



## Southwold Harbour Lands Joint Committee

Tuesday, 18 December 2018

### REPORT ON THE FUTURE OF THE SOUTHWOLD HARBOUR LANDS (SHLJC05)

#### EXECUTIVE SUMMARY

This report:

1. reviews the recent history and management of the Southwold Harbour Lands (“SHL”, meaning the harbour and neighbouring lands, including the relevant stretch of the River Blyth, Buss Creek, Salt Creek, the caravan and camping site and commercial properties leased to independent operators to generate rental income for the harbour);
2. reviews the previously planned charitable model and the alternative long term model for the management of the SHL which have been considered and discussed with consultees, including representatives of Southwold Town Council (“STC”), harbour users and the Department for Transport (“DfT”); and
3. reviews the governance of the SHL and recommends new arrangements to promptly deliver short term governance improvements, and to prepare for longer term improvements.

Is the report Open or Exempt?	Open
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<b>Wards Affected:</b>	Southwold
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## **1 THE JOINT COMMITTEE**

- 1.1 The Southwold Harbour Lands Joint Committee (“**JC**”) was established by the resolutions made by STC and Waveney District Council (“**WDC**”) in 2014, as described in section 4 of this report.
- 1.2 The JC comprises four elected members from each of STC and WDC. The Joint Chairmen of the JC are Councillor Will Windell (STC) and Councillor Mark Bee (Leader of WDC).
- 1.3 The JC is also attended by officers, normally Andrew Jarvis (Strategic Director, WDC), Kerry Blair (Head of Operations, WDC) and Lesley Beevor (Clerk to STC).

## **2 THE HARBOUR ORDER**

- 2.1 The Southwold Harbour Order 1933 (the “**Harbour Order**”) is the governing legislation for the SHL. A copy is at Appendix A to this report.
- 2.2 The Harbour Order refers to a plan showing the extent of the harbour undertaking, a copy of which is at Appendix B to this report.
- 2.3 The Harbour Order was brought into effect by the Pier and Harbour Orders (Elgin and Lossiemouth and Southwold) Confirmation Act 1933, which confirmed the transfer of land for the harbour undertaking to the former Southwold Borough Council (“**SBC**”).
- 2.4 The Harbour Order describes the “**Corporation**” as the body with the powers and responsibilities set out in the Harbour Order for managing the harbour undertaking. The terms of the Harbour Order assume that the Corporation is a local authority and have not been updated to reflect inflation, current legislation and modern good governance. To summarise some points which are relevant to the issues considered by this report and some examples of outdated elements, under the terms of the current Harbour Order the Corporation:
  - 2.4.1 may appoint, as members of any committee appointed by the Corporation for the management of the harbour, and for such period as the Corporation may determine, external persons who have experience in or a special knowledge of the harbour undertaking or are payers of harbour rates (7);
  - 2.4.2 may acquire lands not exceeding 50 acres by purchase or lease (8);
  - 2.4.3 may sell/lease any lands acquired under the Order for their market value/market rent (10);
  - 2.4.4 may use or let steam tugs (16);
  - 2.4.5 may levy rates, subject to limits (18) superseded by the Harbours Act 1964;
  - 2.4.6 may sell the harbour undertaking or any part of it with the consent of (and on such terms, conditions and restrictions as are approved by) the DfT (27);
  - 2.4.7 may lease the harbour undertaking with the consent of (and on such terms, conditions and restrictions as are approved by) the DfT, but such lease cannot be

granted for a premium and must prohibit assignment without the consent of the DfT (28);

- 2.4.8 shall provide such funds as may become necessary for the purposes of the maintenance, management and improvement of the harbour undertaking out of harbour revenue or, if that is insufficient, out of the general rate fund and/or the general rate (30);
- 2.4.9 has restricted borrowing powers, needing consent from the DfT and being subject to restrictions in relation to repayment, if it does not have other borrowing powers (31);
- 2.4.10 may maintain a reserve fund, but that fund cannot exceed £5,000 without the consent of the DfT (38); and
- 2.4.11 shall apply harbour revenue in the following order: (a) payment of revenue expenses of the maintenance, repair and management of the harbour undertaking and all connected conveniences; (b) annual payment of interest on money borrowed; (c) payment of instalments in discharge of any money borrowed and/or to form a sinking fund to pay principal monies borrowed; (d) extending and improving the harbour undertaking, if the Corporation thinks fit; (e) making any payments as the Corporation may think fit into a reserve fund in accordance with the Harbour Order; (f) repayment to the general rate fund of all monies paid out of it for the purposes of the harbour undertaking; and (g) to reduce any principal monies borrowed (39).

### **3 MANAGEMENT OF THE HARBOUR, 1974-2018**

- 3.1 SBC, the original Corporation under the Harbour Order, ceased to exist and WDC and STC were created on local government reorganisation following the Local Government Act 1972.
- 3.2 WDC took the position that the harbour undertaking transferred to WDC under the Local Authorities (England) (Property etc.) Order 1973 and that the effect of the 1972 Act was to apply the functions of the Corporation under the Harbour Order to WDC.
- 3.3 The Department for the Environment was consulted and agreed with WDC, advising on 6 December 1973 that, if WDC reached any agreement with STC to change this and allow STC to operate the harbour instead of WDC, an exemption from the 1973 Order and an order changing the effect of the 1972 Act on the Harbour Order would be needed. No such exemption or order were sought.
- 3.4 On 4 January 1974, SBC confirmed that it had decided to agree to the harbour undertaking transferring to WDC as at 1 April 1974. WDC duly informed the Department for the Environment. On 1 April 1974, SBC ceased to exist.
- 3.5 At least one local consultee has claimed that WDC was merely appointed by STC to manage the harbour undertaking on behalf of STC and/or that the SHL have been held on a charitable trust for hundreds of years, but these claims are not consistent with the terms of the Harbour Order, the advice in 1973 from the relevant government department as mentioned above, the confirmation in 1974 from SBC as mentioned above

and the management of the SHL by WDC as principal for more than 40 years. In particular:

