



Southwold Harbour Lands Joint Committee

Members:

Councillor Ian Bradbury (Southwold)
Councillor Jessica Jeans (Southwold)
Councillor Michael Ladd (Southwold)
Councillor Will Windell (Southwold)
Councillor Norman Brooks (East Suffolk)
Councillor David Ritchie (East Suffolk)
Councillor Craig Rivett (East Suffolk)
Councillor Mary Rudd (East Suffolk)

Members are invited to a Meeting of the **Southwold Harbour Lands Joint Committee** to be held in the Stella Peskett Millenium Hall, Might's Road, Southwold, Suffolk, IP18 6BE, on **Friday, 5 July 2019 at 10:00am.**

An Agenda is set out below.

Part One – Open to the Public

Pages

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- | | | |
|----------|---|--|
| 1 | Election of a Chairman
To elect a Chairman for this meeting. | |
| 2 | Election of a Vice-Chairman
To elect a Vice-Chairman for this meeting. | |
| 3 | Apologies for Absence and Substitutions | |
| 4 | Declarations of Interest
Members and Officers are invited to make any declarations of Disclosable Pecuniary or Local Non-Pecuniary Interests that they may have in relation to items on the Agenda and are also reminded to make any declarations at any stage during the Meeting if it becomes apparent that this may be required when a particular item or issue is considered. | |

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|----------|---|---------------|
| 5 | Minutes
To confirm as a correct record the Minutes of the meeting held on 6 March 2019 | 1 - 8 |
| 6 | Governance of the Southwold Harbour Lands ES/0068
To consider the future governance of the Southwold Harbour Lands. | 9 - 62 |

Part Two – Exempt/Confidential

There are no Exempt or Confidential items for this Agenda.

Close



Stephen Baker
Chief Executive, East Suffolk Council



Lesley Beevor
Town Clerk, Southwold Town Council

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Minutes of the Southwold Harbour Lands Joint Committee Meeting held at St Edmunds Hall, Cumberland Road, Southwold, Suffolk, IP18 6JP on **Wednesday, 6 March 2019 at 6.30 pm.**

Members present:

Councillors W Windell (Chairman), I Bradbury, G Catchpole, J Jeans, D Palmer, B Provan and D Ritchie.

Other Councillor also in attendance:

Councillors D Beavan, P Byatt, S Doy, S Flunder and M Rowan-Robinson.

Officers present:

L Beevor (Southwold Town Council Clerk), K Blair (Head of Operations), A Gallant (Southwold Harbour Lands Project Manager), A Jarvis (Strategic Director), H Slater (Monitoring Officer and Head of Legal & Democratic Services), N Wotton (Democratic Services Manager) and D Wyatt (Commercial Lawyer).

The Monitoring Officer and Head of Legal & Democratic Services welcomed everyone to the meeting and read out the fire evacuation procedures.

1 APOLOGIES / SUBSTITUTES

Apologies for absence were received from Councillors Bee and Rudd.

Councillor Catchpole attended the meeting as a Substitute for Councillor Bee.

2 APPOINTMENT OF CHAIRMAN FOR THIS MEETING

Mrs Slater, the Monitoring Officer and Head of Legal & Democratic Services, called for nominations for Chairman of the meeting. It was duly proposed, seconded and

RESOLVED

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

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

3 APPOINTMENT OF VICE CHAIRMAN FOR THIS MEETING

The Chairman called for nominations for Vice Chairman of the meeting. It was duly proposed, seconded and following a collective vote it was

RESOLVED

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

4 DECLARATIONS OF INTEREST

Councillor Bradbury declared Local Non Pecuniary Interests as he was the Secretary to the Blyth Estuary Partnership, the Southwold Town Council representative on the Southwold Harbour, a member of the River Blyth Users Association and the Southwold Haven Port Stakeholders Group.

Councillor Bradbury then took the opportunity to state that there had been some attempts to silence him in relation to the Southwold Harbour Lands, however he refused to be silenced and would continue to act in the best interests of the Southwold.

Councillor Palmer raised a point of order at this point in the proceedings, as this item of business was to receive any declarations of interest that Councillors may have, not to consider a grievance.

There were no other declarations of Local Non Pecuniary Interests or Pecuniary Interests made by any Members of the Southwold Harbour Lands Joint Committee.

Other Councillors present, who were not Members of the Southwold Harbour Lands Joint Committee, then took the opportunity to declare any relevant interests they may have:

Councillor Beavan declared a Local Non Pecuniary Interest that he was the Chairman of the Southwold Haven Port Stakeholders User Group, a member of the Blyth Estuary Partnership, had been a skipper and had previously owned a boat which had been moored at Southwold Harbour.

Councillor Byatt declared a Local Non Pecuniary Interest as he was a Waveney District Councillor.

Councillor Doy declared a Local Non Pecuniary Interest as her family had been involved with the Harbour for many years, her son and grandson both had a boat and a shed at Southwold Harbour.

Councillor Flunder declared a Local Non Pecuniary Interest as Vice Chairman of the Harbour Users Association, a member of the Southwold Haven Port Stakeholders Group, a member of the Blyth Estuary Partnership and had a shed and boat at Southwold Harbour.

5 MINUTES

RESOLVED

That the Minutes of the Southwold Harbour Lands Joint Committee Meeting held on 18 December 2018 be approved as a correct record and signed by the Chairman.

Councillor Bradbury took the opportunity to request that all future Minutes of the Southwold Harbour Lands Joint Committee meetings should contain Councillors names, in order that it was clear who had asked questions or commented. It was confirmed that future minutes would contain Councillors names, wherever practicable.

6 SOUTHWOLD HARBOUR GOVERNANCE

The Head of Operations introduced a report, which he advised should be read in conjunction with the report from the Southwold Harbour Lands Joint Committee meeting from 18 December 2018. The report provided an overview of the recent history and management of the Southwold Harbour Lands, which included the harbour and neighbouring lands, the 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.

Members noted the resolutions from the 18 December 2018 meeting, which were included in full, on pages 13 and 14 of the report. In summary, it was reported that the decision had been taken to revisit the resolutions made in 2015, that the Harbour Management Committee model of governance should be explored and that a Public Consultation process should be undertaken.

Members noted that there had been a significant amount of public consultation, the results of which had been included within the meeting papers and also the supplementary documents, which were tabled at the meeting and also published on the Council's website. There followed some discussion about the public consultation. It was noted that the public consultation included 4 specific questions:

1. Views on the Harbour Management Committee model
2. Actions that Waveney District Council should take to demonstrate a commitment to the future
3. Funding and investment – and how this should be managed
4. How Waveney District Council can ensure transparency and openness

The public consultation took place from 16 January 2019 to 1 March 2019. This comprised of Drop In Events, which took place on 19 and 26 January 2019 and which were attended by 43 and 27 people respectively. There was also a Public Meeting, which took place on 6 February 2019, which was attended by 120 people. Street Surveys also took place on 11 and 18 February 2019, which involved 16 and 28 people, respectively. Many comments had been received through the online questionnaire and by e-mail and copies were provided.

Waveney District Council's Overview & Scrutiny Committee also considered the Southwold Harbour Lands at its meeting on 7 February 2019, following Councillor Beavan's submission of a Scrutiny Scoping Form dated 20 December 2018. The Committee meeting focussed upon the following issues:

- The management of the North Dock Wall project
- The transparency of the Southwold Harbour Lands Joint Committee meetings
- The management of the Harbour and Caravan Site
- Accuracy of accounting

The Overview & Scrutiny Committee debated the matters in great detail and after due consideration made the following resolutions:

- 1) That the Southwold Harbour Lands Joint Committee should meet openly and formally with notice and minutes at least once a year.
- 2) That in the light of the information provided and reviewed, the Overview & Scrutiny Committee considers that it is not necessary or appropriate to further investigate the allegations made in the Scoping Form dated 20 December 2018 and it would be inappropriate to interfere with the consultation and consideration by the Southwold Harbour Lands Joint Committee of the way forward for the future governance of the Southwold Harbour Lands.

Those present were then updated regarding the ongoing discussions which had been taking place with the Department for Transport (DfT). Their advice had included that:

- Any new governance structure needed to be clear about who the duty holder was – with responsibility for ensuring that the port was compliant with the Port and Marine Safety Code.
- That Waveney District Council should look at the way that other Harbour Management Committees have been structured in order to meet all of the statutory requirements. It was noted that Littlehampton and Langstone had been given as examples of good practice.
- The report explored this information in more detail and it set out the proposed governance arrangements. Members noted that it was not the role of this meeting to decide on a particular model, however it should give consideration to these points.

Reassurance was provided that an Equality Impact Assessment had been undertaken and it had concluded that none of the issues under consideration would negatively impact upon any particular group. Members noted that all possible options for the Southwold Harbour Lands had been considered and evaluated, in accordance with the DfT guidance.

Members were advised that Section 12 of the report explained in great detail the reasons for the recommendations contained within the report. Reassurance was provided that the comments from the public consultation were in line with the priorities that were set out in the 2014 consultation and whose principles had guided the 2015 resolution. It was noted that the creation of a Harbour Management Committee, as proposed within the report, was in accordance with those principles, it was simply a

different vehicle to achieve those principles. The proposals under consideration would address all of the concerns which had been raised previously and in particular:

- Ensuring that any changes would reflect the character and culture of Southwold
- Allow for financial transparency and ensuring investment and re-investment in the lands, including nearby infrastructure such as road access
- The model of governance would be sustainable, with regular public meetings
- Ensuring that the caravan site would be protected from sale
- Partnership working involving local influence

The Head of Operations advised that as a result of the public consultation responses, the recommendations for the Southwold Harbour Lands Joint Committee to consider had been revised slightly to reflect the consultation comments received. It was noted that all those in attendance had been given a copy of the revised recommendations, which had increased from 4 to 6. The Head of Operations then read out all of the new recommendations, for clarity.

The 6 amended recommendations, which had been circulated at the meeting, were then moved and seconded by Councillors Palmer and Ritchie, respectively. Those present were then given the opportunity to ask questions.

Councillor Beavan stated that he was disappointed that the issue of ownership of the Southwold Harbour Lands had been mentioned again in this report, as he felt that the residents of Southwold had extended an olive branch towards Waveney District Council in respect of the Harbour. He also commented on the lack of public attendance at this meeting. Councillor Beavan stated that he felt that the public consultation process had gone well and he thanked the Head of Operations for his work in arranging it. He then commented that the report was hard to follow at certain points, as paragraph 11.3 had stated that some comments had been received from the public that the Harbour 'should not pay back Waveney District Council for the loan it had provided for the works on the North Dock Wall'. Despite reading all of the public comments received during the consultation process, he had been unable to find any comments relating to this matter. He then reported that the Chief Finance Officer and Section 151 Officer at Waveney District Council had, last week, agreed that the depreciation of the Southwold Harbour Lands should not be recorded within the accounts in its current form, ie being removed from the profits. This would result in £4million being returned to the Harbour accounts. He then stated that he would reserve his position on the ownership of the Southwold Harbour Lands for the time being. However, he was very keen to work with Waveney District Council to find a final solution to secure the future of the Southwold Harbour Lands. It was very important to work together, in order that local people would have an input and secrecy should be avoided at all costs. He stated that the issue of ownership of the lands was like a can of worms, with the same things being repeated by all sides concerned. He hoped that an independent body would be used to make the final decision in this respect and that it would be ensured that all profits would be reinvested back into the Harbour Lands.

Councillor Rowan-Robinson, Mayor of Southwold, reported that a letter from Southwold Town Council was included at Item 9, within the Supplementary Information which was tabled at the meeting. Southwold Town Council had debated the issue of the Harbour

Lands at its recent meeting. All Councillors had been given the opportunity to express their views and the majority view was summarised within the letter. He stated that he was delighted with the revised recommendations which had been presented, which reflected the points made during the public consultation. The public consultation process had been very thorough and detailed and Waveney District Council had listened to all of the responses. He hoped that significant progress could be made as a result and that the Harbour Management Committee could be established and become a reality. He took the opportunity to commend the revised recommendations and he thanked all those who had been involved in this significant piece of work.

Councillor Doy stated that she was a supporter of the local fishermen who used Southwold Harbour and that she was very pleased that any money generated by the Southwold Harbour Lands in future would be re-invested in the Harbour Lands. She stated that she had only ever wanted what was best for the Harbour Lands and, as a result, she agreed with Councillor Beavan and his views.

