

Annex D-6: Application of Torbay Council

POWERS OF HARBOUR DIRECTION: APPLICATION FOR DESIGNATION

TORBAY COUNCIL: TOR BAY HARBOUR, DEVON

Torbay Council are the Statutory Harbour Authority for Tor Bay Harbour, which includes the harbours of Torquay, Brixham and Paignton. In order to assist them in managing and running a safe and efficient harbour, and in particular discharging their responsibilities relating to the safety of vessels and people within the harbour (including navigational safety) and the protection of the port environment, Torbay Council wishes to apply to be designated as a designated harbour authority with the power to make Harbour Directions.

RATIONALE

As required by the Port Marine Safety Code. Torbay Council has recently carried out a review of its existing statutory powers (included local legislation and bye-laws) with the assistance of its legal advisors. This review has confirmed Torbay Council's pre-existing understanding, which is that Torbay Council do not have powers of general direction. Torbay Council do have the power to issue bye-laws, it is a competent harbour authority for pilotage purposes and the Harbour Master may issue special directions under section 52 Harbour Docks and Piers Clauses Act 1847.

However the lack of powers for Torbay Council or its Harbour Master to issue general directions in relation to all ships in the harbour area either in response to a particular occurrence or as a standing instruction to all ships or specified classes of ship, is considered by Torbay Council to hinder them in the fulfilment of its statutory duties. The Port Marine Safety Code advises that the paragraph 3.4 that *"Harbour Authorities would be well advised to secure powers of general direction to support the effective management of vessels in their harbour waters, if they do not have them already."*

In order to obtain standard powers of general direction Torbay Council would need to make a Harbour Revision Order application, which is a costly a time consuming process. Designation with powers of Harbour Direction would be an effective substitute for powers of general direction. Therefore Torbay Council seeks to be designated as a designated Harbour Authority with powers of Harbour Direction in response to its review of its statutory powers, as recommended by the PMSC.

DETAILS OF ANY PROPOSAL AMENDING OR REPEALING ANY STATUTORY PROVISION OF LOCAL APPLICATION

The bye-laws in place at Tor Bay Harbour have been reviewed as part of the Statutory Harbour Power Review carried out by Torbay Council with the assistance of its legal advisors. As recommended by paragraph 4.4 of the Code of Conduct, it is Torbay Council's intention to update these bye-laws (including revocation/amendment of any existing bye-laws which might otherwise conflict with Harbour Directions) at the same time as making Harbour Directions (provided Torbay Council's application to become designated with powers of Harbour Direction is successful). Compatibility with any Harbour Directions Torbay Council may wish to introduce can then be ensured.



Under the local legislation applying at Tor Bay Harbour (s3(2)(c)(ii) Tor Bay Harbour Act 1970), Torbay Council's power of special direction under s52 Harbour Docks and Piers Clauses Act 1847 has been extended to enable the Harbour Master, in the case of an emergency, to give general directions in relation to the exercise of his powers under s52 HDPC Act 1847. In effect, in the case of emergency the harbour master does not need to give each vessel affected a direction specific to that vessel individually, but instead can communicate the same direction to all affected vessels. This limited extension of Torbay Council's power of special direction, exercisable only in an emergency, is not akin to a standard power of general direction and is not considered to conflict with powers of harbour direction. Therefore Torbay Council is not requesting that any statutory provision of local application be amended or repealed in the designation order. However, if the Department for Transport does consider that Torbay Council's existing powers could conflict with designation with powers of harbour direction, Torbay Council is willing to consider an amendment to their existing powers.

CONSULTATION

Torbay Council carried out a consultation between 16 February and 17 March 2016 which sought the views of harbour users and other interested parties on Torbay Council's intention to apply to be designated with powers of Harbour Direction.

The consultation document at Annexe 'B' and the Department for Transport Harbour Direction Guidance document was placed on the Tor Bay Harbour website during the consultation period. Copies were also available at the Harbour Office. As the consultation document makes clear, views were sought on the suitability of the Harbour Authority to be designated with the power to make Harbour Directions and gave an indication of what Harbour Directions can cover.

A Public Notice appeared in the Herald Express on the 16 February for one edition (see Annexe 'C').

Members of The Torquay and Paignton Liaison Forum and the Brixham Liaison Forum were emailed on 18 February 2016 to inform them of the consultation.