3.5.1 WDC has, from 1974 to date, been in exclusive possession, managing, collecting the rents and other harbour revenue from and maintaining/improving the SHL, apparently as the Corporation under the Harbour Order;

3.5.2 WDC is the landlord to various commercial tenants (such as restaurants) of buildings on the SHL, maintaining insurance and collecting the rents, which are accounted for as part of the harbour revenue;

3.5.3 WDC employs the relevant staff and acts as the statutory harbour authority under the relevant legislation. The relevant staff form part of the Operations team at WDC and are employed directly by WDC:

3.5.3.1 the harbour operation is currently managed by two Harbour Masters, who provide full time cover for the moorings and pontoons, deliver the statutory functions, ensure that the harbour is operating safely and deliver ongoing repairs and maintenance. In the summer months, the harbour masters are assisted by a part time position, which is created to deal with bookings and liaise with harbour users and other members of the public;

3.5.3.2 the caravan and camping site is managed and operated by three full time staff. These are the Site Manager, the Site Assistant and a Receptionist/Administrator. In the summer months, additional staffing resources are engaged by WDC through temporary contracts and/or agencies;

3.5.3.3 in addition to the on-site staff, WDC allocates staff in its Customer Service Centre in Lowestoft to take and manage bookings. This involves the equivalent of one full time employee post;

3.5.3.4 currently, the senior staff managing the SHL report directly to the Head of Operations for WDC. It is recognised that, to deliver the improvements needed for the caravan site and the harbour in future, it is likely to be necessary to add a dedicated management function; and

3.5.4 WDC has advanced substantial sums to enable maintenance and improvement of the harbour over the years, repaying the sums advanced from revenue over time. It is understood that the SHL operated at a loss from 1975 until 1996 and thereafter produced surpluses in some periods and losses in others, with WDC lending substantial sums from its general rate fund for harbour costs and being repaid from income when there was a surplus. The current remaining debt to WDC is approximately £1.2 million.

3.6 In all the circumstances, WDC believes that it is the owner of the SHL, that even if any charitable trust did exist before 1974 it would long since have been extinguished and that WDC would be entitled to apply to the Land Registry to register WDC's title to the SHL. WDC has refrained from doing so for some years in the interests of reassuring local stakeholders who have expressed fears that WDC might then sell the SHL or parts of it to

third parties, but it may well apply to register title in future to clarify the position and facilitate any leasing arrangements in future.

- 3.7 Further to the details explained in section 5 below, a full harbour survey is being commissioned which will provide a detailed summary of the works that are required both in the SHL and the upstream environment to ensure that the harbour remains navigable and able to support marine industry.
- 3.8 WDC, operating under the Prudential Code for its investments, has to ensure that its capital investment plans are affordable, prudent and sustainable. As the owner of the SHL and the Corporation under the Harbour Order, WDC is responsible for its long term investment and maintenance. Like most councils, WDC is also faced with a severe reduction to its funding levels. However, it benefits from having in place a robust financial framework and Medium Term Financial Strategy (“**MTFS**”). The MTFS is designed to ensure appropriate allocation of resources to WDC’s investment and maintenance plans and the MTFS tests WDC’s financial resilience to underwrite the required investment if needed.

#### **4 PREVIOUSLY PLANNED GOVERNANCE CHANGES**

- 4.1 Over the years, there have been complaints from STC and some local residents/users, claiming that the SHL should be managed by STC or that it is or should be held on charitable trust for or otherwise owned by STC or the people of Southwold.
- 4.2 In 2003 and 2004, WDC and STC were in disagreement about whether WDC could sell or lease parts of the SHL and the basis upon which they were held. Over the following ten years, little or no progress was made in seeking to resolve matters by agreement.
- 4.3 In 2013, a joint working group was formed, consisting of representatives from WDC and STC, to focus on the future of the SHL. The terms of reference of the joint working group were:

*“Both Councils acknowledge that there are various complex historical and current issues that prevent any simple transfer or devolution of Southwold Harbour and its associated lands to any existing or other body. The Councils will however work through the Joint Working Group to overcome these collective challenges and to jointly seek to enable:*

- i. In the short term, more local involvement and engagement in the management and delivery of Southwold Harbour and all other activities on the wider Southwold Harbour lands; and*
- ii. In the medium term, implementation of a revised local model for the delivery of Southwold Harbour and its associated lands that addresses the future ownership, and long term sustainability, responsibility, liability and delivery”.*

- 4.4 The joint working group organised a public consultation, which took place between 2 June 2014 and 11 July 2014 and began with publication of a consultation document dated June 2014, a copy of which is at Appendix C to this report. The group emphasised in its consultation document that it did not wish to engage in “*lengthy and potentially expensive and confrontational discussions with regard to ownership and liability of the*

*Harbour Lands*". The group was looking for a way forward which could avoid this and set out its key principles in the consultation document as:

- Improvements that reflect the culture & character of Southwold
- Local influence & accountability
- Working in partnership
- Discharging of statutory obligations
- Financial transparency
- Investment & local re-investment
- Viability & sustainability (both financially and in terms of governance)

4.5 On 28 July 2014, a simultaneous meeting of WDC's Cabinet and STC was held (REP1127, a copy of which is at Appendix D to this report, and the relevant minutes, copies of which are at Appendix E to this report, refer). WDC's Cabinet and STC both resolved that:

