



SOUTHWOLD HARBOUR LANDS JOINT COMMITTEE

Monday, 3 February 2020

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a consultation exercise and detailed review of the position, the Southwold Harbour Lands Joint Committee (**JC**) rescinded resolutions about previous planned governance changes which had proved inappropriate, and made the recommendations set out in section 5 of this report,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 the recommended governance improvements described in paragraph 2 below (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 Harbour Management Committee (**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 a June 2014 consultation document and the Ports Good Governance Guidance issued by the Department for Transport in March 2018 (**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 to update the 1933 legislation which governs the harbour.
3. On 1 April 2019, East Suffolk Council (**ESC**) replaced WDC. Pursuant to the recommendations and directions outlined above, specialist solicitors (at Ashfords LLP) were instructed to advise and prepare a draft constitution for the proposed HMC.
4. On 5 July 2019, the JC met to consider the advice and draft constitution and had questions and reservations about whether to follow the advice from the solicitors (which recommended following the PGGG) or, for example, have automatic places for member(s) of STC and a greater proportion of members from ESC, as proposed in the report to the JC for 6 March 2019 and the instructions to the solicitors. To enable this to be resolved as soon as possible, the JC resolved to put the advice and draft constitution out to public consultation with a circular highlighting key points and the JC's concerns.
5. This report explains the public consultation which was carried out between September and December 2019, the consultation responses and the changes to the draft constitutional documents which are recommended in light of the JC's initial concerns (as highlighted in the consultation circular) and the consultation responses.

6. The JC had arranged to meet on 11 December 2019 to consider this and decide on the way forward. Unfortunately, this was delayed by the general election subsequently announced for 12 December 2019 and diary problems in January 2020.
7. At the meeting on 3 February 2020, the JC will be asked to consider the consultation responses and proposals to recommend to ESC's Cabinet and STC, as set out in this report. As requested by the JC at the last meeting, a solicitor from Ashfords has been asked to attend the meeting to answer any questions about their advice.

Is the report Open or Exempt?	Open
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Wards Affected:	Southwold
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Cabinet Member:	Councillor Craig 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.

ESC: East Suffolk Council.

February Report: the report to the meeting of the JC on 6 March 2019, a copy of which is at Appendix A to this report for ease of reference. 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 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 and, modified by the resolutions made by WDC's Cabinet and STC on 15 March 2019, as described in more detail in section 4 of the December Report.

July Report: the report to the meeting of the JC on 5 July 2019.

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. A copy is also produced at Appendix A to this report for ease of reference. 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 (such as representations about the constitution of the proposed HMC; these were summarised in section 12 of the February Report). 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 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, 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 to:

- (i) protect surplus income from the Harbour and Harbour Lands, for the protection and benefit of the Harbour and Harbour Lands;
- (ii) preserve the Harbour Lands in the ownership of WDC and its successor local authority; and
- (iii) 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, as set out in paragraph 5.1.2 above.

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 The following matters are explained in more detail in the report for the meeting of the JC on 5 July 2019 (**July Report**). A copy of the July Report and appendices are available at the link included at the end of this report.

8.2 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.

8.3 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 (**Ashfords**) and suggested other potential firms for comparison purposes.

8.4 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.