Councillor Flunder reported that he felt the public consultation had been undertaken to a very high standard and he offered his congratulations in this respect. He reported that it was very important for the views of local residents, fishermen and stakeholders to be taken seriously and it was crucial that all felt they had input into the future of the Southwold Harbour Lands. The most important thing was to build upon the trust between Southwold residents and Waveney District Council. Southwold Town Council would help to build trust wherever possible and it was important that best practice was followed at all times.

Councillor Bradbury reported that he was working on an amendment to the recommendations, which he would share later. He took the opportunity to praise the public consultation which had been undertaken and the large number of comments which had been received. Although he stated that he had some reservations about the validity of the street surveys, as tourists may have been involved rather than local residents. He felt that the comments received should be taken on board by all and that the Joint Committee should outline the main points that they had taken from the consultation process.

Councillor J Jeans stated that she had wished that the Members of Waveney District Council had been able to attend the Southwold Town Council meeting last week, in order to hear all of the debate and discussions which had taken place. She felt that it had been the best and most productive meeting so far. The meeting had been focussed, there had been honest debate and the evidence had been thoroughly reviewed. Southwold Town Council had come to a view, which was also embedded within the revised recommendations which had been tabled this evening. The consultation had been excellent and the 2014 principles would continue to be the basis for the whole process going forward. Councillor Jeans then requested further clarification regarding the issue of depreciation for Southwold Harbour Lands.

The Strategic Director reported that there was concern that Waveney District Council had taken £4.2million from the Southwold Harbour Lands, due to depreciation. This had been a complete misunderstanding. Local Authorities were required by law to record depreciation in a certain way. This accounting mechanism was completely different to

how businesses, organisations and associations would record their depreciation. To summarise, a debit entry for an amount to represent the depreciation was recorded in the accounts and then later, within the accounts, the same amount was credited. It was simply a paper exercise, there was no actual loss or gain. The whole balance sheet would be required, in order to see the debit and credit recorded. Waveney District Council could not return the £4.2million to Southwold Harbour Lands as it was never taken from them in the first place. The Chief Finance Officer and Section 151 Officer had meticulously gone through all of the accounts for the past 10 years and had found a minor error that had been replicated during those years. Waveney District Council had reimbursed the Southwold Harbour Land accounts with approximately £70,000 to correct this error. The accounts and finances of the Southwold Harbour Lands had been explained to Councillor Beavan, in great detail, several times, however he continued to disagree with the explanations provided.

Councillor Ritchie commented that he was pleased that Councillors from Waveney District Council and Southwold Town Council were so engaged and determined to find a suitable way forward for the Southwold Harbour Lands. He was pleased to note that the recommendations had been revised to take account of the comments from the public consultation and that the principles from the 2014 and 2015 meetings had also been taken on board. It was important that a workable solution was found for the Southwold Harbour Lands and the Harbour Management Committee appeared to be the most appropriate way forward. Councillor Ritchie reported that he was disappointed that it had taken so long to get to this point, however it was hoped that progress would continue in this respect.

There being no further comments or queries regarding the report or the revised recommendations, the matter was put to the vote. It was noted that the revised recommendations had previously been moved and seconded by Councillors D Palmer and D Ritchie respectively. The Joint Committee therefore

RESOLVED

Following consideration of the published report to the Joint Committee (the “**February Report**”) with appendices, the consultation responses received by 28 February 2019 and the other representations received by 1 March 2019, the Joint Committee resolves 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 (“**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.

The meeting concluded at 7.20 pm

Chairman



SOUTHWOLD HARBOUR LANDS JOINT COMMITTEE

Friday, 5 July 2019

GOVERNANCE OF THE SOUTHWOLD HARBOUR LANDS

EXECUTIVE SUMMARY

1. On 6 March 2019, following a consultation exercise and detailed review of the position, the Southwold Harbour Lands Joint Committee (**JC**) rescinded resolutions about previous planned governance changes, which had proved inappropriate, and made the recommendations set out in section 5 of this report, including proposals for a Harbour Management Committee (**HMC**) to enable short term governance improvements and plan for medium term improvements (the **March Resolutions**).
2. On 15 March 2019, Waveney District Council (**WDC**)'s Cabinet and Southwold Town Council (**STC**) noted and endorsed these recommendations and, as recommended, directed the JC to arrange to consult professional advisers and stakeholders and advise WDC's Cabinet and STC on proposals for a HMC 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.
3. Pursuant to those directions and the JC's recommendations which informed them, professional advisers have been instructed (Appendix A to this report) and have provided:
 - (i) an explanatory note (Appendix B to this report);
 - (ii) draft terms of reference for the proposed HMC (Appendix C to this report); and
 - (iii) a draft Memorandum of Understanding (Appendix D to this report).
4. This report outlines the background to this matter, with links to the detailed reports and documentation already considered in relation to the future governance of the Southwold Harbour Lands, and proposes a further consultation exercise to enable the JC to consider and finalise proposals to recommend to WDC's Cabinet and STC.

Is the report Open or Exempt?	Open
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Wards Affected:	Southwold
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Cabinet Member:	Councillor C Rivett Deputy Leader and Cabinet Member with responsibility for Economic Development
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Supporting Officer:	Kerry Blair Head of Operations 01502 523 007 kerry.blair@eastsoffolk.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 background 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 arranged pursuant to those resolutions for the JC to consider on 6 March 2019. Later results up to the end of the main consultation exercise (28 February 2019) and deadline for e-mail representations (1 March 2019) were 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, modified by the resolutions made by WDC's Cabinet and STC on 15 March 2019, comprising four elected members from each of STC and WDC, as described in more detail in section 4 of the December Report.

March Resolutions: the resolutions and recommendations made by the JC on 6 March 2019.

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 replaced Waveney District Council and Suffolk Coastal District Council on 1 April 2019).

2 DECISION TO REVIEW PREVIOUS PLANNED CHANGES

- 2.1 In December 2018, the Southwold Harbour Lands Joint Committee (**JC**) reviewed the background and the problems encountered when seeking to implement previously planned changes to the governance of the Southwold Harbour Lands (**SHL**), meaning 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.
- 2.2 The report to the JC for their meeting on 18 December 2018 (**December Report**), which is available at the link in the table at the end of this report, 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, which should be updated;
 - 2.2.2 in section 3, a summary of the history of management of the SHL by WDC for more than 40 years, ever since 1974 (replacing Southwold Borough Council, the original Corporation under the Harbour Order, on local government reorganisation);
 - 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 Southwold Town Council (**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:
- (i) the (informal) advice from the Department for Transport (**DfT**) that the Harbour Order should be updated before any transfer;
 - (ii) the risks for WDC that it would lose control of the SHL but remain liable for the SHL directly (through any guarantee, or other security, 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);
 - (iii) 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
 - (iv) the recommendations made in the new Ports Good Governance Guidance (**PGGG**) issued by the 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 committee or HMC, advisory or otherwise) and working on a longer term project to update the Harbour Order through an application for 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 DECEMBER RESOLUTIONS

- 3.1 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 the JC resolved to:
- 3.1.1 revisit the 2015 Resolutions;
 - 3.1.2 note the December Report, including the proposals 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;
 - 3.1.3 arrange a consultation exercise; and
 - 3.1.4 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, (the **December Resolutions**).

4 CONSULTATION PURSUANT TO THE DECEMBER RESOLUTIONS

- 4.1 The report to the next meeting of the JC, on 6 March 2019 (the **February Report**), and the documents published with it, are available at the links in the table at the end of this report. The February Report explains developments since the December Report in detail, including in particular:
- 4.1.1 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;
 - 4.1.2 in section 5, the complaints about historic issues relating to the SHL which had been made to the Overview and Scrutiny Committee (**OSC**) of WDC and considered by the OSC on 7 February 2019;
 - 4.1.3 in section 6, further points relevant to the proposed HMC arrangements arising from informal consultation with the Department for Transport (**Dft**);
 - 4.1.4 in section 11, the other governance options which had been considered; and
 - 4.1.5 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.
- 4.2 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.
- 4.3 Copies of these consultation responses are available at the links in the table at the end of this report. 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. However, three particular requests emerged from the consultation as having been made by a range of stakeholders:
- 4.3.1 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);
 - 4.3.2 to have reassurance that WDC would not seek to sell the SHL; and
 - 4.3.3 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.
- 4.4 The JC wished to recommend such reassurances. It was mindful that they 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), so 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 restrictions or 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 MARCH RESOLUTIONS

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 JC resolved to:

- 5.1.1 rescind the 2015 Resolutions because, having considered the circumstances which had emerged and developed since the 2015 Resolutions were made and the results of the consultation exercise arranged pursuant to the December Resolutions, the JC was satisfied that the 2015 Resolutions are no longer appropriate;
- 5.1.2 recommend to WDC's Cabinet and STC 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 [*improvements that reflect the culture and character of Southwold, local influence and accountability, working in partnership, discharging statutory obligations, financial transparency, investment and local re-investment and viability and sustainability (both financially and in terms of governance)*] and the PGGG; 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,
- 5.1.3 recommend that, when planning the short term improvements described in 5.1.2(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;
- 5.1.4 recommend that, when designing the medium term improvements described in 5.1.2(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,
- 5.1.5 arrange to instruct professional advisers to advise on the appropriate constitution for a HMC as outlined above; and
- 5.1.6 make stakeholder engagement arrangements to consult community stakeholders and all other relevant stakeholders on the improvements outlined above.

6 DIRECTIONS FROM WDC'S CABINET AND SOUTHWOLD TOWN COUNCIL

- 6.1 At their simultaneous meeting on 15 March 2019 at the Stella Peskett Millennium Hall, Southwold, WDC's Cabinet and STC considered the matters outlined above, heard from members of WDC and STC (and, under STC's provisions for public comment at their meetings, from members of the public), and from WDC officers responding to questions raised, and resolved to:
- 6.1.1 note and endorse the recommendations made by the JC in their March Resolutions (as set out in section 5 above); and
 - 6.1.2 modify the resolutions made by WDC's Cabinet and STC 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 WDC's Cabinet and STC on proposals for a HMC 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.

7 EAST SUFFOLK COUNCIL

- 7.1 On 1 April 2019, East Suffolk Council replaced WDC. All property, rights and liabilities of WDC transferred to and vested in East Suffolk Council by operation of law (the East Suffolk (Local Government Changes) Order 2018 and the Local Government (Boundary Changes) Regulations 2018).
- 7.2 Elections to East Suffolk Council took place on 2 May 2019 and the newly elected members took up office on 6 May 2019.

8 PROFESSIONAL ADVICE ON THE CONSTITUTION OF THE PROPOSED HMC

- 8.1 Following the March Resolutions and the directions from WDC's Cabinet and STC, as described above, arrangements were made to instruct professional advisers to advise on the appropriate constitution for the proposed HMC, to fit with the constitution of, and within the legal powers and restrictions which apply to, East Suffolk Council.
- 8.2 As explained in the February Report, the DfT had (informally) suggested liaising with Littlehampton and/or Langstone harbour. When we did so, Littlehampton harbour recommended Ashfords LLP and suggested other potential firms for comparison purposes.
- 8.3 We contacted these firms to ask them to carry out conflict checks. Matters were slightly delayed because Ashfords had previously been sent information by a third party seeking to instruct them in relation to Southwold Harbour. Ashfords had not acted for that third party and confirmed they would not disclose the information they had been provided with, but would have to contact that (unnamed) third party and give them an opportunity to object before they could confirm whether they could act. With our agreement, Ashfords did so. They then confirmed that the third party had consented and that they were accordingly free to act. The other firms of solicitors confirmed that they were likewise able to act.
- 8.4 We prepared detailed draft instructions and provided these to STC on 3 May 2019 to check for any comments. A copy of these instructions is at Appendix A to this report.
- 8.5 These instructions deliberately set out the background and the points from the various consultations and meetings in detail, to ensure that these would be taken into account. The instructions emphasised the JC's recommendation in the March Resolutions that, when planning the short term governance improvements which the HMC is intended to enable, the points set out in section 12 of the February Report should be taken into account, including places on the proposed HMC for member(s) of STC and other external appointees.
- 8.6 The draft instructions were provided to the potential firms of solicitors to enable them to provide their initial cost estimates and proposals.
- 8.7 The proposal from Ashfords LLP was potentially more expensive than the other firms (with various components depending on the effect of the relevant legal restrictions and a likely total cost between £7,250 and £11,750) but more considered and realistic, and should deliver better value than those provided by the competitor firms; it appeared that Ashfords were likely to provide higher quality advice and to work within their estimates rather than exceeding them.
- 8.8 Accordingly, after comparing their proposals and allowing a suitable period for any comments from STC on the draft instructions, we instructed Ashfords on 22 May 2019.
- 8.9 Ashfords have now provided, as requested:
- 8.9.1 an explanatory note, for the JC and for use in the consultation proposed below, of their advice (produced at Appendix B to this report); and
- 8.9.2 their draft constitution for the proposed HMC, comprising:
- (i) Terms of Reference (produced at Appendix C to this report) to create the proposed HMC in accordance with the East Suffolk Council constitution; and

- (ii) a Memorandum of Understanding (produced at Appendix D to this report) to set out matters in more detail, in line with the PGGG.

