



SOUTHWOLD HARBOUR LANDS JOINT COMMITTEE

Wednesday, 6 March 2019

SOUTHWOLD HARBOUR GOVERNANCE (REPSHLJC06)

EXECUTIVE SUMMARY – INTERIM REPORT

This report:

1. should be read with the report to the Southwold Harbour Lands Joint Committee (**JC**) for its meeting on 18 December 2018 (**December Report**), which reviewed the background and made recommendations for new arrangements to deliver improved governance of the Southwold Harbour Lands (**SHL**, as defined below). For ease of reference, copies of Appendices A to I of the December Report are at Appendices A to I of this report and a copy of the December Report is at Appendix J of this report;
2. reviews developments since the December Report and the results so far of the consultation exercise arranged by the JC pursuant to the resolutions it made on 18 December 2018 to revisit previously planned changes and consider the way forward for the future governance of the SHL;
3. based on the results so far, makes interim recommendations for arrangements to deliver short term governance improvements and to prepare for longer term improvements, but
4. remains subject to consideration of any further consultation responses or representations made by any potentially interested person. An update taking into account any such further responses or representations received by 1 March 2019 will be provided to the JC when it meets again on 6 March 2019 to decide on the way forward to recommend to STC and WDC's Cabinet.

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

1.1 Most of the following expressions are defined when first used in the body of this report so that it is easier to read, but for ease of reference the following expressions used in this report have the following meanings:

2015 Resolutions: the resolutions made by the JC on 18 March 2015 (relevant minute copied at Appendix H to this report), 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. A copy is at Appendix J to this report. 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.

Harbour Order: the Southwold Harbour Order 1933, the governing legislation for the harbour undertaking, as summarised in section 2 of the December Report. A copy is at Appendix A to this 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 in 2014, comprising four elected members from each of STC and WDC, as described in section 4 of the December Report.

OSC: the Overview and Scrutiny Committee of WDC.

PGGG: the Ports Good Governance Guidance issued by the DfT in 2018 (a copy of which is available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684839/ports-good-governance-guidance.pdf).

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

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

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

SHL: Southwold harbour and neighbouring lands, including the relevant stretch of the River Blyth, Buss Creek, Salt Creek, the caravan and camping site and commercial properties leased to independent operators to generate rental income for the harbour.

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

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

STC: Southwold Town Council.

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

2 THE BACKGROUND AS SET OUT IN THE DECEMBER REPORT

- 2.1 Please read the report to the Southwold Harbour Lands Joint Committee (**JC**) for the meeting on 18 December 2018 (**December Report**). A copy is at Appendix J to this report. For ease of reference, Appendices A to I referred to in the December Report are at Appendices A to I of this report.
- 2.2 The December Report was published on the WDC website from 7 December 2018 and explains the background in detail, including in particular:
 - 2.2.1 in section 2, a summary of the Southwold Harbour Order 1933 (**Harbour Order**), the governing legislation for the harbour undertaking, a copy of which is at Appendix A to this report;
 - 2.2.2 in section 3, a summary of the history of management by WDC for more than 40 years of the Southwold Harbour Lands (**SHL**, meaning as appropriate Southwold harbour and neighbouring lands, including the relevant stretch of the River Blyth, Buss Creek, Salt Creek, the caravan and camping site and commercial properties leased to independent operators to generate rental income for the harbour), from 1974 (replacing Southwold Borough Council, the original Corporation under the Harbour Order, on local government reorganisation) to date;

