



Friday, 13 June 2014

HARBOUR COMMITTEE

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

Monday, 23 June 2014

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

Mr Ellis	Councillor Faulkner (J)
Capt. Paul Lloyd	Councillor Hytche
Mr Stewart	Councillor McPhail
Capt. Curtis	Councillor James
Mr Buckpitt	Mayor Oliver
Councillor Amil	Councillor Richards
Councillor Ellery	Councillor Stringer

Working for a healthy, prosperous and happy Bay

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

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HARBOUR COMMITTEE AGENDA

1. **Election of Chairman/woman**
To elect a Chairman/woman for the 2014/15 Municipal Year.
2. **Apologies**
To receive apologies for absence, including notifications of any changes to the membership of the Committee.
3. **Election of Vice-Chairman/woman**
To elect a Vice-Chairman/woman for the 2014/15 Municipal Year.
4. **Minutes** (Pages 1 - 5)
To confirm as a correct record the Minutes of the meeting of the Committee held on 17 March 2014.
5. **Declarations of interest**
 - (a) To receive declarations of non pecuniary interests in respect of items on this agenda
For reference: Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.
 - (b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda
For reference: Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(**Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)
6. **Urgent items**
To consider any other items that the Chairman decides are urgent.
7. **Harbour Committee Terms of Reference** (Pages 6 - 7)
To note the Harbour Committee's Terms of Reference as set out in the Council's Constitution.
8. **Appointment of Harbour Appointments Sub Committee** (Page 8)
To appoint a Harbour Appointments Sub-Committee for the 2014/15 Municipal Year.

9. **Harbour Asset Review Working Party** (Page 9)
To appoint the Harbour Asset Review Working Party for the 2014/15 Municipal Year.
10. **Harbour Budget Review Working Party** (Page 10)
To appoint the Harbour Budget Review Working Party for the 2014/15 Municipal Year.
11. **Pilotage Review Working Party** (Page 11)
To appoint a Pilotage Review Working Party with the following Terms of Reference.

To review the Pilotage arrangements for the Tor Bay Harbour and to recommend amendments to the Pilotage direction as and when appropriate.
12. **Paignton Harbour Development Opportunity** (To Follow)
To consider report on the Paignton Harbour Development Opportunity.
13. **Exemption of the Press and Public**
To consider passing a resolution to exclude the press and public from the meeting prior to consideration of the following item on the agenda on the grounds that exempt information (as defined by the Local Government (Access to Information) Act, 1985) is likely to be disclosed.
14. **Paignton Harbour Development Opportunity** (To Follow)
To consider an Exempt report on the Paignton Harbour Development Opportunity.
15. **Torbay BSAC Application** (To Follow)
To consider an Application for a grant.
16. **Tor Bay Harbour Authority Revenue Outturn 2013/14** (Pages 12 - 18)
To note the Report on the Harbour Authority Outturn for 2013/14.
17. **Torquay/Paignton and Brixham Harbour Liaison Forums** (To Follow)
To note the minutes of the above Harbour Liaison Forums.
18. **Tor Bay Harbour Authority Quarterly Budget Monitoring Report** (Pages 19 - 30)
To consider the Tor Bay Harbour Authority Quarterly Budget Monitoring Report.
19. **Performance Report - Tor Bay Harbour Authority** (To Follow)
To consider a report on the performance of the Tor Bay Harbour Authority.
20. **Tor Bay Harbour Authority Audit Plan** (Pages 31 - 37)
To approve the Audit Plan for the Tor Bay Harbour Authority Business Unit for 2014/15.

21. **Tor Bay Harbour Enforcement and Prosecution Policy (biennial - 2014)** (Pages 38 - 59)
To approve the Tor Bay Harbour Enforcement and Prosecution Policy (biennial - 2014).
22. **Quarterly Accident and Incident for Tor Bay Harbour** (Page 60)
To review the Quarterly Accident and Incident for Tor Bay Harbour.
23. **Amendments to the Moorings Policy** (Pages 61 - 85)
To approve amendments to the Moorings Policy.



Minutes of the Harbour Committee

17 March 2014

-: Present :-

Councillor Amil (Chairwoman)

Councillors Ellery, Faulkner (J), Hytche, McPhail, James, Richards and Stringer
and Mayor Oliver

External Advisors: Capt. Curtis Mr Ellis and Mr Buckpitt

(Also in attendance: Councillor Morey)

23. Apologies

Apologies for absence were received from External Advisor Mr Mike Stewart and Capt. Paul Lloyd.

24. Minutes

The Minutes of the meeting of the Harbour Committee held on 16 December 2013 were confirmed as a correct record and signed by the Chairman.

25. Urgent items

The Committee considered the items in Minutes 26, and not included on the agenda, the Chairman being of the opinion that they were urgent by reason of special circumstances i.e. the matter having arisen since the agenda was prepared and it was unreasonable to delay a decision until the next meeting.

26. Torquay Inner Harbour - WWII Motorboats Heritage and Tourist Attraction Proposal Presentation

The Harbour Committee welcomed the Owners of a collection of World War II Motorboats who presented their proposal to Members to relocate to South Pier, Torquay Harbour their restored vessels to form a Heritage and Tourist Attraction.

The Executive Head of Tor Bay Harbour Authority advised Members that the proposal to locate the four vessels on the north side of South Pier would necessitate the removal of 15 existing vessels to the new inner harbour pontoon scheme and assured Committee Members that the presumption was that the current level of income from South Pier would be maintained.

The proposal had been presented to the Torquay & Paignton Harbour Liaison Forum, as outlined in the Forum Minutes, and had been received with general enthusiasm from the harbour users.

The Executive Head of Tor Bay Harbour Authority advised Members that the proposal had been brought to Committee with the Chairman and Vice-Chairman's approval, to seek agreement from Members that they were content with the use of the Executive Head of Tor Bay Harbour Authority's Delegated Authority to progress the move of the 15 vessels and aim to have the attraction in place by the end of April 2014 and in time for the D-Day 70th Anniversary event.

Members were supportive of the proposal and thanked the Owners of the Heritage Boat Attraction for their presentation and for restoring and saving such magnificent vessels.

Resolved:

1. that the Executive Head of Tor Bay Harbour Authority – Tor Bay Harbour Master, use his Delegated Powers to progress the Torquay Heritage Boat Attraction Proposal.

27. Presentation to Mr Gordon Jennings

The Chairman and Executive Head of Tor Bay Harbour Authority advised Members that the proposed presentation to past External Advisor, Mr Gordon Jennings, could not take place as he had become unavailable due to personal circumstances.

Members were advised that the presentation to Mr Jennings would be re-arranged.

The Executive Head of Tor Bay Harbour Authority advised Members that the Paignton Harbour Master, John Turner, was retiring on 31 March 2014 and thanked him for his valued hard work and expertise over the years and presented him with a token of appreciation.

28. Review of Delegated Powers

The Executive Head of Tor Bay Harbour Authority informed the Council that harbour customers and the wider community, would expect the harbour authority to be fit for purpose and to regularly review the powers delegated to its senior management.

Resolved:

That having reviewed the powers delegated to the Executive Head of Tor Bay Harbour Authority as set out in Appendix 1 and Appendix 2 of the submitted report, the Harbour Committee found no reason to refer any proposed changes to the Council for determination.

29. Tor Bay Harbour Business Plan 2014/2015

The Committee considered a report which sought agreement of the Business Plan for the Tor Bay Harbour Authority business unit for 2014/2015.

Resolved:

- i) that the draft Tor Bay Harbour Business Plan 2014/2015, as set out in Appendix 1 to the submitted report be approved; and
- ii) that the Executive Head of Tor Bay Harbour Authority and the Chairman of the Harbour Committee agree the final detail of the Tor Bay Harbour Business Plan 2014/2015, and sign the Acceptance Statement in Section 9.

30. Tor Bay Harbour - Operational Moorings and Facilities Policy

The Committee considered a report to amend the Harbour Authority's operational moorings and facilities policy. The Committee were advised that the policy sought to ensure that a consistent, fair and equitable approach was applied to new, existing and potential facility customers that use Tor Bay Harbour and the harbour estate. It also aimed to ensure that the policy and associated conditions were fully understood and recognised as being reasonable.

Resolved:

That the Tor Bay Harbour operational Moorings and Facilities Policy – Version 8 as set out in Appendix 1 of the submitted report, be approved.

31. Torquay/Paignton and Brixham Harbour Liaison Forums

The Committee noted the minutes of the Torquay and Paignton Harbour Liaison Forum meeting on 4 March 2014 and the Brixham Harbour Liaison Forum meeting on 6 March 2014.

32. Tor Bay Harbour Authority Budget Monitoring

The Committee noted a report on the quarterly Budget Monitoring.

The Committee noted the amended outturn positions of the two harbour accounts and adjustments to the Reserve Funds as shown in Appendix 1 of the submitted report and noted the Harbour Master's use of delegated powers to make decisions in relation to the budget allocated to Tor Bay Harbour.

Members noted the Harbour Masters use of their delegated powers to waive certain harbour charges , which this financial year amounted to £1,938.39

(excluding VAT), and which have been spread across both harbour accounts. No additional charges had been levied.

33. Harbour Committee Work Programme - 2014/2015

Members considered a report which outlined the Committee's Work Programme for the 2014/15 Municipal Year.

Resolved:

The Harbour Committee work programme for 2014/15, as set out in the submitted report, be approved.

34. Performance of the Harbour Authority Business Unit

The Committee noted the submitted report outlining the performance of the Tor Bay Harbour Authority Business Unit. The Executive Head of Tor Bay Harbour Authority informed Members where performance was on target or below target.

Members noted that due to the extreme weather conditions a shortfall of Brixham Harbour Fish Toll income was expected by the year end.

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

The Committee considered the submitted report to review and approve the Tor Bay Harbour Authority Asset Management Plan.

The Executive Head of Tor Bay Harbour Authority advised the Committee that the Asset Review Working Party had met on 24 February 2014 and reviewed the Asset Management Plan in accordance with their terms of reference.

Resolved:

That the Tor Bay Harbour Authority Asset Management Plan 2014/15 as set out in Appendix 1 of the submitted report be approved.

36. Harbours Funding Opportunities - Briefing Paper

Members noted a briefing paper presented by the Executive Head of Tor Bay Harbour Authority which had been provided by the Torbay Development Agency.

Members noted that the Executive Head of Tor Bay Harbour Authority would be writing to the Local Enterprise Partnership (LEP) concerning the non inclusion of

Brixham Harbour, under the heading of port infrastructure, in the LEP's Strategic Economic Plan and EU investment strategy. .

37. Quarterly Accident & Incident for Tor Bay Harbour

Members received a briefing note which provided an update of the current accident statistics for the Harbour Authority. Members were advised that there had been one fatality in the harbour since December 2013, which had been categorised as SU (suicide) and a hospitalisation categorised as ASU (attempted suicide).