- 4.5.1 the draft key principles and vision outlined in the June 2014 consultation document be adopted;
- 4.5.2 a Joint Committee ("JC") of WDC Cabinet and STC be established in place of the current joint working group, with the same terms of reference as the joint working group (recited in paragraph 4.3 above);
- 4.5.3 delegated authority be granted to the JC to act as the *'Initial Strategic Board'* for the SHL as set out in the consultation document (*"delegated decision making powers from both Southwold Town Council and executive powers from the Waveney District Council Cabinet ... providing a strategic steer, ensuring compliance with legislation and holding to account the 'management' for the operation and delivery of the lands, within the budgets set by the Councils"*);
- 4.5.4 WDC Cabinet and STC each appoint four of their Councillors to the JC, and each appoint two additional named substitutes;
- 4.5.5 the governance arrangements set out in paragraph 3.3 of the report to the simultaneous meeting, a copy of which is at Appendix D to this report, be adopted for the operation of the JC (i.e. the legal procedures required by executive committees of WDC for the arrangement of meetings and decision making, with a quorum of a minimum of three councillors on the basis that the JC will only be quorate when at least one of the councillors appointed from each of the Councils is present);
- 4.5.6 investigations be made to identify the options for optimising investment in and delivery of the caravan site in line with the vision set out in the consultation document;
- 4.5.7 professional advisers be instructed on behalf of both Councils to develop the optimum options for the sustainable, long term, ownership, control and delivery of the SHL; and

- 4.5.8 a community engagement strategy be developed and implemented to ensure the ongoing involvement of all relevant stakeholders as the vision continues to evolve and be delivered.
- 4.6 WDC subsequently engaged Winckworth Sherwood, solicitors, to produce a report to the JC on a charitable model which had been proposed by the JC, assuming that all assets and liabilities were to be transferred to the new model. A copy of their report is at Appendix F to this report. This referred to various options and suggested that:
- 4.6.1 a company limited by guarantee and registered as a charity would manage the SHL (purchasing the SHL, holding the SHL on trust or taking a lease of the SHL, subject to consent from the DfT; Winckworth Sherwood suggested a long term lease, giving as an example a lease with a term of 99 years), with an independent board of trustees (comprised initially of elected members from STC and WDC, with additional trustees to be recruited); and
- 4.6.2 a leisure trading company, limited by shares and wholly owned by the charitable company, would manage the caravan site and any other non-charitable elements, gifting profits to the charitable company to seek maximum tax efficiency.
- 4.7 On 18 March 2015, the JC met (copies of the minutes are at Appendix H to this report) and adopted the findings of the report from Winckworth Sherwood, resolving that:
- 4.7.1 the legal model for the new governance arrangement should be a charitable company limited by guarantee ('Harbour Trust'), supported by a trading subsidiary;
- 4.7.2 the key provisions of the governing document (as set out in Section 6 of the report from Winckworth Sherwood) be approved in principle, subject to further consideration being given to •The name of the new company; •Members - including WDC and/or STC being Corporate Members of the Harbour Trust; •Trustees; •Election of Trustees; and •The terms of reference of the Stakeholder Advisory Group;
- 4.7.3 the mechanisms for the recruitment, selection and appointment of trustees (as set out in Section 7 and Appendices 2 to 4 of the report from Winckworth Sherwood) be endorsed;
- 4.7.4 the statutory function of the Harbour Authority should be transferred to the new Harbour Trust;
- 4.7.5 the indicative implementation timetable as set out in Section 15 of the report from Winckworth Sherwood (for incorporation of a company and its registration with the charity commission) be endorsed; and
- 4.7.6 any land/property transfers, creation of the Harbour Trust and transfer of statutory function of the Harbour Authority should take place simultaneously.
- 4.8 It proved difficult to progress the implementation of this planned charitable model. Accordingly, in October 2015, the JC resolved to appoint a project manager to "*accelerate delivery of the SHL transformation project*".
- 4.9 The project manager was ultimately recruited and started work in June 2016. As explained in section 5 of this report, a number of issues about the planned charitable

model came to light. In particular, the lack of agreement in respect of ownership of the SHL was identified as a major barrier to progression, obstructing implementation of any model involving overarching responsibilities for liabilities/risk and transfer of the SHL. For example, some stakeholders insisted that in the event of failure of the planned model there must be arrangements for the SHL to be vested in STC.

- 4.10 The last formal meeting of the JC was on 26 October 2015 [REPSHLJC 03/04 refers], but since then the JC has met frequently on an informal basis and the issues associated with the charitable model were discussed.
- 4.11 In particular, in December 2016, WDC:
  - 4.11.1 expressed concern informally to the JC that the charitable model may be unable to independently finance future work required, or have the resilience to manage the liabilities and risks of the SHL, as outlined in section 5 of this report; and
  - 4.11.2 outlined their willingness to finance works at the SHL in future, but warned that they would be unable to do so without retaining sufficient strategic oversight and control, which (as outlined in section 5 of this report) was not possible under the charitable model.
- 4.12 Accordingly, from January 2017, the JC began to work informally to consider and consult local stakeholders about alternative models to seek to improve governance of the harbour which were as far as possible in line with the resolutions made in 2015. The aim was to:
  - 4.12.1 provide strategic overview by WDC, to reflect and secure the level of future funding;
  - 4.12.2 include STC and WDC with a view to 'local influence and accountability' (one of the key principles in the consultation document published in June 2014);
  - 4.12.3 permit the return of all assets in the event of failure of any implemented governance structure; and
  - 4.12.4 enable appropriate borrowing by any body charged with managing the SHL.
- 4.13 After further consulting Winckworth Sherwood, the JC considered in particular a local authority trading company model, which would enable a similar arrangement to the charitable model whereby:
  - 4.13.1 a local authority trading company would manage the SHL (taking a transfer or lease of the SHL, subject to legal requirements as to the terms of such transfer or lease and subject to consent from the DfT) with a board of directors comprising elected members from STC and WDC and with WDC remaining as sole shareholder (to avoid procurement difficulties and because it is likely to be asked to lend substantial sums to the harbour in future as it has in the past);
  - 4.13.2 a leisure trading subsidiary, limited by shares and wholly owned by the local authority trading company, would manage the caravan site; and
  - 4.13.3 there would be the option of adding a separate charitable company, which could be established in future if this would be desirable to ensure tax efficiency in

relation to any profits made by either trading company and to facilitate private fund raising.