9 STAKEHOLDER CONSULTATION AND CONSIDERATION

- 9.1 Accordingly, following the March Resolutions and the directions from WDC's Cabinet and STC, as described above, we propose to make arrangements to consult stakeholders on the proposed way forward.
- 9.2 We propose to arrange the consultation by:
 - 9.2.1 publishing the advice note and the draft constitution from Ashfords LLP on the East Suffolk Council website;
 - 9.2.2 inviting any new written representations by e-mail by a suitable date, making it clear that there is no need to repeat representations made in the previous consultation exercise because those will continue to inform future planning; and
 - 9.2.3 arranging a public event at a suitable location in Southwold, to enable stakeholders to make representations and ask questions in person if they prefer.
- 9.3 The JC can then meet to consider the results of the consultation exercise and the next steps. Subject to the outcome of that consultation exercise, that is likely to include:
 - 9.3.1 making any appropriate changes to the draft constitution for the HMC;
 - 9.3.2 considering whether to arrange preparation of an initial business plan and any other documentation at this stage; and
 - 9.3.3 making proposals to WDC's Cabinet and STC to create the HMC and disestablish the JC.

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, pursuant to the 2015 Resolutions.
- 10.2 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 above.
- 10.3 The proposed approach is to work towards creation of the proposed HMC. This will enable improved governance of the SHL, in accordance with the PGGG and in the interests of all stakeholders.

11 FINANCIAL AND GOVERNANCE IMPLICATIONS

- 11.1 East Suffolk Council agreed to advance funds to enable instruction of the external solicitors to advise on the appropriate constitution for the HMC.
- 11.2 This has been arranged through Legal and Democratic Services at East Suffolk Council to control expenditure and work cost-effectively with the arrangements for the new constitution for East Suffolk Council. The estimated fees are described in section 8 above.

- 11.3 The longer term financial and governance considerations for the SHL are described and considered in section 12 of the February Report.

12 OTHER KEY ISSUES

- 12.1 This report has been prepared having taken into account and reviewed the results of an Equality Impact Assessment (EIA), as published with the February Report and available at the link in the table at the end of this report. 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:

12.1.1 As to the physical environment of the SHL, we consider 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. The Head of Operations at East Suffolk Council 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.

12.1.2 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.

- 12.2 We consider that the proposal will not adversely affect the status quo and should improve it. Currently, the SHL is managed by officers of East Suffolk Council, in consultation with SHRBUA, and SCOA, and others. The proposed 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.
- 12.3 No points have been made by consultees during the previous 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. Any new points made in the proposed further consultation exercise can be taken into account by the JC when it meets again to decide on the way forward.

13 CONSULTATION

This report has been prepared taking into account the results of the consultation exercises referred to above and proposes the further consultation exercise described in section 9 of this report.

14 OTHER OPTIONS CONSIDERED

- 14.1 The proposals made in this report are to implement the March Resolutions made by the JC. Before those resolutions were made, the JC considered all of the other options described in section 11 of the February Report.
- 14.2 Although it may not be necessary to carry out a further consultation exercise, some consultees in the previous consultation exercise did ask for this and, in the March Resolutions, the JC did resolve to arrange further consultation, as described in section 5 above.

15 REASON FOR RECOMMENDATION

- 15.1 The recommendations made in this report are to implement the March Resolutions made by the JC and are made for the reasons summarised in this report and explained in more detail in the reports referred to in it (which are available at the links in the table at the end of this report).
- 15.2 At the simultaneous meeting on 15 March 2019, while recognising the time which would be needed for the move to East Suffolk Council in April and the election process in May, members of WDC's Cabinet and members of STC asked that we aim to obtain the draft constitution by the end of July 2019 for the JC to consider, with a view to carrying out the proposed consultation exercise thereafter and helping to progress this matter.

East Suffolk Council

24 June 2019

RECOMMENDATIONS

That the Joint Committee resolves to:

1. Note the report dated 24 June 2019 to the Joint Committee (**Report**) and appendices;
2. Arrange a further consultation exercise by:
 - (i) publishing on the East Suffolk Council website the explanatory note (as produced at Appendix B to the Report) and the draft Harbour Management Committee constitution (as produced at Appendices C and D to the Report) from Ashfords LLP;
 - (ii) inviting any new written representations by e-mail by a suitable date, making it clear that there is no need to repeat representations made in the previous consultation exercise because those will continue to inform future planning; and
 - (iii) arranging a public event at a suitable location in Southwold, to enable stakeholders to make representations and ask questions in person if they prefer.
3. Meet again after an appropriate period to decide the way forward, taking into account the results of that consultation exercise.

APPENDICES

Appendix A	Instructions to solicitors
Appendix B	Explanatory note from Ashfords LLP
Appendix C	Draft Terms of Reference from Ashfords LLP
Appendix D	Draft Memorandum of Understanding from Ashfords LLP

BACKGROUND PAPERS		
Date	Type	Available From
6 March 2019	The documents considered by the JC on 6 March 2019 as referred to in this report, including the specific items listed below for ease of reference	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/
June 2014	Consultation Document	https://www.eastsuffolk.gov.uk/assets/Your-Council/WDC-Council-Meetings/2019/March/Southwold-Harbour-Lands-Joint-Committee-06-03-19/Item-06-Appendix-C-Southwold-Harbour-Lands-Consultation-June-2014.pdf
28 July 2014	Minutes of the simultaneous meeting of WDC's Cabinet and STC	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
November 2018	Equalities Impact Assessment (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
December 2018	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
February 2019	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

6 March 2019	March Resolutions	https://www.eastsuffolk.gov.uk/assets/Your-Council/WDC-Council-Meetings/2019/March/Southwold-Harbour-Lands-Joint-Committee-06-03-19/Decision-Notice-for-Southwold-Harbour-Lands-Joint-Committee.pdf
15 March 2019	Resolutions by WDC's Cabinet	https://www.eastsuffolk.gov.uk/assets/Your-Council/WDC-Council-Meetings/2019/March/WDC-Cabinet-and-Southwold-Town-Council-Meeting/99-Decision-Notice-Simultaneous-Cabinet-15-March-2019.pdf

Appendix A – Instructions to solicitors

Dear []

New matter – Harbour Management Committee for the Southwold Harbour Lands

As arranged, I set out below our draft instructions. These are deliberately detailed, to seek to explain the position and reference material in one.

At this stage, we would be asking you to:

- 1) As explained in section 8 below, advise on whether we could appoint external voting members to the proposed Harbour Management Committee (**HMC**) for the Southwold Harbour Lands (**SHL**), or, if not, how we can provide for external appointees to have appropriate involvement and influence and whether they could be paid for their attendance/expenses; and
- 2) Prepare terms of reference, consistent with our new constitution, to establish the proposed HMC.

We would be aiming to have your advice and initial draft terms of reference in May/June in good time for the Southwold Harbour Lands Joint Committee (**JC**) to consider and discuss when they meet on 5 July and put out for consultation.

I would be grateful if you could please let us have an initial cost estimate. It might be helpful to discuss the matter, but I explain the details below for completeness.

For completeness, I attach copies of the following reference/background documents, which are explained below:

- 1) The Council's constitution;
- 2) The Harbour Order of 1933, which is the current governing legislation for the harbour undertaking, as described below;
- 3) The plan to the Harbour Order;
- 4) The June 2014 consultation document, which refers on page 3 to the "key principles" set out below;
- 5) Our report from December 2018, which explains the background (if needed); and
- 6) Our report from February 2019, which sets out, in section 12, particular points (in relation to each of the "key principles" and the constitution of a HMC) which emerged from a further consultation exercise.

1. Work by the Southwold Harbour Lands Joint Committee (JC) to advise on a HMC to replace the JC

The client contact for billing purposes will be Legal Services at East Suffolk Council of East Suffolk House, Station Road, Melton, Woodbridge IP12 1RT.

East Suffolk Council replaced Waveney District Council (**WDC**) and Suffolk Coastal District Council on 1 April, when all property, rights and liabilities of those predecessor councils transferred to and vested in East Suffolk Council by operation of the East Suffolk (Local Government Changes) Order 2018 and the Local Government (Boundary Changes) Regulations 2018.

This work is being arranged to assist the Southwold Harbour Lands Joint Committee (**JC**), which was established after a consultation exercise in 2014 by WDC's Cabinet and members of Southwold Town Council (**STC**), who resolved that the rules of procedure for committees of WDC's Cabinet would apply to the JC. The JC is comprised of four elected members of WDC's Cabinet and four elected members of STC.

The intention is to enable immediate governance improvements by establishing a HMC. In line with the resolutions described below, the design of the terms of reference of the HMC will need to take into account the points set out in section 12 of the attached report from February 2019 and will need to enable the HMC to:

- a) have places for member(s) of STC and other external appointees (to represent local and other stakeholders and ensure 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 (**PGGG**) issued by the DfT in 2018);
- b) replace the Joint Committee;
- c) govern the SHL, subject to any requirements of Cabinet and the requirements of the Council's constitution;
- d) confirm who will be the duty holder for the purposes of the Port Marine Safety Code; and
- e) plan further governance improvements, including annual reports and proposals to deliver longer term improvements (which are likely to be made by application for a Harbour Revision Order to update the current Harbour Order), addressing future ownership and providing for the long term welfare, sustainability, responsibility, liability and delivery of the SHL. Those proposals for longer term improvements should take into account recommendations that 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 SHL, for the protection and benefit of the Harbour and Harbour

Lands, while specifically allowing expenditure on works outside the SHL such as work on the Blyth estuary as explained below; (ii) to preserve the Harbour Lands in the ownership of WDC and its successor local authority; and (iii) to complement the HMC arrangements.

2. Harbour Order of 1933

The current governing legislation for the harbour undertaking is the Southwold Harbour Order 1933 (**Harbour Order**), a copy of which is attached. As explained in section 2 of the December Report, 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.

The Council acts as the “Corporation” as described in the Harbour Order. WDC took over the management of the SHL in 1974 when the original Corporation, Southwold Borough Council, was dissolved and WDC was created on local government reorganisation under the 1972 Act. Ownership has been queried over the years and the land has not been registered, but WDC and the relevant government department at the time agreed that the SHL transferred to WDC under the relevant transfer of property order. Further, WDC had exclusive possession of the material parts of the SHL from 1974 onwards. The property, rights and liabilities of WDC were then vested in East Suffolk on 1 April 2019, as explained above.

3. Southwold Harbour Lands (SHL)

We have described the SHL as the same areas of land which may fall within the definition of “harbour undertaking” under the Harbour Order, which uses the attached plan to describe its limits. These are 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.

Harbour activities under the Harbour Order are accounted for separately from the Council’s general fund with appropriate adjustments. In particular, as required by guidance from the District Auditor in 2007, the caravan and camping site is operated by the Council as part of the general fund after deduction of an allowance in favour of the harbour undertaking for the value of the use of the land on which it sits.

4. Key principles from the June 2014 consultation

When establishing the Joint Committee, WDC’s Cabinet and STC adopted the following “key principles” which had been set out in the consultation document from June 2014:

- 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)

5. Recommendations of the JC

On 6 March 2019, after considering the results of a consultation exercise, the Joint Committee resolved to rescind resolutions made previously about a different proposed governance model and to:

- 1) *recommend to WDC and STC that they 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 HMC 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,*
- 2) *recommend that, when planning the short term improvements described in 2(i) above, the points set out in section 12 of the report from February 2019 to the JC (copy attached) 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.*
- 3) *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.*

- 4) *arrange to instruct professional advisers to advise on the appropriate constitution for a HMC as outlined above; and*
- 5) *make stakeholder engagement arrangements to consult community stakeholders and all other relevant stakeholders on the improvements outlined above.*

On 15 March 2019, WDC's Cabinet and STC held a simultaneous meeting and each resolved to note and endorse the above recommendations and to direct the Joint Committee to arrange to consult professional advisers and stakeholders and advise Cabinet and STC on proposals for such a HMC.

6. The Council's constitution

Governance of the SHL is a responsibility of the Council's Cabinet. In particular, under Part 2, D3.2 of the constitution, any function of the Council as harbour authority and any function under a local Act (other than those specified or referred to in reg. 2 or sch.1 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, which do not apply here) is a Cabinet responsibility.