Chairwoman

Harbour Committee Terms of Reference – June 2014

<p>Terms of Reference:</p> <p>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:-</p> <ol style="list-style-type: none"> 1. Manage all of the Harbour's 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): <ol style="list-style-type: none"> 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; <p>providing that no decision by the Harbour Committee shall impact adversely on the Council's general fund or capital budget.</p> 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; 	<p>Membership:</p> <p>9 members of the Council plus up to five external non-voting advisors appointed by the Committee on a four year term and one non-voting advisor who is a private sector representative of the Board of the Torbay Economic Development Company</p> <p>(Group Leaders will be asked to take account of the geographical spread of members in making appointments to the Committee)</p> <p>Conservative (5)</p> <p>Liberal Democrat (2)</p> <p>Non Coalition Group (2)</p>
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5. Review annually the powers delegated to the Executive Head Tor Bay Harbour Authority – Tor Bay 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 Executive Head Tor Bay Harbour Authority;
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 to the Executive Head Tor Bay Harbour Authority and the Mayor in relation to those assets within Tor Bay Harbour and the harbour estate that are managed by Tor Bay Harbour Authority.; and
10. Appoint advisors following receipt of recommendations from the Harbour Appointments Sub-Committee and the Board of Torbay Economic Development Company 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 and one non-voting advisor who is a private sector representative of the Board of the Torbay 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”

Although not specifically stated in the Terms of Reference for the Harbour Committee it is a Harbour Committee recommendation that External Advisers should be limited to two 4-year terms, which is in line with good governance best practice. The table below shows the current position in respect of External Advisers :-

Advisor	Appointing Body	Date Appointed	4 year term ends
Robert Curtis	Harbour Committee	18 Sept 2007	End of Sept 2014
David Buckpitt	Harbour Committee	5 Dec 2011	End of Dec 2015
Michael Stewart	Harbour Committee	17 Dec 2012	End of Dec 2016
Paul Lloyd	Harbour Committee	23 Sept 2013	End of Sept 2017
Michael Ellis	Harbour Committee	16 Dec 2013	End of Dec 2017
Vacant	EDC	N/A	N/A

June 2014

Harbour Budget Review Working Party

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

“manage all of the Harbour’s 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 (at least two Councillors plus the Chairman 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”

In June 2013 it was agreed that Harbour Budget Review Working Party Terms of Reference should be amended to the following :-

“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. Also, to assist officers to monitor and review the budget ahead of each quarterly Harbour Committee meeting”

June 2014

Agenda Item 10

Harbour Budget Review Working Party

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

“manage all of the Harbour’s 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 (at least two Councillors plus the Chairman 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”

In June 2013 it was agreed that Harbour Budget Review Working Party Terms of Reference should be amended to the following :-

“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. Also, to assist officers to monitor and review the budget ahead of each quarterly Harbour Committee meeting”

June 2014

Pilotage Review Working Party

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

2. *'act as Duty Holder for the purposes of the Port Marine Safety Code;'*
7. *'establish any sub-committee or working parties as the Committee sees fit'*

In June 2013 the Harbour Committee agreed that a Pilotage Review Working Party should be formed with the following Terms of Reference :-

"to review the Pilotage arrangements for Tor Bay Harbour and to recommend amendments to the Pilotage direction as and when appropriate"

June 2014

Agenda Item 16



Meeting: Harbour Committee

Date: 23rd June 2014

Wards Affected: All Wards in Torbay

Report Title: Tor Bay Harbour Authority Revenue Outturn 2013/14

Executive Lead Contact Details: Non-Executive Function

Supporting Officer Contact Details: Kevin Mowat

Executive Head of Tor Bay Harbour Authority

Tor Bay Harbour Master

 **Telephone: 01803 292429 (Ext 2724)**

 **E.mail: Kevin.Mowat@torbay.gov.uk**

Pete Truman

Principal Accountant

 **Telephone: Ext 7302**

 **E.mail: Pete.Truman@torbay.gov.uk**

1. Purpose and Introduction

1.1 This report provides Members with the details of the Tor Bay Harbour Authority final expenditure and income figures against budget targets for 2013/14.

2. Proposed Decision

2.1 That the report is noted.

Supporting Information

3. Position

3.1 The Tor Bay Harbour Authority budget for 2013/14, based on a 2.8% increase in harbour charges, was approved by Council on 17th December 2012.

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

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

	Original Budget 2013/14	Revised Budget 2013/14	Outturn 2013/14
	£000	£000	£000
Torquay and Paignton Harbours Surplus/(Deficit)	(19)	6	48
Brixham Harbour Surplus/(Deficit)	(15)	(27)	(53)

- 3.4 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.
- 3.5 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 £1,938.39 (excl VAT) and which were spread across both harbour accounts.
- 3.6 The Harbour's liability for prudential borrowing is detailed in the following table:

Capital Scheme	Amount Borrowed	Start of Repayments	Principal outstanding at 31st March 2014
Town Dock (Torquay Harbour)	£1,140,000	2008/09	£836,642
Haldon Pier (Torquay Harbour)	£1,200,000	2010/11	£1,084,157
Brixham Harbour New Fish Quay Development	£4,750,000	2011/12	£4,365,151
Torquay Inner Harbour pontoons (Inner Dock)	£800,000	2014/15	£800,000
	TOTAL		£7,085,950

- 3.7 The Tor Bay Harbour Authority debt position at 31st March 2014 is set out in the table below:-

	Corporate Debtor System		HMS	
	Unpaid by up to 60 days	Unpaid over 60 days	Unpaid by up to 60 days	Unpaid over 60 days
Debt outstanding	£162k	£38k	£737k	£43k
Bad Debt Provision	£16k		N/A	N/A

The Harbour Management System (HMS) debt does not have a separate bad debt provision because the income is not credited until it is received. However, following the advice from an internal audit report the Executive Head of Tor Bay Harbour Authority has determined that the overall debt position should be shown to the Harbour Committee on each budget monitoring report. The large element of unpaid debt up to 60 days on HMS relates to accounts raised in advance for the 2014/15

year. The high element on the corporate debt system outstanding up to 60 days reflect property rental invoices raised in advance of the first quarter of 2014/15.

7. Consultation

7.1 The Harbour Outturn position has been shared with the Harbour Liaison Forums.

8. Risks

8.1 There are no risks associated with this report.

Appendices

Appendix 1 – Harbour Revenue Accounts Outturn 2013/14

Additional Information

None

TORQUAY and PAIGNTON HARBOURS

Expenditure	2013/14 Original Budget £ ,000	2013/14 Revised Budget £,000	2013/14 Outturn £ ,000	Notes
Operations and Maintenance :-				
Harbour Attendants Salaries	144	141	141	1
Repairs and Maintenance	153	103	109	2
Repairs and Maintenance - Storm Damage	0	67	22	3
Rent Concessions	2	2	2	
Other Operating Costs	105	138	137	4
Town Docks Costs	5	11	16	5
Management and Administration :-				
Salaries	181	167	165	6
Internal Support Services	105	81	86	7
External Support Services	19	27	29	8
Other Administration Costs	48	73	88	9
Capital Charges	178	178	177	
Contribution to Patrol Boat Operation	3	(1)	1	10
Contribution to Reserve	0	15	15	11
Dividend to General Fund (based on 6% of total income)	59	61	61	
	<u>1,002</u>	<u>1,063</u>	<u>1,049</u>	
Income				
Rents and Rights :-				
Property and Other Rents/Rights	260	246	246	12
Marina Rental	222	240	237	13
Operating Income :-				
Harbour Dues	79	78	79	
Visitor and Slipway	41	50	50	14
Mooring fees	69	78	82	14
Town Dock	250	253	252	
Boat and Trailer parking	37	33	34	
Other Income	25	45	50	15
Rebate of NNDR charges	0	15	15	11
Contribution from Reserve	0	30	30	16
Contribution from General Fund - Storm Damage	0	0	22	17
	<u>983</u>	<u>1,068</u>	<u>1,097</u>	
Operating Surplus/(Deficit)	<u>(19)</u>	<u>5</u>	<u>48</u>	

RESERVE FUND			
Opening Balance as at 1st April 2012		621	
Interest Receivable		6	
Net Surplus / (Deficit) from Revenue Account		48	
Contribution from Revenue Account		15	11
Withdrawals - Capital Financing		(30)	16
Closing Balance as at 31st March 2013		<u>660</u>	

Note: In line with Harbour Committee minute 398 (5) the minimum Reserve level is **£197k** based on 20% of budgeted turnover to meet any deficit in the revenue budget or winter storm damage. The balance is earmarked for harbour related capital projects.

TORQUAY AND PAIGNTON HARBOURS

NOTES

- 1 A Harbour Assistant post was vacant for a brief period.
- 2 Maintenance was reduced at Torquay Harbour during the year.
- 3 Costs relating to damage caused by the severe storms in February 2014 have been funded corporately in anticipation of funding from central government (Bellwin) and Environment Agency schemes. The Outturn reflects works ordered and completed in 2013/14. A further £45k of estimated works is still to be programmed.
- 4 Investigative works at Torquay Inner Harbour were carried out ahead of the planned pontooning scheme. The Executive Head of Tor Bay Harbour Authority reviewed the marine insurance cover and approved additional cover for specific risks.
- 5 New power and water supply points were installed on the Torquay Town Dock.
- 6 The Outturn reflects the waiving of superannuation contributions by some employees. Further savings occurred through the vacancy in an Admin Assistant post which was frozen from September to the end of the year.
- 7 Central Support Charges reduced as a result of budget reduction measures implemented across the Council. Additional charges were received from the Engineers Department.
- 8 Additional costs were incurred in connection with the review of Harbour rating assessment and the resulting rebate (see note 11)
- 9 Costs relating to the Port Masterplan were carried forward from the previous financial year with a corresponding contribution from the Reserve (see note 16). Additional costs were incurred in securing European Interreg funding.
- 10 Operational efficiencies were applied to the Patrol Boat operation to reduce the operating deficit.
- 11 A specific contribution to the Reserve was authorised by the Executive Head of Tor Bay Harbour reflecting the windfall rebate of National Non-Domestic Rates following a review of the Harbours rating assessment.
- 12 Budget expectations for rental income at Torquay was over-inflated.
- 13 The Marina turnover for the 2012 trading year was higher than anticipated with the additional benefit falling in the current year.
- 14 Additional income was generated at Torquay Harbour.
- 15 Income levels were boosted by the sale of arrested boats and fish landings at Torquay.
- 16 Contribution to fund the costs of the Port Masterplan (see note 9).
- 17 Corporate funding for repair work completed during the year following the severe storms in February 2014 (see note 3).

BRIXHAM HARBOUR

Expenditure	2013/14 Original Budget £ ,000	2013/14 Revised Budget £,000	2013/14 Outturn £ ,000	Notes
Operations and Maintenance :-				
Harbour Attendants	228	168	165	1/2
Repairs and Maintenance	120	178	207	3
Repairs and Maintenance - Storm Damage	0	12	11	4
Rent Concessions	4	4	4	
Other Operating Costs	352	355	367	5
Management and Administration :-				
Salaries	148	145	147	1
Internal Support Services	88	68	76	6
External Support Services	19	24	26	7
Other Administration Costs	37	102	93	8
Capital Charges	291	291	292	
Leased Properties	0	0	7	
Contribution to Patrol Boat Operation	3	(1)	1	9
Contribution to Reserve	0	43	43	10
Dividend to General Fund (based on 6% of total income)	81	81	83	
	<u>1,371</u>	<u>1,470</u>	<u>1,522</u>	
Income				
Rents and Rights :-				
Rents and Rights	215	228	234	11
Marina Income	162	179	183	12
Operating Income :-				
Harbour Dues	87	82	86	
Visitor and Slipway	13	8	7	13
Mooring fees	138	137	140	
Fish Tolls income	650	620	588	14
Other Income	91	116	158	15
Rebate of NNDR Charges	0	43	43	10
Contribution from Reserve	0	30	30	16
	<u>1,356</u>	<u>1,443</u>	<u>1,469</u>	
Operating Surplus /(Deficit)	<u>(15)</u>	<u>(27)</u>	<u>(53)</u>	

RESERVE FUND			
Opening Balance as at 1st April 2012		523	
Interest Receivable		4	
Net Surplus / (Deficit) from Revenue Account		(53)	
Withdrawals - Capital Financing		(288)	17
Contribution from Revenue Account		43	10
Contributions to Revenue Account		(30)	16
Closing Balance as at 31st March 2013		<u>199</u>	

Note: In line with Harbour Committee minute 398 (5) the minimum Reserve level is **£271k** based on 20% of budgeted turnover to meet any deficit in the revenue budget or winter storm damage. The balance is earmarked for harbour related capital projects.

HARBOUR REVENUE ACCOUNTS - OUTTURN 2013/14

BRIXHAM HARBOUR

NOTES

- 1 The Outturn reflects the waiving of superannuation contributions by some employees.
- 2 A vacancy for the Assistant Harbour Master post was frozen until the end of the financial year and no seasonal attendant was employed during the year.
- 3 Additional costs were incurred with mechanical and electrical maintenance, including unresolved snagging issues from the fish market project.
- 4 Costs relating to damage caused by the extreme winter weather were completed at the close of the financial year and any external funding available will now be applied in 2014/15.
- 5 The Executive Head of Tor Bay Harbour Authority reviewed the marine insurance cover during the year and approved additional cover for specific risks.
- 6 Central Support Charges reduced as a result of budget reduction measures implemented across the Council. Additional charges were received from the Engineers Department.
- 7 Additional costs were incurred in connection with the review of Harbour rating assessment and the resulting rebate (see note 10)
- 8 Costs relating to the Port Masterplan were carried forward from the previous financial year with a corresponding contribution from the Reserve (see note 16). Additional costs were incurred in securing European Interreg funding.
- 9 Operational efficiencies were applied to the Patrol Boat operation to reduce the operating deficit.
- 10 A specific contribution to the Reserve was authorised by the Executive Head of Tor Bay Harbour reflecting the windfall rebate of National Non-Domestic Rates following a review of the Harbours rating assessment.
- 11 Increased income was received in respect of the Fish Quay restaurant unit and boat booking kiosks.
- 12 The Marina turnover for the 2012 trading year was higher than anticipated with the additional benefit falling in the current year.
- 13 Lower than anticipated use of the slipway facility in 2013/14.
- 14 Severe weather in January and February 2014 significantly reduced the level of fish tolls below the revised target figure.
- 15 Other income levels have been boosted by sales of arrested and abandoned craft, along with improved recharging of utilities costs.
- 16 Contribution to fund the costs of the Port Master Plan (see note 8).
- 17 Capital funding for quayside capping repairs, new ladders and new fenders were completed at a final cost of £252k. A further withdrawal of £36k is required to fund residual capital costs relating to the Brixham Regeneration scheme.



