

Unconfirmed



Minutes of a Meeting of the **Southwold Harbour Lands Joint Committee** held in the Stella Peskett Millennium Hall, Might's Road, Southwold, IP18 6BE, on **Monday, 03 February 2020 at 2:00pm**

Members of the Committee present:

Councillor Ian Bradbury, Councillor Norman Brooks, Councillor Jessica Jeans, Councillor Michael Ladd, Councillor David Ritchie, Councillor Craig Rivett, Councillor Mary Rudd, Councillor Will Windell

Other Members present:

Councillor David Beavan

Officers present:

Kerry Blair (Head of Operations), Andy Jarvis (Strategic Director), David Wyatt (Commercial Lead Lawyer) and Nicola Wotton (Deputy Democratic Services Manager).

Others present:

Lesley Beevor (Southwold Town Council Clerk), Councillor Simon Flunder (Southwold Town Council) and Lara Moore (Legal Director, Ashfords).

1 Election of a Chairman

Mr Jarvis, Strategic Director, called for nominations for Chairman of the meeting. It was duly proposed, seconded and

RESOLVED

That Councillor Rivett be appointed Chairman for this meeting of the Southwold Harbour Lands Joint Committee.

NOTE: Councillor Rivett presided over the rest of the meeting.

2 Election of a Vice-Chairman

The Chairman called for nominations for Vice Chairman of the meeting. It was duly proposed, seconded and

RESOLVED

That Councillor Windell be appointed Vice Chairman for this meeting of the Southwold Harbour Lands Joint Committee.

Those present then introduced themselves for the benefit of the members of the public in attendance at the meeting.

3 Apologies for Absence and Substitutions

There were no apologies for absence on this occasion.

4 Declarations of Interest

Councillor Bradbury declared a Local Non Pecuniary Interest, as he was the Secretary of the Blyth Estuary Partnership.

5 Minutes

RESOLVED

That the Minutes of the Southwold Harbour Lands Joint Committee Meeting held on 5 July 2019 be approved as a correct record and signed by the Chairman.

6 Governance of Southwold Harbour Lands

Mr Blair, Head of Operations, presented the report which contained information on the public consultation which had been carried out between September and December 2019, regarding the proposals for the creation of a Harbour Management Committee (HMC). The report also contained the consultation responses and, subject to advice from the Solicitors, Ashford's, the changes to the draft constitutional documents which had been proposed in light of the Joint Committee's initial concerns and the consultation responses.

It was noted that at the last meeting of the Southwold Harbour Lands Joint Committee on 5 July 2019, the Joint Committee had met to consider the advice and draft constitution in relation to the creation of an HMC. The Joint Committee had questions and some reservations about whether to adhere to the advice from Ashfords, which had recommended following the Ports Good Governance Guidance (PGGG) rather than having initial fixed appointments for Southwold Town Council. In order for this matter to be resolved as soon as possible, the Joint Committee had resolved to put the advice and draft constitution out to public consultation, with a circular highlighting key points and the Joint Committees concerns.

The public consultation which had taken place during September to December 2019 had included an online survey, as well as a number of public drop-in sessions. A total of 79 responses had been received and these were shown in Appendix C to the report.

Mr Blair then introduced Ms Moore, Legal Director from Ashfords, who was at the meeting to provide advice and answer any questions that arose during the meeting.

Ms Moore provided the Joint Committee with a short summary of her career to date and it was noted that she was a specialist Ports and Harbour Lawyer and was nationally recognised for her expertise in Ports, Harbours and Coastal Development. She currently acts for a range of Ports, Harbours, Local Authorities and Developments and was described by Maritime Journal as a pre-eminent Marine Licensing Lawyer. Ms

Moore had been elected, by industry, on to the national board of the UK Harbour Master's Association and had won numerous academic awards. She also writes for prominent publications including Local Government Lawyer and Maritime Journal and she is also regularly requested to speak at national conferences.

Ms Moore reported that she had been asked by East Suffolk Council to provide advice on setting up the Harbour Management Committee (HMC) and she clarified that any advice that she provided was always based upon best practice and her experience at other statutory harbours, regardless of who had sought her legal opinion.