Under the constitution, Cabinet may arrange for any decision that it is collectively responsible for to be taken by a committee of the Cabinet. Similarly, under the Cabinet Procedure Rules in the constitution, the Leader of the Council may provide for executive functions to be discharged by a committee of the Cabinet and such committee may delegate further to an area committee or joint arrangements (a Cabinet Member).

The Suffolk Local Code of Conduct as set out in the constitution applies to all elected Members and any co-opted Members entitled to vote on any decisions of the council or its committees, sub committees or joint committees. Under the Code, a co-opted Member has the same meaning as that set out in Section 27(4) of the Localism Act 2011 and means a person who is not a Member of the authority but who: (a) is a Member of any Committee or Sub-Committee of the authority, or (b) is a Member of, and represents the authority on, any joint Committee or Joint Sub-Committee of the authority, and who is entitled to vote on any question that falls to be decided at any meeting of the Committee or Sub-Committee.

Under Part 1, 8.1 of the constitution, decisions are made by simple majority, with the Chairman of a meeting entitled to a casting vote in the event of a tie.

7. Reference models

When consulted, the DfT mentioned that it might be helpful to look at the governance arrangements for Langstone harbour or Littlehampton harbour when considering the constitution of any HMC. This is explained in more detail in the February report, but:

We gather that Langstone has a Harbour Board (two of whom are elected by the Advisory Committee) and an Advisory Committee (which has a number of members to represent the various stakeholder organisations involved). The Advisory Committee meets the week before

each Harbour Board meeting and considers the full agenda for the next Harbour Board meeting. The Harbour Board have a duty to consult the Advisory Committee on all matters substantially affecting the preservation, regulation, management and improvement of the harbour. The Harbour Board must also consider any matters referred to them on these topics by the Advisory Committee.

We gather that Littlehampton harbour is governed by a Harbour Board, which consists of 11 members. Eight are appointed by the local authorities involved, one is appointed by the Environment Agency, one is appointed by the Board to represent recreational users of the port and one is appointed by the Board to represent commercial users of the port.

However, please do not consider yourself limited to these if there are better examples/models which you would recommend.

Subject to the question in section 8 below, it seems to us that it would be better to have co-opted members of the committee with voting rights (bound by the Suffolk Local Code of Conduct, as above), generally and so that they could be paid for their attendance and expenses, if this is possible. The Members' Scheme of Allowances at Part 5 of the constitution allow for co-opted members to be paid an allowance for each meeting and for travelling/subsistence.

8. Can we have voting external appointees or, if not, provisions enabling external appointees to have appropriate involvement and influence?

We would be grateful for your advice as to whether, and if so how, we could appoint co-opted members with voting rights to the proposed HMC or, if not, the best arrangement which could be made to accommodate external appointees in line with the aims described in these instructions.

Harbour Order

We are dubious about relying on article 7 of the Harbour Order, because (even apart from the points mentioned below, and claims from some local people that the council is not the Corporation under the Harbour Order), this seems narrow (as to which types of external appointees are permitted, and referring only to the harbour, not the land neighbouring the harbour) and to expect only an advisory committee:

"The Corporation may at any time and from time to time by resolution 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 any number of persons not being members of the Council being persons of experience in or having a special knowledge of the harbour undertaking or being payers of harbour rates and any such person may be at any time removed by the Corporation from such committee and subject as aforesaid the provisions of S.22 of the Municipal Corporations Act 1882 shall apply to any such committee..."

We note that s.22 of the 1882 Act provided that the council may from time to time appoint such committees out of their own body, *but the acts of every such committee shall be submitted to the council for their approval.*

Local government law restrictions on powers to appoint external voting members

It seems that a committee of cabinet could only appoint external members with voting rights if it is an “area committee” established under s.102(1A) of the 1972 Act as inserted by the Local Government Act 2000, since s.13 of the Local Government and Housing Act 1989 does not apply to such an area committee and s.102(3) of the 1972 Act allows the inclusion of persons who are not members of the appointing authority. This option is unlikely to be available, because the SHL cover a relatively small area; the members of the committee who are members of the council will not be elected for electoral divisions or wards which fall “wholly or mainly within” the part of the council’s area in respect of which the committee is to discharge functions, as required for an area committee.

We are not sure that cabinet (as opposed to council) could appoint external members to a committee under s.102(1) of the 1972 Act, but if it could it would be subject to the restrictions under s.13(1) of the 1989 Act, so a member of the committee would “*for all purposes be treated as a non-voting member*” of that committee if they are not a member of the council.

We doubt that the committee would be treated as having been established exclusively for the purpose of discharging such functions as may be prescribed by regulations made by the Secretary of State under s.13(4)(f) of the 1989 Act, since the Harbour Order does not seem to fall within this.

Given the exclusion under s.13(4)(e) of the 1989 Act, we would perhaps have the option of voting co-opted members on an advisory committee appointed by the Council under s.102(4) of the 1972 Act to advise Cabinet on any matter relating to the discharge of their functions, since s.102(4) provides that such committee may consist of such persons (whether members of the appointing authority or authorities or not) appointed for such term as may be determined by the appointing authority or authorities, and may appoint one or more sub-committees to advise the committee with respect to any such matter. The restrictions under S.13(1) of the 1989 Act do not apply to such advisory committee, so the external members could have a vote (so long, in the case of the members of any sub-committee, as they were members of the committee which appointed that sub-committee). This does seem to be the type of committee which was envisaged by article 7 of the Harbour Order, as described above.

However, we would like to investigate the options for a HMC with appropriate governance powers (subject always to any requirements of cabinet) rather than a HMC which only advises cabinet. If it is not possible for external appointees to have voting rights, we expect that the terms of reference could provide for Cabinet to appoint external representatives to attend committee meetings in an advisory capacity, but not vote? This is of course what the Ports Good Governance Guidance expects in relation to the harbour master and the like, for example. If so, could the draft terms of reference provide for this and provide for external appointees be given notice of meetings and for those external appointees who attend committee meetings to be consulted? We are seeking to ensure that the new arrangements

provide, so far as feasible, for local influence and accountability in line with the principles and recommendations explained in these instructions.

9. Particular representations made by consultees

During the last consultation exercise, some consultees appear to have worked together to separately submit very similar representations. Substantially the same representations were also produced by a Councillor at the simultaneous meeting on 15 March 2019 with a request that they be used as a “framework” for discussions about the constitution of the HMC. It was confirmed at the meeting that these would be taken into account.

Accordingly, please find below copies of these representations with comments under each in turn.

“1. The Council acknowledges it has a key strategic role in determining and securing the future of Southwold Harbour, the Caravan park and the Blyth Estuary, all of which are mutually interdependent.”

The Council takes the position that it owns the SHL, which include the harbour and the caravan park.

It could usefully be reflected in the terms of reference that work/expenditure outside the SHL can be appropriate; upstream work on the River Blyth is likely to be necessary in future to raise river banks and consultees appeared to agree that the Council should be entitled to use harbour revenue to finance or contribute towards the financing of such work. Since there have been questions about whether this is permitted under the terms of the current Order, plans for any HRO should include clarification of this.

“2. The proposed Management Committee must be enabled to act independently and take and implement decisions for the long-term. Its delegated duties and powers should combine, as far as possible, those of a Trust Board and Management Committee as set out in the Ports Good Governance Guidelines.”

The HMC cannot be independent of the Council because it will be a committee of the Council’s Cabinet, which is responsible for governance of the harbour, and the Council expects to need to advance substantial sums to the harbour (being repaid from income over time), as it has in the past, so needs to retain control of the SHL.

It should be part of the terms of reference for the HMC to plan proposals for long term improvements, as explained above.

It will not follow a trust board model because it is not a trust port; the DfT has confirmed that it is a municipal (local authority) port. The plans take into account the recommendations in the PGGG for the constitution of HMCs for municipal ports, with suitable external appointees to represent other stakeholders, including STC, as set out in the recommendations made by the JC.

“3. The future ownership of all the Harbour Lands must be guaranteed in perpetuity such that they are permanently protected from sale.”

There are of course legal issues here; we should follow the recommendation by the Joint Committee, as recited above, that when designing medium term improvements, 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; and (ii) to preserve the Harbour Lands in the ownership of East Suffolk Council.

“4. All profit (income less legitimate costs) from the Harbour and the Caravan Park, must be ringfenced for use in, or to preserve the future of the Harbour. This must include an appropriate financial contribution from the Harbour to the maintenance of flood protection in the estuary since this is vital to the continued viability of the Harbour itself as we have discussed above.”

The Harbour Order already contains restrictions and of course any such provisions need to be carefully considered and drafted; we should follow the JC’s recommendation as described under point 3 above. When doing so, the potential need to use harbour revenue to finance work outside the harbour which directly or indirectly benefits the harbour/local environment should be accommodated, as suggested here and noted under point 1 above.

“5. The membership of Board/Management Committee should be balanced to reflect the roles and expertise of stakeholders. We propose: Two appointed by WDC, two appointed by STC (It is important that those appointed to these posts have relevant expertise and that non-councillors should be considered), four Independent Members appointed to bring required expertise (eg from Caravan owners, Harbour Businesses, Harbour Users, Statutory Agencies etc). An independent Chairman, whose expertise and experience should be appropriate to the role, should be appointed, after advertisement, by the other eight members of the Board/Committee. The terms of office should be set to provide both continuity and the opportunity for change and an element of community control through the elected members.”

These proposals should be taken into account, but we have concerns that they may not be feasible. For the reasons explained in the reports, the Council needs to retain control of the SHL, so external appointees will need to be in the minority or non-voting, or the HMC would have to be advisory. We note the recommendations from the PGGG that the key features of HMCs are that they should be strategic and aware of the commercial and legal framework within which ports operate, ideally comprising:

- *PGGG: approximately 50% elected members of the local authority, although these do not all have to be local authority councillors; they could be co-opted representatives who are appointed by the local authority or provide specific skills in support of port management;*

As a starting point for this draft, we propose that the HMC consists of the following members:

[up to eight] appointed by the Council/Cabinet, including elected members and potentially external specialists, such as marine engineers;
[one or two] nominated by STC;
[number TBC] appointed by the HMC to represent recreational/commercial users.

This follows the PGGG so far as possible; the Council needs to appoint more than 50% of the members of the HMC because it has substantial potential liabilities in relation to the SHL and is likely to be asked to advance many millions to fund improvement works for the SHL, recovering the advances from income over time, as it has in the past and as explained in more detail in the reports.

- *PGGG: the port chief executive/harbour master, who should have access to the HMC in an advisory role, but as an officer of the council they should not serve on the committee or have voting rights;*

As a starting point, we propose this be the case (for the harbour master; there may be no chief executive of the harbour going forward).

- *PGGG: external appointees who are stakeholder representatives or individuals with valuable skills and experiences and should be appointed by public advertisement; and*

We propose this be the case for all external appointees other than the member(s) of STC. The reason for the difference is that STC are a key local stakeholder who naturally represent local Southwold electors and an automatic place or places for them was frequently requested by consultees during the previous consultation exercise and this was accordingly recommended by the Joint Committee, as explained above.

- *PGGG: a Chairman appointed on merit, skills and suitability, who should ideally be an elected representative of the Council as this will automatically maintain reporting lines and accountability to the Council.*

As a starting point, we propose this be the case.

The PGGG indicates that, before recruiting to a HMC, the local authority should undertake a skills audit to assess the balance of skills required to effectively govern the port and deliver against any adopted business plan. These skills should be considered for all committee members. This is being investigated.

“6. The constitution of the Board/Management Committee must allow it to operate independently but require and enable it:...”

As noted above, the HMC cannot be independent of the Council. A number of the points below are addressed in more detail, with other relevant matters, in section 12 of the report from February 2019, but we comment briefly on each below.

“a. to work solely in the interests of the Harbour Lands, their users and stakeholders;”

We are dubious about a constitution which imposes requirements which cause problems in future because they are unduly narrow or do not allow sufficient flexibility. The main reference points should be the Ports Good Governance Guidance and the “key principles” from 2014 as described above, but these are of course guidance, not mandatory requirements.

“b. to contribute to the protection of the Estuary;”

As noted above, it is agreed that the HMC should so far as possible be permitted to arrange work which benefits areas outside the SHL and should consider this when planning to update the Harbour Order in future.

“c. to work in partnership with Waveney/East Suffolk Council and Southwold Town Council;”

The HMC will be a committee of East Suffolk Council’s Cabinet. It should work with STC and other stakeholders in accordance with the Ports Good Governance Guidance; the intention is that appointment of external appointees, including nominee(s) of STC, will help to achieve this.