Meeting: Harbour Committee

Date: 23rd June 2014

Wards Affected: All wards in Torbay

Report Title: Tor Bay Harbour Authority Budget Monitoring 2014/15

Executive Lead Contact Details: Non-Executive Function

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1. Purpose

- 1.1 This report provides Members with projections of income and expenditure for the year 2014/15 compared with approved budgets.
- 1.2 This report identifies the overall budgetary position for Tor Bay Harbour Authority as at end of May 2014 to enable appropriate action to contain expenditure and maintain reserves at appropriate levels.
- 1.3 The Committee is asked to note that the amended outturn positions of the two harbour accounts and adjustments to the Reserve Funds shown in Appendix 1.
- 1.4 The Committee is asked to note the Executive Head of Harbour Tor Bay Harbour Authority's use of delegated powers to make decisions in relation to the budget allocated to Tor Bay Harbour.
- 1.5 The Committee is asked to note the Harbour Master's use of delegated powers to waive certain harbour charges, which this financial year amounted to £1,297.86 (excl VAT) and which were spread across both Harbour accounts. No additional charges have been levied.

2. Summary

- 2.1 The Tor Bay Harbour Authority budget was approved by the Harbour Committee on 16th December 2013.

- 2.2 This is the first budget monitoring report presented to the Harbour Committee for the financial year 2014/15.
- 2.3 Torquay Harbour has benefited from additional income from the successful inner harbour pontoon scheme. However, the Torquay & Paignton account also reflects costs resulting from the severe storms earlier in the year for which funding sources are being investigated. The Brixham account is expecting to suffer from a decline in fish toll income.

Supporting Information

3. Position

3.1 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.

3.2 The performance against budget is summarised below:

	Original Budget 2014/15	Projected Outturn 2014/15
	£000	£000
Torquay and Paignton Harbours Surplus/(Deficit)	(9)	(17)
Brixham Harbour Surplus/(Deficit)	(35)	(64)

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

	Total Budget	Actual to Date (including prior years)	Projected Outturn	Notes
	£000	£000	£000	
Environment Agency grant funding for Torquay Harbour – Haldon & Princess Piers	1,272	337	1,272	(i)
Brixham Harbour – Various Repairs	240	252	252	(ii)
Brixham Breakwater Repairs	100	100	100	(iii)
Torquay Inner Harbour Pontoons	800	770	912	(v)

- (i) An initial application for external funding from the Environment Agency was successful and the grant of approximately £1.3m is currently being used for Phase 2 which commenced in the autumn of 2011 and further work followed in winter 2012. Work towards a further bid of funding from the Environment Agency is now being finalised. In May 2014 a Partnership Funding Bid was submitted to the Local Enterprise Partnership for £4.57m towards essential flood defence work for these Piers.
- (ii) Essential repair work was required to the quay edge capping, access ladders and fenders within the fishing vessel basin. Funding for this spend has been approved from the Brixham Harbour reserve and work is now complete. The final cost has slightly exceeded the original budget.
- (iii) The Environment Agency (EA) has approved £150k within their medium-term financial plan (2014/15) but the Council's Engineers have now secured Local Levy funding from the EA to undertake these works in 2014.
- (iv) This project was approved by Council in February 2013 for delivery in March 2014. Unfortunately, additional costs have been incurred due to the need to rock-socket some of the steel piles.

3.4 The Harbour's liability for prudential borrowing is detailed in the following table

Capital Scheme	Amount Borrowed	Start of Repayments	Principal outstanding at 1st April 2014
Town Dock (Torquay Harbour)	£1,140,000	2008/09	£836,642
Haldon Pier (Torquay Harbour)	£1,200,000	2010/11	£1,084,157
Brixham Harbour New Fish Quay Development	£4,750,000	2011/12	£4,365,151
Torquay Inner Harbour Pontoons (Inner Dock)	£800,000	2014/15	£800,000
		TOTAL	£7,085,950

3.5 The Tor Bay harbour Authority debt position at the end of May 2014 is set out in the table below:-

	Corporate Debtor System		HMS	
	Unpaid by up to 60 days	Unpaid over 60 days	Unpaid by up to 60 days	Unpaid over 60 days
Debt outstanding	£19k	£66k	£67k	£144k
Bad Debt Provision	£16k		N/A	

The Harbour Management System (HMS) debt does not have a separate bad debt provision because the income is not credited until it is received. However, following the recent internal audit report the Executive Head of Torbay Harbour Authority has determined that the overall debt position should be shown to the Harbour Committee on each budget monitoring report.

3.6 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 1.5).

3.7 Harbour Committee minute 398 (5) from December 2011 states the following :-

"That, as recommended by the Harbour Committee's Budget Working Party, each harbour reserve fund is split with 20% of budgeted turnover ring-fenced to meet any deficit in the revenue budget or winter storm damage and the balance ring-fenced to fund harbour related capital projects."

Consequently the Executive Head of Tor Bay Harbour Authority, in consultation with the Chairman of the Harbour Committee, has produced a list of Harbour Reserve Funds projects attached as Appendix 2. The Committee is asked to note this list and the obvious ongoing need for healthy Harbour Reserve Funds.

3.8 In December 2013 the Harbour Committee was reminded that Torbay Council's General Fund budget was facing a significant shortfall of some £22m over the period 2014/15 through 2015/16 and that all council business units had been asked to make further savings and/or look at income opportunities to help reduce the corporate deficit. Consequently the Harbour Committee agreed to make an additional contribution to the Council's General Fund to the equivalent value of £150,000 for the years 2014/15 and 2015/16. Since December 2013 further pressure has been placed on the Council's overall budget position and the Executive Head of Tor Bay Harbour Authority and the Chair of the Harbour Committee have been asked to consider a further contribution to the Council's General Fund of £160,000 for 2015/16.

3.9 The additional request for funding outlined in 3.8 above has been considered by the Harbour Committee's Budget Review Working Party to see what could be achieved. As a result of this process the Budget Review Working Party will be able to make a number of recommendations (see Appendix 3) that would achieve the requested level of contribution, when the Harbour Committee sets the harbour budget in December. However, the Harbour Committee's Budget Review Working Party were very clear that such a contribution should be viewed as a one-off event and was not in their opinion something that could be sustained.

3.10 It is important for the Council's overall budget setting process that the Harbour Committee considers, in principle, whether or not the recommendations set out in Appendix 3 can be achieved when the 2015/16 Tor Bay Harbour Authority budget is set later this year.

3.11 If the Council continues to request a significant contribution to the General Fund in the form of a cash dividend and asset rental fee there is a significant risk that the Harbour Authority will be unable to remain self funding. In that situation the Harbour Authority would require a precept from the General Fund and this scenario would be contrary to government best practice for the management of municipal ports.

Appendices

Appendix 1	Harbour Revenue Accounts for 2014/15
Appendix 2	Harbour Reserve Funds Project List
Appendix 3	Proposed Budget Adjustments for 2015/16

Additional Information

None

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Appendix 1

HARBOUR REVENUE ACCOUNTS 2014/15

Appendix 1

TORQUAY and PAIGNTON HARBOURS

Expenditure	2014/15 Original Budget £ ,000	2014/15 Profiled Budget £ ,000	2014/15 Actual to Date £ ,000	2014/15 Projected Outturn £ ,000	Notes
Operations and Maintenance :-					
Harbour Attendants Salaries and Wages	143	25	21	143	1
Repairs and Maintenance	123	14	13	123	
Repairs and Maintenance-Storm Damage	0	0	42	42	2
Rent Concessions	2	0	0	2	
Other Operating Costs	143	61	64	143	
Management and Administration :-					
Salaries	139	21	15	139	1
Internal Support Services	83	0	0	83	
External Support Services	21	5	16	21	
Other Administration Costs	77	22	30	77	
Capital Charges	232	0	0	232	
Contribution to Patrol Boat Operation	3	0	0	3	
Contbn to General Fund - Cash Dividend	65	0	0	65	
Contbn to General Fund - Asset Rental	64	0	0	64	
	1,095	148	201	1,137	
Income					
Rents and Rights :-					
Property and Other Rents/Rights	262	64	63	262	
Marina Rental	227	20	20	227	
Operating Income :-					
Harbour Dues	54	45	38	54	
Visitor and Slipway	43	12	8	43	
Mooring fees	42	30	39	42	
Town Dock	265	255	237	265	
Torquay Inner Harbour Pontoons	126	95	132	160	3
Boat and Trailer parking	38	35	31	38	
Other Income	29	14	11	29	
	1,086	570	579	1,120	
Interreg Grants received	0	0	17	15	4
Contribution to Reserve	0	0	(17)	(15)	4
Operating Surplus /(Deficit)	(9)	422	378	(17)	

RESERVE FUND	
Opening Balance as at 1st April	660
Interest Receivable	5
Net Surplus / (Deficit) from Revenue Account	(17)
Withdrawal - Inner Harbour Pontoons	(112)
Contribution from Revenue Account	15
Expected Closing Balance as at 31st March	551

Note: In line with Harbour Committee minute 398 (5) December 2011 the minimum Reserve level at year end 2014/15 is **£205k** based on 20% of budgeted turnover to meet any deficit in the revenue budget or winter storm damage. The balance is earmarked for harbour related capital projects.

HARBOUR REVENUE ACCOUNTS 2014/15

NOTES

TORQUAY & PAIGNTON HARBOURS

- 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 this stage as employees are entitled to join the scheme at any time.
- 2 Repair work to pontoon walkways have now been completed. These costs are ineligible for inclusion on the emergency Bellwin grant scheme but other sources of funding are being pursued.
- 3 The budgeted income target for new inner harbour berths was prudently based on 75% - 80% capacity. Actual capacity is already close to 100%.
- 4 The first claim for Interreg European funding has now been received in relation to the Port Masterplan and supporting consultancy costs. The grant income has been transferred to the reserve to repay funding of the original costs in previous years.
- 5 Additional costs of the Inner Harbour Pontoon capital scheme have been met from the reserve instead of increasing the prudential borrowing liability.

HARBOUR REVENUE ACCOUNTS 2014/15

BRIXHAM HARBOUR

Expenditure	2014/15 Original Budget £ ,000	2014/15 Profiled Budget £ ,000	2014/15 Actual to Date £ ,000	2014/15 Projected Outturn £ ,000	
Operations and Maintenance :-					
Harbour Attendants Salaries and Wages	223	35	28	223	1
Repairs and Maintenance	120	7	2	120	
Rent Concessions	2	0	0	2	
Other Operating Costs	375	104	71	354	2
Management and Administration :-					
Salaries	117	33	20	117	1
Internal Support Services	70	0	0	70	
External Support Services	21	16	16	21	
Other Administration Costs	61	37	20	61	
Capital Charges	292	0	0	292	
Contribution to Patrol Boat Operation	3	0	0	3	
Contbn to General Fund - Cash Dividend	83	0	0	83	
Contbn to General Fund - Asset Rental	61	0	0	61	
	1,428	232	157	1,407	
Income					
Rents and Rights :-					
Rents and Rights	222	50	64	222	
Marina Income	170	20	20	170	
Operating Income :-					
Harbour Dues	95	63	63	95	
Visitor and Slipway	13	2	2	13	
Mooring fees	142	104	104	142	
Fish Tolls income	650	105	61	600	3
Other Income	101	21	20	101	
	1,393	365	334	1,343	
Operating Surplus /(Deficit)					
Interreg Grants received	0	0	17	20	4
Contribution to Reserve	0	0	(17)	(20)	4
Net Surplus/Deficit to Reserve	(35)	133	177	(64)	

RESERVE FUND	
Opening Balance as at 1st April	199
Interest Receivable	2
Net Surplus / (Deficit) from Revenue Account	(64)
Withdrawals - Capital Financing	0
Contribution from Revenue Account	20
Closing Balance as at 31st March	157

Note: In line with Harbour Committee minute 398 (5) December 2011 the minimum Reserve level at year end 2014/15 is £278k based on 20% of budgeted turnover to meet any deficit in the revenue budget or winter storm damage. The balance is earmarked for harbour related capital projects.

