



SOUTHWOLD HARBOUR MANAGEMENT COMMITTEE

Thursday, 22 September 2022

Subject	Harbour Revision Order – Approval of documents for consultation
Supporting Officer	Kerry Blair Head of Operations kerry.blair@eastsoffolk.gov.uk

Is the report Open or Exempt?	OPEN
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Category of Exempt Information and reason why it is NOT in the public interest to disclose the exempt information.	Not applicable
Wards Affected:	Southwold

Purpose and high-level overview

Purpose of Report:

To set out the proposed documents for consultation and approve the submission of a Harbour Revision Order (HRO)

Recommendation/s:

That the Harbour Management Committee recommends that the Leader of the Council

1. Approves the application of a Harbour Revision Order
2. Approves the launch of a consultation on the Harbour Revision Order
3. Approves the attached documents as part of the Harbour Revision Order submission

Impact Assessment

Governance:

The HMC is required to recommend the proposed HRO for approval.

Environmental:

The HMC must act in the best interests of the Port, which includes ensuring its long term sustainability and success. Environmental factors will be taken into account in the decisions which the HMC will make.

Equalities and Diversity:

A consultation will be carried out on the proposed wording of the HRO

Financial:

No impact

Legal:

The documents attached have been produced by Ashfords, the legal advisors on the HRO project.

Risk

Harbour Business Plan Priorities

To be added when the plan is in place.

East Suffolk Council Strategic Plan Priorities

Select the themes of the Strategic Plan which are supported by this proposal:		
T01	Growing our Economy	<input type="checkbox"/>
T02	Enabling our Communities	<input type="checkbox"/>
T03	Maintaining Financial Sustainability	<input type="checkbox"/>

T04	Delivering Digital Transformation	<input type="checkbox"/>
T05	Caring for our Environment	<input type="checkbox"/>

Background and Justification for Recommendation

1 Background facts	
1.1	When setting up the HMC, a list of likely tasks and priorities were set out.
1.2	One task was to consider and progress an application for a HRO to modernise the statutory provisions applying to Southwold Harbour (including placing the HMC and Advisory Group on a statutory footing).
1.3	An HRO is made under the Harbours Act 1964, which amends the existing local harbour legislation of statutory harbour authorities.

2 Current position	
2.1	At its meeting on 10 March 2022, the HMC received a report from Lara Moore from Ashfords LLP to talk through the process and background to an HRO. The minutes of the meeting detail the full discussion.
2.2	<p>The HMC were advised that Harbour Revision Order allowed existing local harbour legislation to be modernised, repealed or for new powers to be added to ensure that harbours could be properly managed by the statutory harbour authority. Any successful application had to pass the 'core test' which was that the Marine Management Organisation would be:</p> <p><i>"Satisfied that the making of the order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships"</i></p>
2.3	<p>At that meeting, the following benefits were set out</p> <ul style="list-style-type: none"> • Placing the HMC on a statutory footing • Placing the Advisory Board on a statutory footing • Modernising but retaining full ring fencing of the harbour funds • Modernising provisions related to capital monies • Short fall in harbour revenue • Ensuring the 'rating' and 'harbour' limits are the same • Modernising the definition of vessel • Obtaining Powers of General Direction • Fixing the landside harbour premises limits or making them flexible • Extension of the Harbour Limits
2.4	An HRO would also enable the ability to update some definitions in the Harbour Order, for Powers of General Direction and to enable further economic development.

3 How to address current situation

	<p>HMC agreed in July to prepare documents for consultation for an HRO application. Officers have been working with Ashfords to prepare the Order.</p> <p>In preparation for consultation and submission of the HRO, the following documents are appended to this report:</p> <ol style="list-style-type: none"> 1. The draft HRO 2. The draft Statement of Support 3. The 1933 Harbour Revision Order, showing changes to be made as a result of the HRO 4. A marked up copy of the Harbours, Docks and Piers Clauses Act 1847 as incorporated <p>As previously discussed, the deadline for submission of the HRO application to avoid the application fee increase (from £4,000 to £9,769) was the 30th September.</p> <p>However the MMO at very short notice have introduced a new ‘validation’ procedure which will take a minimum of 10 working days. It is our intention to submit these draft documents by the 23rd September in order to avoid the increase in fees.</p>
3.1	<p>Two issues have been raised via the Stakeholder Advisory Group during the drafting process:</p> <ul style="list-style-type: none"> • A request to include a prohibition against sale of land in the Harbour by the HMC. • A request to include a form of words that provides the HMC the opportunity – but not the obligation – to spend money upstream of the bailey bridge if required in order to maintain the interests of the harbour.
3.2	<p>On the second point – the SAG proposed the following wording:</p> <p>”The HMC recognises that lack of maintenance of estuary banks pose an existential threat to the harbour and commits to support the Blyth Estuary Partnership, landowners and agencies to build resilience both practically and financially if necessary “</p> <p>ESC and Ashfords considered the wording and have made an alternative suggestion set out below</p>
3.3	<p>To take both points in section 3.1 in turn</p> <p>Sale of Harbour Land</p> <p>The Council cannot ‘asset strip’ the harbour under the HRO. Under the HRO the HMC can only make a freehold disposal if:</p> <ul style="list-style-type: none"> • if the land is no longer required for harbour purposes; or