- 2.2.3 in paragraphs 4.1 to 4.5, the background and consultation in June 2014 which proposed what it described as key principles (recited in section 12 below) and led to the establishment of the JC and the resolutions made by WDC's Cabinet and STC on 28 July 2014 (relevant minute copied at Appendix E to this report) 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 (relevant minute copied at Appendix H to this report – the **2015 Resolutions**), including the resolutions that the legal model for the new governance arrangements for the SHL should be a charitable company with a trading subsidiary and that the statutory function of harbour authority should be transferred to that company;
- 2.2.5 in paragraphs 4.8 to 4.18, introduction of the issues which had been encountered while seeking to implement the 2015 Resolutions in 2016 and then the local authority trading company model which had been investigated in 2017 as an alternative;
- 2.2.6 in section 5, further details of those issues, including the (informal) advice from the DfT that the Harbour Order should be updated before any transfer, the risks for WDC that it would lose control of the SHL but remain liable for the SHL directly (through any guarantee required by the DfT for consent to transfer the SHL to a charity, company or other body) or indirectly (to manage flood risks etc. and as the only body with sufficient resources to advance very substantial funds), the advice from Coastal Partnership East that advances of several million pounds would be needed to bring the caravan site up to date, repair harbour structures and address upstream changes on the River Blyth, and the recommendations made in the new Ports Good Governance Guidance (**PGGG**) issued by the Department for Transport (**DfT**) in 2018 promoting the establishment of a harbour management committee (**HMC**) as one way to meet the requirements of the PGGG;
- 2.2.7 in section 6, the (informal) suggestion made by the DfT, when consulted in July 2018, of looking at interim governance improvements (such as establishing a harbour user's or harbour management committee, advisory or otherwise) and working on a longer term project to update the Harbour Order through a Harbour Revision Order or the like; and

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

3 THE DECEMBER RESOLUTIONS

3.1 On 18 December 2018, the JC met to review the position and consider the future governance of the SHL.

3.2 First, the JC considered the December Report, with appendices, copies of which are at Appendices A to J to this report. Next, the JC heard from members of WDC and STC and considered responses from officers to the questions raised, and comments made, by those members.

3.3 The JC then resolved as follows (the **December Resolutions**):

1. that it is minded to revisit the 2015 Resolutions because, having considered the circumstances which have emerged and developed since the 2015 Resolutions were made, as summarised in the December Report, it considers that the 2015 Resolutions are no longer appropriate.
2. to note the recommendation in the December Report that the JC:
 - a. rescind the 2015 Resolutions; and
 - b. recommend to a simultaneous meeting of WDC 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 (**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 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 long term sustainability, responsibility, liability and delivery.

- c. arrange to instruct professional advisers to advise on the appropriate constitution for a HMC as outlined above; and
 - d. make stakeholder engagement arrangements to consult community stakeholders and all other relevant stakeholders on the improvements outlined above.
3. to note that the JC keeps an open mind, that all potential outcomes (as to the 2015 Resolutions, the future of the governance arrangements for the SHL and the future role of the JC) remain open and the JC intends fully to take into account the results of the consultation exercise to be arranged as set out below before it makes its decision.
4. to carry out an exercise to consult potentially interested persons (**Stakeholders**) by:
 - a. arranging an event or events in Southwold to consult Stakeholders in person; and
 - b. using reasonable endeavours to notify Stakeholders, at such events and by advertisement in a local newspaper and/or publication on the WDC and/or STC websites, of these resolutions and that they must deliver any representations they may wish to make to Kerry.Blair@eastsoffolk.gov.uk and/or townclerk@southwoldtowncouncil.com in writing by midnight on 1 March 2019; and
5. to arrange a further meeting to decide how to proceed once the results of the consultation exercise have been obtained and considered.

4 CONSULTATION

- 4.1 The consultation exercise was arranged in accordance with the December Resolutions and with reference to the consultation principles issued by the Cabinet Office.
- 4.2 The consultation ran from the first event on the 16th January, with a final deadline for representations of 1 March 2019.
- 4.3 The consultation events required by the December Resolutions were organised and publicised with the other material described below. These events have now been carried out and concluded:
 - 4.3.1 on Saturday, 19 January, from 10am to 1pm, 'Drop in' event at the Sailing Club, Southwold Harbour, which was attended by approximately 43 people;
 - 4.3.2 on Saturday, 26 January, from 10am to 1pm, 'Drop in' event at the Methodist Church Hall, Southwold, which was attended by approximately 27 people; and