HARBOUR REVENUE ACCOUNTS 2014/15

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 this stage as employees are entitled to join the scheme at any time.
- 2 The effect of the harbour rating review was not fully reflected within the approved budget.
- 3 The anticipated level of Fish Toll income has been reduced to reflect the previous year outturn and industry projections for the current year.
- 4 The first claim for Interreg European funding has now been received in relation to the Port Masterplan and supporting consultancy costs. The grant income has been transferred to the reserve to repay funding of the original costs in previous years.

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Appendix 2

Appendix 2 - Tor Bay Harbour Authority - Reserve Funds Project List

Harbour Committee Minute 398 (5) - December 2011

“That, as recommended by the Harbour Committee’s Budget Working Party, each harbour reserve fund is split with 20% of budgeted turnover ring-fenced to meet any deficit in the revenue budget or winter storm damage and the balance ring-fenced to fund harbour related capital projects.”

	Brixham	Torquay & Paignton
	£	£
Reserve Balance at 31st March 2014	199,324	660,359
Planned withdrawals in year	0	(112,000)
Planned contributions in year	19,669	15,208
Anticipated interest for year	1,400	4,800
Projected Surplus/(Deficit) for year	(64,000)	(17,000)
Projected Reserve Balance at 31st March 2015	156,393	551,367
less: 20% of Budgeted Turnover	271,200	196,600
= Balance for Projects	(114,807)	354,767
Total costs of proposed Projects (as listed below).	338,000	791,800
<i>Shortfall in Reserve funding available</i>	<i>(452,807)</i>	<i>(437,033)</i>

Projects	Brixham	Torquay & Paignton	Timeframe
Tor Bay Harbour - HMS software upgrade	£25,000	£25,000	Short
Torquay harbour - Haldon Pier fender replacement		£60,000	Short
Torquay harbour - Princess Pier underwater urgent repairs		£50,000	Short
Torquay harbour - Beacon Quay Wi-Fi		£7,000	Short
Torquay harbour - Old Fish Quay full structural survey		£10,000	Short

Brixham harbour - new work boat	£45,000		Medium
Torquay harbour - Haldon Pier brow		£80,000	Medium
Torquay harbour - Old Fish Quay refurbishment		£200,000	Medium
Brixham harbour – photo-voltaic solar panels on roof *	£48,000		Medium
Torquay harbour - fishermen's pontoons		£24,900	Medium
Torquay harbour – office/welfare improvements		£24,900	Medium
Torquay harbour - Inner Harbour Slipway repairs		£75,000	Medium
Torquay harbour - South Pier cathodic protection		£30,000	Medium
Tor Bay Harbour Patrol Boat replacement	£25,000	£25,000	Medium
Brixham harbour - Maritime E training programme *	£45,000		Medium
Torquay harbour - new dinghy park & seaward slipway feasibility study		£30,000	Medium
Torquay harbour - Haldon Pier crane		£50,000	Long
Brixham Breakwater remedial repairs	£150,000		Long
Torquay harbour - Fuel Station refurbishment		£100,000	Long
TOTALS	£338,000	£791,800	

Capital Projects over £25k to be listed on the Council's Capital Plan which is approved by full Council.

* Interreg funding opportunity (FLIP)

KEY
Capital
Revenue



Current financial year
0 to 12 months
12 to 24 months
24 to 60 months

2014-15
Short
Medium
Long

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Appendix 3

Appendix 3

Tor Bay Harbour Authority

Proposed Budget Adjustments 2015/16

	Total £
<u>Expected Budget Pressures</u>	
Increase in Superannuation contributions	19,542
Further Central Support reductions	-10,833
Environment recharges not included in Central Support	8,720
Additional mechanical & engineering costs at Brixham Fish Quay	10,790
Shortfall in potential Green Book savings (Employee terms and conditions)	9,000
Shortfall in advertising income	5,000
Shortfall in Fish Tolls income	50,000
Brixham service charges falling short of expenditure	10,000
Total	102,219
Requested Corporate Savings Target	160,000
Total Savings Required for 2015/16	<u>262,219</u>

2015/16 Proposed savings/new income

Torquay & Paignton surplus 2013/14 (from Reserve)	48,000
Torquay & Paignton surplus 2014/15	48,000
Reduced maintenance budget - Torquay/Paignton	50,000
Rent Blackball Lane	3,000
Additional inner harbour income at Torquay	40,000
Car Parking at Brixham	13,000
Streamline to Icon	3,000
NNDR budget error adjustment	14,000
Increased miscellaneous income	4,000
Saving on Interreg - project ended	45,000
Total	<u>268,000</u>



Meeting: Harbour Committee

Date: 23rd June 2014

Wards Affected: All wards in Torbay

Report Title: Tor Bay Harbour Authority Audit Plan – 2013~2018

Executive Lead Contact Details: Non-Executive Function

Supporting Officer Contact Details: Kevin Mowat

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

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1. Purpose

- 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, the Accounts and Audit Regulations 2003 (as amended), and the Accounts and Audit Regulations 2006 and 2011 which require that the Authority make provision for Internal Audit. 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 risk based, 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 a copy or executive summary of all internal audit reports relating to Tor Bay Harbour.

2. **Proposed Decision**

- 2.1 **That the Committee consider and agree in principle the amended Tor Bay Harbour Audit Plan for 2013~2018 shown in Appendix 1.**

3. **Action Needed**

- 3.1 The Executive Head of Tor Bay Harbour Authority needs to ensure that the agreed Audit Plan is implemented.

4. **Summary**

- 4.1 To inform the Harbour Committee of the arrangements and work plan for the Audit of the Tor Bay Harbour Authority business unit between 2013 and 2018.
- 4.2 To ensure key issues are communicated to and actioned by the Committee to ensure risks are managed and the Internal Control Framework is sound.
- 4.3 To ask the Committee to endorse the outline Audit Plan for 2013~2018 and advise of any areas of concern they feel would benefit from Audit input.
- 4.4 The Devon Audit Partnership will undertake the majority of the audits and their work will be in accordance with the guidelines set down in the Public Sector Internal Audit Standards. 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.

Supporting Information

5. **Position**

- 5.1 The Council's Audit Committee deals with the local authority's corporate responsibility under the Accounts and Audit Regulations 2003 (as amended) and the Accounts and Audit Regulations 2006 and 2011 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.

- 5.2 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.
- 5.3 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.
- 5.4 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 2009 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.
- 5.5 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. In June 2011 the Harbour Committee approved the first formal Audit Plan specifically for Tor Bay Harbour Authority and that plan is now reviewed by the Committee in June each year.
- 5.6 As part of the previous Audit Plan an Audit Report of the Harbour Authority's IT System, Administration & Security was concluded in September 2012 and an overview of the results was presented to the Harbour Committee in March 2013. In April 2014 an audit of the Harbour Authority's management of assets was concluded and the Audit Report is pending.
- 5.7 The audit plan for 2013~18 (Appendix 1) 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.
- 5.8 The audit plan is matched to available resources and should be delivered within the budget available.
- 5.9 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".
- 5.10 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.
- 5.11 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.

6. **Possibilities and Options**

- 6.1 The issues raised in this report are predominantly for information and as such there is no requirement to consider alternative options.
- 6.2 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.
- 6.3 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.

7. Preferred Solution/Option

7.1 That the Committee agrees in principle to the amended Tor Bay Harbour Audit Plan for 2013~2018 shown in Appendix 1.

8. Consultation

8.1 The draft audit plan has been subject to consultation with the Executive Head of Tor Bay Harbour Authority and the business unit's management team.

9. Risks

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

9.2 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.

9.3 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.

9.4 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.

Appendices

Appendix 1 Tor Bay Harbour Authority Audit Plan – 2013~2018

Additional Information

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

Report June/2013 Tor Bay Harbour Authority Audit Plan – 2011~2017



Appendix 1 Rolling Audit Plan for Tor Bay Harbour Authority – 2013 ~ 2018

Audit Entity (Name)	Audit Entity Description (Coverage)	Audit Type	Priority Score (linked to risk assessment)	Last Audited	Next Scheduled Audit
Port Marine Safety Code	Compliance with the Code – audit undertaken by independent “designated Person” (not Devon Audit Partnership)	Operational Risk	63.13	November 2013	November 2014 2 – 3 days
Asset Management	Harbour Estate and Asset Management; Capital Project planning, management and evaluation; Accommodation Planning.	Operational Risk	67.05	Feb - April 2014 (Report pending)	Not yet agreed
Risk Management	Risk Management – Operational & Business; Insurances; Health & Safety; Business Continuity / Contingency Planning.	Operational Risk	60.60	See Note 3	2015/16
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
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	2017/18

Cont.....

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 (old score)	Sept – Dec 2011	Not yet agreed
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 (old score)	September 2012	Not yet agreed

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

2017/18 will be the final year of the initial rolling audit plan conceived in 2011. The content and prioritisation of the rolling plan is reconsidered at least annually; however a new rolling audit plan will be devised in 2017/18 for commencement in 2018/19.

Note 4

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

June 2014

Agenda Item 21



Meeting: Harbour Committee

Date: 23rd June 2014

Wards Affected: All wards in Torbay

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

Executive Lead Contact Details: Non-Executive Function

Supporting Officer Contact Details: Kevin Mowat
Executive Head of Tor Bay Harbour Authority
Torbay Harbour Master

 **Telephone: 01803 292429**

 **E.mail: Kevin.Mowat@torbay.gov.uk**

1. Purpose

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

2. Proposed Decision

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

3. Action Needed

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

4. Summary

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

- 4.3 The safe and proper use of the harbour is also regulated directly via the Tor Bay Harbour Act 1970 and subsequent local harbour acts and/or Orders.
- 4.4 Occasionally marine incidents occur in the harbour. Such incidents may involve death, serious injury, pollution and other undesirable outcomes and they may involve breaches of national or local laws. There may be the need on the part of the harbour authority to initiate enforcement action that may lead to prosecution in their own right or through an agency of another authority such as the Police, the Environment Agency or the Maritime and Coastguard Agency.
- 4.4 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.

Supporting Information

5. Position

- 5.1 The original Enforcement and Prosecution Policy was published in 2004 and the current version was approved by the Harbour Committee on 11th June 2012. Appendix 2 shows the existing policy and Appendix 1 shows the revised and proposed policy. Some changes are being recommended to the existing Policy to provide some minor improvements in line with the Council's Community Safety Enforcement Policy.
- 5.2 The Harbour Authority has statutory powers to regulate the conduct of vessels in the harbour's jurisdiction and to assist in managing the risks of marine operations. To these ends, enforcement action will sometimes be appropriate.
- 5.3 The Harbour Authority recognises that most harbour users want to comply with the law. Therefore, where it can, the Harbour Authority will help users to meet their legal obligations without unnecessary expense, while taking firm action – including prosecution where appropriate – against those who flout the law or act irresponsibly.
- 5.4 The purpose of any enforcement action is to protect the safety of residents, harbour users and visitors to Tor Bay Harbour. The Harbour Authority has the options of negotiation, education and persuasion and, where a criminal offence has occurred, of cautioning or prosecuting the offender.
- 5.5 The Enforcement and Prosecution Policy covers the following areas :-
- Aims of the Policy
 - Guiding Principles
 - Clear Standards
 - Consistency

- Targeting & Proportionality
- Monitoring

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

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

6. Possibilities and Options

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

7. Preferred Solution/Option

7.1 To approve the recommendation set out in 2.1 above.

8. Consultation

8.1 The Enforcement and Prosecution Policy is a well-established policy that has been available to the public, via the website, for many years. As the latest amendments are only of a minor nature no external consultation has been undertaken.