Ms Moore reported that when advising on the creation of the HMC, she had followed the PGGG closely, therefore her advice had been that there should be no automatic seats on the HMC for Southwold Town Council. She advised that there should be a skills audit for the Members of the Board, which could then be reviewed in future as required, in order to ensure that the needs of the Harbour were always met, as the Harbour's needs may change over time. The re-appointments process for the HMC should also be staggered over time, so that the HMC did not lose all of its Members' knowledge and experience at the same time. This approach would provide greater consistency and continuity and would make the HMC more sustainable in the longer term.

It was also widely acknowledged that the PGGG recommended that the HMC should not just consist of Councillors – either from East Suffolk Council or Southwold Town Council, as it was important that the right mix of skills and experience were available to the HMC. An HMC consisting solely of Councillors would ultimately defeat the purpose of creating an HMC. Overall, having the correct mix of skills on the HMC was paramount to its success going forwards and appointees should be selected for their skills and merit, rather than for being a Councillor. It was noted that this approach would ensure that the HMC was safe, fit for purpose and sustainable. Should the HMC consist predominantly of Councillors, it would not receive the required support from the Department for Transport (DfT) at the Harbour Revision Order stage, as it would not comply with the PGGG. The advice received by another statutory harbour authority, which was a Trust Port, was that only 2 and ideally none of the 10 seats on their Board could be reserved by Councillors, despite monetary contributions from the relevant Council(s). The remaining seats had to be filled by other people who had the relevant skills and experience, in order to support the Port.

Ms Moore reiterated that the creation of the HMC needed to comply with the PGGG, which provided a strong and sustainable model for the future of the Harbour. Should the Joint Committee put forwards its own suggestions which did not comply with the PGGG, the proposals would be rejected by the DfT at the Harbour Revision Order application stage. She suggested that the Joint Committee should take forward the Memorandum of Understanding (MOU) as originally drafted, with the safeguard of requiring the undertaking of a skills audit for all Members of the HMC. Clarification was provided that the skills audit would also be required for the seats to be filled by Councillors.

In respect of filling the vacancies on the HMC, Ms Moore suggested that they be advertised widely and locally. She also recommended that the first appointment panel should consist of one representative each from Southwold Town Council, East Suffolk

Council and one independent person. These requirements could be included in the recommendations for the HMC appointments and this would provide additional resilience with regards to the appointments process.

Ms Moore reported that it was also recommended, in line with the PGGG, that a Harbour Advisory Committee (HAC) should be created to provide advice to the HMC, on specific matters, going forwards. It was important to note that all Members of the HMC must act in the best interests of Southwold Harbour overall, at all times, regardless of any other appointments or responsibilities that they may have. Members of the HMC were not appointed to represent the interest of particular groups of stakeholders. If individuals / organisations wished to represent the views of particular groups, the correct place for such representation was on the HAC. In relation to the composition of the HAC, it was important to have representation from both Southwold Town Council and East Suffolk Council, as well as other experienced and interested parties.

It was noted that the HMC and HAC would be in a much stronger position if they were fully compliant with the PGGG. This would mean that DfT support would be gained swiftly in relation to any Harbour Revision Order application and it would enable all those involved to move forward and work to improve the Harbour. Reassurance was provided that should there be problems with the HMC, these could be reviewed over time, as required. It was important to get the HMC created promptly, in terms that comply with the PGGG, in order that work could then progress on the proposed application for a Harbour Revision Order (HRO). The original documentation prepared by Ashfords provided a strong foundation and Ms Moore recommended that it be taken forwards for adoption, as the correct and proper way to progress the work in respect of Southwold Harbour.

As part of the process for the creation of the HMC, a budget and business plan would need to be created for the Harbour, which would ultimately need to be delivered by the HMC. Ms Moore reported that if additional expenses were required, due to unforeseen circumstances that were not included within the budget or business plan, these would need to be taken to the East Suffolk Council's (ESC) Cabinet for consideration and approval. This would provide additional oversight, debate and transparency for these unexpected matters and was a customary route in the management of a Harbour's finances, as ESC would ultimately have to pay for these unbudgeted for items, as ESC remained responsible for the Harbour overall.

In respect of the size of the HMC, Ms Moore noted the concerns raised in the public consultation responses about the size of the HMC, but recommended 11 members for the HMC, as long as the skills audit was undertaken. This size of committee would ensure good levels of attendance and that the meetings were quorate.