- 4.3.3 on Wednesday, 6 February, from 6.30pm, public meeting at St Edmunds Hall, Southwold, which was attended by approximately 120 people.
 - 4.3.4 On the 11th February 2019 a street survey was conducted in the area of the Caravan Site, where passing members of the public were consulted. This led to 16 responses.
 - 4.3.5 On 18th February 2019, a street survey was conducted in the area of Southwold Town Centre, where passing members of the public were consulted. This led to 28 responses.
- 4.4 The notification required by the December Resolutions was published on the WDC website, as was further material to assist consultees at: <https://www.eastsuffolk.gov.uk/visitors/harbours-and-waterways/southwold-harbour/> which includes:
- 4.4.1 an online survey for consultees to complete;
 - 4.4.2 summary information about the SHL consultation;
 - 4.4.3 a map of the SHL;
 - 4.4.4 information and copies of the documents referred to in section 3 of the December Report in relation to the ownership and control of the SHL, as had been requested at the JC meeting on 18 December 2018; and
 - 4.4.5 a link to the PGGG for ease of reference.
- 4.5 Further, WDC arranged for e-mails to be sent to caravan owners at Southwold with details of the consultation and a link to the consultation documents.
- 4.6 Further, there have been communications with groups which claim to represent stakeholders, namely:
- 4.6.1 SCOA (which e-mailed all of their members and arranged for the project manager to attend their committee meeting to discuss the consultation); and
 - 4.6.2 [SHPSG and SHRBUA, to ensure that they were aware of the consultation]
- 4.7 Further, the project manager for the SHL has consulted the DfT in further detail about the proposed HMC. The points emerging from that consultation are summarised in section 6 of this report.
- 4.8 Copies of all consultation responses so far (whether collected in person at consultation events, through the online survey facility or otherwise) are published at Appendix L to this report.
- 4.9 Based on the results so far, section 12 of this report sets out the reasons for the interim recommendations made at the end of this report to improve the governance of the SHL,

picking up specific additional points from the investigations and consultations so far which should assist with the next stage of work which is recommended.

- 4.10 However, it must be emphasised that this is an interim report, prepared for a publication deadline to give the JC as much information as possible in report format in advance of the meeting on 6 March 2019. It remains subject to consideration of any further consultation responses or representations made by any potentially interested person by 1 March 2019. An update taking into account any such further responses or representations will be provided to the JC when it meets again at 6:30pm on 6 March 2019 to decide on the way forward to recommend to STC and WDC's Cabinet.
- 4.11 STC and WDC's Cabinet would then consider whatever recommendations are made by the JC when they meet on 15 March 2019.
- 4.12 First, section 5 below reports on other interim developments.

5 COMPLAINTS ABOUT HISTORIC ISSUES

- 5.1 On 20 December 2018, the Overview and Scrutiny Committee (**OSC**) of WDC received a Scoping Form about Southwold Harbour, alleging historic mismanagement of the Southwold harbour and caravan site by WDC, inaccurate accounts particularly before 2010, gross mismanagement of the North Dock Wall project, failure of the JC to meet quarterly in public and contravention of the Harbour Order, stating that the purpose of making these allegations was to find a way forward for the governance of Southwold Harbour. This was followed by a report making further allegations and recommending various matters, including extension of the current SHL consultation period.
- 5.2 In response, a detailed report was prepared with supporting evidence confirming that the allegations which had been made had already been addressed (in particular, in accordance with advice from the District Auditor in 2007 in relation to the accounts and the Harbour Order, in accordance with advice from the Head of Internal Audit of WDC in relation to the North Dock Wall project in 2011/12 and through informal liaison and consultations with stakeholders followed by the meeting on 18 December 2018 and the planned meetings of the JC, STC and WDC's Cabinet) and the recommendations which had been made by the complainant were all either: (a) inappropriate; or (b) unnecessary because they reflected what was already being done.
- 5.3 Copies of these allegations, reports and supporting documents are available at the link at the end of this report. The OSC considered this documentation and then heard, in public, from witnesses called by the complainant and from WDC officers responding to questions on 7 February 2019.
- 5.4 The OSC then resolved:
 - 5.4.1 to recommend that the JC should meet publicly and formally with notice and minutes at least once a year; and

5.4.2 that, in the light of the information provided and reviewed, the OSC consider 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 JC of the way forward for the future governance of the SHL.