9. Risks

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

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

9.1 There are no remaining risks.

Appendices

Appendix 1 Proposed Tor Bay Harbour Authority Enforcement and Prosecution Policy – June 2014

Appendix 2 Existing Tor Bay Harbour Authority Enforcement and Prosecution Policy – June 2012

Additional Information

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

Tor Bay Harbour Authority Enforcement and Prosecution Policy – June 2012

Torbay Council's Community Safety Enforcement Policy

The Harbour Authority will reserve any right to withhold an 'exchange' especially if customers have found to have been sub-letting, not conforming to the local TQ1-5 post code restriction or have a history of late payment.



Mooring Exchange Scheme – Application

(TOWN DOCK & INNER DOCK HARBOUR ONLY)

Name:

Boat Name:

LOA:

Facility Pontoon..... Number.....

I wish to move to a :- (circle)

6m 8m 9.14m 10m 12m berth.

Signature:

Date:

Please return completed form to the Harbour Office

APPENDIX 1 - PROPOSED



TOR BAY HARBOUR AUTHORITY

ENFORCEMENT POLICY

Introduction

One of the functions of Tor Bay Harbour Authority is to act as a regulator and enforcer for a range of legal duties and powers contained in Acts of Parliament, Regulations and Orders (including various harbour byelaws).

The purpose of enforcement is to regulate the use of the harbour and harbour estate to enable business to be conducted efficiently and safely; thereby protecting harbour users, local residents and visitors to Tor Bay Harbour and safeguarding the environment. Enforcement is a very broad term which covers a large spectrum of work and includes offering advice and information through to bringing prosecutions for more serious offences.

The Tor Bay Harbour Authority team is responsible for a range of harbour and marine legislation. This policy details the standards and guidance that will apply when the harbour officers undertake their regulatory duties.

Aims

The Harbour Authority will :-

- Seek to achieve compliance in a fair, consistent, proportional, transparent and targeted manner;
- Seek to be clear, open and helpful in its approach to enforcement;
- Seek to target enforcement resources at areas of highest risk, including non-compliant businesses and individuals;
- Carry out its activities in a way that supports those they regulate to comply and improve.

In doing so it will act in accordance with national guidance and standards and any supplementary local policies.

Guiding Principles

The Guiding Principles that the Harbour Authority will have regard to when undertaking their regulatory and enforcement role are :-

- Any decision regarding enforcement action will be impartial and objective, and will not be influenced by race, gender, politics, sexual orientation, disability or religious beliefs of any alleged offender, victim or witness; such decisions will not be affected by improper or undue pressure from any source;
- The Harbour Authority believes that the majority of individuals and businesses wish to comply with legal requirements, and should be assisted to do so;
- We will give positive feedback, wherever possible, to encourage and reinforce good practices;
- In dealing with any enforcement situation, the Harbour Authority's actions will be proportionate to the scale, seriousness and intention of any non-compliance;
- There will be consistency of enforcement, whilst recognising that there are different, satisfactory solutions to each issue. We will refrain from being over-prescriptive whenever possible;
- We will provide a variety of opportunities for those we regulate to engage with us;
- This policy is built around a process of escalation. Except in the most serious cases such as a serious breach or where advice/warnings have not been heeded, adequate opportunity will be given to rectify non-compliance before formal legal action commences;
- Prosecution will normally only be considered where it is in the public interest to do so and where there have been serious breaches or where other enforcement measures have failed;
- Regard shall be had to the relevant legislation and codes of practice which protect the rights of the individual and guide enforcement action (e.g. Human Rights Act, Code for Crown Prosecutors, Regulators ~~Compliance Code~~);
- Regard shall be had to the Council/Harbour Authority's own policies in respect of Customer Care, Equal Opportunities, etc.

Clear Standards

- Matters relating to enforcement and regulation will be dealt with promptly;
- Officers will announce themselves on arrival and show identification (unless they are already well known to the person). Officers will always explain the purpose of their visit/enquiry;
- Officers will provide their name and contact details to those persons or businesses with whom they are in contact concerning a regulatory or enforcement matter;
- Complaints relating to enforcement or regulatory matters will normally only be dealt with if the name and address of the complainant is given. Any such identification will be treated in confidence, but may need to be disclosed (with prior consent) should formal legal proceedings be taken against the person or

business to which the complaint relates. Anonymous complaints may however be investigated if the matter relates to a serious health & safety or navigational issue. etc;

- Officers will not be able to act as consultants or legal advisors to individuals or businesses, but will be available (by appointment if necessary) to discuss general issues or matters of specific enforcement with the aim of assisting or guiding compliance;
- Officers will be professional, courteous and helpful in their conduct of regulatory or enforcement matters, and wherever possible will seek to work with individuals and businesses towards compliance;
- Officers will endeavour to provide advice in a clear and simple manner and where any corrective or remedial action is necessary, an explanation will be given as to why it is necessary, and over what timescale it is required. Where non-compliance may result in further enforcement action or prosecution the matter will normally be confirmed in writing by way of a "Formal Warning";
- Where necessary, we will provide leaflets and other information in languages other than English to assist individuals in complying with our requirements and recommendations;
- Officers will generally seek an informal resolution to cases of non-compliance except where immediate formal enforcement action is required. (e.g. serious issues relating to the safety of the harbour or harbour estate, including the control of pollution, etc);
- Where there is known to be an involvement of any other enforcement agency, or any case involves joint enforcement arrangements, the Harbour Authority will consult and share intelligence with that other agency prior to taking any formal enforcement action;
- Where any charges or fees are to be levied for a service, individuals and businesses will be informed of the cost or rate of charge prior to the service being provided. All fees and charges are published on the Tor Bay Harbour website;
- Any dissatisfaction with the quality and/or advice given or any complaint concerning the harbour authority's failure to comply with procedures, rules, statutory obligation or published service standards will be dealt with under the Council's Corporate Complaint procedure. Copies of this procedure are available from offices of the Council, or by accessing the Council's Website (www.torbay.gov.uk).

Consistency

Consistent enforcement action is desirable, but uniformity in approach would not always recognise individual circumstances. We will encourage consistency of approach by :-

- Providing appropriate training and supervision of officers;
- Ensuring compliance with the standards set out in this policy;

- Recognising that we should not normally take formal enforcement action or prosecution in the case of minor infringements;
- Recognising that in some situations, we have no legal discretion but to pursue enforcement action;
- Taking into consideration the guidance issued by Government Departments and other national agencies, e.g. Department for Transport, Maritime & Coastguard Agency, Health and Safety Executive, etc.

Targeting and Proportionality

We will not initiate formal enforcement procedures without a clear need to do so. We believe that through a positive, proactive approach, we can achieve higher compliance rates and better overall outcome than by using reactive enforcement action.

Any formal enforcement procedures will :-

- Aim to change the behaviour of the offender;
- Aim to eliminate any financial gain or benefit to the individual or business from non-compliance;
- Be responsive and consider what is the most appropriate sanction for the particular offender and regulatory issue;
- Be proportionate to the nature of the offence and the harm caused;
- Aim to deter future non-compliance.

Our greatest enforcement effort will be where an assessment shows that both :-

- (i) A compliance breach or breaches would pose a serious risk; and
- (ii) There is a high likelihood of non-compliance.

Monitoring

To ensure that this policy is effective, a number of monitoring and feedback mechanisms will be utilised :-

- Opportunities for businesses and members of the public to comment on the policy;
- [Feedback welcomed through the Tor Bay Harbour website;](#)
- Periodic consultation with harbour stakeholders, e.g. the Harbour Liaison Forums;
- Though open discussion with the public and elected members as part of the Council's Harbour Committee's cycle of business.

Working With Others

The Harbour Authority will work closely with other Council services and our aim is to provide a streamlined service to you.

We are part of a much wider regulatory system in Torbay and have good working relationships with other regulators such as the Maritime & Coastguard Agency, Environment Agency, Police, etc and this enables us to have a much more joined up and consistent service. This includes sharing information and data on compliance and risk, where the law allows, to help target regulatory resources.

June 2014

TOR BAY HARBOUR AUTHORITY

PROSECUTION POLICY

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 :-

- a) Unlawful acts or omissions have seriously or repeatedly compromised the safe and efficient use of the harbour/harbour estate or the environment;
- b) The offending created/posed a risk to public safety or to the environment;
- c) Through blatant action or inaction risks causing pollution have been exacerbated;
- d) Where there is disregard for safe practice;
- e) The offence involves a failure to comply in full or in part with a statutory notice, including a Harbour Master's direction;
- f) The offender has relevant previous convictions or has been cautioned for a relevant matter;
- g) The offender has flagrantly breached harbour bye-laws or other harbour legislation and has ignored advice or requests to remedy breaches of such legal requirements;
- h) 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;
- i) The offence, whether or not serious in itself, is widespread in Tor Bay Harbour;
- j) 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 and the individual circumstances of each case.

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

June 2014

Legal Proceedings Decision Sheet

	For Prosecution (= -1)	Against Prosecution (= +1)	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 the harbour authority 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 /Council reputation tarnished if prosecution is not pursued.	Prosecution may be seen as over zealous enforcement.	
13.	Prosecution will secure definite results, e.g. raise harbour safety standards	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 <u>Harbour Authority</u> identified problems on a previous occasion.	Regulator <u>Harbour Authority</u> did not identify problems on a previous occasion.	
Total			

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 :-

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

We welcome your feedback at any time. You can provide feedback in the following ways:

Website: www.torbay.gov.uk/feedback

Email: complaints@torbay.gov.uk

APPENDIX 2 - EXISTING



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June 2012



TOR BAY HARBOUR AUTHORITY

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- d) Where there is disregard for safe practice
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June 2012

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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.	Council reputation tarnished if prosecution is not pursued.	Prosecution may be seen as over zealous enforcement.	
13.	Prosecution will secure definite results, e.g. raise harbour safety standards	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.	
Total			

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 :-

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

Agenda Item 22

Table of Accident/Incident Statistics 2013/14

Year commenced 1 st December 2013	Year to 7 th March 2014	Year to 11 th June 2014	Year to 10 th Sept 2014	Year to 3 rd Dec 2014
Number of recorded accidents/incidents	10	22		

Type of Accident/Incident	Number	Number	Number	Number
Fatalities	1	1		
Hospitalisation	1	3		
Navigational	0	2		
Fire	0	0		
Abuse or antisocial behaviour afloat or ashore	0	0		
Pollution	0	0		

Type of Accident/Incident	Incident Code	Incident Code	Incident Code	Incident Code
Fatalities	SU	SU		
Hospitalisation	ASU	ASU, SWIM, STF.		
Navigational	0	MF, C.		
Fire	0	0		
Abuse or antisocial behaviour afloat or ashore	0	0		
Pollution	0	0		

MCA & HSE Reportable Accidents/Incidents

Type of Incident	Code	Type of Incident	Code
Alcohol Related	A	Man Overboard	MO
Adrift	AD	Medical	MED
Angling	ANG	Navigational	N
Anti-social behaviour	AS	Near Miss	NM
Attempted Suicide	ASU	Obstruction	O
Collision	C	Other	OT
Capsized	CAP	Owner's Mooring Failure	OMF
Chemical	CH	Pilotage	P
Complaints	CP	Pollution	PO
Damaged Property	DP	Slips, Trips & Falls	STF
Diving	DIV	Speeding	S
Drowning	D	Structural Failure	SF
Entering Prohibited Area	EP	Sunken	SK
Fishing	FG	Suicide	SU
Fire	F	Swamped	SW
Fly Tipping	FT	Swimming	SWIM
Grounding	G	Theft	T
Harbour Mooring Failure	HMF	Unseaworthy	U
Injury	I	Unexploded Ordnance	UXB
Launching	L	Vandalism	VA
Lost/Missing Vessel	LV	Verbal Abuse & Threatening Behaviour	VATB
Machinery Failure	MF	Vehicle	VE
Manual Handling	MH	Wash Incident	W



Meeting: Harbour Committee

Date: 23rd June 2014

Wards Affected: All wards in Torbay

Report Title: Tor Bay Harbour - Operational Moorings and Facilities Policy

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1. Purpose

- 1.1 This report is seeking to amend the operational moorings and facilities policy. The impact of this policy is to ensure 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. It also aims to ensure that the policy and associated conditions are fully understood and recognised as being reasonable.

