropriate minimum contingency level and ensure the harbour remains self-financing;

providing that no decision by the Harbour Committee shall impact adversely on the Council's general fund or capital budget.

2. to act as Duty Holder for the purposes of the Port Marine Safety Code;

3. approve and monitor a business plan for Tor Bay Harbour, in line with the Council's policy framework, and address any issues relating to performance;
4. review these terms of reference annually and request the Council to make any necessary amendments and/or additions;
5. review annually the powers delegated to the Director of Marine Services and the Harbour Master and refer any proposed changes to the Council for determination. The Committee itself shall not authorise any changes;
6. consider any other matters referred to the Committee by the Director of Marine Services;
7. establish any sub-committee or working parties as the Committee sees fit, in particular a Harbour Appointments Sub-Committee for the recruitment of advisors;
8. recommend the format, composition and governance of the Harbour Liaison Forums and keep the arrangements under review;
9. to provide strategic direction in relation to those assets within Tor Bay Harbour and the harbour estate that are managed by Marine Services. (Note: the extent of the harbour estate and asset purchase and disposal over £25,000 is determined by the Council.); and
10. appoint advisors following receipt of recommendations from the Harbour Appointments Sub-Committee and the Board of Torbay Development Agency Ltd. Appointments will be merit based and be in accordance with the Local Protocol for members of the Harbour Committee.

Agenda Item 8

Appointment of Harbour Appointments Sub Committee

The Terms of Reference for the Harbour Committee state that the Committee membership will be :-

“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 one non-voting advisor private sector representative of the Board of Torbay Development Agency Limited (TDAL)/Economic Development Company. Appointments will be merit based and be in accordance with the Local Protocol for members of the Harbour Committee”

The Committee is asked to consider appointments to the Harbour Appointments Sub Committee (previously three Councillors). Members are advised that the Appointments Sub-Committee was formed in 2007 with the following Terms of Reference :-

“to consider ad hoc applications for external advisor positions on the Harbour Committee and recommend to the Harbour Committee the persons who should be appointed to those posts as and when vacancies arise. And to determine the rolling programme for advisors tenure”

The table below shows the current position in respect of External Advisers :-

Advisor	Appointing Body	Date Appointed	4 year term ends
William Butcher	Harbour Committee	18 Sept 2007	End of Sept 2011
Robert Curtis	Harbour Committee	18 Sept 2007	End of Sept 2011
Elaine Hayes	Harbour Committee	18 Sept 2007	End of Sept 2011
Gordon Jennings	Harbour Committee	18 Sept 2007	End of Sept 2011
Vacant	Harbour Committee	N/A	N/A
Vacant	EDC	N/A	N/A

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Harbour Asset Review Working Party

The Terms of Reference for the Harbour Committee state that the Committee should :-

“determine all matters relating to the strategic management of the Council's function as a Harbour Authority..... and provide strategic direction in relation to those assets within Tor Bay Harbour and the harbour estate that are managed by Marine Services”

The Committee is asked to consider appointments to the Harbour Asset Review Working Party (three Councillors plus two External Advisors). Members are advised that the Harbour Asset Review Working Party currently has 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.*

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Harbour Budget Review Working Party

The Terms of Reference for the Harbour Committee state that the Committee should :-

“manage all of the Harbours financial matters in accordance with approved financial procedures and the Council’s aspirations for the harbour to be self financing as outlined in the Harbour and Maritime Strategy and including (but not limited to):

- (a) the setting of harbour charges from time to time (including in-year changes to the schedule) normally following consultation with the relevant Harbour Liaison Forums;*
- (b) approving the annual revenue budgets within the ring-fenced harbour accounts;*
- (c) receiving quarterly budget monitoring reports and to approve variances as appropriate; and*
- (d) monitoring the harbour reserve funds and to seek to ensure that the funds are kept above an appropriate minimum contingency level and ensure the harbour remains self-financing”*

The Committee is asked to consider appointments to the Harbour Budget Review Working Party (two Councillors plus two External Advisors). Members are advised that the Harbour Budget Review Working Party was formed in 2009 with the following Terms of Reference :-

“to scrutinise the draft Tor Bay Harbour Authority budget prior to presentation to the Harbour Committee and to review the full range of harbour charges, including commercial customers using the Torquay Harbour Town Dock and other harbour facilities”

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Public Agenda Item: **Yes**

Title: **Tor Bay Harbour Authority Revenue Outturn 2010/11**

Wards Affected: **All Wards in Torbay**

To: **Harbour Committee** On: **13 June 2011**

Contact Officer: **Kevin Mowat** **Pete Truman**
 Telephone: **292429** **7302**
 E.mail: Kevin.Mowat@torbay.gov.uk Pete.Truman@torbay.gov.uk

1. Key points and Summary

1.1 This report provides Members with the details of the Tor Bay Harbour Authority final expenditure and income figures against budget targets for 2010/11.

2. Introduction

2.1 The Tor Bay Harbour Authority budget for 2010/11, based on a 5% increase in harbour charges, was approved by Council on 7 December 2009.

2.2 Subsequent amendments to the budget and variation to the Reserve Account have been noted by the Harbour Committee throughout the year.

2.3 The final outturn against the revised budget is summarised below:

	Original Budget 2010/11 £000	Revised Budget 2010/11 £000	Outturn 2010/11 £000
Torquay and Paignton Harbours Surplus	6	89	140
Brixham Harbour Surplus/(Deficit)	(27)	15	48

2.4 Details of expenditure and income with explanations of material variances are provided at Appendix 1. The outturn figures form part of the Council's Statement of Accounts which is currently being prepared for audit.

2.5 The Committee is asked to note the Harbour Master's use of delegated powers to waive certain harbour charges, which at the end of this financial year amounted to £5,262.30 (excl VAT) and which were spread across both Harbour accounts.