Torbay Council's application to be designation with powers of Harbour Direction was an agenda item and was discussed at the Torquay and Paignton Liaison Forum meeting on 8th March 2016 and the Brixham Liaison Forum on 10th March 2016.

A full list of member bodies/representative organisations represented in the Torquay and Paignton Liaison Forum and the Brixham Liaison Forum and invited to meetings is included in Annexe 'D'.

On 25 February 2016 the British Ports Association, the RYA, the NFFO, UK Chamber of Shipping and the British Tug Owners Association were informed of Torbay Council's intention to apply to be designated with powers of Harbour Direction and provided with a link to their consultation document (Annexe 'B').

CONSULTATION RESPONSES

Below is a summary of the consultation responses received:

1. The UK Chamber of Shipping and the British Tug Owners Association responded on 25 February 2016 to confirm that they had no particular comments to make and no objections to the proposal.

2. The RYA responded on 17 March 2016 to say that they *'have no objection in principle to Tor Bay Harbour applying to be designated under section 40A of the Harbours Act 1964. We would, however, wish to take up Torbay Council's offer of including an RYA representative on the two Liaison Fora should Tor Bay Harbour be so designated and the Fora act as the Port User Groups.'* Torbay Council confirms that the RYA will be invited to include an RYA representative in any relevant Port User Group(s).
3. The British Ports Association responded on 17 March 2016: *'...We strongly support the availability of Harbour Directions to ports of all type and size to assist with the safe management and functioning within harbour areas. Tor Bay Harbour Authority has a good record on both safety and its stakeholder consultation, and given the wide ranging and diverse traffic within the harbour we would suggest these powers could be an extremely useful addition to port's safety management provisions. We therefore have no hesitation in offering our full support to the Harbour's application.'*
4. The Torquay and Paignton Liaison Forum and the Brixham Liaison Forum were supportive of the application (in the meetings where the application was discussed).
5. No consultation responses were received from members of the public.

CODE OF CONDUCT STATEMENT

See signed Statement of Assurance as Annexe 'A'.

A sub-group(s) of the Torquay and Paignton Liaison Forum and the Brixham Liaison Forum will be Torbay Council's adopted Port User Group(s). The Harbour Authority is in the process of formalising arrangements for the Port User Group(s) so that it functions in compliance with the requirements of the Code of Conduct



.....
Kevin Mowat

Harbour Master Tor Bay Harbour

Executive Head of Business Services Torbay Council

ANNEXES

- A. Statement of Assurance.
- B. Consultation Information
- C. Public Notice
- D. Members Bodies/Representative Groups

Annex A

Signed Statement of Assurance (Pro-forma)

I confirm that the following resolutions of Torbay Council were duly passed at a meeting of the Tor Bay Harbour Committee on 21st December 2015.

The harbour authority has had regard to the content of and agrees to comply with the code of conduct on harbour directions, in particular:

- a) To maintain a Port User Group and to apply a dispute resolution procedure such as is set out in the code of conduct when required; and
- b) To have regard to supplementary guidance issued from time to time by the National Directions Panel on the subject of harbour directions.

The Tor Bay Harbour Master is authorised to apply to the Secretary of State for Transport for [Torbay Council] to be designated as a designated harbour authority for the purposes of section 40A of the Harbour Act 1964.

Name

.....Cllr Nick Bye Chairman of Tor Bay Harbour Committee...

Signed



Date

22nd Nov '16



TORQUAY • PAIGNTON • BRIXHAM

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Torquay Harbour
Torquay TQ1 2BG
t: 01803 292429
f: 01803 299257

Paignton Harbour Office
South Quay
Paignton Harbour
Paignton TQ4 6DT
t: 01803 557812
f: 01803 520057

Brixham Harbour Office
Brixham Harbour Office
New Fish Quay
Brixham TQ5 8AJ
t: 01803 853321/851854
f: 01803 852434



Annex B: Consultation Information

Powers of Harbour Directions - Consultation

PR-POHD 17/02/2016

Torbay Council, as a Statutory Harbour Authority, wish to modernise by seeking to be designated with powers of Harbour Direction. Current byelaws, whilst relevant, are inadequate for the traffic using the port.

Harbour Directions

What are they?

The Harbours Act 1964, as amended by the Marine Navigation Act 2013, provides a mechanism by which the Secretary of State may by Order designate harbour authorities with a power to make harbour directions to better regulate shipping and improve safety within their harbour area. Such harbour authorities are called "designated harbour authorities".