	<ul style="list-style-type: none"> • it would conduce to the improvement, maintenance, operation or management of the harbour in an efficient and economical manner for the property to be held by a person other than the Council. <p>In addition, in a strengthening of the usual level of protection in modern HROs, Ashfords have included at article 11(2) a requirement for all capital monies to be placed in the reserve fund (i.e. all monies from the sale of land would have to go into the reserve fund).</p> <p>The Advisory Group have a statutory right to be consulted and the HMC has a statutory obligation to maintain the harbour – therefore it seems a prohibition would be restrictive and remove the freehold disposal power – which may need to be exercised in the best interests of the harbour.</p> <p>If the Council were to sell land in the face of severe opposition from the Advisory Group and HMC it could be Judicially Reviewed.</p>
3.3	<p>Upstream works</p> <p>The HMC and SAG have discussed this issue at some length. If spending is to be permitted on up stream works then this will potentially have a knock on effect of harbour dues, as there is a requirement that any additional maintenance liability is funded – and this would mainly come from fees and rents.</p> <p>One option for including reference to this would be to include it in a separate article or in article 5 (General Functions) – and a proposed wording is set out below in section 3.4</p> <p>It should be noted that including the wording in red in the general functions article could effectively place an implied duty on the Council to do those things (if necessary or desirable as set out in the wording of (1) even though it says ‘may’ not ‘shall’ / ‘must’). If we have a separate article we can expressly state it is not a duty, but even so, it will place pressure (at least locally) on the Council to do works.</p>
3.4	<p>Taking these points into account, the proposed new wording for the HRO is in red</p> <p>Works in the River</p> <p>[]. It the Council considers it necessary or desirable for the maintenance, operation, management and improvement of the harbour and the harbour facilities afforded therein or in connection therewith, and for the conservation of the harbour’s flora, fauna and geological and physiographical features of special interest, it may (but it under no duty to)</p>

	<p>i. subject to obtaining the necessary rights in or over land, carry out works; or</p> <p>ii. provide funding towards the carrying out of works in the area shown [] on the [] plan.</p> <p>General Functions</p> <p>5.—(1) The Council may, subject to the provisions of this Order, take all such steps from time to time as it considers necessary or desirable for the maintenance, operation, management and improvement of the harbour and the harbour facilities afforded therein or in connection therewith, and for the conservation of the harbour's flora, fauna and geological and physiographical features of special interest.</p> <p>(2) For those purposes and without limiting the scope of paragraph (1), the Council may—</p> <p>(a) improve, maintain, regulate, manage, mark and light the harbour and provide harbour facilities therein;</p> <p>(b) subject to obtaining the necessary rights in or over land—</p> <p>(i) execute and place in and over the harbour such structures, harbour facilities, works and equipment as are required, and</p> <p>(ii) operate, maintain, renew, alter, extend, demolish and reconstruct structures, harbour facilities, works and equipment in the harbour (including those executed or placed pursuant to sub-paragraph (i)),</p> <p>(iii) carry out works or provide funding towards works in the area shown [] on the [] plan.</p> <p>(c) acquire land; and</p> <p>(d) do all other things which in its opinion are expedient to facilitate the operation, improvement or development of the harbour undertaking.</p> <p>(3) The Council must, from time to time, formulate, publish and review a business plan or business plans ("Harbour Business Plan") in relation to its maintenance, conservation, operation, management and improvement of the harbour undertaking, which it must have regard to when performing its functions.</p> <p>(4) In the exercise of the powers of sub-paragraph (2)(b), the Council must not—</p> <p>(a) interfere with, damage or otherwise injuriously affect any apparatus belonging to or maintained by any statutory undertaker; or</p> <p>(b) do anything which will obstruct or impede any work relating to the inspection or repair of any such apparatus, without the consent of the statutory undertaker concerned.</p> <p>(5) This article is without limitation of the powers of the Council under or by virtue of any other enactment.</p>
3.5	<p>It should be noted that the attached documents form the basis of a consultation. The results of that consultation will form the basis of any further changes to the wording of the HRO and associated documents.</p>

3.6	It is therefore recommended that the attached documents are used as the basis of the consultation, which will start following their approval at the HMC meeting.
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4 Reason/s for recommendation

4.1	It is recommended that the attached documents are recommended to the Leader of the Council for approval as the basis of the consultation on the Harbour Revision Order.
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Appendices

Appendices:

Appendix A	Draft Southwold Harbour Revision Order
Appendix B	Draft Statement of Support
Appendix C	1933 Harbour Revision Order
Appendix D	Harbours, Docks and Piers Clauses Act 1847

Background reference papers:

Date	Type	Available From
March 2022	Minutes of the HMC Meeting held on 10 March	CMIS