Ms Moore reiterated that following the PGGG was the most appropriate way forward and would ensure that approval from the DfT was received in a timely manner. It was also a tried and tested way for an HMC to be established and it provided a robust vehicle to enable the issues of Southwold Harbour to be resolved.

Those present were then invited to ask any questions they may have.

Councillor Jeans sought clarification about the recommendations within the report, as the various documents such as the Guidance Notes had been amended and the changes were shown in red. Ms Moore clarified that she was recommending that the original documents were adopted unchanged, without the amendments in red, creating initial fixed appointments. She was recommending that 6 East Suffolk Council representatives were appointed plus 5 external applicants, following the skills audit, to ensure that as a collective group they were bringing the correct skills and knowledge to the HMC. As set out in the original report, it was very likely that Southwold Town Council would have at least 1 appointment on the HMC and potentially more, as those Councillors would have extensive local knowledge about the Harbour, where they could fulfil a skill required under the skills audit. Therefore, they would be able to gain a place on the HMC. Appointments made on merit in this way were more robust and safer than purely appointing someone because they were a Southwold Town Councillor.

Councillor Jeans sought confirmation that the selection process for the HMC would be driven by the skills audit and that if an HMC was created, any Members of the HMC must support the best interests of the Harbour only, not any interests of Southwold Town Council etc. This was confirmed to be the case. It was noted that it was also recommended that a Harbour Advisory Committee (HAC) be created to provide further support or guidance in relation to the Harbour. It was confirmed that any Members of the HAC would also need to work in the best interests of the Harbour as a whole. However, individual members of the HAC could be representative of particular groups and support the interests of those groups.

Councillor Jeans then queried the composition of any future HAC and whether there were specific numbers of members required. Ms Moore reported that standard practice under the Harbour Revision Order provisions was for appointments to be approved by the Harbour Authority. The appointments could consist of local residents, the Environment Agency, Harbour Users and other stakeholders e.g. businesses, local Councils etc. It was confirmed that it was possible to have more than one HAC if a Harbour Authority considered that it would be beneficial. It was always best to follow the advice given in the PGGG in relation to the creation of the HMC and HAC, as any future HRO application would then receive the support of the DfT.

Councillor Bradbury reported that Southwold Town Council had been working for 46 years with the former Waveney District Council and then East Suffolk Council to try and find a proper way of working in relation to the Harbour. He then queried whether anyone could advise whether the HMC would have any statutory powers and whether an explanation could be given in relation to any future surplus income? Ms Moore reported that currently the HMC would not have any statutory rights, such powers would come from the Harbour Revision Order (HRO). It was important to complete the HRO as it would enshrine the requirement to maintain an HMC in the future and it would ultimately protect the interests of the Harbour going forwards. In relation to surplus income, currently any funding was covered by the 1933 Harbour Order Act. Ms Moore stated that it was important to learn and move on from the mistakes of the past. Once the HRO was in place, the HMC would be able to move on and should there be any surplus income, decisions could be made on the best way for it to be spent, in the best interests of the Harbour.

Councillor Ladd sought reassurance that all Members of the HMC would be subject to a skills audit. Ms Moore confirmed that a skills audit should be completed for all of the HMC vacancies and appointments should be made on the basis of the results of the skills audit. This was the most robust way of making any appointments. The external vacancies on the HMC would need to be advertised widely to ensure that they would reach all potential candidates. Confirmation was provided that the East Suffolk Councillor vacancies should also be filled following a skills audit.

Councillor Ladd commented that the PGGG stated that all appointees should be working in the best interests of the Harbour and not their own interests. He queried how the interests of the local community would be represented in relation to the Harbour? Ms Moore reported that community engagement was vital. Once the HMC was set up, the HAC could be created which could include representation from the Harbour Community e.g. harbour users, visitors, local businesses, it was important to have a wide range of Members on the HAC.

Councillor Ladd felt that the use of the word 'stakeholder' could be open to interpretation, as the local community were also stakeholders and it was important that a wide range of stakeholders were included and involved in the HAC. Ms Moore agreed that a wide range of stakeholders should be included in the HAC. She considered that it was important to de-politicise the Harbour and to have a mix of stakeholders and people with a wide range of knowledge and skills, to enable strategic decisions to be made going forwards.