2. Proposed Decision

- 2.1 **That the Tor Bay Harbour Operational Moorings and Facilities Policy – Version ~ 9 set out in Appendix 1 to the report be approved.**

3. Action Needed

- 3.1 That the Tor Bay Harbour Operational Moorings and Facilities Policy (Version ~ 9) should be implemented by harbour authority staff and the policy should be published on the harbour website.

4. Summary

- 4.1 Within Tor Bay Harbour a number of discretionary services are provided. Some of the most popular discretionary services are the provision of moorings, berths, boat park spaces, tender racks, storage lockers, etc. The annual use of these various Council owned harbour facilities is governed by a variety of controlling factors. These factors include local harbour legislation, harbour byelaws and the annual Facility Form Agreement terms and conditions.
- 4.2 In June 2007 the Harbour Committee introduced a new operational policy statement to supplement the Tor Bay Harbour Act 1970 (and subsequent amending legislation), the associated Harbour Bye-laws, and the facility agreement conditions. The policy has been subject to routine review and amendment and the

Harbour Committee has agreed to a number of revisions with the latest being Version 8 which was approved in March 2014.

- 4.3 Waiting lists for facilities have existed for many years and local boat owners have been given preference when vacancies have arisen. The Tor Bay Harbour Operational Moorings and Facilities Policy makes it clear how this system works and it sets out the order of priority for facility allocation.
- 4.4 Currently a £25 non-refundable deposit is required to join the various waiting lists and the deposit is then issued as a credit against harbour charges when a facility is first allocated. No deposit is currently required to join the commercial waiting list.
- 4.5 Version 9 of the Tor Bay Harbour Operational Moorings and Facilities Policy (attached as Appendix 1) proposes the introduction of a £25 non-refundable **registration fee** to join a waiting list and this new fee would **not** be counted as a credit when a facility is first allocated. The revised Policy also suggests the introduction of a **£50 non-refundable registration fee** to join or remain on the commercial moorings waiting list.
- 4.6 An operational moorings and facilities policy is required to ensure that a consistent, fair and equitable approach is applied to new, existing and potential facility holders that use Tor Bay Harbour and the harbour estate. It also aims to ensure that the policy and associated conditions are fully understood and recognised as being reasonable. The existing operational policy statement serves as a management tool and it was accepted that it would need to be amended from time to time by the Harbour Committee. It therefore does not form part of the strategic policy framework set by Torbay Council.

Supporting Information

5. Position

- 5.1 The Tor Bay Harbour Operational Moorings and Facilities Policy was adopted by the Harbour Committee in June 2007 and amended in December 2007. It has since been updated every March since 2009.
- 5.2 All of the amendments in the proposed Tor Bay Harbour Operational Moorings and Facilities Policy – Version 9 (Appendix 1) are shown using the ‘track changes’ tool.

6. Possibilities and Options

- 6.1 To take no action and continue with the existing Tor Bay Harbour Operational Moorings and Facilities Policy (Version 8), which was adopted in March 2014.

7. Preferred Solution/Option

- 7.1 To approve and adopt the Tor Bay Harbour Operational Moorings and Facilities Policy (Version ~ 9) as set out in Appendix 1. These changes would take effect immediately and anyone on an existing waiting list would have the opportunity to receive a full refund of their deposit or to accept the change in policy. If approved the waiting list process would no longer result in foregone income and the administrative burden of issuing credit notes in lieu of deposits would be saved.

8. Consultation

8.1 The moorings and facilities policy includes existing and well-established policy or terms and conditions of use. However, these latest amendments have been tabled at the recent Harbour Liaison Forums and have been discussed with staff within Tor Bay Harbour Authority. In both areas these changes have been supported.

9. Risks

9.1 There are no significant risks associated with the recommendation in this report. However, the absence of such a policy may attract criticism, especially if the Harbour Masters are expected to take operational decisions in the absence of clear guidelines.

9.2 The adoption of a clearly stated moorings and facilities policy will enhance the Council's reputation for transparency and accountability in respect of its delivery of its Harbour Authority function.

9.3 Adoption of a clearly stated moorings and facilities policy should promote equality of opportunity for people to access services provided by the Harbour Authority. Furthermore it should reduce or eliminate any unlawful discrimination, direct or indirect, regarding the allocation and use of moorings and facilities.

9.4 There are no remaining risks.

Appendices

Appendix 1 Tor Bay Harbour – Operational Moorings and Facilities Policy - Version ~ 9

Additional Information

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

A Code of Practice for the Design, Construction and Operation of Coastal and Inland Marinas and Yacht Harbours – British Marine Federation

TOR BAY HARBOUR AUTHORITY

OPERATIONAL MOORINGS AND FACILITIES
POLICY



Tor Bay Harbour Authority

Operational Moorings and Facilities Policy

Introduction

All moorings and other facilities form part of a discretionary service provided by the Harbour Authority. Each facility is allocated on an annual basis only and is covered by a Facility Form Account/Agreement with associated terms and conditions of use.

The purpose of this policy is to ensure a consistent, fair and equitable approach is applied to new, existing and potential facility holders in Tor Bay Harbour and on the harbour estate. It aims to ensure that the operational policy and associated conditions are fully understood and recognised as fair, reasonable and equitable to all.

This operational policy statement supplements the Tor Bay Harbour Act 1970 (and subsequent amending legislation), the associated Harbour Bye-laws, and the facility agreement conditions. However, as a management tool it does not form part of the strategic policy framework set by Torbay Council.

Subject to the Council's Port Masterplan, nothing within this policy shall interfere with the Harbour Master's overall ability to allocate or regulate the number, location, size and type of facilities being used at any time within Tor Bay Harbour.

We have tried to include all situations and circumstances, however if an issue arises that has not been considered I will undertake to ensure that an open, fair and just resolution is sought.

Capt. Kevin Mowat
Executive Head of Tor Bay Harbour Authority
Tor Bay Harbour Master

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Definitions (See also the Tor Bay Harbour Act 1970 7 Harbour Byelaws)

1. “Enclosed Harbours” means at Torquay the area of water enclosed by an imaginary line drawn from the western end of Haldon Pier to the south eastern end of Princess Pier; at Paignton the area of water enclosed by an imaginary line drawn from the eastern end of North Quay to the northern end of Eastern Quay; and at Brixham the area of water enclosed by the Breakwater, an imaginary line from the northern end of the Breakwater to Battery Point and the shore.
2. “Harbour” means the limits of Tor Bay Harbour as comprised in the areas in Part I and Part II in the Schedule of Byelaws.
3. “Harbour Estate” means the piers, wharves, quays, jetties, stages, berths, slipways, roads, sheds, and other works and conveniences and the lands, buildings and property of every description and of whatever nature which are for the time being vested in or occupied by the Council as Harbour Authority and used for the purpose of the Harbour undertaking.
4. “Harbour Master” means the Harbour Master appointed by the Council and includes his authorised deputies, assistants and any other person authorised by the Council to act in that capacity.
5. “Inner part of Brixham Enclosed Harbour” means the area of water enclosed by an imaginary line drawn from the eastern end of New Pier to Kings Quay.
6. “Quays” means any quay, wharf, jetty, dolphin, landing stage or structure used for berthing or mooring vessels, and includes any pier, bridge, roadway or footway immediately adjacent and affording access thereto adjoining the Enclosed Harbours.
7. “Master” when used in relation to any vessel, means any person having the command, charge or management of the vessel for the time being.
8. “Vessel” means every description of vessel however propelled or moved including non-displacement craft and everything constructed or used to carry persons or goods by water.
9. “Council” means Torbay Council.
10. “Authority” means Tor Bay Harbour Authority
11. “Facility” means mooring, berth, boat park space, tender rack, locker, store, etc.
12. “Facility holder” means the person or persons given the allocated use of a facility subject to the conditions of use of a Facility Form Agreement.

13. "Loss, injury or damage" means any loss, injury or damage, which may occur to any person, vessel, vehicle or their contents, or to any other goods or things whatsoever.

14. "Facility Form Agreement and conditions" shown in Appendix 1.

Types of Mooring/Facilities

“Swinging Mooring” - the vessel is secured to a heavy ground chain on the seabed, via a single riser chain. The arrangement allows the vessel to move so that it will head into the wind or the tide – whichever is the stronger.

“Trot Mooring” - the vessel is secured fore and aft (front and back), via separate riser chains. This arrangement does not allow the craft to move freely with the wind/tide and this enables many more boats to be moored in the same area. The fore and aft element of the mooring is tied together, via a single pick-up buoy, even when the facility is unoccupied.

“Pontoon Mooring” - that the vessel is tied fore and aft to pontoons. Pontoons can be single or have “finger” pontoons coming off them. It is common for large pontoons that have heavy vessels on them to be “piled” i.e. secured by steel piles driven into the seabed. Some pontoons are connected to the shore and are known as “walk ashore” pontoons.

“Running/Outhaul Moorings” - used for small craft (currently up to 16ft) where the boat is tethered to a looped line running from the shore to a fixing, on a riser chain, secured to the harbour bed. The boat can be pulled in and out using the running line.

“Tender rack” – used for tenders/dinghies, these are racks, normally made from tubular steel into which light craft may be stored on end.

“Boat Park Space” - an allocated space on the harbour side where boats/dinghies are kept on trolleys/trailers and launched via a slipway. Dry storage on hard-standing.

“Berthing” means tying up against a harbour wall or pontoon.

Facility Charges

All matters related to the application of charges for moorings, berths, boat park spaces and other facilities can be found in the current ‘Tor Bay Harbour Authority Schedule of Charges, Dues & Fees’.

Facilities Allocation

Private Moorings/Facilities Waiting List

A mooring/facility can only be offered and allocated to the person whose name is next on the appropriate waiting list subject to the priority definitions below. A £25 non-refundable registration fee ~~deposit~~ is required to join the waiting list and lists will be closed if they are over subscribed. A procedure covering the waiting list ~~and the application of deposits~~ can be found in Appendix 2.

Under normal circumstances the applicant will only be given one offer of a facility. A second or third offer will only be made in exceptional circumstances. All applicants will have their name removed from the list ~~and their deposit will~~

be lost (without exception), if they have declined three offers of a harbour facility.

Waiting List Priority

The waiting list is segregated into the following categories/order of priority :-

- 1st Council tax payers whose main or principle residence is within the Torbay Council area of residence.
- 2nd Council tax payers who pay 90% of the Torbay Council tax. i.e. second home owners.
- 3rd All others

Torquay Town Dock & Inner ~~DockHarbour~~ Pontoons Priority

The Town Dock and Inner ~~DockHarbour~~ Pontoon waiting lists are closed when 20 names are registered for each band of berth size and when they are re-opened, names will only be accepted from those people with a primary address in the TQ1 to TQ5 postcode areas, on a first come first served basis, to be confirmed by a check of Council Tax records and/or Electoral Register information.. Town Dock and Torquay Inner ~~DockHarbour~~ Pontoon berths will only be allocated to people outside the TQ1 to TQ5 postcode areas if no waiting list exists.

Mooring Exchange Scheme - Torquay Town Dock & Inner ~~DockHarbour~~ Pontoon System

Customers with existing 6 metre, 8 metre, 9.14 metre, 10 metre and 12 metre berths on the Town Dock or Inner ~~DockHarbour~~ Pontoon system at Torquay, may be able to exchange their facility for an alternative sized berth. Further details including eligibility criteria can be found in Appendix 3.

Commercial Moorings - Waiting List

A waiting list exists for a number of specified commercial moorings. Currently these can be split into specific numbers of facilities for passenger carrying pleasure craft and other moorings identified for commercial craft such as fishing vessels. To avoid over capacity the Council has an established policy to restrict the number of moorings for passenger carrying pleasure craft at each of the enclosed harbours. Furthermore this is the only policy that allows the transfer of use of a mooring facility to the new owner of a passenger boat. i.e. where a pleasure boat ceases to operate at any Harbour and the operator sells his/her business, the Harbour Master is authorised to transfer the mooring facilities to the new owner. This mooring transfer does not apply to fishing vessels or other commercial craft.

This commercial moorings waiting list requires a non-refundable £50 registration fee, does not require a deposit.

Given the obvious demand for this type of mooring and the significant contribution made by passenger carrying pleasure boats to the English Riviera tourism product, the Harbour Authority will operate a “use it or lose it” policy. If a commercial boat owner does not put a vessel on the allocated mooring facility for two consecutive years or does not operate a vessel commercially, that has use of a mooring, for two consecutive years, then the mooring facility will be allocated to the next appropriate applicant on the waiting list.