- 8.5 We prepared detailed draft instructions and provided these to STC on 3 May 2019. A copy of these instructions is at Appendix A to the July Report.
- 8.6 These instructions deliberately set out the background and the points from the various consultations, reports 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 (which explained the results of the consultation exercise) should be taken into account, including places on the proposed HMC for member(s) of STC and other external appointees.
- 8.7 The draft instructions were provided to the potential firms of solicitors to enable them to provide their initial cost estimates and proposals. After comparing their proposals and allowing a suitable period for any comments from STC on the draft instructions, we instructed Ashfords in May 2019.
- 8.8 Ashfords then provided in June 2019:
- 8.8.1 an explanatory note, for the JC and for use in consultation, of their advice (copy produced at Appendix E to this report); and
 - 8.8.2 their draft constitution for the proposed HMC (as produced at Appendices C and D to the July Report; copies are available at the links reproduced at the end of this report), comprising:
 - (i) Terms of Reference to create the proposed HMC in accordance with the East Suffolk Council constitution; and
 - (ii) a Memorandum of Understanding to set out matters in more detail, in line with the PGGG.
- 8.9 These draft constitutional documents would together:
- 8.9.1 provide that the HMC shall consist of 11 members, comprised of 6 Members of the Cabinet of East Suffolk Council and 5 Co-opted Members;
 - 8.9.2 state that each Co-opted Member will, as far as it is achievable, 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; and
 - 8.9.3 state that it is considered that at least one Co-opted Member should be a member of Southwold Town Council.

9 JULY RESOLUTIONS

- 9.1 On 5 July 2019, the JC met to consider these documents. The JC considered the July Report with appendices, heard from members of ESC and STC and considered responses from officers to questions.
- 9.2 The JC had questions and reservations about the draft constitutional documents. In particular, it had been expected that the solicitors would be comfortable with the JC's recommendation that there should simply be automatic places for member(s) of STC, and ESC was expecting to require a higher proportion of ESC members in order to ensure adequate control over the matters it will be asked to fund and for which it will remain, directly or indirectly, liable.
- 9.3 Officers explained at the meeting that they had raised these points with Ashfords, who had confirmed that they had fully taken them into account and their advice was that the constitution should follow the PGGG, as summarised in their explanatory note and their

draft Memorandum of Understanding. They explained that this advice was given as a matter of good practice and in particular because the HMC constitution will need to follow the PGGG in future if a Harbour Revision Order is to be secured to update the legislation governing the SHL (the Harbour Order of 1933).

9.4 Having considered this, the JC resolved on 5 July 2019 to arrange a further consultation exercise and then meet again after an appropriate period to decide on the way forward, taking into account the results of that consultation exercise. The JC resolved to carry out the further consultation exercise by:

9.4.1 publishing on the East Suffolk Council website: (a) a consultation circular, approved by the Chairman and Vice Chairman of the JC after discussions with their respective JC Members, setting out the context; (b) the explanatory note from Ashfords; and (c) the draft HMC constitution from Ashfords;

9.4.2 inviting any new written representations; and

9.4.3 arranging a public event at a suitable location in Southwold.

10 FURTHER CONSULTATION

10.1 Pursuant to the resolutions made by the JC on 5 July 2019:

10.1.1 a consultation circular was prepared and approved. A copy is available at the link at the end of this report. The circular explained the context and specifically drew the attention of consultees to the membership advice and proposal summarised above;

10.1.2 the consultation circular, minutes of the meeting of the JC on 5 July 2019, explanatory note from Ashfords and draft HMC constitution from Ashfords were published on the ESC website;

10.1.3 a consultation questionnaire was prepared for consultees to complete online, with the questions described below; and

10.1.4 a public consultation event was arranged and held at the Stella Peskett Millennium Hall in Southwold on 26 October 2019.

10.2 It was suggested that, in the first year of the proposed HMC, most of the proposed external places on the HMC should be initially reserved for STC Councillors, and these initially reserved places would then become open to others in subsequent years. The first question in the consultation questionnaire noted the legal advice explained above, explained this proposal and asked consultees for their views.

10.3 Further, to seek to cover as much as possible in the consultation, an outline draft business plan was prepared (informed by the results of the previous consultation) and published with the other consultation documents. A specific question was included about this outline draft business plan in the consultation questionnaire, as explained below.

10.4 The consultation opened and was published on the ESC website from late September 2019. It was originally expected to end on 1 November 2019, but this date was extended to 18 November 2019 and then finally 4 December 2019 following, respectively, requests from consultees for extensions of time and the extra time needed to arrange the intended next meeting date for the JC. The JC had arranged to meet on 11 December 2019, but this was delayed by the general election subsequently announced for 12 December 2019 and diary problems in January 2020.

