

**SIMULTANEOUS MEETING OF (1) WAVENEY DISTRICT COUNCIL CABINET
AND (2) SOUTHWOLD TOWN COUNCIL**

Friday, 15 March 2019

**RECOMMENDATIONS FOR THE FUTURE GOVERNANCE OF SOUTHWOLD
HARBOUR (REP1976)****EXECUTIVE SUMMARY**

This report:

1. refers to the reports and supporting documents provided to the Southwold Harbour Lands Joint Committee (JC) which explain the background, the establishment of the JC, the previously planned governance changes, the problems encountered when seeking to implement those changes, the alternative governance changes considered by the JC and the consultation exercise carried out by the JC before deciding what recommendations to make for the future governance of the Southwold Harbour Lands (**SHL**, as defined below);
2. explains the resolutions made by the JC on 6 March 2019 to rescind the resolutions in relation to the previously planned governance changes and recommend that the role of the JC be changed, to advise on the proposed new arrangements for a Harbour Management Committee (**HMC**) to succeed the JC and enable short and long term governance improvements.

Is the report Open or Exempt?	Open
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Wards Affected:	Southwold
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Cabinet Member:	Councillor Mark Bee Leader of the Council
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Supporting Officer:	Kerry Blair Head of Operations 01502 523007 kerry.blair@eastssuffolk.gov.uk
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1 INTRODUCTION AND GLOSSARY

1.1 Links to the documents referred to in this report are provided in the table at the end of this report.

1.2 For ease of reference, the following expressions used in this report and the reports referred to in it have the following meanings:

2015 Resolutions: the resolutions made by the JC on 18 March 2015, including the resolutions that the legal model for the new governance arrangements for the SHL should be a charitable company with a trading subsidiary and that the statutory function of harbour authority should be transferred to that company.

December Report: the report to the meeting of the JC on 18 December 2018. The December Report explains the background, the establishment and terms of reference of the JC, the range of issues which had prevented previously planned governance changes and new proposals to improve the governance of the SHL pursuant to the PGGG.

December Resolutions: the resolutions made by the JC on 18 December 2018.

DfT: the Department for Transport.

February Report: the report to the meeting of the JC on 6 March 2019. The February Report explains the December Resolutions and the interim results of the consultation exercise. Later results up to the end of the main consultation exercise (28 February 2019) and deadline for e-mail representations (1 March 2019) are published with the February Report and were made available to the JC and online on 6 March 2019.

Harbour Order: the Southwold Harbour Order 1933, the governing legislation for the harbour undertaking, as summarised in section 2 of the December Report.

Harbour Revision Order: an order to change the legislation governing the management of a harbour. Application for such an order would be to the Marine Management Organisation under Section 14 of the Harbours Act 1964, as explained in paragraph 6.2 of the December Report.

HMC: a Harbour Management Committee, as explained in paragraphs 5.20 to 5.24 of the December Report by reference to the PGGG.

JC: the Southwold Harbour Lands Joint Committee, which was established by the resolutions made by STC and WDC's Cabinet in 2014, comprising four elected members from each of STC and WDC, as described in section 4 of the December Report.

OSC: the Overview and Scrutiny Committee of WDC.

PGGG: the Ports Good Governance Guidance issued by the DfT in 2018 (a copy of which is available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684839/ports-good-governance-guidance.pdf).

PMSC: the Port Marine Safety Code published by the DfT and the Maritime and Coastguard Agency (a copy of which is available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/564723/port-marine-safety-code.pdf).

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

SHL: Southwold 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.

SHPSG: the individuals describing themselves (from about May 2018) as the Southwold Haven Port Stakeholders Group, whose website is at <http://southwoldharbour.info/>, who claim to represent *“individuals, organisations and businesses with expertise in offshore and onshore marine management, business owners, property owners and lessees, fishermen, caravan owners, those engaged in tourism and experience of senior management across a wide range of industries including local government”*.

SHRBUA: the individuals describing themselves as the Southwold Harbour and River Blyth Users Association.

STC: Southwold Town Council.

WDC: Waveney District Council (or where, appropriate, East Suffolk Council, which will replace Waveney District Council and Suffolk Coastal District Council on 1 April 2019).