“d. to develop a strategic and financial business plan to ensure investment is secured for the Southwold Harbour Lands and for the protection of the Blyth Estuary;”

As noted in section 12 of the February report, the HMC should follow the PGGG, which confirms that municipal harbours should generally 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. The PGGG notes that annual reports and regularly updated websites are likely to be important ways of complying with this and the harbour authority should consider producing a business plan that looks at the future prospects of the port and how it will meet the requirements of the stakeholders, who should be fully involved in its development.

The HMC should be tasked with working to achieve this, taking into account representations from consultees that minutes should be published and/or that there should be annual public meetings, and consideration should be given to production of a business plan or plans as described in the PGGG, when the planned harbour study (which is in the process of being commissioned from external advisers) is available, to enable meaningful projections.

“e. to be responsible for an agreed budget and ensure the financial results of the Southwold Harbour Lands are properly accounted for and reported to the Department for Transport;”

If the Council is willing to give the HMC a budget, it is likely to be relatively modest, being a budget for ordinary expenses. Any major proposed expenditure would need to be submitted through the Council’s financial control systems for capital projects or the like for consideration by Council or Cabinet as appropriate.

As explained in section 12 of the February report, the Council accounts for the harbour as part of its overall published local authority accounts. Further, annual accounts should continue to be submitted to the DfT as required by the Harbours Act 1964. The HMC should consider as part of longer term improvements preparing accounts on a commercial basis, as proposed by the PGGG, but this is unlikely to be feasible in the short term in view of the requirements for local authority accounts.

“f. to raise the necessary investment funds to improve the infrastructure of the Harbour Lands;”

As with previous improvement works, the Council is likely to be asked to advance the sums needed for such improvement works, recovering the sums advanced from the harbour revenue over time. Match or grant funding or other sources of funding may be available for some projects and these should be investigated as appropriate, as they have been in the past.

“g. to investigate how the Harbour can benefit from an associated charity to support fundraising and ensure available tax advantages are claimed (e.g. as is now being done successfully for the Alde and Ore Estuary).”

The HMC should be free and encouraged to investigate any such options and any other options to assist fundraising, tax efficiency, operational efficiency or any other improvements.

“7. To protect the integrity of the Harbour Lands and recognise their historical origins as part of a Haven Port developed for the community, there should be a single management structure responsible for all financial and operational matters (including Health and Safety).”

It will not be constructive to engage in a debate about the historical origins of the harbour. It has been governed by East Suffolk Council and its predecessor council, Waveney District Council, as a municipal port for over 40 years. The HMC would be responsible for governance of the harbour for the Council and would liaise with the Head of Operations at the Council to implement their requirements.

Public Consultation Explanatory Document

Establishment of the Southwold Harbour Management Committee

Ashfords LLP has nationally recognised expertise in Ports and Harbours. Lara Moore, who is the lead lawyer advising on this matter from Ashfords LLP, sits on the UK Harbour Masters' Association National Council (elected by Industry). The firm acts for a large number of statutory harbour authorities made up of Municipal, Trust and Private Ports.

Clients include Cornwall Council (10 ports and harbours, including seven statutory harbours), Torbay Council (Brixham, Paignton and Torquay harbours), Littlehampton Harbour Board (Trust Port), Port of Shoreham (Trust Port), and Dorset Council (harbours of Weymouth, Bridport and Lyme Regis). The firm is also acting for a group of stakeholders at Whitby Harbour, challenging Scarborough Borough Council's management (as statutory harbour authority) of Whitby Harbour and use of harbour funds. The firm therefore has an excellent understanding of a range of statutory harbour authorities and best practice in the sector.

Introduction

Ashfords LLP has been instructed to advise East Suffolk Council in respect of the setting up of a new harbour Management Committee (HMC) for Southwold Harbour.

In order to provide the advice, Ashfords LLP has carried out a review of the local statutory harbour legislation that applies in relation to Southwold Harbour. In addition, we have reviewed the Council's new constitution, the previous consultation carried out in June 2014, and the Council's reports of December 2018 and March 2019. We have also considered the Department for Transport's 'Ports Good Governance Guidance' (March 2018) and key relevant principles of the 'Port Marine Safety Code'.

The Council now wishes to carry out a consultation on the draft documentation Ashfords has prepared to establish the HMC. This includes 'Terms of Reference' which would be inserted into the Council's constitution and a draft 'Memorandum of Understanding' ('MoU') that would be put in place between the Council and the HMC to establish the responsibilities of the HMC.

In preparing the above documentation, Ashfords has drawn not only on the recommendations of the Ports Good Governance Guidance ('PGGG'), but also upon the experience and practices of some other municipal ports and harbours where HMCs have been operating successfully for a number of years. As such the draft MoU (and accordingly the Terms of Reference (which are based on the contents of the MoU) reflects best practice guidance and the arrangements in place in some other municipal ports and harbours that have established and well-respected HMCs.

Once the consultation has concluded, all responses will be considered. A decision will then be taken as to whether any amendments should be made to the draft documentation prior to the establishment of the HMC.

One of the purposes of establishing the HMC in advance of any application for a harbour revision order (HRO) to improve and modernise the local statutory harbour legislation that applies to Southwold Harbour is to enable the Council and all interested stakeholders to gain experience of the HMC being established and operated in practice. This experience can then be used to guide the drafting of the provisions that are very likely to be included in any proposed HRO to formally establish the HMC as a statutory requirement.

Ashfords considers that, as the draft documentation reflects the requirements of the PGGG and successful working practices at some other municipal ports, the most important next step is to get the HMC established and operating, with the support of both the Council and stakeholders. Until an HRO is obtained which sets out the HMC requirements through statutory provisions, the arrangements governing the HMC can be further refined, if necessary, after a period of operation of the HMC.

March 2019 Report

The future governance of the harbour is currently being considered by the Southwold Harbour Lands Joint Committee (JC) which is comprised of four elected members of East Suffolk Council (formerly Waveney District Council's) Cabinet and four elected members of Southwold Town Council (STC).

For the reasons set out in the Council's Report of March 2019, Ashfords LLP has been instructed to advise on the appropriate constitution for an HMC to improve governance arrangements in respect of the harbour and to replace the JC.

Divergence from the March 2019 Report

Ashfords does not agree that either Littlehampton Harbour Board or Langstone Harbour Board are a good example of the type of constitution that the Council should be considering when forming a new HMC (either in the short term or in the medium to longer term for an HRO). This is for the following reasons:

- a. Both Littlehampton Harbour Board and Langstone Harbour Board are Trust Ports¹ not municipal ports. Given the wider constitutional and other constraints on local authorities, it makes more sense to look at HMC arrangements amongst municipal ports, than to take, as a starting point, a Trust Port. The Department for Transport has confirmed to Ashfords that it agrees with this approach.
- b. Littlehampton Harbour Board and Langstone Harbour Board are two of only three statutory harbour authorities in England, that are Trust Ports, but also have the ability to call on local council funds each year to make up any shortfall in their revenue. The Department for Transport has confirmed to Ashfords LLP that owing to recent difficulties at one of the three harbour authorities, it is very unlikely that the Department for Transport would support the creation of a new statutory harbour authority based on this model.
- c. Neither Littlehampton Harbour Board nor Langstone Harbour Board's governance arrangements are in line with the recommendations for HMCs set out on page 37 of the PGGG.

Recommendations for the structure of the HMC

The HMC should be strategic and aware of the commercial and legal framework within which the harbour operates.

Ashfords has considered the governance arrangements of a number of other municipal harbours and ports that already operate a successful HMC as part of their governance arrangements. Cornwall Council (which owns 7 statutory harbours and ports) in particular, has been operating a very well-respected HMC for a number of years. The core structure of the HMCs Ashfords has considered are broadly in line with current PGGG and can be summarised as follows:

- a) They consist of between 10 and 12 voting members
- b) The harbour master / port chief executive attends HMC meetings in an advisory capacity but is not a committee member and does not have voting rights.
- c) Approximately 50% of the voting members are local authority elected members of the constituent authority (these do not all have to be local authority councillors; they could be co-opted representatives who are appointed by the local authority or provide specific skills in support of port management. However, they normally are all local authority elected members).
- d) Approximately 50% of voting members are external appointees, selected for their skills and experience (which can include local stakeholder knowledge). Members of Southwold Town Council could also be appointed under this category.
- e) The Chair of the HMC is elected by the HMC, but only those persons who sit on the HMC that are also members of the Council are eligible for election.
- f) In most cases the HMC is not the 'Duty Holder' for the purposes of the PMSC (see further below) but has a direct line of communication to the Duty Holder.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/525076/trust-port-study-key-findings-and-recommendations.pdf

- g) The HMC is required to operate within a budget approved by the Council, with restraints on the level of expenditure that can be approved by the HMC. The disposal of assets (particularly land) also generally requires approval by the Council. The Council must act within the constraints of its statutory harbour powers and duties when approving the budget and expenditure. In the interests of good governance, the financial regulations and the contract standing orders of the Council are applied in so far as they relate.
- h) The HMC manages the harbour in line with a business plan created for the harbour (normally 5 year but with a section on longer term matters) which is updated and reviewed as required. The HMC reports on its progress against the business plan annually. In accordance with PGGG guidance the business plan should seek to establish and implement a strategy to put harbour operations on a commercial basis wherever this is possible (without continuing subsidy from Council general funds).
- i) Separate accounts for the harbour are prepared annually.
- j) The HMC prepares and conducts meetings in accordance with the meeting rules of the Council.

Ashfords considers that that the above arrangements are suitable for any HMC set up in respect of Southwold Harbour.

Basic Structure of the MoU

The draft Terms of Reference for incorporation into the Council's Constitution (Part 2, section C) are contained in Appendix 1 to this document. They reflect the provisions of the MoU (particularly Annex 4) but are necessarily much shorter as they have been adapted to make them appropriate for incorporation into the Constitution. The Terms of Reference set out the matters that would be delegated to the HMC.

The MoU itself is split into 6 sections (the main body of the document and five appendices).

The main body of the document sets out the purpose of the MoU and a brief explanation of the PGGG before going on to lay down the commitments and agreements of the Council and the HMC in respect of the running and management of the Harbour. It also includes provisions related to the length of the MoU and Confidentiality.

The Appendices contain:

1. **An Extract from the Ports Good Governance Guidance about Harbour Management Committees**
2. **A basic 'establishment plan' for the Southwold Harbour Management Committee.** This sets out some of the tasks that will need to be completed to establish the HMC.
3. **An Asset Register.** This will need to be populated, having regard to the provisions of the 1933 Order which set out the harbour limits. It will then need to be reviewed by the new HMC and a recommendation made to Council. Council will then need to review and approve the Asset Register. It is very important to the proper functioning of both the HMC and the harbour, that the assets which are being managed by the HMC (within the parameters set out under the MoU) are clearly identified. These assets include land and property as well as assets such as vessels, moorings etc.
4. **The Southwold Harbour Management Committee Guidance Notes.** The Guidance Notes are effectively a more detailed version of the Terms of Reference. They set out how members are appointed to the HMC, the responsibilities of the HMC, conduct of HMC meetings etc.
5. **Organisational Structure.** The final appendix will contain, once populated, a clear organisational structure that shows the reporting lines between the HMC and Council (including the Duty Holder). Again, this is important to ensure the proper functioning of the HMC and the harbour and to add compliance with the PMSC.

Setting up of HMC

Before the HMC is set up, the Council, as recommended by the PGGG, will carry out a skills audit to assess the balance of skills required to effectively govern the harbour and deliver against the business plan.

As there is not yet a formal business plan in place, the audit will instead need to be carried out with a view to the first tasks of the new HMC (which will include putting in place a new business plan, potentially pursuing a harbour revision order application to modernise the statutory powers and duties applying to the harbour etc.) and the approach taken by other local authorities. The types of skills, experience and knowledge often considered useful to an HMC include:

- (a) maritime industry and activities;
- (b) commerce;
- (c) health and safety;
- (d) management;
- (e) public relations and community issues;
- (f) industrial relations;
- (g) shipping, fishing or cargo handling;
- (h) accountancy or financial management;
- (i) boating and other water related leisure activities;
- (j) environmental matters affecting harbours; and
- (k) any other skills and abilities considered from time to time by the Council to be relevant to the discharge by the HMC of its functions.