10.5 The detailed results of the consultation exercise are appended to this report and summarised below. 79 responses were provided to the consultation questionnaire and

copies of all of these responses are at Appendix B to this report. The responses to questions with set reply options are analysed at Appendix C to this report. Copies of all responses provided by consultees who made separate written representations are provided at Appendix D to this report.

11 COMMENTS ON RESPONSES TO THE FURTHER CONSULTATION

- 11.1 Some consultees who made separate written representations (produced at Appendix D) chose to comment in these separate representations on questions from the consultation questionnaire. It appears that some of these consultees also completed the questionnaire, and some did not. Accordingly, the summary below gives the relevant percentages based on the consultees who answered the questionnaire (as detailed in the analysis at Appendix C), but aims also to refer to the separate representations where they seem to be significant. Please refer to Appendices B and D for the full details.
- 11.2 As with the previous consultation, some consultees appeared to have co-ordinated preparation of their responses to give similar answers, or duplicated comments in the online questionnaire and their separate written representations. The apparently co-ordinated responses tended to argue for an HMC comprised of two cabinet members from ESC, plus the ESC ward councillor, one member from STC and four independent members (some suggesting these four should be people with financial, marine, landowner and business skills/experience, and one or more suggesting that one of them should be from the Blyth Estuary Partnership and three should be co-opted from harbour users with appropriate qualifications in relation to the harbour).
- 11.3 The first question in the consultation questionnaire was: *“The legal advice that we have received is that the HMC is to be made of 11 external members. Six of these will be East Suffolk Councillors and five others will be members from outside the District Council. Following the meeting in June [meaning July], it has been suggested that in the first year four of those external members are Southwold Town Councillors. Subsequent elections would allow members from outside the Town Council to join the HMC. Do you support this proposal?”*
- 11.4 Approximately 40%¹ of the consultees who answered this question supported that proposal.
- 11.5 The second question in the consultation questionnaire was: *“How do we ensure that there is a strong local voice on the HMC?”*.
- 11.6 Broadly in line with the results of the previous consultation (as summarised in section 12 of the February Report, a copy of which is at Appendix A to this report), consultees who responded to these first two questions made a variety of comments. In particular:
- 11.6.1 A number felt that there were too many HMC members overall and that a smaller committee would be more appropriate, with suggestions ranging from totals of five to nine members and one consultee observing that (as explained in the consultation documents) the first draft constitutional documents were based on Cornwall Council’s HMC, which manages a number of harbours;
- 11.6.2 A number felt that there should be fewer members from ESC, so that there is always either an exact split between ESC and other members, or an exact split between ESC, STC and other members;

¹ Over 41% of the consultees who answered this question in the consultation questionnaire, but fewer of the consultees who made separate written representations and may or may not have completed the questionnaire.