Councillor Beavan took the opportunity to thank Ms Moore for attending the meeting today. He was very pleased that the Council had sought expert advice in relation to the creation of an HMC and the future of the Harbour. He reported that it was important that local people, who have a lot of knowledge about the Harbour, could potentially be part of the HMC and that a skills audit was recommended in this respect. He stated that it was crucial not to lose momentum and that the Council should progress the creation of the HMC as soon as practicable. Should there be any difficulties and the HMC did not end up working in the way that it should, then advice would be sought, and the governance arrangements could be reviewed, in accordance with the correct processes. He felt that the local residents should give the HMC a chance to work and that everyone should work together in the best interests of the Harbour. Sea level rise was a significant threat, and everyone needed to work together, in the best interests of the Harbour to try and protect it for future generations to enjoy. He felt that the Joint Committee should progress the creation of the HMC quickly.

Councillor Ritchie commented that he had enjoyed being a Member of the Southwold Harbour Lands Joint Committee, which had worked hard to find a suitable governance arrangement for the future of the Harbour. He then reported that, in relation to the composition of the HMC, he felt that it was preferable for the HMC to consist of an odd number, in order to avoid the need for the Chairman of the HMC to use their casting vote, where possible. However, it was noted that the HMC could consist of an equal number of Members, in accordance with the PGGG. Councillor Ritchie commented that it was important for East Suffolk Council to have more Members on the HMC, as the Council would ultimately be responsible for any financial liabilities for the Harbour. Ms Moore commented that there was flexibility with regard to the

appointments, however she recommended that the PGGG be followed at all times.

Councillor Ritchie sought clarification about whether the potential 6 East Suffolk Councillor appointments would need to be current Councillors or whether the Council could appoint external representatives to its vacancies? Ms Moore reported that the appointees would usually be Councillors, as long as they met the requirements of the skills audit. However, the Council could appoint external people who were not Councillors, if it so wished. There was flexibility within the regulations in this respect.

Councillor Ritchie sought further clarification about the East Suffolk Council appointments and whether they needed to be a Cabinet Member or any Councillor. Ms Moore reported that that was a decision for the Council, in line with its Constitutional arrangements. There was flexibility to allow either Cabinet Members or other Councillors to sit on the HMC. As long as the skills audit was completed, and those appointed had the correct skills to meet the needs of the HMC, that would be acceptable.

Councillor Windell thanked Ms Moore for her clear advice in relation to the creation of the HMC. He queried what processes were in place to safeguard the HMC and to stop the HMC going 'rogue'. Ms Moore reported that as there would be external appointees on the HMC, there would be a good mix of skills and experience on the HMC and as the meetings would be held in public, with formal minutes, agendas and reports, the HMC would almost be self-policing. The proposed HRO would also provide statutory protection and there would be processes and procedures in place to prevent the HMC from operating 'ultra vires' (beyond its powers). A Judicial Review would also be another formal way of protecting the Harbour. The mix of appointees on the HMC, who had undertaken a skills audit and were all working in the best interests of the Harbour, would help to ensure that the Harbour was properly protected. That was a key reason for the creation of the HMC; it was intended itself to be a safeguard.

Councillor Windell reported that members of the public were still concerned about the possibility of selling the caravan site and marina, and he queried how these fears could be allayed. Ms Moore reported that the best way to protect the Harbour would be to replace the 1933 Harbour Order Act with an HRO, which would provide all of the modern protections needed to ensure the long-term future of the Harbour. With an HRO, containing the correct provisions regarding the disposal of land, the only way that assets could be disposed of, would be to prove that they were not longer required, which in respect of the caravan site was unlikely, given its importance to the long-term future viability of the Harbour.

Councillor Rudd commented that she was very pleased with the progress that had been made in relation to the Harbour to date and she queried whether Substitutes would be permitted on the HMC, if a Member of the HMC was not able to attend a meeting. It was reported that it should be assumed that substitutes would not be permitted as matters stand, because this would be a committee of the Cabinet, but if it was possible to change the Constitution to allow this, that would be a matter for the Council to determine, and the Monitoring Officer could be asked for their opinions in this respect.