The exact list can be refined in relation to the particular circumstances of the harbour in question. For example, in relation to Southwold Harbour, it clearly is appropriate for Southwold Town Council to have a position on the HMC (possibly more than one, depending on the outcome of the skills audit and the applicants for HMC positions following public advertisement). It is important that when carrying out the skills audit, the Council try to secure, so far as reasonably practicable, that the persons appointed by them to the HMC (including members of the Council), have special knowledge, experience and ability in a broad and complementary range of matters relevant to the efficient, effective and economic discharge by the HMC of the HMC's functions.

In making appointments to the HMC, the Council should also act in accordance with any guidance issued by the Secretary of State from time to time with regards to the exercise of such functions. Currently this guidance is contained in the PGGG which advises that external members should be appointed by public advertisement using the guidance applicable to public appointments.

Duties of members of the HMC to the HMC

When sitting as the HMC, the duties of all members of the HMC are primarily to the harbour, within the terms of reference and parameters of the MoU governing its operation. As set out in the PGGG, municipal harbours should (within the constraints of their statutory harbour powers and duties) be "*governed and operated in the interests of stakeholders including the local community*".

For example, if a stakeholder has been appointed to the HMC, they are required when making decisions to act in the best interests of the harbour as a whole. Similarly, in respect of members of the Council appointed to the HMC, they are required to act in the same way. Ashfords, therefore, prefers not to refer to any HMC members as 'representatives' of any particular stakeholder group etc. as it leads to confusion about the nature of the role. Knowledge of local stakeholders (or a particular group of them) is a valid criterion against which to appoint a person as a member of the HMC, but once appointed to the HMC that person is not there as that group's representative.

If stakeholders wish to 'represent' the interests of their particular stakeholder group only, then this should be done through stakeholder user groups, or the potential Advisory Group described below.

The draft MoU proposes that the HMC will consider setting up a formal stakeholder 'Advisory Group' within the first two years of its operation. The HMC would then liaise formally with this advisory group on all matters substantially affecting the harbour, including business plans etc. and take account of its views when making decisions or recommendations.

Identity of the Duty Holder

The Port Marine Safety Code (“PMSC”) requires that all statutory harbour authorities have a “duty holder” who is accountable for compliance with the PMSC and ensuring safe marine operations. The duty holder is publicly accountable for marine safety under the PMSC, both individually and collectively (where the duty holder is more than one person).

It is standard for an HMC to operate under an approved budget and to have limits on the level of financial transaction it can authorise without further approval from its Council. For this reason, it is not generally considered appropriate for the HMC to be appointed as the Duty Holder.

Therefore, in respect of Southwold Harbour, having considered the new constitution of the Council it is recommended that the Duty Holder is the Cabinet. Duty holders cannot assign or delegate accountability for compliance with the PMSC to others, such as a Harbour Master.

Works outside the harbour limits / Drainage & Flood Defence works

Ashfords has been advised that one of the longer-term matters under consideration is the protection of surplus harbour revenue, for the protection and benefit of the Harbour, while specifically allowing expenditure on works outside the Harbour such as work on the Blyth Estuary.

The harbour as defined under the Southwold Harbour Order 1933 (‘the 1933 Order’), includes the Southwold Harbour Lands within its limits. As such references below to the ‘harbour’ include the Southwold Harbour Lands and in relation to ‘harbour revenue’ include monies payable to the Council as the Statutory Harbour Authority in respect of the Southwold Harbour Lands.

Article 39 of the 1933 Order sets out how harbour revenue has to be allocated and effectively ring fences the harbour revenue. This does not mean that harbour revenue cannot ever pass into the Council’s General Fund. In certain limited circumstances it can. For example, article 39(7) expressly authorises the repayment of monies provided to the Harbour by General Fund (under article 40) as long as there are surplus funds available to utilise for this purpose. There are also provisions related to the repayment of borrowed monies.

However, having carried out a review of the current statutory harbour legislation, Ashfords can confirm that whilst harbour funds are already ringfenced (as described above) under the current statutory harbour legislation, it does not consider that it would, in most circumstances, currently be a lawful use of harbour funds to fund drainage or flood defence works or other improvements to the Blyth Estuary not within the harbour limits or related to the harbour undertaking. Nor would it be lawful for the Council to lend money to the harbour to carry out such works and then to recover these monies from the harbour funds over time.

Drainage and flood defence are a separate responsibility to the statutory harbour authority function. This is made particularly clear by article 13 of the 1933 Order which contains protections for the East Suffolk Rivers Catchment Board in relation to the main channel of the River Blyth. Whilst some infrastructure may serve a dual purpose (whether it does or not is a matter for expert advice), the statutory harbour authority function and harbour funds are not responsible or indeed (in most circumstances) authorised to carry out or fund works that are essentially required for drainage or flood defence purposes. A Harbour Revision Order application would therefore need to be made to authorise such expenditure and activities if considered appropriate in the future. However, there is no guarantee any such application would be successful.

21 June 2019

Ashfords LLP

Appendix 1 – Draft Terms of Reference

Appendix 2 – Draft Memorandum of Understanding

APPENDIX 1**HARBOUR MANAGEMENT COMMITTEE – Terms of Reference****1. Introduction**

- 1.1. The Council is the Owner and Statutory Harbour Authority for Southwold Harbour (the 'Harbour').
- 1.2. Under the Constitution, any function of the Council as Harbour Authority is a Cabinet responsibility.
- 1.3. The Cabinet has resolved to dissolve the existing Southwold Harbour Lands Joint Committee and replace it with the Harbour Management Committee (the 'Committee') to manage the Harbour.
- 1.4. The Committee will manage the Harbour in accordance with the provisions of the Harbours Act 1964, the Southwold Harbour Order 1933 and the Harbour Docks and Piers Clauses Act 1847 (as incorporated), as amended from time to time (the 'Harbour Legislation').

2. Purpose of the Committee

- 2.1. To, in respect of the Harbour, perform functions:
 - 2.1.1. within the definition of a Harbour Authority in Section 57(1) of the Harbours Act 1964 and the Southwold Harbour Order 1933 and the Harbour Docks and Piers Clauses Act 1847 (as incorporated), as amended from time to time; and
 - 2.1.2. arising out of any Byelaws made by the Council under the above legislation.
- 2.2. The discharge of these functions within any policy and budget approved by Council to be delegated as set out in the Memorandum of Understanding between the Committee and the Council.
- 2.3. The Committee shall not incur any expenditure, enter into any obligations or take any other action except:
 - 2.3.1. within the budget determined by the Council in accordance with the following provisions; and
 - 2.3.2. as set out in the harbour business plan approved by the Cabinet in accordance with the following provisions (the 'Harbour Business Plan').
- 2.4. The Committee shall, only make decisions regarding the management, acquisition and disposal of assets in accordance with the Council's acquisitions and disposals policy, financial procedure rules and contracts procedures rules.
- 2.5. The Committee shall not make decisions on the disposal or acquisition of property assets unless:
 - 2.5.1. the decision(s) accord with the provisions of the Harbour Legislation and Council's plans, policies and strategies and in particular the Harbour Business Plan; and
 - 2.5.2. 21 days' prior notice has been given to the Council's Asset Management Service; and
 - 2.5.3. the Cabinet of the Council has not requested that the decision(s) be referred to the Council for consideration and decision; and
 - 2.5.4. it involves a transaction value of £25,000 or less.

- 2.6. The Committee shall not make disposals or acquisitions of assets with a value in excess of £25,000 but shall make recommendations to the Cabinet in respect of such transactions.
- 2.7. The Committee will review and then recommend an annual budget, (including rental charges and central re-charges to the Council) and an annual schedule of charges and dues for the Harbour and these will be determined by the Cabinet.
- 2.8. The Committee will monitor performance against approved budgets and take appropriate action where this is required.
- 2.9. The Committee will make a six monthly and annual report to the Cabinet reporting on performance against budget.
- 2.10. The Committee will publish a Harbour Business Plan and any other plan required from time to time following approval from the Cabinet.
- 2.11. The Harbour Business Plan and other plans should promote the Harbour to be financially self-sustainable in the long term, reducing the risk of the need to call upon the Council's General Fund.

3. Form and Composition

- 3.1. The Committee will be comprised of eleven members (11), six (6) elected members will be appointed by the Cabinet and five (5) non-elected members will be co-opted onto the Committee following an appointment process to assess the skills and expertise that they can bring to the Committee.
- 3.2. The Chair and Vice Chair of the Committee shall be elected members of the Cabinet.
- 3.3. The elected members of the Committee shall be nominated by the Cabinet.
- 3.4. The non-elected members will be recommended to the Cabinet for appointment and their appointment is subject to ratification by the Cabinet. Non-elected members will serve the Committee in accordance with the following arrangements:-
 - 3.4.1. Co-opted Membership for the first term of the Committee shall be divided as follows:
 - 1 Co-opted Member will sit for only 1 year
 - 2 Co-opted Members will sit for only 2 years
 - 2 Co-opted Members will sit for a full term of 3 years
- 3.5. Co-opted Members who sit for only one or two years in the first term may be appointed for one or two subsequent three-year terms without further competition being required.
- 3.6. Following this transition period, terms for Co-opted Members will remain at three years from appointment.
- 3.7. A Co-opted Member may be appointed to a second three-year term without recourse to open competition, subject to the agreement of both the Chairman and the Co-opted Member, and the Committee's assessment that the Member has performed satisfactorily during the first term (all Membership of the Committee is subject to ratification by the Cabinet).
- 3.8. Re-appointment of a Co-opted Member for a third term shall involve competition with other candidates.

4. Meetings

- 4.1. The Committee shall meet at least 6 times a year and be governed by the Cabinet Procedure Rules as set out in the Council's Constitution.

- 4.2. All members of the Committee shall abide by the Council's Code of Conduct;
- 4.3. The quorum for meetings of the Committee shall be 5 save that at no time shall there be less than 3 Cabinet elected members present at the meeting.
- 4.4. The Committee shall consider the following business:
 - 4.4.1. Approval of the Minutes of the previous meeting;
 - 4.4.2. Declarations of Interest, if any;
 - 4.4.3. Report and feedback from any Stakeholder Forum(s);
 - 4.4.4. The business otherwise set out on the Agenda for the meeting;
- 4.5. An Annual Meeting of the Committee will take place during the year. This will be an informal meeting and include invitation to all members of Stakeholder Forums.

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APPENDIX 2 – Draft MoU

Dated

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(1) East Suffolk Council

(2) The Southwold Harbour Management Committee

**MEMORANDUM OF UNDERSTANDING
IN RESPECT OF SOUTHWOLD HARBOUR**

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MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made on the _____ day of _____ 2019

Between

East Suffolk Council whose principal place of business is at East Suffolk House, Station Road, Melton, Woodbridge, IP12 1RT (hereinafter referred to as 'the Council')

and

The Southwold Harbour Management Committee (a Committee of the Cabinet of the Council) whose principal place of business is at East Suffolk House, Station Road, Melton, Woodbridge, IP12 1RT (hereinafter referred to as "the HMC")

Who are jointly referred to in this Memorandum of Understanding as 'the Parties'

WHEREAS:

- The Council is the Owner and Statutory Harbour Authority for Southwold Harbour ('the Harbour');
- The Southwold Harbour Lands Joint Committee ("JC") was a Joint Committee of the Cabinet of the Council and Southwold Town Council established on **[please insert date]**. The JC was established to assist with improvement of the governance of the Harbour.
- Following further advice and consultation with stakeholders including the Department for Transport, the JC was dissolved on **[date to be inserted if JC dissolved]** and instead, in accordance with advice from the Department for Transport, the Council at its Cabinet meeting on **[date to be inserted]** resolved to establish the Southwold Harbour Management Committee ('HMC') as a Committee of the Cabinet of the Council pursuant to the provisions of the Local Government and Housing Act 1989 and having regard to the recommendations for governance changes made in the Ports Good Governance Guidance ('PGGG') published by the Department for Transport in March 2018;
- The MOU is made pursuant to the recommendations made in the PGGG. The Parties wish to set out their commitment to implementing the recommendations contained in the PGGG relevant to the establishment of the HMC.

1) Definitions and Abbreviations

For the purposes of this MOU the following definitions and abbreviations shall apply;

- a) The "Assets" shall mean the property, equipment and all other matters set out in the Asset Register at **Annex 3** annexed hereto.
- b) The "Constitution" shall mean the constitution of the Council as amended from time to time.
- c) The "Cabinet" shall mean the Cabinet of the Council.
- d) The "Council" shall mean East Suffolk Council or, as appropriate, the Cabinet.