Kevin Mowat
Executive Head of Tor Bay Harbour Authority

Appendices

Appendix 1 – Harbour Revenue Accounts Outturn 2010/11

Documents available in members' rooms

None

Background Papers:

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

None

HARBOUR REVENUE ACCOUNTS - OUTTURN 2010/11

TORQUAY and PAIGNTON HARBOURS

Expenditure	2010/11 Original Budget £ ,000	2010/11 Revised Budget £,000	2010/11 Outturn £ ,000	Notes
Operations and Maintenance :-				
Harbour Attendants Salaries and Wages	118	122	128	1
Repairs and Maintenance	165	143	117	2
Rent Concessions	2	2	1	
Other Operating Costs	111	122	108	3
Town Docks Costs	26	5	1	4
Management and Administration :-				
Salaries	177	166	165	1/5
Internal Support Services	122	108	109	6
Other Administration Costs	47	46	40	7
Capital Charges	169	169	168	
Contribution to Reserve re: Uncompleted Works	0	0	5	8
Contribution to Bad Debt Provision	5	0	0	9
Contribution to Patrol Boat Operation	2	2	3	
	944	885	845	
Income				
Rents and Rights :-				
Property and Other Rents/Rights	234	238	249	10
Marina Rental	250	228	222	11
Operating Income :-				
Harbour Dues	58	68	68	12
Visitor and Slipway	51	56	56	13
Mooring fees	58	71	71	12
Town Dock	242	234	233	14
Boat and Trailer parking	33	39	39	15
Other Income	24	23	27	16
Contribution from General Fund	0	17	17	17
Reduction in Bad Debt Provision	0	0	3	9
	950	974	985	
Operating Surplus /(Deficit)	6	89	140	

RESERVE FUND	
Opening Balance as at 1st April 2010	478
Interest Receivable	7
Net Surplus / (Deficit) from Revenue Account	140
Contributions from Revenue	5
Withdrawals	(13)
Closing Balance as at 31st March 2011	617

*Note: The recommended minimum level for the Torquay and Paignton Harbours Reserve fund at year-end 2010/11 is **£440,000** based on 20% of budgeted turnover together with a cash figure of £250k.*

HARBOUR REVENUE ACCOUNTS - OUTTURN 2010/11

TORQUAY AND PAIGNTON HARBOURS

NOTES

- 1 A review of pay undertaken in the year changed local arrangements and introduced new employment costs. A one-off contribution from the General Fund has been received to mitigate the impact in the first year (see note 17).
Additional costs have been incurred in covering for long-term sickness absence.
- 2 Savings have been achieved against general and programmed maintenance.
- 3 A new rating assessment has been made against the Beacon Quay Harbour office for an annual charge of £3.6k. A backdated charge of approximately £15k has also been made and an appeal has been lodged which may succeed in reducing this figure in future years.
A combination of in-year adjustments has now led to a further small increase in expenditure but this has been more than offset at outturn by savings from not using consultants to implement Decriminalised Parking arrangements.
- 4 Energy costs for the Town Dock are met from the Torquay Quays & Piers provision. The rating liability for the Town Dock is now combined within the overall Torquay Harbour assessment and further savings have been achieved on maintenance.
- 5 Employee costs have reduced due to the waiving of superannuation contributions by some employees and the deletion of a provision for the impact of pay reviews.
- 6 The allocation of Support Service charges was reduced for Torquay and Paignton with a corresponding increase to Brixham.
- 7 A combination of in-year adjustments has led to a reduction in budgeted expenditure.
- 8 Planned works to the Torquay Harbour Bridge and Cill were not completed in the year. A specific contribution has been made to Reserve from the current year budget provision to meet the costs in 2011/12.
- 9 A reduction to the required provision based on current outstanding debt levels has been passed back to the Revenue Account.
- 10 The estimate for Paignton Harbour rents has been reviewed and increased. The outturn figure reflects rent charged to other Council services for premises at Paignton.

- 11 Marina income was down in 2009/10 due to economic conditions and the 2010/11 budget was adjusted during the year. The trend has continued with reported figures giving a further reduction in income.
- 12 Income from commercial craft is up for Torquay Harbour due to charges for prior years being raised in arrears.
- 13 Visitor income has exceeded original expectations at Torquay by around £10k although Paignton activities have fallen with receipts short by £5k.
- 14 Although Town Dock berths were fully allocated the original income projection was overestimated and was revised down to reflect actual levels.
- 15 Income from Torquay has exceeded target.
- 16 The outturn reflects better than expected income from winter storage facilities at Paignton and a small surplus from the British Ports Association Conference held in Torquay in 2010.
- 17 A contribution has been received from the General Fund to mitigate the cost of new local pay arrangements. This is a one-off payment and the full cost will be borne by the Harbour Account going forward.
- 18 A final funding contribution toward the Town Dock capital scheme.

BRIXHAM HARBOUR

Expenditure	2010/11 Original Budget £ ,000	2010/11 Revised Budget £,000	2010/11 Projected Outturn £ ,000	Notes
Operations and Maintenance :-				
Harbour Attendants Salaries and Wages	225	216	218	1/2
Repairs and Maintenance	138	167	138	3
Rent Concessions	10	4	4	4
Other Operating Costs	222	256	317	5
Management and Administration :-				
Salaries	155	133	134	1/2
Internal Support Services	95	112	122	6
Other Administration Costs	45	37	42	7
Capital Charges	176	176	175	8
Contribution to Reserve re: Uncompleted Works	0	0	17	9
Contribution to Patrol Boat Operation	2	2	3	
	<u>1,068</u>	<u>1,103</u>	<u>1,170</u>	
Income				
Rents and Rights :-				
Rents and Rights	134	141	147	10
Marina Income	174	169	168	11
Operating Income :-				
Harbour Dues	74	77	79	12
Visitor and Slipway	24	16	16	13
Mooring fees	115	124	126	14
Fish Tolls income	485	485	557	15
Other Income	35	73	92	16
Contribution from General Fund	0	33	33	17
	<u>1,041</u>	<u>1,118</u>	<u>1,218</u>	
Operating Surplus /(Deficit)	<u>(27)</u>	<u>15</u>	<u>48</u>	

RESERVE FUND	
Opening Balance as at 1st April 2010	481
Interest Receivable	7
Net Surplus / (Deficit) from Revenue Account	48
Contributions from Revenue	17
Withdrawals	0
Projected Closing Balance as at 31st March 2011	<u>553</u>

Note: The recommended minimum level for the Brixham Harbour Reserve fund at year-end 2010/11 is **£458,000** based on 20% of budgeted turnover together with a cash figure of £250k.