Facilities for Heritage Vessels

A limited number of ‘Heritage’ vessels are permitted, with the Harbour Master’s consent, to berth on the Town Pontoon in Brixham Harbour, provided they have alternative bad weather mooring facilities within the harbour. The Council’s agreed criteria against which vessels could be measured for inclusion within the “fleet” of heritage boats based at Brixham Harbour is as follows :-

“that a heritage boat in Torbay be defined as a vessel which is British built, 40 feet or more in length and built prior to 31st December 1935 and that, at the absolute discretion of the Council, is considered to have an historical relevance to Tor Bay and its operation and general activity is considered to be beneficial to the local community; and that compliance with the approved definition of a heritage boat should form the basic criteria against which vessels can be measured for inclusion within the “fleet”.

Boat Park Spaces

Certain boat park spaces contain racking. Racks provided by the Harbour Authority will be charged per rack in accordance with the current ‘Tor Bay Harbour Authority Schedule of Charges, Dues & Fees’. Recognised Youth Groups may apply to the Harbour Master for approval to erect their own racking and in these circumstances, if consent is granted; the charges will only apply to the quay space occupied by the racking.

Duration of Facility Agreement

These run for a maximum of 12 months commencing on the 1st of April and expiring on the 31st March of the following year. However, vacancies that arise after 1st April will be filled from the waiting list and run from the acceptance date up to the 31st March. The Harbour Master reserves the right to determine whether to renew an allocated facility and will review such allocation on an annual basis.

Renewal of Allocated Facility

Each year the Council will send each existing facility holder a Facility Form Agreement, together with an invoice requesting a Facility Form Agreement fee. If the facility holder returns the form/invoice indicating they does not wish to renew the Facility Form Agreement, it will be allocated to the next person on the appropriate waiting list.

The Council will, upon receipt of payment allocate a facility to the applicant as described in the Facility Charge Details in a location in Tor Bay Harbour

determined at the discretion of the Harbour Master. The Harbour Master may at any time designate to the facility holder an alternative location for such a facility, whereupon the applicant will move their vessel and/or any other possessions or chattels from the previous location to the appointed new location for such a facility forthwith.

Cancellation of Facility Form Agreement

The facility holder may terminate the Facility Form Agreement by giving 14 days notice in writing to the Council. However, the fee ~~and/or deposit~~ already paid shall be retained by the Council.

The Council may terminate the Facility Form Agreement at any time by giving 1 months notice in writing to the facility holders last known address. For the avoidance of doubt, the Harbour Master has delegated authority to terminate Facility Form Agreements on behalf of the Council. A facility may be terminated for a number of reasons and these may include but are not limited to; bad debt, failure to comply with harbour regulations, abuse towards harbour staff and a discretionary facility being discontinued.

Risk, Liability, Insurance Requirements and Recommendations **(Facility Agreement Conditions 1, 2, 3, 4 & 5)**

All reasonable care will be taken of the facility holder's property but whilst precautions will be taken to prevent loss and/or damage all vessels are berthed, moored, launched, moved and hauled out at the risk of the applicant. The applicant is therefore required to make sure that his/her vessel and property are adequately insured against all risks.

If the vessel sinks at the mooring it will have to be recovered and removed from the harbour by the vessel's owner. Failure to remove such a vessel from the harbour in such a period as shall be specified by the Harbour Master in his absolute discretion (including immediate notice) will result in the Council recovering and removing the vessel and the appropriate charges being made. Such charges shall be a debt due from the Facility Form Agreement holder to the Authority. It is therefore strongly recommended that your insurance policy includes a 'wreck removal' clause.

The facility holder shall indemnify the Council, their servants and agents against all actions, claims, costs and demands in respect of any injury or death of any person and any damage to any property which may arise out of the applicant's occupation and use of the harbour facilities including slipways, steps, jetties and staging and for this purpose shall maintain a Public Liability policy against such risks. Failure to maintain the appropriate insurance cover will result in the withdrawal of the mooring, launching and other facilities.

All facility holders using any part of the harbour facilities including slipways, steps, jetties and staging, for whatever purpose in connection with this application and whether by the Council's invitation or not, are expected to have due regard for their own safety and do so at their own risk.

The facility holder shall at all times be responsible for the safety of his/her vessel and shall be liable for any damage occasioned to the Council's

property, howsoever caused, during the navigation of any vessel by the applicant or his/her servant or agents, or whilst the applicant's vessel is berthed, moored, or launched, or by the vessel slipping her berth, mooring or being cast adrift and will pay to the Council on demand any claim for reasonable compensation in respect of such damage.

The Council's Harbour Master and other authorised officers and servants, whilst acting in the course of their duty, shall not be responsible for any loss or damage which may occur as a result of compliance, or attempted compliance, with any lawful order or directions given by the Harbour Master, or such other officers or servants, nor shall the Council be liable for any loss or damage arising out of compliance, or attempted compliance, with the officers' lawful orders. The Council, its servants, agents or employees shall not be liable for injury to any person, except where such injury arises through the negligence of the Council.

This section applies equally to visitors and temporary users of the harbour and harbour estate, whether using a vessel, vehicle or trailer.

Vessels Injurious to the Amenity of the Harbour (see Section 23 – Tor Bay Harbour Act 1970)

If at any time the Harbour Authority are satisfied that a derelict vessel or structure moored in or lying in the water or on the foreshore of the harbour is in such a condition as to be seriously injurious to the amenity of that part of the harbour in which it is moored or lying, the Harbour Authority may by notice require the owner thereof within such time as may be specified in the notice (the period being not less than six weeks) to take such steps as may be necessary to abate the injury to amenity. A vessel may be considered to be injurious to the amenity of the harbour if it is badly dilapidated, seriously unkempt, unseaworthy and/or in danger of sinking, etc.)

For the avoidance of doubt, the Harbour Master is empowered, on behalf of the Harbour Authority, to determine whether a vessel is seriously injurious to the amenity of the harbour.

Failure to comply with such a notice issued by the Harbour Authority may result in the necessary action being taken directly by the Harbour Authority.

Prohibition on Assignment/Sub Letting of Facilities (Facility Agreement Conditions 12)

The facility is personal to facility holder and may not be shared, assigned, transferred, sub let or otherwise used or made available to anyone other than the facility holder. In the event that it is discovered that a facility holder is subletting the facility will be withdrawn with immediate effect.

The facility granted may not be loaned without prior notification to, and agreement of the Harbour Master in writing. Written notification must also be provided to the Harbour Master from both parties to the loan. If the Harbour Master's consent is obtained in no circumstances will this be given for a

period greater than 12 months. In agreed loan circumstances the owner of the vessel borrowing the facility must confirm that he holds the necessary required insurance, confirm acceptance of all conditions and Byelaws and be liable for the appropriate level of harbour dues.

Any individual boat owner will only be permitted to borrow a facility for two consecutive years, assuming that two separate facility holders and the Harbour Master are agreeable to such an arrangement. i.e. the maximum stay without a properly allocated facility is 24 months.

Size of Vessel (Facility Agreement Conditions 17)

No vessel shall be placed on a facility of a different size than applied for. The facility is allocated according to the size of the vessel and the facility holder must not increase the size of his/her boat without ascertaining whether or not there is a suitable alternative mooring space available. The facility holder may lose the mooring without being offered a replacement. A vessel will be charged based on overall length, which includes any bowsprit, pushpit, stern davit, bathing platform, bumpkin or any other extension, etc. etc.

Inheritance

The facility granted will be for one vessel only and is not transferable. Where a member of a family wishes to continue using the facility after the death or incapacity of the existing holder he/she must join the appropriate waiting list. The use of harbour facilities cannot be inherited other than by a legitimate 'partner' who meets the requirements of a partnership arrangement as set out elsewhere within this document.

Vessel Identification (Byelaw 35)

All boats, trailers and tenders used within the harbour must have their names and current Harbour Authority plaques displayed to the satisfaction of the Harbour Master. The facility holder should also ensure that the name of the vessel or mooring number is clearly displayed on any mooring buoy not provided by the Council.

Change of Vessel (Byelaw 33)

In the event of the facility holder selling or otherwise disposing of the vessel authorised to use the facility, the parties to the change shall ensure that immediate written notification is given to the Harbour Master.

Vessel Not On Facility

If the facility holder does not have his/her own vessel on the authorised facility for a period of one year then the facility will be forfeit and reassigned from the waiting list.

Partnerships

Partnerships must have been registered with the Harbour Authority when the facility was first allocated. Any subsequent changes of ownership or partnership buy out **will not be recognised** or count towards facility allocation. The Harbour Authority will not recognise shared ownership beyond

one third. i.e. a maximum of three partners inclusive of the applicant. All partners must be over the age of 18 and meet the local residence requirements detailed in this policy with regard to facility allocation priority.

Use of Facilities

Facilities must only be used for the purposes stated in the original application. Vessels using facilities must not be used for residential purposes. i.e. no living on board is permitted and boats must not serve as the sole or main residence of any individual or group. Customers are not expected to sleep on board their craft unless that vessel has a suitable manufacturer's holding tank for grey water and sewage. Facilities will be withdrawn from those customers who regularly breach this expectation.

Privately owned vessels paying harbour charges as private craft must not operate their craft on a commercial basis. The number of available commercial moorings is restricted under this policy (please refer to the 'Facilities Allocation' section in this document under the heading 'Commercial Moorings – Waiting List'). Consequently any owner who changes the use of their craft from a private vessel to a commercial vessel (either by conversion or replacement) will have their facility agreement terminated.

Privately owned fenders **must not** be fixed to harbour authority property (other than by rope) without the prior consent of the harbour authority. Installation of owner's 'dock fenders' will normally be permitted, subject to prior approval. Any fixing that requires drilling into steel, stone or concrete **must be undertaken** by harbour authority staff.

Privately owned 'dock boxes' **must not** be fixed to harbour authority property without the prior consent of the harbour authority and a charge may be applicable.

Fuel and Re fuelling

No fuel or combustible material is permitted to be kept on or within the allocated facility save in authorised storage tanks and containers.

Other than for small outboard engines, no petrol refuelling from cans or containers is permitted on the harbour side, pontoons, steps, slipways, or moorings. Petrol refuelling is permitted at a licensed marine fuel station or when using an approved siphoning/pumping device agreed specifically with the Harbour Master or at Paignton Harbour from cans onto moored vessels when the harbour has dried.

Any fuel spillage must be reported to the Harbour Master

Pollution (Byelaw 91 and Byelaw 102)

Facility holders must not pollute the harbour by spillage, dumping of waste, effluent, human waste, detergent and/or fuel or otherwise deposit refuse or scrap on the harbour estate, in the waters of the harbour or on the harbour bed.

Moorings and Vessel Protection

Fitting of Moorings (Facility Agreement Condition 16)

Any swivel, riser chain, mooring rope or buoy, not provided by the Council, shall comply with the Council's specification in that behalf and shall only be fitted by a person licensed by the Council to do such work or by the facility holder personally in respect of his/her allocated mooring. The Facility Holder shall as soon as any swivel, riser chain, mooring rope or buoy has become fitted, immediately notify the Harbour Master of the fact. The applicant shall also arrange for regular inspection and maintenance of such equipment not provided by the Council.

Buoyant Rope (Byelaw 98)

No person shall within any enclosed Harbour use buoyant pick-up ropes on moorings.

Removal of Moorings (Byelaw 100)

A mooring, buoy or similar tackle shall as soon as reasonably practicable be removed by its owner or any other person claiming possession of it if the Harbour Master so directs.

Vessel Monitoring

All vessels should be monitored by the owner or owner's agent, on a regular basis, particularly during periods of bad weather.

Propeller Covers (Facility Agreement Conditions 22)

When moored outboard engines in the raised position must have the propeller and skeg covered with a plastic bucket or other approved protective cover in order to prevent damage to other boats.

Provision of Proper Fenders (Byelaw 46)

The facility holder shall ensure that his/her vessel is provided with a sufficient number of fenders adequate for the size of the vessel, and when berthing or leaving, or lying at a quay or against other vessels, the master shall cause the vessel to be fendered off from that quay or those other vessels so as to prevent damage to that quay, those other vessels or other property

Mooring, Berthing, Anchoring in the Harbour

Vessels to be moored etc as directed

Masters of vessels in the harbour shall moor, anchor, berth and/or cease to moor, berth or anchor and be moved in accordance with directions given from time to time by the Harbour Master.