- 4.14 During 2017 and early 2018, the JC arranged consultations with stakeholders about some of the issues raised by the charitable model and the local authority trading model was proposed instead. Please see section 7 of this report for details.
- 4.15 STC indicated willingness to agree the change to the proposed local authority trading company model, but some consultees were unhappy with it and at least one local consultee made it clear that they would resist anything other than a charitable model. In particular, consultees were concerned about any arrangement to simplify matters by leasing (rather than selling/transferring) the SHL to the proposed local authority trading company.
- 4.16 As explained in section 2 of this report, any sale/transfer or lease of the harbour undertaking, under any model, would not be possible without the consent of the DfT. Accordingly, to seek to progress the matter, WDC arranged to consult with the DfT to seek its views on the local authority trading company model and likely requirements for any arrangements to improve the governance of the SHL.
- 4.17 The DfT suggested the approach explained in section 6 of this report.
- 4.18 In view of the feedback received from the DfT and local consultees, and the related issues explained in section 5 of this report in relation to the models proposed so far, it is recommended that the JC considers adopting the approach suggested by the DfT to improve the governance of the SHL.

## **5 ISSUES ARISING**

- 5.1 As explained in section 6 below, the DfT has indicated that it would be concerned about any sale/transfer of the SHL from WDC (whether to a charity company directly or on trust, to a local authority trading company, or otherwise), at least without a Harbour Revision Order to update the terms of the Harbour Order and make it suitable for a harbour authority which is not a local authority.
- 5.2 Further, in the event of insolvency of the charitable model, even if that model was structured by having the SHL held as an asset of the charity rather than on trust for others, the SHL could only be transferred to other charitable organisations. This is known as the “asset lock”. Accordingly, even if the DfT would give consent to a sale/transfer of the SHL to a charitable company, either a trust structure or the asset lock would prevent the DfT from requiring as a condition of their consent that the SHL must revert to WDC in the event of insolvency of the charitable company.
- 5.3 This would not be acceptable to WDC. It would create a risk that WDC would end up without control of the SHL but with effective liability for it - whether because the DfT required a guarantee from WDC as a condition of their consent or merely because WDC would need to manage flood risks etc. and would be the only body with sufficient resources to advance the very substantial funds which would be needed for the repair/maintenance work at the harbour, as explained below.
- 5.4 WDC believes that it is likely to be asked to advance very substantial sums for the repair, maintenance and improvement of the SHL in the future, as it has in the past. WDC is the

only known body with sufficient financial resources to advance such funds for such works and the sums it advances will only be partially mitigated or supplemented by any grant funding available. It cannot risk public monies in advancing very substantial sums without control of the SHL so that it knows it can control expenditure and recover those advances from income over time. In view of the title registration position described in section 3 above, it is not (as matter stand) in a position to quickly register a legal charge (mortgage) against the SHL as security for loans to a company holding the SHL, and even with such a charge is unlikely to be able to justify advancing very substantial public funds without the ability to oversee and control precisely how these funds are applied.

5.5 In February 2017, the Asset Management team at WDC worked with Coastal Partnership East (a partnership of various coastal local authorities, including WDC, which has responsibility for managing the coast and estuary environments of Norfolk and Suffolk) to identify necessary expenditure in respect of the SHL over the next 25 years. This work indicated that advances of several million pounds will be required, including:

5.5.1 work to bring the caravan site up to date, including the installation of mains electricity and water;

5.5.2 repairs to harbour structures, as outlined in the table below; and

5.5.3 work to address upstream changes on the River Blyth, including the raising of river banks, that if not carried out would significantly affect the tidal flow in the harbour and potentially the viability of the SHL.

5.6 The estimated costs in relation to the harbour entrance structures alone were as set out in the table below:

<b>Structures</b>	<b>Estimated cost (£000)</b>	<b>Estimated date of next rebuild</b>	<b>Comments/assumptions</b>
North Pier & knuckle	2400	2030	The North Pier may require capital repairs to parts before 2030.
North Fender 1	840	2017	Assumes the current design is retained for future rebuilds.
North Fender 2	840	2037	
South Pier (new line)	4050	2025	Assumes the South Pier rebuild on a new line can be deferred to 2025 or later without causing unacceptable harm to harbour navigation.
South Fender (new)	750	2025	Assumes a separate fender will be required.
South training wall	2410	2035	
Stage W10	360	2025	The existing stage can be maintained to 2025