HARBOUR REVENUE ACCOUNTS - OUTTURN 2010/11

BRIXHAM HARBOUR

NOTES

- 1 A review of pay has been undertaken which has changed local arrangements and introduced new employment costs. A one-off contribution from the General Fund has been received to mitigate the impact in the first year (see note 17). In year savings have been made by reducing the hours of seasonal harbour attendants.
- 2 Employee costs are reduced due to the waiving of superannuation contributions by some employees.
- 3 The original budget provision was increased because it proved inadequate for maintaining the harbour structure to an appropriate standard. However, various planned works were not completed by year end. A specific contribution has been made to the Reserve from the current year budget provision to meet the costs in 2011/12 (see note 9). Furthermore a late invoice was received for preliminary costs relating to the previous mooring contract which will now be met from the 2011/12 revenue budget.
- 4 The concession granted to Brixham 21 is no longer applicable with the organisation vacating their accommodation.
- 5 A new rating assessment has been made against the new Fish Market building resulting in an additional liability of £13k. An appeal has been lodged with the District Valuer which may succeed in reducing this figure.
Water consumption has increased in year due to construction works. These costs will be recharged where appropriate.
A new engine has been purchased for the work boat. An insurance contribution toward the cost was received and reported last financial year.
In year savings have helped to offset some of these costs although the impact of these reductions has lessened since the last report.
Electricity costs were £30k over the estimated target.
- 6 The allocation of Support Service charges has increased for Brixham with a corresponding reduction to Torquay and Paignton.
- 7 Investment in additional IT network infrastructure has been offset by a combination of in year savings to deliver an overall reduction to the original budget.
- 8 Repayment of borrowing costs in respect of the Brixham Regeneration project will not commence until 2011/12. The unspent provision in the current year has been transferred to the capital budget to provide increased funding for the New Fish Market.

- 9 Various planned works were not completed by the year end. A specific contribution has been made to the Reserve from the current year budget provision to meet the costs in 2011/12.
- 10 Additional income from occupation of new employment units.
- 11 Marina income was down in 2009/10 due to economic conditions and the 2010/11 budget was adjusted during the year. The trend has continued with reported figures giving a further reduction in income.
- 12 There has been a minor increase in income received for all categories of harbour dues.
- 13 The numbers of visiting vessels and slipway launches is significantly down on last year.
- 14 Income from commercial and MFV moorings is up due to a revised base budget and the impact of increased mooring charges for this year.
- 15 Fish Tolls increased significantly in the latter part of the year mainly due to rising fish prices and also a modest increase in volume.
- 16 Additional income has been received for winter storage and fish buyers licences. The balance of recharging utilities has also seen an increase in revenue.
- 17 A contribution has been received from the General Fund to mitigate the cost of new local pay arrangements. This is a one-off payment and the full cost will be borne by the Harbour Account going forward.

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Public Agenda Item: **Yes**

Title: **Tor Bay Harbour Authority Budget Monitoring 2011/12**

Wards Affected: **All Wards in Torbay**

To: **Harbour Committee** On: **13 June 2011**

Contact Officer: **Kevin Mowat** **Pete Truman**
Telephone: **292429** **7302**
E.mail: Kevin.mowat@torbay.gov.uk Pete.Truman@torbay.gov.uk

1. Key points and Summary

- 1.1 This report provides Members with projections of income and expenditure for the year 2011/12 compared with approved budgets.
- 1.2 This report identifies the overall budgetary position for Tor Bay Harbour Authority as at end of April 2011 to enable appropriate action to contain expenditure and maintain reserves at appropriate levels.
- 1.3 The Committee is asked to note any amended outturn positions of the two harbour accounts and the resulting change in reserve movements.
- 1.4 The Committee is asked to note the Executive Head of Tor Bay Harbour Authority's use of delegated powers to make decisions in relation to the budget allocated to Tor Bay Harbour.
- 1.5 Both Harbour accounts are currently expected to show a worse position to the approved budget due to reduced income from Torquay and Brixham marinas; and additional expenditure resulting from a late invoice relating to the previous moorings contract at Brixham.
- 1.6 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 £821.88 (ex VAT). No additional charges have been levied.

2. Introduction

- 2.1 The Tor Bay Harbour Authority budget was approved by the Harbour Committee on 6 December 2010.
- 2.2 This is the first budget monitoring report presented to the Harbour Committee for the financial year 2011/12.
- 2.3 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.

2.4 The performance against budget is summarised below:

	Original Budget 2011/12	Projected Outturn 2011/12
	£000	£000
Torquay and Paignton Harbours Surplus/(Deficit)	0	(6)
Brixham Harbour Surplus/(Deficit)	(50)	(64)

2.5 The current progress of Harbour capital schemes is detailed below:

	Total Budget	Actual to Date (including prior years)	Projected Outturn	Notes
	£000	£000	£000	
Torquay Harbour – Haldon & Princess Piers [General Fund element]	1,200 [600]	1,200 [600]	1,200 [600]	(i)
Brixham Harbour – Various Repairs	640	647	649	(ii)
Brixham Harbour – New Fish Quay Development	4,750	4,683	4,750	(iii)
Brixham Breakwater Repairs	150	0	150	(iv)

- (i) The Phase 1 works are now complete and they have included sprayed concrete on the seaward face, additional rock armouring, some emergency repairs to the inside wall and a trial repair method that included a row of mini-piles. An initial application for external funding from the Environment Agency was successful and the grant of approximately £1.3m will be used for Phase 2 which will commence in the autumn of 2011.
- (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) Work commenced in February 2008 and the majority of the development is now complete. The deck strengthening work will now continue until July 2011 and some further costs may be required to complete the restaurant shell. Borrowing has been approved up to £4.75m and the capital charges used to service this loan can now be seen within the Brixham Harbour revenue account for 2011/12.
- (iv) The Environment Agency approved a grant of £40,000 to produce a more detailed structural report of the breakwater. Officers continue to evaluate this new report along with some additional wave modelling results and a way forward should be known later this year. In the meantime the approved £150k capital work has been postponed until further assessments are concluded.