- 11.6.3 A number felt there should be more, or fewer, permanent members from STC, noting that local and STC involvement had been a particular theme from the results of the previous consultation;
 - 11.6.4 Some would like “representatives” from Walberswick, Reydon and Blythburgh parish councils to be members of the HMC;
 - 11.6.5 Some felt that all of the members of the HMC should be external individuals or experts, not councillors;
 - 11.6.6 Consultees proposed as members a variety of categories of people including: knowledgeable full-time residents of Southwold, representatives of harbour businesses, representatives of the Blyth Estuary Partnership, representatives of the Environment Agency, Southwold Caravan Owners Association, moorings personnel, regular users of the harbour, people elected through a ballot of local groups, people with skills and/or knowledge of benefit to the harbour and members with knowledge of coastal management, environmental matters, maritime/marine/port matters, fishing, leisure and business management;
 - 11.6.7 A number felt that there should be an independent chairperson;
 - 11.6.8 Consultees who appeared to have co-ordinated their responses felt that there should be an automatic dispensation for anyone with a pecuniary interest in the harbour; and
 - 11.6.9 Consultees who appeared to have co-ordinated their responses felt that the HMC should have the right to co-opt non-voting members to represent local stakeholder groups, or a separate stakeholder committee could be formed to provide advice to the HMC of stakeholder views.
- 11.7 The third question in the consultation questionnaire was: *“What skills and experience do you consider to be most important when selecting committee members?”*.
- 11.8 This question had fixed reply options. Over 53% selected maritime and marine skills and experience. Over 18% selected organisational management skills and experience. Over 11% selected financial management skills and experience. Just under 8% selected leisure user skills and experience.
- 11.9 Other consultees observed that all of these skills and experience would be important. Some referred to the need for members to understand the running of the caravan site and the local area and/or be local residents. Some referred to needs for skills and experience in communication and social media, accounting, riparian ownership, business management, valuation surveying and property management, acting as councillors, technical statistics and surveying of the estuary and legal matters. The apparently co-ordinated responses suggested business and recreational harbour users, and individuals with experience of the Blyth estuary, either on the HMC or on a separate stakeholder advisory committee.
- 11.10 The fourth question in the consultation questionnaire was: *“How long should Committee Members be appointed for?”*
- 11.11 This question had fixed reply options. Over 45% of the consultees who answered this question chose three years, which is the period suggested in the draft consultation documents. Over 32% chose two years and just under 13% chose one year. Other respondents suggested periods of three to four years with staggered reappointments (as provided by the draft consultation documents), recognising that it will be important to seek to avoid the co-opted membership changing all at the same time.
- 11.12 The fifth question in the consultation questionnaire was: *“Do you have any comments on the priorities in the attached outline Business Plan?”*.

- 11.13 This was a draft initial business plan to start the work of the HMC. Consultees noted that this was not a detailed business plan, preparation of which would need to be considered by the new HMC at an early stage as proposed in the draft Memorandum of Understanding and the draft outline business plan.
- 11.14 Consultees (including those who appeared to have co-ordinated their responses) were concerned by the advice from Ashfords (in their explanatory note) about the potential need to secure appropriate provision in a Harbour Revision Order if the harbour authority is to be enabled to carry out or fund flood protection and similar works outside the SHL for the protection/benefit of the SHL, and suggested that this aspect of the proposed application for a Harbour Revision Order should be a priority for the HMC, acknowledging the “interdependence” of the harbour and the estuary. Some felt that this should go further, and that the limits of the Southwold Order should be extended to include the river Blyth up to the A12.
- 11.15 The sixth question in the consultation questionnaire asked: *“Which of these areas do you feel should be a priority for the HMC in the first few years?”*
- 11.16 This question had fixed reply options. Just under 65% of the consultees who answered this question selected harbour engineering and protection works as a priority. Over 10% selected improvements to the environment, including the access road. Over 10% selected improving facilities for marine users. Just under 6.5% selected improvements to the caravan site and over 2% selected training for members. None selected promoting the harbour to visitors or improving facilities for visitors, but other consultees referred elsewhere to the general need for such promotion and improvement.
- 11.17 Other consultees referred to harbour engineering and protection works, and, in particular, the need for works to maintain the Blyth estuary (and the Harbour Revision Order which may be necessary to seek additional powers for such works). A number of consultees referred to the need to improve the caravan site, and improvements for marine users and commercial businesses.
- 11.18 The seventh question in the consultation questionnaire asked: *“How can we ensure that the public are better aware of the committee's work?”*
- 11.19 Consultees referred to the need for an active website and use of social media, holding meetings in public, ensuring that all minutes of HMC meetings, reports and accounts are readily accessible, providing a public forum for comments/questions and publication of meetings on the website, in the local press and on social media.
- 11.20 The eighth question in the consultation questionnaire asked: *“Where should meetings be held?”*
- 11.21 Most consultees would like meetings to continue to be held in Southwold, in a venue large enough to allow the public to attend.
- 11.22 The ninth question in the consultation questionnaire asked: *“How often should financial information be reported?”*
- 11.23 This question had fixed reply options. Just over 62% of consultees who answered this question would like financial information to be reported quarterly. Just under 30% would like financial information to be reported annually and just over 5% would like financial information to be reported on a monthly basis.
- 11.24 The tenth question in the consultation questionnaire asked: *“What other performance information [should] be made public?”*
- 11.25 This question had fixed reply options. Over 37% of consultees who answered this question selected income. Over 27% selected investment. Over 10% selected health and safety updates and just under 8% selected visitor numbers/trends.