- 5.7 Consultees have disputed whether some or all of this estimated expenditure in relation to the harbour entrance structures will be necessary. WDC is in the process of commissioning external consultants to investigate, project and advise on the likely natural effects on the harbour over the coming years. This approach was agreed with representatives of harbour users when they met with the Head of Operations for WDC (at one of their regular consultation meetings, as explained at paragraph 7.5 below). The first stage was to engage a technical consulting firm, ENBE Ltd, to prepare a detailed technical specification and scope for the external consultants. WDC will use this specification/scope to invite experts to tender for the instruction to carry out a full harbour study to fulfil the following objectives:
- 5.7.1 to better understand the hydrodynamic regime and performance of the harbour entrance;
  - 5.7.2 to better understand the impacts of flood risk management strategy on the harbour; and
  - 5.7.3 to develop an investment plan.
- 5.8 Further, under the charitable model, all profit from the subsidiary would be donated to the charitable company and so be treated as harbour revenue to be applied only for the purposes set out in the Harbour Order, potentially limiting necessary flexibility as to the proper use of such funds (for example, investing in flood defence works further up the River Blyth).
- 5.9 Further, in 2016, WDC were advised by Winckworth Sherwood that if elected members of WDC became the first trustees of the charity (together with elected members of STC, as anticipated when the resolutions were passed in 2015), this would need to be for an interim period only to avoid potential issues in securing charity registration. This is naturally a concern for WDC in view of the need for control and the magnitude of the anticipated expenditure, as outlined above.
- 5.10 Further, an independent charity company, solely reliant on grants and other discretionary public funding, may well find it difficult to attract adequate expertise and staff and finance unforeseen risk.
- 5.11 Further, as described in section 3 above, the title to the SHL is unregistered. Sale/transfer or grant of a full legal lease of the SHL would trigger the requirement to register the title to the SHL at the Land Registry.
- 5.12 As mentioned above, to seek to avoid some of the difficulties identified, WDC suggested a lease (rather than sale or transfer) of the SHL to a local authority trading company, since it should be possible to obtain consent from the DfT for a lease and potentially to grant an equitable lease to seek to avoid the need to register title for a legal lease. However, consultees were unhappy about the possibility of a lease from WDC. Further, as explained in section 6 below, the DfT commented that a lease would leave unresolved the issues relating to the need to update the Harbour Order, suggesting that if at all possible a better long term model should be designed and implemented using a Harbour Revision Order rather than attempting to make any sale/transfer or lease model fit around the existing Harbour Order.

- 5.13 Further, in March 2018, the DfT issued new Ports Good Governance Guidance (“**PGGG**”) which sets out new best practice recommendations for the governance of and reporting by harbour authorities. The PGGG needs to be taken into account when designing the improved governance arrangements for the SHL. A copy is available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/684839/ports-good-governance-guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684839/ports-good-governance-guidance.pdf).
- 5.14 The following points in respect of the PGGG are not exhaustive but may be helpful:
- 5.15 The purpose of the PGGG is to set out for statutory harbour authorities (“**SHAs**”) what good governance looks like, to help deliver the key aims of: *“managing, maintaining and improving their harbour in the broad public interest”*. The guidance covers all SHAs regardless of the port ownership model - that is, whether this is private, a trust port or a local authority (“**LA**”) owned port.
- 5.16 There is specific guidance about LA owned ports in Part C of the PGGG. This includes some overarching principles which state that: *“LA owned ports should be governed and operated in the interests of stakeholders including the local community”*.
- 5.17 The PGGG does not have force of law and is not legally binding; it does not replace any legal duties or obligations that SHAs have under their own legislation or general acts of Parliament, such as the Harbours Act 1964. However, the DfT expects all SHAs to carefully consider the PGGG and to implement its principles if these are not already in place, where *“practical and appropriate to the circumstances of the SHA”*, adding: *“where the SHA decides not to comply with an aspect of the PGGG, for example, because its scale makes this impracticable, it should be able to clearly state this and the reasons why to stakeholders, such as in their annual report”*.
- 5.18 The PGGG notes that LA owned ports operate within the governance and decision making structure of the overall decision making structure of the LA. Generally, a LA port is unlikely to be governed by a board in the sense that privately owned SHAs or trust ports may be. Governance of LA owned ports may instead be the responsibility of a Council Committee or a Cabinet member, who may also be responsible for a number of other functions in the LA. LA owned harbours are part of the LA and so ultimately accountable to elected Council members and the local electorate.
- 5.19 The PGGG states that where LAs provide a substantial or continuing subsidy to a SHA, or any subsidiary engaged in port related operations, the LA should seek to establish and implement a strategy to put port operations on a commercial basis wherever this is possible.

#### **Harbour Management Committees (HMCs)**

- 5.20 The PGGG states that some LAs have established HMCs as a means of governing their harbours. HMCs are seen by the DfT as a way to meet the requirements of the PGGG. HMCs have some of the features of a trust port board or board of a private SHA and are a good example of how corporate governance best practice principles can be applied in the context of LA harbours. The establishment of a HMC (which could be constituted as a committee within the current LA system) can bring openness and additional accountability to port decisions, along with more expertise and experience (as a skills audit will be carried out prior to board members being decided upon). Some HMCs are advisory only.

- 5.21 The PGG states that key features of HMCs are that they should be strategic and aware of the commercial and legal framework within which ports operate, ideally comprising:
1. approximately 50% LA elected members. These do not all have to be LA councillors; they could be co-opted representatives who are appointed by the LA or provide specific skills in support of port management;
  2. the port chief executive/harbour master, who should have access to the HMC in an advisory role, but as an officer of the LA they should not serve on the committee or have voting rights;
  3. external appointees who are stakeholder representatives or individuals with valuable skills and experiences and should be appointed by public advertisement;
  4. a Chairman appointed on merit, skills and suitability.
- 5.22 The PGGG states that the Chairman of the HMC should ideally be an elected representative of the LA, as this will automatically maintain reporting lines and accountability to the LA. Should the LA favour the appointment of an independent Chairman, it is important that reporting lines and voting arrangements are clear and in line with LA corporate governance practice.
- 5.23 Before recruiting to a HMC, the LA should undertake a skills audit to assess the balance of skills required to effectively govern the port and deliver against the business plan. These skills should be considered for all committee members.
- 5.24 In order for the HMC to operate effectively, a formal memorandum of understanding could be established between the HMC and the LA. This could set out the recommended ground rules for a framework between the HMC and the LA.

#### **Engagement with stakeholders**

- 5.25 The PGGG says that the SHA should engage with a wide range of stakeholders. This will facilitate the SHA setting out its position on its current performance and future proposals, as well as allowing it to hear and take account of stakeholder views in formulating its future plans.