2 THE BACKGROUND AS SET OUT IN THE DECEMBER REPORT

- 2.1 Please read the report to the Southwold Harbour Lands Joint Committee (**JC**) for the meeting on 18 December 2018 (**December Report**), available at the link in the table at the end of this report.
- 2.2 The December Report was published on the WDC website from 7 December 2018 and explains the background in detail, including in particular:
 - 2.2.1 in section 2, a summary of the Southwold Harbour Order 1933 (**Harbour Order**), the governing legislation for the harbour undertaking;
 - 2.2.2 in section 3, a summary of the history of management by WDC for more than 40 years of the Southwold Harbour Lands (**SHL**, meaning as appropriate Southwold 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), from 1974 (replacing Southwold Borough Council, the original Corporation under the Harbour Order, on local government reorganisation) to date;

- 2.2.3 in paragraphs 4.1 to 4.5, the background and consultation in June 2014 which proposed what it described as key principles and led to the establishment of the JC and the resolutions made by WDC's Cabinet and STC on 28 July 2014 to adopt those key principles, establish the JC and enable the JC to: (a) provide a strategic steer (ensuring compliance with legislation and holding the management to account for the operation and delivery of the SHL within the budgets set by the Councils); (b) investigate, (c) instruct professional advisers; and (d) develop a community engagement strategy;
- 2.2.4 in paragraphs 4.6 to 4.7, the resolutions made by the JC on 18 March 2015 (**2015 Resolutions**), including the resolutions that the legal model for the new governance arrangements for the SHL should be a charitable company with a trading subsidiary and that the statutory function of harbour authority should be transferred to that company;
- 2.2.5 in paragraphs 4.8 to 4.18, introduction of the issues which had been encountered while seeking to implement the 2015 Resolutions in 2016 and then the local authority trading company model which had been investigated in 2017 as an alternative;
- 2.2.6 in section 5, further details of those issues, including the (informal) advice from the DfT that the Harbour Order should be updated before any transfer, the risks for WDC that it would lose control of the SHL but remain liable for the SHL directly (through any guarantee required by the DfT for consent to transfer the SHL to a charity, company or other body) or indirectly (to manage flood risks etc. and as the only body with sufficient resources to advance very substantial funds), the advice from Coastal Partnership East that advances of several million pounds would be needed to bring the caravan site up to date, repair harbour structures and address upstream changes on the River Blyth, and the recommendations made in the new Ports Good Governance Guidance (**PGGG**) issued by the Department for Transport (**DfT**) in 2018 promoting the establishment of a harbour management committee (**HMC**) as one way to meet the requirements of the PGGG;
- 2.2.7 in section 6, the (informal) suggestion made by the DfT, when consulted in July 2018, of looking at interim governance improvements (such as establishing a harbour user's or harbour management committee, advisory or otherwise) and working on a longer term project to update the Harbour Order through a Harbour Revision Order or the like; and

2.2.8 in section 7, the further consultations which had been carried out already, particularly during 2017 and early 2018 when alternative governance models were being considered.

3 THE FEBRUARY REPORT – INTERIM CONSULTATION RESPONSES AND RECOMMENDATIONS

3.1 Please read the report to the JC for the meeting on 6 March 2019 (**February Report**) and the documents published with it, available at the links in the table at the end of this report.

3.2 The February Report was published on the WDC website from 26 February 2019 and explains developments since the December Report in detail, including in particular:

3.2.1 in section 3, the resolutions made by the JC on 18 December 2018 (having considered the December Report and appendices, heard from members of WDC and STC and considered responses from officers to the questions raised and comments made, by those members), to:

3.2.1.1 revisit the 2015 Resolutions;

3.2.1.2 note the recommendations in the December Report, including those that the JC rescind the 2015 Resolutions and recommend modification of the role of the JC to advise on proposals for a Harbour Management Committee (**HMC**) to succeed the JC;

3.2.1.3 arrange a consultation exercise; and

3.2.1.4 note that the JC kept an open mind and all potential outcomes (as to the 2015 Resolutions, the future of the governance arrangements for the SHL and the future role of the JC) remained open and that the JC intended fully to take into account the results of the consultation exercise before it made its decision,

(December Resolutions);

3.2.2 in section 4, the consultation exercise carried out in accordance with the December Resolutions, from the first event on 16 January 2019, providing for the main consultation exercise to conclude on 28 February 2019 and with a final deadline for written representations by e-mail of 1 March 2019;

3.2.3 in section 5, the complaints about historic issues relating to the SHL which had made to the Overview and Scrutiny Committee (**OSC**) of WDC and considered by the OSC on 7 February 2019;

3.2.4 in section 6, further points relevant to the proposed HMC arrangements arising from informal consultation with the Department for Transport (**Dft**);

3.2.5 in section 11, the other governance options which had been considered;

3.2.6 in section 12, the reasons for the recommendations made in the February Report and specific points arising out of the consultation to be taken into account in future if the recommendations were accepted, all subject to any new grounds or considerations submitted by any potentially interested person by 1 March 2019.