Councillor Flunder reported that he was now very hopeful for the future of the Harbour, as a result of the discussions which have taken place today. His fears about

protecting the Harbour and ring fencing any surplus monies that were generated had now been allayed. He then took the opportunity to query whether works could be undertaken on the Blyth Estuary, which would benefit the Harbour, as the two were inextricably connected. Ms Moore reported that it was not likely that it would be possible to use any of the Harbour funds to pay for works in the Blyth Estuary without having an HRO in place. The HRO may be able to facilitate spending monies in the Blyth Estuary, as long as it could be sufficiently demonstrated that the work would bring significant benefit to the Harbour and were not primarily flood defence works. Spending Harbour Funds in this way was unlikely to be permitted under the current 1933 Harbour Order Act which was in place.

Councillor Jeans commented that the East Suffolk Council appointees may be Cabinet Members or other Members of the Council and she queried how it was possible to ensure that all Members of the HMC were working in the best interests of the HMC, when they may have conflicting priorities. Ms Moore reported that East Suffolk Council was the Harbour Authority and therefore had a number of responsibilities already in that respect. The ESC Cabinet Members or Councillors who would sit on the HMC would have a statutory duty to operate in the best interests of the HMC. They would also have to work within the constraints of the current legislation, which would be improved by an HRO that was modern, clear and fit for purpose. It was noted that the responsibilities of the Council and the HMC Members were significant, due to the potential liabilities involved with the Harbour. Ms Moore advised that having an HRO in place would be the best way to protect the Harbour. Councillor Rivett also commented that it was usual for Councillors to have multiple responsibilities and they were used to working in this way.

Councillor Brooks thanked Ms Moore for her advice and guidance so far. He queried whether there was a statutory requirement in respect of the frequency and number of meetings that the HMC should have. Ms Moore reported that the frequency of meetings would be determined in the Terms of Reference, however most HMCs tended to meet every two months.

Councillor Bassinette, Chairman of Walberswick Parish Council, took the opportunity to comment that many of the fears of the residents of Walberswick had now been allayed. She felt it was crucial that Councillor Beavan, who was a Southwold Town Councillor and an East Suffolk Councillor, be a Member of the HMC, due to his knowledge of the Harbour. Ms Moore confirmed that undertaking a skills audit and appointing Members with reference to this, was the safest and most robust way to make the appointments to the HMC.

Councillor Ritchie commented that the relationship between the Blyth Estuary and the Harbour was complex and that in 2005-2006 the Environment Agency had withdrawn from providing maintenance to the Estuary and this had made a significant negative impact upon the Harbour. Ms Moore stated that it was important not to have any further delays and the Joint Committee should follow the PGGG so that the Harbour can then have the proposed HRO, which would provide the long-term security that the Harbour required.

There being no further questions, Ms Moore took the opportunity to sum up her advice, which was that she recommended the approval of the Terms of Reference and

the Memorandum of Understanding, in the original versions, which were presented in the public consultation, subject to the slight amendments discussed during the meeting. Those documents had been written in accordance with the PGGG and should therefore be accepted when submitted to the DfT. She suggested that appointing to an HAC would be helpful and would assist the working of the HMC.

Those present then debated the advice which had been received and the need to take action to protect the future of the Harbour.

The meeting was then adjourned for 15 minutes from 3.20 pm to 3.35 pm in order to amend the recommendations for the Southwold Harbour Lands Joint Committee to consider, in light of the discussions and advice received at the meeting.

Once the meeting had resumed, the amendments to the revised Terms of Reference and Memorandum of Understanding were ready out and Ms Moore read out the amended recommendations clearly twice, in order that all those present were fully aware of the matters that they were voting upon. It was then

RESOLVED TO RECOMMEND TO THE CABINET OF EAST SUFFOLK COUNCIL AND TO SOUTHWOLD TOWN COUNCIL:

- a) That the Harbour Management Committee should be created by the Cabinet of East Suffolk Council, based on the revised Terms of Reference and the revised Memorandum of Understanding agreed in the meeting and initialled by the Chairman for the purposes of identification;
- b) That Ashfords LLP should be instructed to prepare the draft terms of reference and structure for the Advisory Group as soon as reasonably practicable;
- c) That a skills audit for the Harbour Management Committee is carried out as soon as reasonably practicable; and
- d) That the Joint Committee should be disestablished on creation of the Harbour Management Committee.

The meeting concluded at 3.40 pm.

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Chairman