2.6 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 1.6).

Kevin Mowat
Executive Head of Tor Bay Harbour Authority

Pete Truman
Principal Accountant

Appendices

Appendix 1 Harbour Revenue Accounts 2011/12

Documents available in members' rooms

None

Background Papers:

None

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HARBOUR REVENUE ACCOUNTS 2011/12

TORQUAY and PAIGNTON HARBOURS

Expenditure	2011/12 Original Budget £ ,000	2011/12 Profiled Budget £ ,000	2011/12 Actual to Date £ ,000	2011/12 Projected Outturn £ ,000	Notes
Operations and Maintenance :-					
Harbour Attendants Salaries and Wages	138	10	11	138	
Repairs and Maintenance	152	9	18	157	1
Rent Concessions	2	0	0	2	
Other Operating Costs	108	5	15	108	
Town Dock Costs	23	2	0	23	
Management and Administration :-					
Salaries	181	17	14	181	2
Internal Support Services	117	10	11	117	
Other Administration Costs	45	3	2	45	
Capital Charges	169	7	0	169	
Contribution to Bad Debt Provision	5	0	0	5	
Contribution to Patrol Boat Operation	2	0	0	2	
	942	63	72	947	
Income					
Rents and Rights :-					
Property and Other Rents/Rights	246	45	50	246	
Marina Rental	228	20	20	222	3
Operating Income :-					
Harbour Dues	60	30	32	60	
Visitor and Slipway	50	4	4	50	
Mooring fees	59	28	33	59	
Town Dock	240	135	190	240	
Boat and Trailer parking	31	17	29	31	
Other Income	28	3	8	28	
Contribution from Reserve	0	0	0	5	4
	942	282	367	941	
Operating Surplus /(Deficit)	0	219	295	(6)	

RESERVE FUND	
Opening Balance as at 1st April	617
Interest Receivable	8
Net Surplus / (Deficit) from Revenue Account	(6)
Withdrawal	(5)
Expected Closing Balance as at 31st March	614

Note: The current recommended minimum level for the Torquay and Paignton Harbours Reserve fund

is **£440,000** based on 20% of budgeted turnover together with a cash figure of £250k

HARBOUR REVENUE ACCOUNTS 2011/12

NOTES

TORQUAY & PAIGNTON HARBOURS

- 1 Work on the Torquay Harbour Bridge & Cill, originally planned for 2010/11 has been undertaken this year. Provision was made from the previous years budget with the corresponding funding coming back from the Reserve (see note 4).
- 2 It is anticipated that there will be a reduction in employee costs due to the waiving of superannuation contributions by some employees. However, this has not been reflected in the projected outturn at present as employees are entitled to join the scheme at any stage.
- 3 Marina income was down in 2010/11 due to the continuing difficult economic conditions. These conditions are expected to remain during the current year and as a prudent measure the projected rental has been reduced.
- 4 Funding for the Torquay Harbour Bridge & Cill work (see note 1) provided for from the 2010/11 revenue budget, via the Reserve.

HARBOUR REVENUE ACCOUNTS 2011/12

BRIXHAM HARBOUR

Expenditure	2011/12 Original Budget £ ,000	2011/12 Profiled Budget £ ,000	2011/12 Actual to Date £ ,000	2011/12 Projected Outturn £ ,000	
Operations and Maintenance :-					
Harbour Attendants Salaries and Wages	250	19	15	250	1
Repairs and Maintenance	111	9	19	138	2
Rent Concessions	4	1	0	4	
Other Operating Costs	224	7	5	224	
Management and Administration :-					
Salaries	156	13	11	156	1
Internal Support Services	92	8	7	92	
Other Administration Costs	39	3	5	42	3
Capital Charges	268	0	0	268	
Contribution to Patrol Boat Operation	2	0	0	2	
	1,146	59	63	1,177	
Income					
Rents and Rights :-					
Rents and Rights	189	47	29	189	
Marina Income	169	20	20	168	4
Operating Income :-					
Harbour Dues	76	50	48	76	
Visitor and Slipway	15	1	0	15	
Mooring fees	125	93	82	125	
Fish Tolls income	474	31	26	474	
Other Income	49	10	5	49	
Contribution from Reserve	0	0	0	17	5
	1,097	252	210	1,113	
Operating Surplus /(Deficit)	(50)	193	147	(64)	

RESERVE FUND	
Opening Balance as at 1st April	553
Interest Receivable	6
Net Surplus / (Deficit) from Revenue Account	(64)
Withdrawal	(17)
Closing Balance as at 31st March	478

Note: The current recommended minimum level for the Brixham Harbour Reserve fund is **£470,000** based on 20% of budgeted turnover together with a cash figure of £250k.

HARBOUR REVENUE ACCOUNTS 2011/12

NOTES

BRIXHAM HARBOUR

- 1 It is anticipated that there will be a reduction in employee costs due to the waiving of superannuation contributions by some employees. However, this has not been reflected in the projected outturn at present as employees are entitled to join the scheme at any stage.
- 2 Work on various schemes, originally planned for 2010/11 have been undertaken this year. Provision was made from the previous years budget with the corresponding funding coming back from the Reserve (see note 5). However, a late invoice for preliminary costs relating to the previous mooring contract in 2010/11 will now be met from the current year revenue budget as an overspend.
- 3 Work originally planned for 2010/11 has been undertaken this year. Provision was made from the previous years budget with the corresponding funding coming back from the Reserve (see note 5).
- 4 Marina income was down in 2010/11 due to the continuing difficult economic conditions. These conditions are expected to remain during the current year and as a prudent measure the projected rental has been reduced.
- 5 Funding for various work (see notes 2 and 3) provided for from the 2010/11 revenue budget, via the Reserve.