4 FURTHER CONSULTATION RESPONSES AND REVISED RECOMMENDATIONS

4.1 The further consultation responses, representations and other information received after the print deadline for the February Report and by 1 March 2019 were published on the WDC website, and made available to the JC, on 6 March 2019.

4.2 Copies of these consultation responses are available at the links in the table at the end of this report.

4.3 These further consultation responses were largely in line with the preceding consultation responses or made suggestions which were either not appropriate or should be taken into account in future if the recommended way forward is adopted.

4.4 However, three particular points emerged from the consultation as having been requested by a range of stakeholders:

4.4.1 to have reassurance, in view of allegations which had been made by third parties, that surplus income from the SHL would so far as possible be protected for the benefit of the SHL (generally expressed in wide terms, including for example any works needed to address upstream changes on the River Blyth, outside the SHL but recognised as being for their benefit);

4.4.2 to have reassurance that WDC would not seek to sell the SHL; and

4.4.3 to ensure that the planned short term governance improvements would correspond with and not be replaced by proposed long term governance improvements, which included a potential application for a Harbour Revision Order to update the existing Harbour Order.

4.5 The JC wished to recommend such reassurance, bearing in mind that any such provisions, which would either conflict with or be to confirm, change or supplement the provisions of the current Harbour Order (which has specific provisions, relied upon by some stakeholders, governing issues such as the application of the income from the harbour undertaking and any sale of the harbour undertaking) should be made by an application for a Harbour Revision Order or the like, that some stakeholders (such as the DfT or the Marine Management Organisation) may have specific requirements in relation to any such provisions and that legal advice should be sought to ensure that any such provisions are carefully considered, well drafted and do not cause unforeseen problems in future.

5 MEETING OF THE JC ON 6 MARCH 2019

5.1 Accordingly, at the meeting on 6 March 2019, after considering the February Report with appendices and the further consultation responses, representations and other information referred to above, and after hearing from members of STC and WDC (who were complimentary about the consultation exercise which had been conducted), the recommendations which had been made in the February Report were revised as follows (with the additions shown in bold and underlined) and then made by the JC to:

1. *rescind the resolutions it made on 18 March 2015 (the “Resolutions”) because, having considered the circumstances which have emerged and developed since those Resolutions were made and the results of the consultation exercise arranged pursuant to the resolutions made by the Joint Committee on 18 December 2018, it is satisfied that the Resolutions are no longer appropriate;*
2. *recommend to the simultaneous meeting of Waveney District Council’s Cabinet (“WDC”) and Southwold Town Council (“STC”) which has been arranged for 10:30am on 15 March 2019 at the Stella Peskett Hall, Southwold 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 **providing for the** long term **welfare**, sustainability, responsibility, liability and delivery **of the Harbour Lands**,*
3. **recommend that, when planning the short term improvements described in 2(i) above, the points set out in section 12 of the February Report should be taken into account, including places on the proposed Committee for member(s) of STC and other external appointees to represent local and other stakeholders;**
4. **recommend that, when designing the medium term improvements described in 2(ii) above, specific safeguards should, subject to legal advice and the**

requirements of stakeholders including the Department for Transport/Marine Management Organisation, be included:

- (i) to protect surplus income from the Harbour and Harbour Lands, for the protection and benefit of the Harbour and Harbour Lands;***
- (ii) to preserve the Harbour Lands in the ownership of WDC and its successor local authority; and***
- (iii) to complement the short term governance improvements made in accordance with the resolutions above,***

5. *arrange to instruct professional advisers to advise on the appropriate constitution for a Harbour Management Committee as outlined above; and*

6. *make stakeholder engagement arrangements to consult community stakeholders and all other relevant stakeholders on the improvements outlined above.*

6 HOW DOES THIS RELATE TO THE EAST SUFFOLK BUSINESS PLAN?

6.1 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.

6.2 It became clear that, for the reasons summarised in the December Report and updated in the February report, this would not be appropriate. Accordingly, the alternative models explained in those reports were investigated to enable improvements in the governance of Southwold Harbour while working in line with the key principles adopted from the 2014 consultation, as described in those reports.