- e) The “DfT” shall mean the Department for Transport.
- f) The “Harbour” shall mean Southwold Harbour, the limits of which are established under the 1933 Order.
- g) The “Harbour Business Plan” shall mean the Harbour Business Plan for the relevant period as approved by the Cabinet of the Council.
- h) The “Harbour Revenue” shall mean and include the charges dues rates tolls and other moneys and receipts which may be taken and received by way of income from or in respect of the harbour undertaking under the authority of the 1933 Order or the Harbours Act 1964.
- i) “HMC” shall mean the Southwold Harbour Management Committee.
- j) “HMC Guidance Notes” shall mean the guidance notes contained in Annex 4 of this MoU
- k) “MoU” shall mean Memorandum of Understanding.
- l) The “Parties” shall mean the Council and the HMC.
- m) “PGGG” shall mean the report published by the Department for Transport in March 2018 called *Ports Good Governance Guidance*.
- n) “Terms of Reference” shall mean the matters incorporated into the Constitution under the heading “Harbour Management Committee”.
- o) “1933 Order” means the Southwold Harbour Order 1933, as amended from time to time.

2) Purpose of MoU

- a) Subject to the requirements of the Constitution the purpose of this MoU is to
 - (i) Provide a clear framework for the decision making, accountability, and financial management of the Harbour to enable the HMC to address the needs of the Harbour as a business and an environmental and community asset, which takes full account of the commercial realities of municipal port operations; and
 - (ii) Assist in clarifying the role of the HMC to carry out its functions under its Terms of Reference
- b) The statutory role and functions of the Parties are not affected by the requirements of the MoU.
- c) This MoU is a statement of the understanding between the Council and the HMC. The MoU is not, and is not intended to be, legally binding to either Party. The detailed working arrangements may change over time by the agreement of the Council.
- d) The MoU provides that the Harbour will be governed according to best practices as set out in the PGGG.

3) Ports Good Governance Guidance 2018.

- a) The PGGG was published by the DfT in March 2018, following extensive consultation with Industry. It sets out a number of recommendations for the accountability, governance, and finance of statutory harbour authorities and Part C applies specifically to Ports and Harbours within the Municipal Sector.
- b) The PGGG is based on a number of other documents, particularly the UK Corporate Governance Code (UKCGC). It replaces that in previous documents such as Modernising Trust Ports (MTP), published by the then DETR in 2000, its second edition Modernising Trust Ports (MTP2), published by DfT in 2009, and Opportunities for Ports in Local Authority Ownership, published by DfT in 2006. The guidance also reflects the recommendations of the Department's Trust Port Study, published in May 2016.
- c) The PGGG does not have force of law and is not legally binding. It does not replace any legal duties or obligations that SHAs might have in their own legislation or general acts of Parliament, such as the Harbours Act 1964 or the Companies Act 2006. Where such legal duties conflict with the PGGG, the legal duties take precedence.
- d) Whilst the guidance is advisory, the DfT expects all SHAs to carefully consider it and to implement its principles if these are not already in place, where practical and appropriate to the circumstances of the SHA.
- e) It has been agreed by the Council that this MoU is drawn up to address the recommendations contained in the PGGG. An extract from the PGGG related to the establishment of Harbour Management Committees is set out at **Annex 1**.
- f) Following the decision made by the Council at its Cabinet meeting on the **[date to be inserted]** the requirements arising from the PGGG have been considered and an Establishment Plan has been prepared to ensure that all the required topics are properly addressed – see **Annex 2**.
- g) This MoU is prepared on the basis of the findings of the PGGG. However, it is recognised by the Parties that the PGGG deals with short, medium and long term issues. It is fully appreciated that circumstances may change and for this reason a review and monitoring mechanism is essential to underpin this process.
- h) On this basis it is intended that a report will be put to the HMC annually to allow the HMC to review and monitor this MoU and recommend to Cabinet any changes to it as are required by amendments to the PGGG or developments in respect of the PGGG.

4) General Commitments of the Council and the HMC

- a) This MoU records that the Council and HMC have considered the guidance of the PGGG and records the commitment of the Council and the HMC to implement the recommendations contained therein; and
- b) This MoU further records that Council and HMC shall take all reasonable steps to work together constructively to mutually facilitate the implementation of the recommendations contained in the PGGG.

5) Agreements of the Council and HMC

The Council and HMC agree that:

- a) The reporting lines relevant to all Committees of the Cabinet of the Council and pursuant to the provisions of the Local Government and Housing Act 1989 and having regard to the recommendations of the PGGG will be maintained to assist the HMC to carry out its functions under its Terms of Reference.
- b) The HMC will, subject always to the requirements of the Cabinet of the Council, be required to exercise the Council's functions in respect of the Harbour under and in accordance with the Harbours Act 1964, the 1933 Order and the Harbour Docks Piers and Clauses Act 1847 (as incorporated).
- c) **Annex 5** sets out the organisational structure that is to be put into place defining the reporting lines between the Parties; and
- d) Establishment of **assured accounts**: In accordance with article 41 of the 1933 Order, it is the intention of the Parties that all Harbour Revenue and capital monies are placed into a separate assured account with capital distinguished from revenue. The funds shall be used to allow for the maintenance and upkeep of the Harbour, for implementation of the future business plan of the Harbour and for the Harbour Revenue to be applied in accordance with article 39 of the 1933 Order
- e) The assured accounts are to include any monies in any reserve fund established under article 38 of the 1933 Order.
- f) Companies Act accounts are to be established and maintained for ease of understanding for the HMC, and to fulfil statutory obligations under the Harbours Act 1964.

6) Agreement of the Council

The Council agrees that:

- a) The Assets (including land, buildings, infrastructure, plant and machinery) of the Council that are utilised for the running of the Harbour as listed in **Annex 3** shall be managed by the HMC in accordance with its Terms of Reference, the Harbour Business Plan, the Council's plans and policies and the provisions of this MoU; and
- b) An annual budget including all harbour rental charges and central re-charges will be recommended by the HMC and will then be reviewed and determined by the Cabinet of the Council annually; and
- c) The annual charges and dues for the Harbour will be recommended by the HMC at the same time as the annual budget and will be reviewed and determined by the Cabinet of the Council annually; and
- d) Any shortfall in the Harbour Revenue in any year, shall be managed in accordance with article 40 of the 1933 Order; and
- e) The HMC shall be permitted to obtain specialist services from sources other than the Council by agreement with the Cabinet of the Council where specific expertise is not available from within the Council; and
- f) The Cabinet of the Council will ensure that its aims and objectives for governing and managing the Harbour on its behalf are agreed and clearly set out between the Parties in policies and plans; and

- g) The Council's policies and plans for the Harbour are stated by the Council in the form of the Environmental Policy and the Harbour Business Plan; and
- h) It is the intention of the Parties that these policies and plans will support the Harbour as a financially self-sustainable body, without the need to call upon the Council's General Fund; and
- i) The Cabinet of the Council will consider for approval updated policies and plans proposed by the HMC from time to time, and utilise the skills and experience of the HMC to its best advantage; and
- j) Borrowing facilities may at the Council's discretion be made available to the HMC to fund revenue generating projects in the Harbour where the HMC can demonstrate that such borrowing facilities are consistent with the Council's policies and plans and the 1933 Order; and
- k) The Council will make payments to all HMC members in accordance with the Council's Members' Scheme of Allowances at Part 5 of the Constitution.

7) Agreement of the HMC

The HMC agrees that:

- a) The HMC will manage the Harbour under its delegation from the Cabinet of the Council on its behalf to address the needs of the Harbour as a business and an environmental and community asset, which takes full account of the commercial realities of harbour operations; and
- b) Any matters beyond the delegated authority of the HMC that comes before the HMC for decision will be recommended to the Cabinet of the Council for determination; and
- c) The HMC shall, subject to Clause 7(d) and (e) only make decisions regarding the management, acquisition and disposal of assets in accordance with the Council's acquisitions and disposals policy, financial procedure rules and contracts procedures rules; and
- d) The HMC shall not make decisions on the disposal or acquisition of property assets unless:
 - (i) it accords with the provisions of the 1933 Order and Council's plans, policies and strategies and in particular the Harbour Business Plan; and
 - (ii) 21 days' prior notice has been given to the Council's Asset Management Service; and
 - (iii) The Cabinet of the Council has not requested that the decision(s) be referred to the Council for consideration and decision; and
 - (iv) It involves a transaction value of £25,000 or less; and
- e) The HMC shall not make disposals or acquisitions of assets with a value in excess of £25,000 but shall make recommendations to the Cabinet of the Council in respect of such transactions; and
- f) The HMC will review and then recommend an annual budget, (including rental charges and central re-charges to the Council) and an annual schedule of charges and dues for the Harbour and these will be determined by the Council; and

- g) The HMC will monitor performance against approved budgets and take appropriate action where this is required; and
- h) The HMC make a six monthly and annual report to the Cabinet of the Council reporting on performance against budget; and
- i) The HMC will produce and publish a Harbour Business Plan and any other plan required from time to time following approval from the Cabinet of the Council; and
- j) The Harbour Business Plan and other plans should promote the Harbour to be a financially self-sustainable body in the long term, reducing the risk of the need to call upon the Council's General Fund; and
- k) The HMC will discharge its role in accordance with its Terms of Reference, the HMC Guidance Notes contained in Annex 4 of this MoU, this MoU and with consideration of other relevant policies and plans such as the Port Marine Safety Code, PGGG, Health and Safety at Work legislation, Harbour Byelaws and any other appropriate policies, plans and legislation; and
- l) The HMC will provide an annual report to the Cabinet of the Council on how it is governing the Harbour in a manner that is consistent with relevant policies plans and legislation; and
- m) Borrowing facilities may be requested by the HMC and considered by the Council to fund revenue generating projects in the harbour where the HMC can demonstrate that such borrowing facilities are consistent with the terms of the 1933 Order and Council's policies and plans including the sustainability of the Council's budget; and
- n) The HMC shall consider and make recommendations to the Cabinet of the Council regarding an application for a Harbour Revision Order to modernise the statutory provisions applying in respect of the Harbour, in accordance with the recommendations of the PGGG and the PMSC, and to establish the HMC through statutory provisions; and
- o) The HMC will take all reasonable steps to engage appropriately with the stakeholder community. It will maintain formal links with stakeholder forum(s) as appropriate; and
- p) Within the first two years of its operation, the HMC will consider setting up a formal stakeholder Advisory Group that it will consult on all matter substantially affecting the operation of the Harbour.

8) General

- a) This MoU neither expands nor is in derogation of those powers and authorities vested in the participating Parties by applicable law.
- b) For the avoidance of doubt, the HMC is neither the Designated Person nor the Duty Holder under the Port Marine Safety Code. The Duty Holder is the Cabinet of the Council.

9) Term

- a) This MoU in this form or such amended form as agreed between the Parties shall remain effective for as long as the present governance arrangements are in place.

b) The Parties shall review this MoU at periods of 12 months, or such earlier period as appropriate should the need arise. The Council may agree to amend this MoU if circumstances dictate.

c) The MoU may be terminated by resolution of the Council.

10) Data protection and information

a) The Parties agree to comply with the Data Protection Act 2018, the General Data Protection Regulation, the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and other statutory information regimes.

Signed for and on behalf of

East Suffolk Council

.....

Chief Executive

Signed for and on behalf of

Southwold Harbour Management Committee

.....

Chairperson of Southwold Harbour
Management Committee

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Annex 1

Extract from Part C PGGG – Harbour Management Committees

Harbour Management Committees

4.6 Some LAs have established Harbour Management Committees (HMCs) as a means of governing their harbours. These 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 local authority harbours.

4.7 The establishment of an HMC (which would 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 HMC members being decided upon).

4.8 LAs may wish to consider formally establishing HMCs by legislative routes. The BPA has produced guidance for LAs that have or are planning to put in place HMCs.

Key points are set out in the box below.

Harbour Management Committees

The formation and membership of the committee is critical. It should be strategic and aware of the commercial and legal framework within which ports operate. Based on particular experiences the Committee should ideally comprise:

- approximately 50% LA elected members of a constituent authority. These do not all have to be LA councillors, but can be co-opted representatives who are appointed by the LA or provide specific skills in support of port management;
- the port chief executive/harbour master should have access to the HMC in an advisory role, but as an officer of the Council they cannot serve on the committee or have voting rights;
- external appointees who are stakeholder representatives or individuals with valuable skills and experiences;
- a Chair appointed on merit, skills and suitability;
- external members should be appointed by public advertisement using the guidance applicable to public appointments, in line with the advice given above.

The HMC Chair should ideally be an elected representative of the LA as this will automatically maintain reporting lines and accountability to the Council. Should the LA favour the appointment of an independent Chair, it is important that reporting lines and voting arrangements are clear and in line with LA corporate governance practice.

Before recruiting, local authorities 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.