#### **Provision of information**

- 5.26 The PGGG says that the LA owned SHA should:
1. submit annual accounts to DfT in the same way other SHAs are required to;
  2. consider preparing accounts on a commercial accounting basis for its ports to help stakeholders understand its performance;
  3. operate in an open, transparent and accountable way, making a range of information available to stakeholders about their organisation and activities, subject to commercial and data confidentiality considerations;
  4. provide annual reports and regularly updated websites;
  5. have a good understanding of the duties and powers set out in the legislation, as well as the common law and fiduciary duties of SHAs, and ensure these duties and powers are applied in the governance and management of the SHA;

6. produce a business plan that looks at the future prospects of the harbour and how it will meet the requirements of the stakeholders, who should be fully involved in its development.

## 6 DFT RECOMMENDATIONS

- 6.1 In July 2018, officers of WDC consulted Ports Good Governance and Trust Ports at the DfT about the background and the proposed local authority trading company model. While making it clear that they could only comment formally if an application was made or specific guidance was sought in writing, their informal observations were that:
  - 6.1.1 their policy expectations are that any new model should improve governance and be in line with the new version of the PGGG for municipal (local authority) ports, explaining the reasons for any departures;
  - 6.1.2 they would hope for community support for any proposal and independent involvement in the model (such as professionals appointed through an open recruitment process);
  - 6.1.3 the current Harbour Order is extremely restrictive and out of date - they would be concerned about any model transferring statutory duties to a third party based on the Harbour Order in its current form;
  - 6.1.4 it would be much less difficult to obtain DfT consent to a lease rather than a transfer of the SHL, but the need to update the existing Harbour Order would remain;
  - 6.1.5 they would suggest designing and implementing a better long term model using a Harbour Revision Order, rather than attempting to make a model fit the existing Harbour Order;
  - 6.1.6 accordingly, the matter may be better dealt with by:
    - (a) looking at interim governance improvements, such as establishing a harbour user's or harbour management committee (advisory or otherwise); and
    - (b) working on a longer term project, to update the Harbour Order through a Harbour Revision Order.
- 6.2 A Harbour Revision Order is used to change the legislation governing the management of a harbour. The application is made to the Marine Management Organisation ("MMO") under Section 14 of the Harbours Act 1964. This will only be granted if the MMO can be satisfied that the making of the Harbour Revision Order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner. The process is explained at: <https://www.gov.uk/guidance/apply-for-a-harbour-order>. It includes initial consultation, advertisement, notices and a six week objection period. Where there are no objections, the process might only take approximately six months. However, where there are objections, the process could take approximately two years and incur relatively significant costs. Accordingly, it would be important to prepare and consult carefully in

relation to the proposed application to enable it to be fully developed before it was made.

- 6.3 In view of the time which would be needed to prepare properly for and complete an application for a Harbour Revision Order, the DfT suggested interim arrangements to improve governance by establishing a harbour user’s committee or harbour management committee, which could only be advisory, with independent members.
- 6.4 While it would not be essential to use this, the Harbour Order gives a specific formal management committee option, enabling the “Corporation” to bring in external appointees to a committee appointed by the Corporation for the management of the harbour. Should such a management committee be appointed, it could still include representatives from STC, as outlined in the previous proposed models, as long as any member of the committee who is not a member of WDC has experience in, or special knowledge of the harbour undertaking, or is a payer of harbour rates (art.7 of the Harbour Order). The appointment document would need to clearly define the limits of authority of any such committee. Under the Harbour Order, WDC would be entitled to appoint members to such a committee by resolution for such periods as WDC determines and to remove them at any time.

## 7 CONSULTATION

- 7.1 The terms of reference of the JC (set out in paragraph 4.3) and the key principles for the future management of the SHL (set out in paragraph 4.4) were adopted following wide consultation in 2014, as explained in section 4 of this report.
- 7.2 From December 2016, the JC has met informally to discuss some of the issues associated with the charitable model planned in 2015, as noted in section 4.
- 7.3 During 2017 and early 2018, the JC arranged the following consultation events with stakeholders about some of the issues raised by the charitable model and the alternative proposed local authority trading model, as described in section 4.
- 7.4 In this section:

“**SCOA**” means the individuals describing themselves as the Southwold Caravan Owners Association (who are understood to represent most of the users of the caravan site), whose website is at <http://www.southwoldcaravanowners.co.uk/index.php>;

“**SHRBUA**” means the individuals describing themselves as the Southwold Harbour and River Blyth Users Association; and

“**SHPSG**” means the individuals describing themselves (from about May 2018) as the Southwold Haven Port Stakeholders Group, whose website is at <http://southwoldharbour.info/>.

	Event	Location	Attendance	Hosted by
A	Staff presentation 1000hrs –	Stella Peskett Hall, Southwold	Staff employed by WDC at SHL	Cllr Will Windell (STC Councillor and joint chair of the JC)

	1400hrs 13/12/17		Approx. 10 people	Andrew Jarvis (WDC Director) Jo Bussell (Winckworth Sherwood Solicitors) Andy Gallant (SHL Project Manager)
B	Caravan site users presentation 1200hrs – 1400hrs 13/12/17	Stella Peskett Hall, Southwold	SCOA and non-SCOA members from the caravan site Approx. 50 people	As above
C	Harbour users presentation 1400hrs – 1600hrs 13/12/17	Stella Peskett Hall, Southwold	SHRBUA members Approx. 45 people	As above
D	'Drop-in' event 100hrs – 1400hrs 20/1/18	Buckenham Galleries High Street Southwold	Members of the public Approx. 60 people	Cllr Mark Bee (WDC leader and joint chair of the JC) Cllr Will Windell (STC Councillor and joint chair of the JC) Cllr Sue Allen (STC Councillor) Andrew Jarvis (WDC Director) Jo Bussell (Winckworth Sherwood Solicitors) Andy Gallant (SHL Project Manager)
E	SHRBUA briefing 1530hrs – 1645hrs 1/2/18	Southwold Town Hall	Chair and Vice Chair of SHRBUA Cllr Ian Bradbury (STC Councillor, STC representative for SHRBUA and member of the JC)	Kerry Blair (WDC Head of Operations) Andy Gallant (SHL Project Manager)
F	Presentation at SCOA AGM 1400hrs – 1530hrs 5/3/18	Stella Peskett Hall Southwold	SCOA members including Chair, and Vice Chairs Approx. 70 people	Andy Gallant (SHL Project Manager)

7.5 In addition, the Head of Operations for WDC meets regularly with representatives of SHRBUA (at least two of whom are understood also to be members of SHPSG) and representatives of SCOA to consult them about the problems encountered with the charitable model, the potential local authority trading model and the management of the SHL.