11.26 Other responses from consultees included suggestions that:

11.26.1 the draft constitutional documents should not be subject to limitations from ESC's constitution/Cabinet, should not refer to ESC as the harbour authority under the Southwold Order or otherwise to ownership and should specifically include references to the intention to apply for a Harbour Revision Order (to ensure protective provisions are in place in respect of sale of the SHL and harbour income, and/or to seek powers to carry out or fund works to the Blyth estuary, outside the SHL);

11.26.2 the HMC should be free to engage non-voting advisers;

11.26.3 financial and technical risk should be added to the list in paragraph C1 of Annex 4 to the Memorandum of Understanding;

11.26.4 the HMC should have a larger budget;

11.26.5 meetings of the HMC should be in public;

11.26.6 an annual report should be published, monitoring against the budget, and the HMC should (in line with the PGGG) consider moving to preparation of commercial-type accounts; and

11.26.7 a five-year business plan should be updated every 12 months.

11.27 This summary is intended to assist but is not exhaustive; please refer to the detailed consultation responses at Appendices B and D to this report, together with the summary of the previous consultation in section 12 of the February Report, produced at Appendix A to this report for ease of reference.

11.28 Further, we have been referred to paragraph 1.9 of the Port Marine Safety Code Guide to Good Practice on Port Marine Operations, which states:

"1.9.1 Some harbour authorities have powers, through their local enabling legislation, to give 'general directions' to enable them, after due consultation, to lay down general rules for navigation (subject to certain constraints) and regulate the berthing and movements of ships. These carry the force of law, but are often easier to achieve and amend than using byelaws, and thus act as a useful mechanism for managing navigation and furthering safety. General directions procedural provisions involve publication of proposed directions but they do not require to be confirmed by the Secretary of State as is the case with byelaws.

1.9.2 Harbour authorities would be well advised to secure these powers to support the effective management of vessels in their harbour. This can be achieved in two main ways:

1.9.3 a) through a harbour revision order under section 14 of the Harbours Act 1964 (the 1964 Act) or;

b) through designation under section 40a of the 1964 Act with the power to give harbour directions for the movement, mooring, management and equipment of ships. These powers are of the nature of general directions to support the effective management of vessels in their harbour waters. A non-statutory Code of Conduct on the use of the section 40a power has been agreed by the Department in conjunction with organisations representative of ports and port users."

12 AMENDMENTS MADE TAKING INTO ACCOUNT THE JC CONCERNS AND CONSULTATION RESPONSES

12.1 In view of the responses from the further consultation, considered with the responses from the previous consultation and the initial comments from the JC at the meeting on 5 July 2019, we propose to amend the draft Terms of Reference and draft Memorandum of Association as marked up (with deletions struck through and additions underlined) in the revised drafts produced at Appendices F and G to this report, to:

12.1.1 reduce the number of HMC members from 11 to nine, comprised of five Members of the Cabinet of East Suffolk Council and four Co-opted Members, to accommodate the comments and preferences of consultees as far as reasonably possible;

12.1.2 provide for STC to have the automatic right to nominate two Co-opted Members in the first year of the HMC, one for a term of two years and one for a term of three years, in view of requests from consultees for automatic places for Southwold Town Council (but for the initial three years only, because the HMC needs to follow the PGGG over the longer term), to enable a phased transition to compliance with the PGGG over a reasonable period (during which preparations for the application for a Harbour Revision Order could be made), following the staggered reappointment pattern advised by Ashfords and requested by consultees;