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2010/11 Performance - Marine Services

Filtered by Service: Tor Bay Harbour Authority
Using Default Comparisons Settings

Key to Performance Status:

Performance Indicators:

Key to change on same period in previous year:

Improved Performance Worse Performance Unchanged

Key to +/- Column:

Higher figures are better Lower figures are better Direction cannot be determined

2010/11 Performance - Marine Services

Code	Title	+/-	Actual 09/10	Target 10/11	Actual 10/11	Status 10/11	Change on 09/10	Notes
TDAMS01	<u>TDAMS01 Harbour estate lettings occupancy</u>	+	96%	100.00%	95.80%	On Target	↓	
TDAMS04	<u>TDAMS04 Navigation Lights availability</u>	+	100%	100.00%	99.35%	On Target	↓	
TDAMS07	<u>TDAMS07 Brixham Harbour Fish Tolls</u>	+	£471,248.00	£485,000.00	£556,620.29	Well Above Target	↑	
TDAMS08	<u>TDAMS08 Harbour Users Survey</u>	+	86.2%	86%	82%	On Target	↓	
TDAMS09	<u>To monitor and support staff through induction and appraisal reviews</u>	+	79%	100%	100%	On Target	↑	(2010 - 2011) 22 RADAR appraisals completed out of a possible 22 by the end of February 2011. (KM)
THARB02	<u>Help provide appropriate sea and flood defences</u>	+	Yes	Yes	Yes	On Target	↔	

2010/11 Performance - Marine Services

Code	Title	+/-	Actual 09/10	Target 10/11	Actual 10/11	Status 10/11	Change on 09/10	Notes
THARB04	<u>To assist in the collection of spatial mapping data</u>	+	Yes	Yes	Yes	On Target	↔	
THARB08	<u>To Produce and Review a Risk Register for the Business Unit</u>	+	Yes	Yes	Yes	On Target	↔	
THARB11	<u>Reduce the number of reportable accidents including (RIDDOR)</u>	-	8	8	3	Well Above Target	↑	(Quarter 4) The number of reportable accidents i.e. those reported to the Council's Health & Safety Officer (KM)
THARB13	<u>Renew the bilateral agreement with the UK Hydrographic Office</u>	+	Yes	Yes	Yes	On Target	↔	
THARB16	<u>To Provide Visitor Moorings</u>	+	Yes	Yes	Yes	On Target	↔	
THARB21	<u>Test and Review a Business Continuity Plan for the Business Unit</u>	+	No	Yes	No	Below Target	↔	
THARB23	<u>To Reduce Staff Absence</u>	-	2.0%	2.50%	2.42%	On Target	↓	(August) The average year to date = 1.91% (KM)
THARB25	<u>To keep existing businesses and attract new activities</u>	+	Yes	Yes	Yes	On Target	↔	
THARB26	<u>% Variation on Budgeted Income</u>	+	n/a	0.00%	5.10%	Above Target		(Quarter 4) As per the Harbour Committee's final budget monitoring report and not the final outturn figure (KM)
THARB27	<u>% Variation on Budgeted Expenditure</u>	-	n/a	0.00%	-1.20%	Above Target		(Quarter 4) As per the Harbour Committee's final budget monitoring report and not the final outturn figure (KM)

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Public Agenda Item: **Yes**

Title: **Tor Bay Harbour Authority Audit Plan – 2011~2017**

Wards Affected: **All Wards in Torbay**

To: **Harbour Committee** On: **13 June 2011**

Key Decision: **No**

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

Contact Officer: **Kevin Mowat**

☎ Telephone: **01803 292429**

✉ E.mail: Kevin.Mowat@torbay.gov.uk

1. **What we are trying to achieve**

- 1.1 Tor Bay Harbour Authority is a function of Torbay Council and all local authorities and other relevant bodies are subject to the Local Government Act 1972 Section 151 and the Accounts and Audit Regulations 2003 (as amended 2006). Consequently the Council must maintain an adequate and effective system of Internal Audit of its accounting records and of its system of Internal Control in accordance with the proper practices in relation to internal control.
- 1.2 Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes. Internal auditing is a catalyst for improving an organisation's effectiveness and efficiency by providing insight and recommendations based on analyses and assessments of data and business processes.
- 1.3 The key objective of the Audit Plan is to deliver a framework of audit tasks that will provide the Harbour Committee with the assurances outlined in 1.2 above. By adopting a systematic approach to internal auditing the Harbour Committee will be able to assist the Tor Bay Harbour Authority business unit to meet the overall objectives of the service. Furthermore it will also provide assurance to Torbay Council that the strategic management of Tor Bay Harbour, undertaken by the Harbour Committee, meets their aspirations for their harbour authority function.

- 1.4 The Tor Bay Harbour Audit Plan attached as Appendix 1 has been prepared with the help of the Devon Audit Partnership using a risk based approach and priority assessment including consultation at both strategic and operational levels to ensure that the content of the plan is aligned to the Harbour Authority's needs, goals and objectives and satisfies the statutory assurance requirements. The number of Audit Days for each audit entity will vary depending on risk, available resources and previous audit reports.
- 1.5 Internal auditors are not responsible for the execution of harbour authority activities but through a robust Audit Plan they can provide advice to harbour management and the Harbour Committee about how to better execute their responsibilities. As part of its governance role the Harbour Committee will receive copies of all internal audit reports relating to Tor Bay Harbour.

2. Recommendation for decision

- 2.1 That the Committee consider and agree in principle the proposed Tor Bay Harbour Audit Plan for 2011~2017 shown in Appendix 1.**

3. Key points and reasons for recommendations

- 3.1 To inform the Harbour Committee of the arrangements and work plan for the Audit of the Tor Bay Harbour Authority business unit between 2011 and 2017.
- 3.2 To ensure key issues are communicated to and actioned by the Committee to ensure risks are managed and the Internal Control Framework is sound.
- 3.3 To ask the Committee to endorse the outline Audit Plan for 2011~2017 and advise of any areas of concern they feel would benefit from Audit input.
- 3.4 The Devon Audit Partnership will undertake the majority of the audits and their work will be in accordance with auditing standards contained within the CIPFA Code of Practice for Internal Audit in Local Government in the United Kingdom. Audits are planned and performed so as to obtain all the information and explanations considered necessary to gain assurance as to the level of control within the business unit. Audit findings and recommendations are however based on restricted samples of transactions / records and discussions with relevant officers.