7.6 The main relevant opposing comments made by consultees and WDC’s view on these can be summarised as follows:

Item	Comments	View
1.	Stakeholders are concerned that WDC could (directly, or indirectly through any proposed new governance model) sell the SHL, or the caravan site.	WDC has no intention of selling the SHL or the caravan site. The approach proposed in this report would not change the status quo.
2.	WDC would have too much control of the SHL and/or cannot impose changes because STC are the owners of the SHL.	WDC has controlled and managed the SHL, acting as owner for more than 40 years and advancing substantial sums. Please see section 3 of this report for further details.
3.	The SHL are held on charitable trust and/or stakeholders wish to convince WDC to pursue the previously planned charitable model (explained in section 4 of this report) and/or in the event of failure of the planned model there must be arrangements for the SHL to be vested in STC.	As above; the SHL are not held on charitable trust. Please see section 3 of this report.  For the reasons summarised in section 5 of this report, it has become clear that the charitable model planned in 2015 would not be appropriate.
4.	WDC should transfer the harbour to a local authority trading company or other new governance structure (not merely lease it, or the like).	As explained in sections 5 and 6 of this report, the DfT (and WDC) would be concerned about any transfer with the Harbour Order in its current form.  Such transfer may be possible in future, but a Harbour Revision Order would be needed to modernise the Harbour Order and deal with the issues identified in this report.
5.	There is no requirement for immediate investment and no additional future funding will be required because this can be financed through existing income.	Based on WDC’s experience of the last 40 years, these assertions are not realistic. WDC has no reason to doubt the initial cost estimates (as outlined in section 5) and no alternatives have been produced. In any event, this would be for any

		harbour management committee or other decision maker to review once the external consultants have reported their projections and advice, as explained in section 5.
6.	Concerns about increases in rents after investment and the nature of improvements/investments planned, including desires to see better use of green and carbon neutral materials/facilities, a club house, better integration between the caravan site and the camping site and possible expansion.	Such points should be taken into account by the proposed harbour management committee or other decision maker at the appropriate time.

## 8 EQUALITY IMPACT ASSESSMENT

- 8.1 This report has been prepared having taken into account the results of an Equality Impact Assessment (EIA). The EIA is attached to this report at Appendix I.
- 8.2 The EIA is carried out to ensure that the proposed way forward takes into account any potential impact on groups with protected characteristics. These groups may share particular and protected characteristics, such as gender, sexual orientation or disability. Please refer to the EIA for full details, but in particular:
- 8.2.1 As to the physical environment of the SHL, WDC considers that the facility in its current condition is accessible to all groups. Due to the nature of the marine environment, access to vessels may require special adaptations. However, the pontoons and jetties themselves are, where possible, level and accessible. WDC is arranging a review of disabled access to jetties for marine users to better understand parameters for their use and inform planning for future improvements whatever governance structure applies.
- 8.2.2 The facility is free to access. While there are some commercial outlets on the Blackshore and harbour areas, it is not a requirement that people spend money to access the harbour. Therefore, it is considered that the harbour and its facilities are open to people regardless of socio-economic status.
- 8.3 WDC considers that the approach recommended in this report will not adversely affect the status quo and should improve it. For the reasons explained in this report, it is clear that the proposed charitable model has run into difficulties and is not appropriate, leaving the harbour continuing to be managed by officers of WDC, in consultation with SHRBUA, a group of individuals who hold themselves out as representing harbour users, and SCOA. Accordingly, it is important to revisit the resolutions to adopt that model. As set out in section 5 above, the proposed Harbour Management Committee would be well placed to enhance equality of access. In particular, external appointees would be engaged following open advertisement, in accordance with the PGGG, and it is proposed

that the JC would arrange stakeholder engagement arrangements to consult community stakeholders and all other relevant stakeholders on the improvements (which may include improved access arrangements) to be planned for the SHL.

- 8.4 Any points made by consultees during the suggested new consultation exercise about any potential impact on groups with protected characteristics would be taken into consideration by the JC when making its decision following the conclusion of the consultation exercise.

## **9 CONCLUSION**

- 9.1 WDC recognises that some improvements will take more time, but is keen that there should be prompt improvements in governance of the SHL by ensuring Cabinet or Committee responsibility for the SHL within WDC and working on:
- 9.1.1 arrangements for governance to be more open and transparent, with annual reports, better reporting and monitoring through websites and other improvements to enable compliance with the PGGG; and
  - 9.1.2 arrangements to enable investment in and improvement of the caravan site, in line with the resolutions made in 2014.
- 9.2 WDC is interested in developing this further by arranging to establish a Harbour Management Committee (with external appointees to represent stakeholders) which is either decision making or advisory and can help to work on the necessary short term improvements in line with the PGGG and prepare for long term improvements, in line with the suggestions made by the DfT.
- 9.3 Accordingly, and for the reasons summarised in section 11 below, the JC is asked to consider making the resolutions proposed in the recommendations section below.

## **10 HOW DOES THIS RELATE TO THE EAST SUFFOLK BUSINESS PLAN?**

- 10.1 In the East Suffolk Business Plan published by WDC and Suffolk Coastal District Council in 2015, it was anticipated that Southwold Harbour would be transferred to a new local trust.
- 10.2 It has become clear that, for the reasons summarised in section 5 of this report, this would not be appropriate.