Vessels not to Anchor in a Fairway (Byelaws 11 & 18)

No person shall anchor so as to obstruct a fairway.

Vessels not to be made fast to unauthorised objects, Navigational Buoys or Seasonal 5 Knot Buoys (Byelaws 13 & 50)

The master of a vessel shall not make fast his/her vessel to or lie against any buoy, beacon or mark used for navigation. No person shall make a vessel fast

to or interfere with any post, quay, ring, fender or any other thing or place not assigned for that purpose.

Vessels not to Obstruct Free Passage

The master of a vessel shall not cause or permit the vessel to manoeuvre, come to anchor or be moored or placed so as to intentionally obstruct in any manner whatsoever the passage of vessels in the harbour.

Vessels to be Properly Secured

No vessel shall be insecurely moored or improperly made fast within the harbour.

Vessels Not to Obstruct Steps, Slipways (Byelaw 26)

No person shall allow any vessel to obstruct any pontoons, steps or slipways or to lie at any pontoons steps or slipways without the permission of the Harbour Master.

Reckless Conduct and Disorderly Behaviour

The facility holder shall not use the mooring facility in a reckless manner so as to cause danger to other users of the Harbour or damage to their property.

The facility holder (including any persons on board a vessel on the harbour facility) shall not cause unreasonable noise, nuisance or annoyance to other users of the Harbour.

Compliance with Statute, Byelaws and Directions of the Harbour Master

The facility holder and all persons having control or having charge of or being aboard his/her vessel shall observe and perform all statutory and other obligations relating to the Harbour including all Byelaws and Regulations made by the Council and Directions given by the Harbour Master.

In the event of the holder of the Facility Form Agreement failing to comply with the conditions of the Facility Form Agreement the Council may give notice to remove the vessel. Should this notice not be complied with or the conditions of the Facility Form Agreement not met within fourteen days of the sending of the notice to the last known address of the facility holder the Authority may remove the vessel to any place where so ever. The facility holder shall pay the cost of such removal, storage, mooring or berthing and subsequent replacement to the Authority. Such charges shall be a debt due from the facility holder to the Authority.

Disabled Access

The Harbour Authority provide a range of moorings and other facilities, which by there very nature, have various forms of access. Consideration has been given to providing facilities for disabled persons, wherever this is reasonably practicable, in accordance with the Disability Discrimination Act 1995/2005 (DDA). The Harbour Authority is obliged to make such adjustments as is reasonable to prevent disabled persons from being placed at a substantial disadvantage when compared to others.

Anyone who has a disability should assess the most suitable facility that meets their needs and if necessary join the relevant waiting list. The Harbour Authority staff can provide advice to anyone who is uncertain about which facility would be the most appropriate.

Young People

Young people are encouraged to use the harbour facilities and in certain circumstances they will be eligible for a 50% discount on applicable harbour charges. Please see the current 'Tor Bay Harbour Authority Schedule of Charges, Dues & Fees' for details. Unfortunately it is not lawful for the Harbour Authority to enter into a contract with a minor (under 18 years of age) and the facility form agreement will therefore be in the name of a responsible adult. Please note that this discount is discretionary.

Visitor Moorings

To avoid the abuse of visitor moorings by local vessels, all craft using visitor mooring facilities are normally restricted to a maximum stay of three weeks (21 days) with no return within one week 7 days.

Appendix 1

GENERAL CONDITIONS

DUES, TOLLS, LEVY RENTS, FEES AND OTHER CHARGES ARE ONLY ACCEPTED ON THE FOLLOWING CONDITIONS:

1. All reasonable care will be taken of the applicant's property but whilst precautions will be taken to prevent loss and/or damage all vessels are berthed, moored, launched, moved and hauled out at the risk of the applicant. The applicant is therefore strongly advised to make sure that his/her vessel and property are adequately insured against all risks.
2. The applicant shall indemnify the Council, their servants and agents against all actions, claims, costs and demands in respect of any injury or death of any person and any damage to any property which may arise out of the applicant's occupation and use of the harbour facilities including slipways, steps, jetties and staging and for this purpose shall maintain a Public Liability policy against such risks. Failure to maintain the appropriate insurance cover will result in the withdrawal of mooring, launching or other facilities.
3. All applicants using any part of the harbour facilities including slipways, steps, jetties and staging, for whatever purpose in connection with this application and whether by the Council's invitation or not, are expected to have due regard for their own safety and do so at their own risk.
4. The applicant shall at all times be responsible for the safety of his/her vessel and shall be liable for any damage occasioned to the Council's property, howsoever caused, during the navigation of any vessel by the applicant or his/her servant or agents, or whilst the applicant's vessel is berthed, moored or launched, or by the vessel slipping her berth, mooring or being cast adrift and will pay to the Council on demand any claim for compensation in respect of such damage.
5. The Council's Harbour Master and other authorised officers and servants, whilst acting in the course of their duty, shall not be responsible for any loss or damage which may occur as a result of compliance, or attempted compliance, with any lawful order or directions given by the Harbour Master, or such other officers or servants, nor shall the Council be liable for any loss or damage arising out of compliance, or attempted compliance, with the officers' lawful orders. The Council, its servants, agents or employees shall not be liable for injury to any person, except where such injury arises through the negligence of the Council.
6. The phrase "loss, injury or damage" in these conditions means any loss, injury or damage which may occur to any person, vessel, vehicle or their contents, or to any other goods or things whatsoever.

7. The lawful orders or directions of the Council's Harbour Master and other authorised officers must always be obeyed promptly.
8. The Council may determine this agreement at any time during the period of this contract by giving one month's notice in writing to the applicant at their last known address.
9. The Council will, upon receipt of payment in accordance with this account, allocate a facility to the applicant as described in the Facility Charge Details in a location in Tor Bay Harbour determined at the discretion of the Harbour Master and the Harbour Master may at any time designate to the applicant an alternative location for such a facility, whereupon the applicant will move his/her vessel and/or any other possessions or chattels from the previous location to the appointed new location for such facility forthwith.
10. The Council will, upon the commencement of this agreement, allocate a facility to the applicant but the Harbour Master may at any time designate an alternative facility to the applicant, whereupon the applicant must move his/her vessel to the appointed facility forthwith.
11. Following the determination of this agreement, the applicant shall forthwith remove his/her vessel and any other property from the facility.
12. This facility is personal to the applicant and made available on the basis to which the Applicant hereby agrees that it will not be shared, assigned, transferred, sublicensed or otherwise used by or made available to anyone other than the applicant.
13. The facility made available to the applicant shall not be used other than for the purpose described in the Facility Charge details.
14. No facility granted may be shared or *LOANED* without the prior consent of the Harbour Master in writing.
15. The Council have the right to exercise a general lien upon any vessel, and/or her gear and equipment, whilst in or upon the harbour premises, or afloat, until such time as the monies due to the Council from the applicant in respect of such vessel whether on account of storage or mooring charges or otherwise, shall be paid.
16. Any swivel, riser chain, mooring rope or buoy, not provided by the Council, shall comply with the Council's specification in that behalf and shall only be fitted by a person licensed by the Council to do such work or by the applicant personally in respect of his/her allocated mooring. The applicant shall as soon as any swivel, riser chain, mooring rope or buoy has become fitted, immediately notify the Harbour Master of the fact. The applicant shall also arrange for regular inspection and maintenance of such equipment not provided by the Council.

17. The applicant shall not place a vessel on a mooring prescribed in the mooring scheme prepared by the Council for a vessel of a different size than that applied for, without the applicant obtaining the approval of the Harbour Master in writing.
18. All boats and trailers used within the harbour shall have their **names** clearly displayed and to the satisfaction of the Harbour Master. The applicant should also ensure that the name of the vessel or a mooring number is clearly displayed on any mooring buoy not provided by the Council.
19. The mooring shall be in such a position and of such type as shall be allocated by the Harbour Master.
20. In the event of the applicant selling or otherwise disposing of the vessel authorised to use the mooring, the Harbour Master shall be notified in writing.
21. No attachment (e.g. strops) is to be affixed to the mooring chain provided by the Council without the applicant obtaining the prior approval of the Harbour Master.
22. When moored, outboard engines in the raised position **must** have the propeller and skeg covered with a plastic bucket or other approved protective cover in order to prevent damage to other boats.
23. The applicant shall ensure that the vessel is provided with a sufficient number of fenders adequate for the size of vessel, so as to prevent damage to other vessels, quays or other property.

Appendix 2

WAITING LISTS

TOR BAY HARBOUR

WAITING LIST PROCEDURE AND APPLICATION OF DEPOSITS

- 1) The waiting list ~~registration fee~~ deposit is **£25**. On receipt of the appropriate fee, your name will be placed on the relevant list. Please make cheques payable to 'Torbay Council'.
- 2) The waiting list entry will be dated the same day the ~~deposit~~ fee is received.
- 3) The ~~deposit~~ registration fee is **NOT REFUNDABLE OR TRANSFERABLE** but will be credited to the facility charges when a facility is obtained.
- 4) Under normal circumstances the applicant will only be given one offer of a facility. A second or third offer will only be made in exceptional circumstances. All applicants will have their name removed from the list ~~and their deposit will be lost (without exception)~~, if they have declined three offers of a harbour facility.
- 5) When a facility is offered and accepted, it can only be allocated to the person whose name is on the waiting list. The facility is **NOT TRANSFERABLE**.
- 6) When a facility is offered and accepted and no boat is immediately available, then the applicant **must pay the full fee** for the size of facility applied for, and then has twelve months to place their craft on the facility.
- 7) Often a waiting list will be banded dependent on the size of the facility. It is therefore important that applicants are certain about the size of facility required. The length entered on the waiting list form will not be adjusted up at a later date and an adjustment down in size may result in a transfer to a new list with a new entry date.
- 8) Applicants who live locally will be given priority over those applicants who live outside the Torbay area. (see the Tor Bay Harbour Operational Moorings and Facility Policy)
- 9) Unfortunately applicants who have a disability do not have priority over other people on the waiting list.
- 10) From time to time applicants will be asked to provide written confirmation of their wish to stay on a particular waiting list. The applicant's details will be deleted from our records ~~and the deposit forfeit~~ if written confirmation is **not** provided.

- 11) It is the applicant's responsibility to keep us advised of any change in the applicant's details, especially any **change of address**.
- 12) The terms and conditions of use of any facility are shown on the reverse side of any invoice/facility form agreement and are also found within the Tor Bay Harbour Operational Moorings and Facility Policy.
- 13) Partnerships must have been registered with the Harbour Authority when the facility was first allocated. Any subsequent changes of ownership or partnership buy out **will not be recognised** or count towards facility allocation. The Harbour Authority will not recognise shared ownership beyond one third. i.e. a maximum of three partners inclusive of the applicant. All partners must be over the age of 18 and meet the local residence requirements detailed in this policy with regard to facility allocation priority.

Appendix 3

Mooring Exchange Scheme - Torquay Town Dock & Inner DockHarbour Pontoon System

Customers with existing berths on the Town Dock or Inner DockHarbour may be able to exchange their facility for an alternative sized berth.

Customers may be eligible to exchange their allocated berth, so long as they fulfil the following conditions of exchange.

The 13 metre berths will not feature in this scheme.

Exchanged vessels must be of a length appropriate for the alternative sized berth requested.

Original Partnerships recognised during first allotment will remain exactly the same and cannot be added to.

Exchanges may only occur when 'pairs' are authorised by the Harbour Office. Customers will be notified when an exchange can be made, followed by any account for adjustment.

Requests for exchanges will be treated on a first come first served basis and each exchange will be appraised by the Harbour Authority to ensure correct use of facility and compatibility of vessels features.

An administration charge of £50 will apply per applicant and will feature in the account adjustment, when the exchange has taken place.

The decision to approve or decline an exchange request will be based, among other things, on maximising income for the harbour authority and will be at the Harbour Master's complete discretion.

Step 1

Complete form for existing berth to *move from*

Step 2

Enter details of preferred facility to *move to* – e.g. 6m 8m 9.14m 10m or 12m

Step 3

Submit form and wait until a suitable 'pair' is made, then await acknowledgement and further details from the Harbour Office

Step 4

Move your boat as directed by the Harbour Authority, then pay the balance or receive a refund for the new facility (subject to the inclusion of the administration charge).