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

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

Supporting information to Report

A1. Introduction and history

- A1.1 The Council's Audit Committee deals with the local authority's corporate responsibility under the Accounts and Audit Regulations 2006 (amended) to include in their annual statement of accounts an Annual Governance Statement. This Statement also requires an annual review of the Internal Control Environment and an annual review of Internal Audit. The statement is wide ranging and includes an assessment of risks, Corporate Governance and the delivery of the Council's functions. Internal Audit work forms an element of the evidence required but it is the management of the organisation that is responsible for the internal control framework and for providing the assurance required.
- A.1.2 As part of Torbay's commissioning model, Internal Audit provision is commissioned from Devon Audit Partnership. The Partnership is a shared service between Torbay, Plymouth and Devon County Councils which delivers Internal Audit services to the partner authorities and it replaced the previous three separate internal audit sections with effect from 1 April 2009. The commissioned service is expected to deliver improved efficiencies, productivity and performance, economies of scale and shared best practice.
- A.1.3 On 22nd June 2009 the Harbour Committee received report number 147/2009 which provided detailed results of the Internal Audit Report of the Harbour and Marine Services business unit concluded in May 2009. The key objective of the 2009 audit was to provide assurance to the Council's Audit Committee that the strategic management of Tor Bay Harbour, undertaken by the Harbour Committee and delivered by the Harbour & Marine Services business unit (now the Tor Bay Harbour Authority business unit), met the overall objectives of the service. However, at the time it was considered entirely appropriate that the Harbour Committee should also receive and note the Internal Audit of the Harbour & Marine Services business unit.
- A.1.4 In 2009 it was the Audit Report's opinion that the administrative, financial and risk management systems and controls within the Harbour Authority were generally well managed. The last Audit Report did not find any area requiring urgent improvements in controls or in the application of controls and none of the recommendations were considered as being an immediate or high priority. The Council was found to be meeting its legal responsibilities and obligations as a Harbour Authority.
- A1.5 The scope and content of the May 2009 Audit Report was of necessity wide ranging and this led the Executive Head of Tor Bay Harbour Authority to consider a more systematic and targeted approach to future internal audits. Appendix 1 represents the first formal Audit Plan specifically for Tor Bay Harbour Authority.

A2. Planned Audit Coverage 2011~17

- A2.1 The audit plan for 2011~17 has been prepared and identified, with the help of Devon Audit Partnership, by :-

- Adopting a risk based priority audit planning tool to identify those areas where audit resources can be most usefully targeted. This involves scoring a range of systems, services and functions across the whole of the business unit using a number of factors/criteria e.g. materiality, control environment, sensitivity, time since last review etc. The final score, or risk factor for each area, together with a priority ranking, then determines a schedule of priorities for audit attention.
- Discussions and liaison with Devon Audit Partnership and harbour staff regarding the risks which threaten the achievement of the service objectives, including the introduction of new systems and corporate initiatives.
- Taking into account results of previous internal audit reviews.
- Taking into account Internal Audit's knowledge and experience of the risks facing the Harbour Authority.
- Consideration of risks identified in the Harbour Authority's strategic and operational risk registers.

A.3. Risk assessment of preferred option

A3.1 Outline of significant key risks

A3.1.1 The report is predominantly for information and therefore there are no risks associated with the recommendations.

A3.1.2 The adoption of a clear Harbour Authority Audit Plan will enhance the Council's reputation for transparency and accountability in respect of its delivery of its harbour authority function. It also reflects best practice.

A.3.2 Remaining risks

A3.2.1 Although the plan has been matched to available resources, if those resources are stretched or unavailable there remains a risk that audit reviews could slip thereby increasing the future risk to the Harbour Authority. Such situations will be managed within the overall audit resources available to the Devon Audit Partnership with audit resources being moved between client Councils to better manage the risk and to address the issue identified. Conversely the impact of such an event on the other client Councils could necessitate resources being moved away from Torbay but it is hoped that allowing a contingency will help to manage this.

A3.2.2 It should be recognised that ultimately it is the responsibility of management to establish systems of internal control to ensure that activities are conducted in a secure, efficient and well-ordered manner. It does not matter how good the systems of internal control are, it is not possible to guarantee that a fraud will not occur, although it is hoped any irregularity would be quickly identified and resolved. However the work undertaken by Internal Audit should give the business unit, and the Harbour Committee, assurance that with the testing undertaken, no fraud was found and that all systems were operating effectively within the limitations reported at the time. Only by constant appliance of the

Council's Standing Orders, Financial Regulations and operating instructions can this risk be fully minimised.

A4. Other Options

A.4.1 The issues raised in this report are predominantly for information and as such there is no requirement to consider alternative options.

A.4.2 There is a statutory requirement for a continual internal audit of the Council's processes and internal controls. Whilst there are options surrounding the risk assessments, those being used are the accepted approaches for this style of risk assessment and may vary from those which are applied to the Council's services generally but in certain cases there are no alternative options if the Council is to meet external requirements.

A.4.3 Internal Audit reports provide one element of assurance to the Harbour Committee but the Tor Bay Harbour Authority management team provide another source of assurance and should provide evidence to support the view that Internal Controls and wider corporate governance are adequate. External reviews provide another source of assurance.

A5. Summary of resource implications

A.5.1 The audit plan is matched to available resources and should be delivered within the budget available.

A.5.2 Resource implications are related to staff time both within the service and within departments who may be required to make officers available to answer audit queries and provide information in respect of any audit review or investigation. The Port Marine Safety Code compliance audit requires the procurement of an external "Designated Person".

A6. What impact will there be on equalities, environmental sustainability and crime and disorder?

A.6.1 Members and employees, in their roles and responsibilities, are asked to be vigilant in preventing and detecting fraud, corruption and irregularity. In addition, Members and employees have a responsibility to lead by example in ensuring adherence to legal requirements, Standing Orders, Financial Regulations and all procedures and policies including both Members and Officers Codes of Conduct.

A.6.2. The Devon Audit Partnership has due regard for section 17 of the Crime and Disorder Act 1998, ensuring that they consider crime and disorder reduction and community safety in the exercise of all of their duties and activities. Part of their role includes being one of the major contacts within the Council's Fraud & Corruption and Whistle-blowing Policies that detail how potential irregularities and frauds will be investigated and reported.