## **11 REASONS FOR THE RECOMMENDATION**

- 11.1 A great deal has happened and emerged since 2015 which the JC needs to take into account when deciding how to proceed.
- 11.2 For the reasons summarised in this report, it has become clear that the charitable model previously adopted by the JC is not appropriate. Accordingly, the resolutions made in 2015 to adopt that model should be rescinded.
- 11.3 It should be in the interests of all stakeholders to investigate the (informal) suggestion made by the DfT of planning to establish a Harbour Management Committee to enable

short term governance improvements (including more local involvement) and plan for longer term improvements by application for a Harbour Revision Order.

- 11.4 This suggested approach would be in line with the guidance from the DfT and the terms of reference of the JC (as set out in paragraph 4.3 above), which were adopted following the 2014 consultation exercise and aim to enable:

*“In the short term, more local involvement and engagement in the management and delivery of Southwold Harbour and all other activities on the wider Southwold Harbour lands; and*

*In the medium term, implementation of a revised local model for the delivery of Southwold Harbour and its associated lands that addresses the future ownership, and long term sustainability, responsibility, liability and delivery.”*

- 11.5 The proposed approach would enable planning of the new governance arrangements for the harbour to:
- 11.5.1 take into account the practical issues which have come to light since 2015, as summarised in this report;
  - 11.5.2 arrange consultation with stakeholders and look at examples of good practice from comparable harbours;
  - 11.5.3 take into account the results of the external harbour study which is being commissioned in relation to the harbour structures (as described in section 5);
  - 11.5.4 check that new governance arrangements would comply with the requirements of the new PGGG and explain any proposed divergence; and
  - 11.5.5 take professional advice on the appropriate structures, documents and processes and recommend these to WDC and STC.
- 11.6 The JC would be well placed to take on the new role of arranging the necessary consultations about the proposed approach and advising WDC and STC on how to improve governance of the SHL.
- 11.7 This report will be published on the WDC website in advance and it does not seek to prevent the JC from making the proposed resolutions without delay. However, it is suggested that it would be best practice and help to encourage local involvement if the JC makes clear the decision it is minded to make and allows a formal objection period to enable the JC to take into account any further points which might be made by stakeholders before making its final decision.

**Waveney District Council**

**4 December 2018**

## RECOMMENDATIONS

That the Joint Committee progress this matter by resolving:

1. that it is minded to revisit the resolutions it made on 18 March 2015 (the “**Resolutions**”), including those that the legal model for the new governance arrangements for the Southwold harbour lands should be a charitable company with a trading subsidiary and that the statutory function of harbour authority should be transferred to that company (as recited in paragraph 4.7 of the report to the Joint Committee dated 4 December 2018 (“**Report**”); relevant minute copied at Appendix H to the Report) because, having considered the circumstances which have emerged and developed since those Resolutions were made, as summarised in the Report, it considers that those Resolutions are no longer appropriate.
2. to note the recommendation in the Report that the Joint Committee:
  - a. rescinds the Resolutions; and
  - b. recommends to a simultaneous meeting of Waveney District Council and Southwold Town Council that they modify the resolutions made by them on 28 July 2014 to withdraw the delegation to the Joint Committee to act as an “*Initial Strategic Board*” and direct the Joint Committee to, in line with its terms of reference, arrange to consult professional advisers and stakeholders and advise WDC and STC on proposals for a Harbour Management Committee to succeed the Joint Committee and:
    - i. enable short term governance improvements (including more local involvement and engagement in management and delivery) in line with the key principles in the June 2014 consultation document and the Ports Good Governance Guidance issued by the Department for Transport in March 2018; and
    - ii. design proposals to deliver medium term improvements (which are likely to be made by application to the Marine Management Organisation for a Harbour Revision Order), addressing future ownership and long term sustainability, responsibility, liability and delivery.
  - c. arranges to instruct professional advisers to advise on the appropriate constitution for a Harbour Management Committee as outlined above; and
  - d. makes stakeholder engagement arrangements to consult community stakeholders and all other relevant stakeholders on the improvements outlined above.
3. to note that the Joint Committee keeps an open mind, that all potential outcomes (as to the Resolutions, the future of the governance arrangements for the Southwold harbour lands and the future role of the Joint Committee) remain open and the Joint Committee intends fully to take into account the results of the consultation exercise to be arranged as set out below

before it makes its decision.

4. to carry out an exercise to consult potentially interested persons (**Stakeholders**) by:
  - a. arranging an event or events in Southwold to consult Stakeholders in person; and
  - b. using reasonable endeavours to notify Stakeholders, at such events and by advertisement in a local newspaper and/or publication on the WDC and/or STC websites, of these resolutions and that they must deliver any representations they may wish to make to [kerry.blair@eastsoffolk.gov.uk](mailto:kerry.blair@eastsoffolk.gov.uk) and/or [townclerk@southwoldtowncouncil.com](mailto:townclerk@southwoldtowncouncil.com) in writing by midnight on 1 March 2019.
5. to arrange a further meeting to decide how to proceed once the results of the consultation exercise have been obtained and considered.

## APPENDICES

<b>Appendix A</b>	Southwold Harbour Order 1933
<b>Appendix B</b>	Copy plan of the harbour undertaking
<b>Appendix C</b>	Southwold Harbour Lands Consultation – June 2014
<b>Appendix D</b>	Report to WDC Cabinet and STC for 28 July 2014 (REP1127)
<b>Appendix E</b>	Minutes of the WDC Cabinet and STC meetings on 28 July 2014
<b>Appendix F</b>	Winckworth Sherwood report – March 2015
<b>Appendix G</b>	Report to the JC for 18 March 2015
<b>Appendix H</b>	Minutes of the JC meeting on 18 March 2015
<b>Appendix I</b>	Equality Impact Assessment

## BACKGROUND PAPERS

None.