In order for the HMC to operate effectively a formal memorandum of understanding could be established between the harbour committee and the local authority. The memorandum of understanding could set out the recommended ground rules for a framework between the port and its authority.

ANNEX 2

The Harbour Management Committee: Establishment Plan

Ref No.	Activity	Person Responsible	Agreed/Intended Action	Implementation Date	Follow up action
1	Review and Finalise Schedule of Assets	[]	Once complete to be included in Annex 3 of the MoU and MoU to be signed off by [Chief Executive] and Chairperson of the HMC	[]	Review Schedule of Assets on an annual basis
2	Draw up [initial/5 year] Business Plan for Southwold Harbour	[]	Business Plan for Southwold Harbour to be reviewed and recommended by the HMC and then submitted to Cabinet for review and approval.	[]	Business plan to be implemented. Review Business Plan on an annual basis and update 5 yearly.
3	Draw up proposed Budget for 20[]/[] for Southwold Harbour	[]	To submit the proposed Budget for 20[]/[] to HMC for review and recommendation; then Cabinet for review and approval	[]	HMC to report to Cabinet on performance against approved budget every 6 months Prepare new budget for approval annually
4	Prepare Annual Report for Southwold Harbour	[]	Annual Report to be reviewed and approved by HMC and then submitted to Cabinet for review.	[]	Update on an annual basis

Annex 3 – Asset Register

To be completed by the Council and then reviewed and finalised once HMC in place.

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Annex 4 – HMC Guidance Notes

Harbours Management Committee Guidance Notes

A Establishment of the HMC

1. The functions of the Council conferred under the Constitution: Functions within the definition of a Harbour Authority in Section 57(1) of the Harbours Act 1964 for Southwold Harbour and the Southwold Harbour Order 1933 and the Harbour Docks and Piers Clauses Act 1847 (as incorporated).
2. Functions arising out of any Byelaws made by the Council under the above Acts.
3. That the discharge of these functions within any policy and budget approved by the Council be delegated as set out in the Terms of Reference and Memorandum of Understanding between the HMC and the Council.
4. All Meetings of the HMC and subcommittees shall be conducted in accordance with the Council's Cabinet Procedure Rules as set out in pages 75-78 of the Council's Constitution.

B Membership of the HMC

1. The HMC shall consist of 11 members, 6 Members of the Cabinet of the Council and 5 Co-opted Members. Each Co-opted Member, as far as it is achievable, will be appointed on a 'fit for purpose basis' through assessment of each nominee's skills, knowledge, experience and commitment on matters identified from time to time by a skills audit as being the main skills requirements for the HMC. It is considered that at least one Co-opted Member should be a member of Southwold Town Council.
2. All Members of the HMC, including any Co-opted Members, will be bound by the Suffolk Local Code of Conduct as set out in the Council's Constitution and will be required to sign the declaration of acceptance of office as required by law in any event within 14 days of their appointment. A Co-opted Member is under the same obligations as Members of the Council that appoints the Co-opted Member, and that member must observe the Council's Constitution and most importantly comply with the statutory rules relating to conduct and the disclosure of interests.
3. No Co-opted Member shall act as a Member until that person has made the declaration of acceptance of office; and a Co-opted Member shall cease to be a Member of the HMC if that person fails to make that declaration within three months of his / her appointment.
4. The Chairperson and Vice Chairperson of the HMC shall be elected in accordance with the Council's Constitution. Only Cabinet Members shall be the Chairperson and Vice Chairperson of the HMC.
5. Voting rights – by virtue of the Local Government (Committees and Political Groups) Regulations 1990 (as amended) Regulation 4, a Co-opted Member is entitled to vote on a committee established exclusively for the discharge of the Council's functions as a Harbour Authority. All Co-opted Members shall have full voting rights on all matters before the HMC. The power to co-opt rests with the Cabinet of the Council and not with committees although the selection of persons to serve as co-opted is usually (but not always) left to the committee, such decisions to be taken in accordance with any relevant skills audit and application procedure and ratified by the Cabinet of the Council.
6. Voting at any Meeting of the HMC shall be in accordance with paragraph 8 on pages 5-6 of the Constitution;
7. In the event that an HMC Member other than Council Member does not attend any meetings of the HMC for a period of six months from the date of his or her last attendance, that Member ceases to be

an HMC Member, unless within the period of absence the Council gives approval for this absence. This shall not apply to Council Members whose attendance is regulated by Statute.

8.(i) All HMC Members will attend relevant training to be determined by the Chairperson on the basis of appropriate advice, which shall be founded on best practice.

(ii) All HMC Members will be required to attend Code of Conduct Training.

C Appointments Process

The HMC shall consist of 11 members, 6 Members of the Cabinet of the Council, and 5 Co-opted members. Each Co-opted Member, as far as it is achievable, will be appointed on a 'fit for purpose basis' through assessment of each nominee's skills, knowledge, experience and commitment on matters but not limited to the following:

- management of harbours;
- shipping and other forms of transport;
- local industrial, commercial, financial or legal matters;
- management of marine leisure activities;
- safety or personnel management;
- community issues;
- environmental matters;
- knowledge of port/maritime or other nautical experience;
- any other skills and abilities considered from time to time by the Appointments Panel to be relevant to the discharge by the HMC of its functions;

As stated above, it is considered that it is appropriate that at least one Co-opted Member who is deemed fit for purpose is appointed from Southwold Town Council.

1. Council Members shall be appointed to the HMC by the Cabinet and a Council Member's term shall expire on the fourth day after the date of the next regular election or from the date of their resignation. Council Members' appointments will be governed by the Council's Constitution.

2. The Council shall secure, so far as reasonably practicable, that the Council Members appointed by them will, between them, have special knowledge, experience and ability in a broad and complementary range of matters relevant to the efficient, effective and economic discharge by the HMC of its functions.

3. A Co-opted Member's term of appointment shall be three years from the date of appointment unless the Member shall die, resign or be disqualified;

4. Co-opted HMC Members shall be appointed by the Council for up to 2 full terms, and exceptionally 3 full terms.

5. In order to stagger the appointments process to maintain some continuity of the HMC for Co-opted Membership, the first term shall be divided as follows:

- 1 Co-opted Member will sit for only 1 year
- 2 Co-opted Members will sit for only 2 years
- 2 Co-opted Members will sit for a full term of 3 years

Co-opted Members who sit for only one or two years in their first term may be appointed for one or two subsequent three-year terms without further competition being required. Following this transition period, terms for Co-opted Members will remain at three years from appointment.

6. A Co-opted Member may be appointed to a second three-year term without recourse to open competition, subject to the agreement of both the Chairperson and the Member, and the HMC's assessment that the Member has performed satisfactorily during the first term (all Membership of the HMC is subject to ratification by the Council);

7. Re-appointment of a Co-opted Member for a third term shall involve competition with other candidates;

8. Appointments will usually be made by an Appointments Panel consisting of the Chairperson of the HMC, a Co-opted Member of the HMC, [and an independent external technical advisor with a thorough understanding of harbour/port governance issues].

9. The Appointments Panel shall secure, so far as reasonably practicable, that the Co-opted Members appointed by them will, between them, have special knowledge, experience and ability in a broad and complementary range of matters relevant to the efficient, effective and economic discharge by the HMC of its functions. The decisions of the Appointments Panel are subject to ratification by the Council.

D Resignation of Members

1. An HMC member, including the Chairperson, may resign his or her office at any time by Notice in writing given to the Council's Monitoring Officer.

E Meetings

1. The HMC shall meet at least 6 times a year and be governed by the Cabinet Procedure Rules as set out in the Council's Constitution;

2. The quorum for meetings of the HMC shall be 5 save that at no time shall there be less than 3 Council Members present at the Meeting.

3. The HMC shall consider the following business:

- i. Approval of the Minutes of the previous meeting;
- ii. Declarations of Interest, if any;
- iii. Report and feedback from Stakeholder Forums;
- iv. The business otherwise set out on the Agenda for the meeting;

4. Agendas

(i) a copy of the agenda including the item, or a copy of the item, shall be open to inspection by members of the public at least 5 clear working days before the meeting or, where the meeting is convened at shorter notice, from the time the meeting is convened; unless

(ii) by reason of special circumstance, which shall be specified in the Minutes, the Chairperson of the meeting is of the opinion that the item should be considered as a matter of urgency.

5. Annual Meeting

An Annual Meeting of the HMC will take place during the year. This will be an informal meeting and include invitation to all members of Stakeholder Forums.

F Declaration of Interests

1. A Co-opted Member shall be under the same obligations as Members of the Council that appoint that person and that person must observe the Council's Standing Orders and comply with the statutory rules relating to the disclosure of interests.

2. All HMC members will be governed by the Suffolk Local Code of Conduct which details interests which need to be declared.

3. The Council maintains and regularly updates a register of interests declared by Members, and shall make the register available for inspection by members of the public at all times during usual office hours.

G Payments to Members

1. [The Chairperson of the HMC shall receive a Special Responsibility Allowance in accordance with the Local Authorities (Members' Allowances) (England) Regulations 2003 (as amended).]
2. The HMC may pay to Co-opted Members such expenses for travelling, subsistence [and attendance] allowances on the same basis as Members of the Council.

H Stakeholder Forums

1. To ensure that the HMC has strong and direct links with both harbour users, local communities and other external organisations with an interest in the HMC area, a formal consultation mechanism will be established. This will enable Stakeholder Forums to formally make representations to the HMC;
2. No Member of the HMC will have a position on the Stakeholder Forums. The Harbour Master (or authorised deputy) and an HMC Member may attend as observers.
3. The HMC may choose to appoint other Stakeholder Forums at its discretion.
4. Within the first two years of its establishment the HMC will consider the establishment of a formal stakeholder Advisory Group that it will consult on all matter substantially affecting the Harbour.

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Schedule 1 : Declaration of Acceptance of Office – Co-opted Members East Suffolk Council

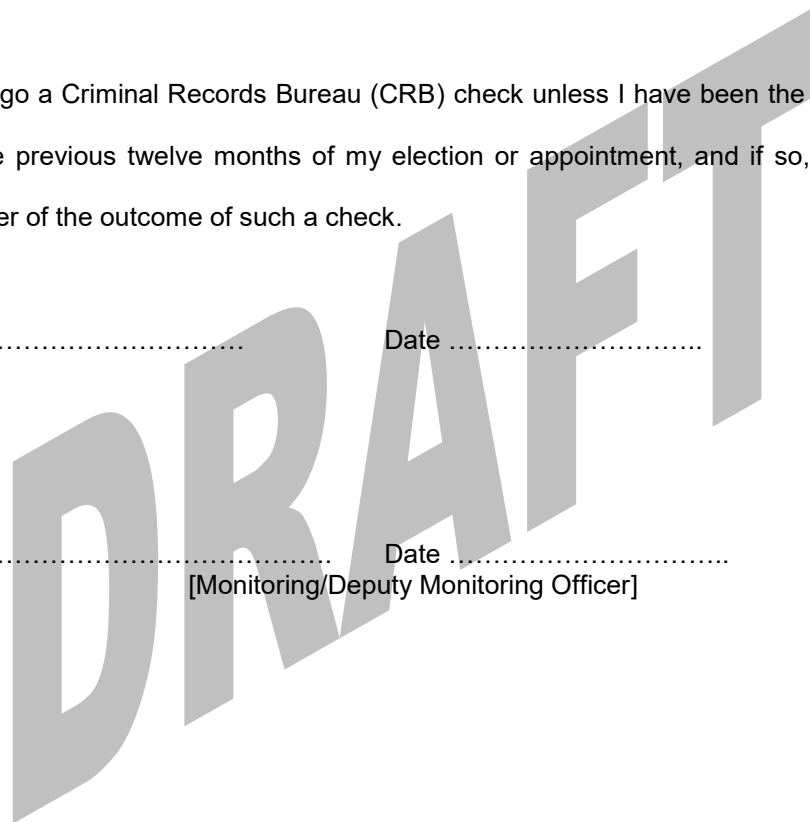
I.....being a Co-opted Member of East Suffolk Council, declare that I will duly and faithfully fulfil the requirements of this role according to the best of my judgement and ability.

I undertake to observe the Suffolk Local Code of Conduct as to the conduct which is expected of Members and Co-opted Members of East Suffolk Council.

I agree to undergo a Criminal Records Bureau (CRB) check unless I have been the subject of a CRB check within the previous twelve months of my election or appointment, and if so, I shall notify the Monitoring Officer of the outcome of such a check.

Signed Date

Signed Date
[Monitoring/Deputy Monitoring Officer]



Annex 5 – Organisational Structure

To be inserted

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