A.6.3 Services from the Devon Audit Partnership will support equality and diversity ensuring inclusion, fairness and equality of access. The key actions for the Partnership in relation to equality and diversity are as follows: -

- Equality Impact Assessments of all audit related policies and procedures

- All correspondence etc. can be made available in different languages and formats as required – Audit subscribe to the National Interpreting Service
- Equalities is included as a standing agenda item in management team meetings and is included in job descriptions.

A7. Consultation and Customer Focus

A7.1 The draft audit plan has been subject to consultation with the Executive Head of Tor Bay Harbour Authority and the Harbour Administration Officers.

A.8. Are there any implications for other Business Units?

A.8.1 There are no significant implications for other business units but staff time maybe required within other departments who may be required to make officers available to answer audit queries and provide information in respect of any audit review or investigation.

Appendices

Appendix 1 Tor Bay Harbour Authority Audit Plan – 2011~2017

Documents available in members' rooms

None

Background Papers:

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

Report 147/2009 Harbour and Marine Services Internal Audit Report - May 2009

Report 90/2010 Torbay Council's Internal Audit Plan 2010/11



Rolling Audit Plan for Tor Bay Harbour Authority – 2011 ~ 2017

Audit Entity (Name)	Audit Entity Description (Coverage)	Audit Type	Priority Score (linked to risk assessment)	Last Audited	Next Scheduled Audit
Income	Harbour Charges; Other Income including Rents and Fish Tolls; Cash Handling; Re-charges; Debt Management.	Material System	46.63	See Note 3	Sept – Dec 2011 15 days
Strategic Management	Governance (includes significant partnerships); Harbour Committee Terms of Reference & Roles and Responsibilities; Strategic Management; Long Term Planning; Government Policy Response; Energy Management; Sustainability; Value for Money; Harbour Bye Laws.	Strategic Risk	56.69	May 2009	2016/17
Risk Management	Risk Management – Operational & Business; Insurances; Health & Safety; Business Continuity / Contingency Planning.	Operational Risk	60.60	See Note 3	2015/16
Port Marine Safety Code	Compliance with the Code – audit undertaken by independent “designated Person” (not Devon Audit Partnership)	Operational Risk	63.13	November 2010	November 2011 2 – 3 days
IT System Administration & Security	Harbour Management Software (HMS); IT Audit; IT Security; Security of IT Infrastructure and Disaster Recovery; Information Governance including CCTV.	Material System	45.28	See Note 3	2013/14

Cont.....

Audit Entity (Name)	Audit Entity Description (Coverage)	Audit Type	Priority (linked to risk assessment)	Last Audited	Next Scheduled Audit
Asset Management	Harbour Estate and Asset Management; Capital Project planning, management and evaluation; Accommodation Planning.	Operational Risk	67.05	See Note 3	2013/14
Business Unit Management	Business Unit Management; Procurement and Payments; Financial Planning and budget setting, monitoring and forecasting; Performance Management; Staff Development; Personnel and Establishment; Sickness Absence; Quality Management; Fundamental Financial Accounting and Asset controls; Equality and Diversity.	Operational Risk	44.90	See Note 3	2015/16

Note 1

For all audit entities the associated risks and controls related to the coverage areas examined will be determined including any risk / control issues relating to fraud and corruption.

Note 2

Reactive fraud and corruption investigation will be undertaken in the event of an incident at the Tor Bay Harbour Authority or where routine audit activity uncovers a potential irregularity.

Note 3

Prior to 2008/09 the audit of harbours was undertaken by harbour location covering the financial controls in that location.



Public Agenda Item: **Yes**

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

Wards Affected: **All wards in Torbay**

To: **Harbour Committee** On: **13 June 2011**

Key Decision: **No**

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

Contact Officer: **Kevin Mowat**
Telephone: **01803 292429**
E.mail: **Kevin.Mowat@torbay.gov.uk**

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 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 business to be conducted efficiently and safely.

3.3 Occasionally marine incidents occur in harbours. 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 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 to Report

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 21st June 2010. Appendix 1 shows the existing policy with some amendments shown as track changes. Changes are being recommended to the existing Policy to provide further clarity over the decision to prosecute.
- 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 ;-
- Clear Standards & Consistency
 - Openness & Helpfulness
 - Targeting & Proportionality
 - Procedures, Appeals and Complaints against Tor Bay Harbour Authority

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.

A7 Are there any implications for other Business Units?

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

Appendices

Appendix 1 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 2010

Environmental Health and Consumer Protection Enforcement Policy



TOR BAY HARBOUR AUTHORITY

ENFORCEMENT POLICY

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.

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.

The Harbour Authority will provide information and advice in plain language on the rules that apply and will disseminate it as widely as possible. Also, the Harbour Authority will provide encouragement and support to ensure that their legal powers are used appropriately to improve and safeguard public health, public safety and the environment. 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.

The Harbour Authority will minimise the costs of compliance for users by ensuring that any action it takes is proportionate to the risks. As far as the law allows, the Harbour Authority will take account of the circumstances of the case and the operator's attitude when considering action.

The Harbour Authority will carry out its duties in a fair, equitable and consistent manner. It will seek to be clear, open and helpful in its approach to enforcement. The Harbour Authority will seek to target enforcement resources where they are most needed and will be informed by its other Policies, Aims and Objectives. It will liaise with other authorities and enforcement bodies as appropriate.

Clear Standards & Consistency

- The Harbour Authority will distinguish in written correspondence those matters which the law requires must be dealt with from recommendations which provide advice on good practice but do not require compliance (notwithstanding that failure to comply may prejudice any defence which may be available should prosecution ensue).
- Where there is a shared enforcement role, such as with the Maritime and Coastguard Agency or other statutory bodies, the Harbour Authority will ensure that liaison takes place at an early stage to promote a consistent approach.