12.1.3 provide in the Memorandum of Understanding for the HMC to establish a stakeholder advisory group. This would enable a range of potential stakeholder representatives and others to be appointed to the advisory group, in line with the requests from consultees. Arrangements would need to be made by the HMC (with advice from Ashfords as appropriate) to enable the stakeholder advisory group to operate efficiently and for its views to be reported to the HMC; and

12.1.4 repeat in the Memorandum of Understanding the recommendations made and endorsed earlier in relation to protective safeguards (as described in sections 5 and 6 of this report) and make a further recommendation in relation to potential additional powers, in view of the requests from consultees in relation to the Blyth estuary and the further information in relation to the Port Marine Safety Code Guide to Good Practice on Port Marine Operations and powers of general direction, as summarised in section 11 of this report, in substantially the following terms:

“X. The [Harbour Order] includes protective provisions in relation to any sale of the harbour undertaking and the [revenue from the harbour undertaking]. Further, the Council has [endorsed] the recommendations made by the Southwold Harbour Lands Joint Committee on 6 March 2019 [and 3 February 2020], including the recommendations that:

X1 the [HMC] should be established to replace the Southwold Harbour Lands Joint Committee, enable short-term governance improvements and design proposals for long-term improvements, including an application for a Harbour Revision Order to update the [Harbour Order];

X2 when designing these long-term improvements, by applying for a Harbour Revision Order or otherwise:

X2.1 specific safeguards should, subject to legal advice and the requirements of stakeholders, be included to protect income from the Harbour and preserve the Harbour in the ownership of the Council; [and

X2.2 the [HMC] should consider whether any appropriate additional powers should be sought, including powers of general direction and/or to carry out or fund works to the Blyth estuary, outside the Harbour, for the protection of the Harbour.]”

12.2 A number of the proposals made by consultees had already been addressed in section 12 of the February Report, explaining why these were not considered to be appropriate. We do not propose to repeat these in this report, but a copy of the February Report is produced at Appendix A to this report for ease of reference.

12.3 In relation to the proposals made by consultees which are not addressed (so far as possible) by the amendments described above or the explanations in the February Report, we would make the following comments:

12.3.1 Meetings of the HMC will normally be held in public, save for any business which needs to be considered in private in accordance with ESC’s constitution and local government law (such as a discussion about private personal data), in the same way that all committees of ESC operate;

12.3.2 The recommendations (including those in the draft outline business plan /Memorandum of Understanding) are that an Annual Report should be prepared and published and that preparation of a five-year business plan, to be reviewed annually, should be one of the first tasks for the HMC; and

12.3.3 It is not appropriate to provide for automatic dispensation for members with disclosable pecuniary interests, because all members of the HMC will be bound by the Suffolk Local Code of Conduct which provides that members cannot discharge any function or participate in any Council business or discussions, or vote on any issues, that relate to or concern any disclosable pecuniary interest of theirs. Such members could seek, in advance, written dispensation from the Monitoring Officer to remain in the room when the matter relating to their disclosable pecuniary interest is discussed, but the question of whether such dispensation is appropriate needs to be considered on a case by case basis and this important protective provision cannot, or should not, be changed.

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

13.1 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.

13.2 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.

13.3 The proposed approach is to make recommendations to ESC for creation of a HMC. This will enable improved governance of the SHL, in accordance with the PGGG and in the interests of all stakeholders, and enable longer-term improvements by considering, preparing and making an application for a Harbour Revision Order to update the Harbour Order from 1933.

14 FINANCIAL AND GOVERNANCE IMPLICATIONS

- 14.1 East Suffolk Council agreed to advance funds to enable instruction of the external solicitors to advise on the appropriate constitution for the HMC. 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.
- 14.2 The longer term financial and governance considerations for the SHL are described and considered in section 12 of the February Report, produced at Appendix A to this report.