What are they used for?

Harbour directions may be used by a designated harbour authority to regulate ships within their harbour, or entering or leaving their harbour. They may relate to the movement, mooring and unmooring, equipment and manning of ships. For example directions could be used:

1. To regulate the use of any main navigation channel or fairway;
2. To prescribe where and how vessels are to moor and move within the harbour;
3. To ensure ships above a certain size have working radios to allow communication between harbour master and ship;
4. To specify requirements for no deficiency in machinery; and,
5. To ensure sufficient people with relevant experience crew specific types of ship.

Who will they apply to?

Harbour directions will only apply to ships as defined in the Harbours Act 1964. This Act defines a ship as including every description of vessel used in navigation, seaplanes and hovercraft. The Court of Appeal has held that to be used in navigation, a vessel must be used to make ordered progression from one place to another.

The grant of powers depends on the Commissioners giving assurance that they will maintain

1. A Port User Group and to apply a dispute resolution procedure such as is set out in the code of contact when required; and
2. To have regard to supplementary guidance issued from time to time by the National Directions Panel on the subject of harbour directions.

The Harbour Committee is the adopted Port User Group and Torbay Council resolved to offer the required assurance at its board meeting on 21st March 2016.

This consultation seeks views, comments and/or observations on the matter, which should be forwarded to the Committee Chairman by 20th March 2016.

This consultation is only relevant to the taking of powers. The actual Directions will be the subject of a further consultation once the Powers are granted.

Annex C: Public Notice

Public Notice which appeared in the Herald Express on the 16 February 2016

Torbay Council: Tor Bay Harbour

Views are invited from Harbour Users and other Interested Parties by 16th March 2016 on the taking up of Powers of Harbour Direction by

Torbay Council

Further details from Torquay Harbour Office, Beacon Quay, Torquay, TQ1 2BG, (01803) 292429

www.tor-bay-harbour.co.uk

Annex D: Members Bodies/Representative Groups

Brixham Liaison Forum

| <u>Company</u> | <u>Role</u> |
|---|----------------------------------|
| Torbay Council | Councillors (x 10) |
| Torbay Council – Environmental Health | Environmental Health Officer |
| Brixham Trawler Agents | Director |
| Torbay Council – Harbour Authority | Brixham Deputy Harbour Master |
| Brixham Yacht Club | Commodore |
| Kelly's Hero Charters | Skipper/Owner |
| Marine & Towage Services Group | General Manager |
| Grenville House | Centre Manager |
| Torbay Council – Harbour Authority | Brixham Assistant Harbour Master |
| Torbay Council | Elected Mayor |
| Brixham Trawler Agents | Director/Accountant |
| Harbour Committee | External Advisor |
| RNLI | Operations Manager |
| RYA | SW Member |
| Brixham Marina MDL | Manager |
| Simon Beer | Shipwright |
| Devon & Severn Inshore Fisheries Conservation Authority | Chief Fisheries Officer |

Torquay and Paignton Liaison Forum

| <u>Company</u> | <u>Role</u> |
|-------------------------------------|-------------------------------|
| Torbay Council | Councillors (x8) |
| Paignton Community Partnership | Member |
| Birchell Marine | Director |
| Paignton Pleasure Cruises | Director |
| Royal Torbay Yacht Club | Officer |
| Torbay Council – Harbour Authority | Torquay Deputy Harbour Master |
| Living Coasts | Operations Managers |
| Torquay Fishermans Association | Chairman |
| Harbour Committee | External Advisors (x4) |
| Disabled Sailing Association | Chairman |
| Blue Seafood | Director |
| Britannia Sea Scouts | Leader |
| TJ's Bistro | Owner |
| Birchell Marine | Director |
| Marine & Towage Services Group | General Manager |
| Paignton Rowing Club | Committee Member |
| International Sailing School | Director/Chairman |
| Torbay Council | Elected Mayor |
| Torquay Fishermans Association | Member |
| Torquay Marina MDL | Manager |
| Torbay Council – Harbour Authority | Harbour Master |
| Torbay Council – Harbour Authority | Paignton Harbour Master |
| Paignton Sailing Club | Commodore |
| Torbay Council – Harbour Authority | Torquay Administrator |
| Torbay British Sub Aqua Club (BSAC) | Member |
| Torbay Seaways & Stevedores | Director |