Openness & Helpfulness

- We will provide information and advice in plain language.
- We will be open about how we set about our work, including any charges that may be set.
- We will consult with harbour users, other consumers and workforce representatives in our endeavours to be open and clear in our approach.
- We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.
- We will offer you the opportunity to put your point of view forward before action is taken against you, unless immediate action is necessary.
- We will provide a courteous and efficient service and our staff will identify themselves by name.
- We will provide a contact point and a telephone number for further dealings with us and we will encourage harbour users to seek advice/information from us.
- We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

Targeting & Proportionality

- We will always make ourselves available to advise whenever our other priorities permit.
- We recognise that there are sometimes different satisfactory solutions to some problems and we will refrain from being over-prescriptive whenever we can.
- We support the principles of BATNEEC (Best Available Technology Not Entailing Excessive Costs) and recognise that our actions should be in the public interest.

Procedures and Appeals and Complaints against Tor Bay Harbour Authority

- Whenever possible we will make clear what the next action, if any, will be, for example a further warning or a notice of prosecution.
- In cases where immediate enforcement action is considered necessary then we will provide you with a written explanation as to why enforcement action has been taken against you. We will ensure that advice from an Officer is put clearly and simply and this will be confirmed in writing on request, and where remedial work is required, will explain why it is necessary.
- Where action is taken by another agency this may not preclude the Harbour Authority from pursuing its own action.
- Where statutory provisions exist for you to appeal against any action taken we will inform you of those provisions.
- If you are dissatisfied about the action taken by the Harbour Authority or where the Harbour Authority has not taken any action and you want a further response, a Corporate Complaints Procedure is available to you. Contact Torbay Council, Town Hall, Castle Circus, Torquay, Devon. TQ1 3DR. Telephone – 01803 201201.



TOR BAY HARBOUR AUTHORITY

PROSECUTION POLICY

The Harbour Authority has statutory powers to enforce relevant legislation and in some circumstances prosecution will be appropriate. Prosecution is a serious step and must be regarded as the ultimate sanction. A prosecution will only be initiated when the alleged conduct has been such that the Harbour Authority cannot impose an appropriate sanction itself and the matter therefore deserves the attention of the Court.

The Harbour Authority is committed to assisting other enforcement agencies, including the Police, to pursue their statutory duties. The Harbour Authority will liaise with any enforcement agency that may also have an interest in any matter being considered for prosecution.

Officers will always explain the purpose of their visit or interview. Each case will be considered on its individual merits and a prosecution will only be initiated in accordance with this Policy together with the Harbour Authority's Enforcement Policy.

Having duly considered the Harbour Authority's internal policies due regard will be given to the Code for Crown Prosecutors. Any decision to initiate a prosecution will be recorded in writing and the reasons for initiating the prosecution will be given.

Any investigation carried out by the Harbour Authority will be conducted pursuant to the Police and Criminal Evidence Act 1984 with due regard to the applicable Codes of Practice. In addition, where applicable, best practice will be observed as set out in national guidance issued by bodies such as the Department for Transport (Ports Policy) and/or Maritime and Coastguard Agency.

As stated above the decision to prosecute is a serious one, having implications for the defendant, for witnesses, sometimes for the Harbour Authority and wider still, for the consistent and effective maintenance of standards. Prosecution will be considered only when :-

- There is sufficient admissible and reliable evidence to provide a realistic prospect of conviction; and
- It is in the public interest to do so.

Prosecution will normally be in the public interest when one or more of the following criteria are satisfied :-

- (i) Unlawful acts or omissions have seriously or repeatedly compromised safety of navigation, public safety or the environment;

- (ii) The offending created/posed a risk to navigation, public safety or to the environment;
- (iii) Through blatant action or inaction the risks of and/or actual pollution have been exacerbated;
- (iv) Where there is clear disregard for safe practice;
- (v) The offence involves a failure to comply in full or in part with a statutory notice;
- (vi) The offender has relevant previous convictions or has been cautioned for a relevant matter;
- (vii) The offender has flagrantly breached the law or has ignored advice or requests to remedy breaches of legal requirements;
- (viii) The offender obstructs an Officer of the Harbour Authority carrying out statutory duties or where the offence involves the failure to supply information or the supply of false or misleading information upon lawful request;
- (ix) The offence, whether or not serious in itself, is widespread in Tor Bay Harbour;
- (x) The Harbour Authority is under a statutory duty to enforce legislation.

The above list is not exhaustive and the decision whether to prosecute will be taken having regard to the legal proceedings sheet (Appendix 1) and the individual circumstances of each case.

Regard will be had to the Code for Crown Prosecutors at all stages of proceedings.

The Harbour Authority recognises that once a prosecution has been commenced control of the matter is ceded to the Courts and the Criminal Justice System.

June 2011

Appendix 1

Legal Proceedings Decision Sheet

	For Prosecution	Against Prosecution	Score
1	Serious Incident	Minor Incident	
2	Deliberate act or potential to cause injury or damage through reckless disregard.	Unforeseeable/Accidental / Minor error of judgement	
3	Inadequate control systems in place.	Adequate control systems in place.	
4	Previous advice already given to the company / individual.	No precise information given by regulator previously.	
5	Company/individual aware of the risk involved in their action.	Company/individual could not have been aware of the risk involved in their action.	
6	Management/supervisor responsible for the incident.	Employee or supplier responsible for the incident.	
7	Poor confidence in management / individual.	Good confidence in management / individual.	
8	Previous prosecution for a similar offence.	First offence.	
9	No remedial action taken / proposed.	Remedial action already taken.	
10	Management / individual obstructive in the investigation.	Management / individual co-operative with the investigation.	
11	Attempt to cover up the true facts.	Attitude open and honest.	
12	Harbour Authority reputation tarnished if prosecution is not pursued.	Prosecution may be seen as over zealous enforcement.	
13	Prosecution will secure definite results, e.g. protection of workforce.	No obvious improvements in standards will result from prosecution.	
14	Prosecution will resolve an important legal issue.	Prosecution will not clarify a legal issue.	
15	Regulator identified problems on a previous occasion.	Regulator did not identify problems on a previous occasion.	

If statements in column 1 are true, score -1.

If statements in column 2 are true, score +1.

If neither statements are true, or not applicable, score nil.

A total minus score will favour a prosecution.

However, a prosecution must be justifiable by a logical argument, including such reasons as:-

- the protection of employees or members of the public;
- to remedy deficiencies due to incompetent or irresponsible activities.

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