15 OTHER KEY ISSUES

- 15.1 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:
- 15.1.1 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 has arranged 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.
- 15.1.2 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.
- 15.2 We consider that the proposal will not adversely affect the status quo and should improve it. Currently, the SHL are 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 (on a staggered basis over the first three years, to allow for the initial automatic appointments for STC) be engaged following open advertisement, in accordance with the PGGG.
- 15.3 No points have been made by consultees during the previous or further 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, with particular references to improvements to the access road. This would be a matter for the proposed HMC to take forward.

16 CONSULTATION

This report has been prepared taking into account the results of the consultation exercises referred to above. Further, the proposed approach would enable ongoing consultation, including the provisions for establishment of the stakeholder advisory group described above.

17 OTHER OPTIONS CONSIDERED

- 17.1 The proposals made in this report are to implement the March Resolutions made by the JC and the corresponding directions from WDC and STC. Before those resolutions were made, the JC considered all of the other options described in section 11 of the February Report.
- 17.2 The other options proposed by consultees in respect of the constitution of the HMC are considered and summarised in section 12 of the February Report and above, and in more detail in the appendices to the February Report and the appendices to this report.

18 REASON FOR RECOMMENDATION

- 18.1 The recommendations in this report are made in response to the March Resolutions made by the JC and the corresponding directions from WDC and STC seeking recommendations for the proposed new HMC. These recommendations are made for the reasons summarised in this report and the reasons explained in more detail in the preceding reports referred to in it (which are available at the links in the table at the end of this report).
- 18.2 We believe that the recommended approach strikes the right balance, accommodating the wishes of stakeholders as far as possible and enabling the HMC to comply with the PGGG (after the initial transition period proposed in view of the requests from stakeholders in the consultation exercises). We recommend that the proposed HMC should be created as soon as possible, to allow it to begin work and evolve based on its experience and ongoing consultation with stakeholders.

East Suffolk Council

20 January 2020

RECOMMENDATIONS

That the Joint Committee resolves to:

1. Recommend to the Cabinet of East Suffolk Council and to Southwold Town Council that:
 - a) the Harbour Management Committee recommended by the report dated 20 January 2020 to the Joint Committee ("**Report**") should be created by the Cabinet of East Suffolk Council, based on the Terms of Reference and the Memorandum of Understanding produced at Appendices F and G to the Report;
 - b) the initial business plan to start the work of the Harbour Management Committee should be based on the outline draft produced at Appendix H to the Report; and
 - c) the Joint Committee should be disestablished on creation of the Harbour Management Committee.

APPENDICES

Appendix A	February Report (the report to the meeting of the JC on 6 March 2019)
Appendix B	Responses to the consultation questionnaire
Appendix C	Analysis of the responses to those questions in the consultation survey with set reply options

Appendix D	Copies of other responses provided by consultees
Appendix E	Explanatory note from Ashfords LLP (as published in the consultation exercise)
Appendix F	Revised draft Terms of Reference
Appendix G	Revised draft Memorandum of Understanding
Appendix H	Draft Initial Outline Business Plan (as published in the consultation exercise)

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
5 July 2019	July Report	https://eastsuffolk.cmis.uk.com/eastsuffolk/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/108/Committee/26/Default.aspx
July 2019	Draft Terms of Reference as published for consultation	https://www.eastsuffolk.gov.uk/assets/Visitors/Southwold-Harbour/Management-consultation/Terms-of-Reference.pdf
July 2019	Draft Memorandum of Understanding as published for consultation	https://www.eastsuffolk.gov.uk/assets/Visitors/Southwold-Harbour/Management-consultation/Memorandum-of-Understanding.pdf
August 2019	Consultation circular	https://www.eastsuffolk.gov.uk/assets/Visitors/Southwold-Harbour/Management-consultation/Consultation-Circular.pdf
August 2019	Draft outline business case	https://www.eastsuffolk.gov.uk/assets/Visitors/Southwold-Harbour/Management-consultation/Outline-Business-Case.pdf