7 FINANCIAL AND GOVERNANCE IMPLICATIONS

7.1 WDC is prepared to advance funds to enable instruction of suitable external solicitors to advise on the appropriate constitution for a HMC, as outlined in the December Report and the February Report. This would be arranged through Legal and Democratic Services at WDC to control expenditure and work cost-effectively with the arrangements for the new constitution for East Suffolk Council when it replaces WDC in April 2019.

7.2 Please refer to the longer term financial and governance implications described and considered in section 12 of the February Report.

8 OTHER KEY ISSUES

8.1 This report has been prepared having taken into account the results of an Equality Impact Assessment (EIA), as published with the February Report.

8.2 The EIA was 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 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 the December Report and the February Report will not adversely affect the status quo and should improve it. For the reasons explained in the December Report, it is clear that the proposed charitable trust model has run into difficulties and is not appropriate, leaving the SHL managed by officers of WDC, in consultation with SHRBUA, and SCOA. The proposed Harbour Management Committee (**HMC**) 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 stakeholders on the improvements (which may well include improved access arrangements) to be planned for the SHL.

8.4 No points have been made by consultees during the consultation exercise about any potential impact on groups with protected characteristics, other than general comments about the need to give priority to good access by land and sea to ensure future viability and a suggestion for improved roadways and footpaths.

9 CONSULTATION

9.1 This report has been prepared taking into account the consultation exercise detailed in section 4 of the February Report, including the responses published online, as explained in sections 3 and 4 of this report.

10 OTHER OPTIONS CONSIDERED

10.1 The other options described in section 11 of the February Report were considered.

11 REASONS FOR THE RECOMMENDATIONS

The following recommendations follow those made by the JC on 6 March 2019, as explained in section 5 of this report. They were made for the reasons explained in this report and in the documents referred to in it.

RECOMMENDATIONS

To resolve to:

1. note the recommendations made by the Southwold Harbour Lands Joint Committee (JC) on 6 March 2019; and
2. modify the resolutions made on 28 July 2014 to withdraw the delegation to the JC to act as an “Initial Strategic Board” and direct the JC to instead, in line with its terms of reference, arrange to consult professional advisers and stakeholders and advise Waveney District Council’s Cabinet and Southwold Town Council on proposals for a Harbour Management Committee to succeed the JC 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 providing for the long term welfare, sustainability, responsibility, liability and delivery of the Southwold Harbour Lands.

APPENDICES

None

None

BACKGROUND PAPERS

The documents considered by the JC on 6 March 2019 as referred to in this report, all available through the menu at: <https://www.eastsuffolk.gov.uk/yourcouncil/council-meetings-and-decisions/agendas-reports-and-minutes-of-council-meetings/waveney-district-council-meetings/2019-meetings/march-2019-meetings/southwold-harbour-lands-joint-committee-6-march-2019/>, including in particular:

June 2014
consultation

<https://www.eastsuffolk.gov.uk/assets/Your-Council/WDC-Council-Meetings/2019/March/Southwold-Harbour-Lands-Joint-Committee-06-03->

document	19/Item-06-Appendix-C-Southwold-Harbour-Lands-Consultation-June-2014.pdf
Minutes of the simultaneous meeting on 28 July 2014	https://www.eastsuffolk.gov.uk/assets/Your-Council/WDC-Council-Meetings/2019/March/Southwold-Harbour-Lands-Joint-Committee-06-03-19/Item-06-Appendix-E-Minutes-of-the-WDC-Cabinet-and-STC-meetings-on-28-July-2014.pdf
December Report	https://www.eastsuffolk.gov.uk/assets/Your-Council/WDC-Council-Meetings/2019/March/Southwold-Harbour-Lands-Joint-Committee-06-03-19/Item-06-Appendix-J-Report-on-Future-of-Southwold-Harbour-Lands.pdf
EIA	https://www.eastsuffolk.gov.uk/assets/Your-Council/WDC-Council-Meetings/2019/March/Southwold-Harbour-Lands-Joint-Committee-06-03-19/Item-06-Appendix-I-Equalities-Impact-Assessment.pdf
February Report	https://www.eastsuffolk.gov.uk/assets/Your-Council/WDC-Council-Meetings/2019/March/Southwold-Harbour-Lands-Joint-Committee-06-03-19/Item-006-Southwold-Report.pdf