6 CONSULTATION WITH THE DEPARTMENT FOR TRANSPORT

6.1 Specific points arising from the PGGG issued by the Department for Transport (**DfT**) and the (informal) consultation with the DfT in July 2018 are summarised in sections 5 and 6 of the December Report and picked up in the recommendations in section 12 of this report for ease of reference in future.

6.2 In addition, the following points have arisen from the (informal) consultations with the DfT so far.

6.3 New governance arrangements need to be clear about who will be the “duty holder” responsible for ensuring that the harbour authority complies with the Port and Marine Safety Code (**PMSC**). We note that:

6.3.1 Under WDC’s current constitution, the duty holder is the Head of Customer Services and Commercial Partnerships. If that post is vacant from time to time, the responsibilities of duty holder are undertaken by the Head of Operations and/or the Strategic Director as appropriate.

6.3.2 The PGGG observes that in many harbour authorities the role of duty holder will be undertaken by the board or management team who are publicly accountable for marine safety under the PMSC both individually and collectively (paragraph 2.33), explains specific operational and resourcing requirements and notes that fulfilling these duties effectively is an essential part of a board’s role in delivering good governance in its broadest sense, referring to the requirements of the PMSC in full (paragraphs 2.34 to 2.38 of the PGGG).

6.3.3 The Guide to Good Practice on Port Operations ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697196/MCGA-Port Marine Guide to Good Practice NEW-links.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697196/MCGA-Port_Marine_Guide_to_Good_Practice_NEW_links.pdf)) advises that the harbour authority must confirm and publish who the duty holder is.

6.3.4 This point is considered further in section 12 of this report.

6.4 The DfT mentioned that it may be helpful when considering the constitution of any Harbour Management Committee (or other body to govern or advise on the governance of a harbour) to look, for the purposes of reference or comparison, at the governance arrangements of Langstone harbour or Littlehampton harbour. An initial review of these is below.

6.5 Details of Langstone harbour are at: www.langstoneharbour.org.uk. It appears that:

- 6.5.1 It is a municipal (local authority) port, which has been run over time by different authorities dealing with different parts as boundaries changed before joint arrangements were agreed for the harbour to work as one.
- 6.5.2 The harbour authority is now a Harbour Board, which is a body corporate and the statutory harbour authority. The Harbour Board works with an Advisory Committee, as follows.
- 6.5.3 There are 15 members of the Harbour Board, two of whom are elected by the Advisory Committee and the rest of whom are elected by the local authorities from their members.
- 6.5.4 The Advisory Committee has a number of members to represent the various stakeholder organisations involved, as listed at: <http://www.langstoneharbour.org.uk/about-committee.php>.
- 6.5.5 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.

6.6 Details of Littlehampton harbour are at: www.littlehampton.org.uk. It appears that it is a trust port governed by a Harbour Board, which consists of 11 members, eight of whom are appointed by the local authorities involved, one of whom is appointed by the Environment Agency, one of whom is appointed by the Board to represent recreational users of the port and one of whom is appointed by the Board to represent commercial users of the port.

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

- 7.1 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.
- 7.2 It has become clear that, for the reasons summarised in the December Report and updated in this report, this would not be appropriate. Accordingly, the alternative models explained in the December Report and in this report have been investigated to enable improvements in the governance of Southwold Harbour while working in line with the key principles adopted from the 2014 consultation described in the December Report and summarised in this report, taking into account the results so far of the ongoing consultation exercise.

8 FINANCIAL AND GOVERNANCE IMPLICATIONS

- 8.1 WDC is prepared to advance funds to enable instruction of suitable external solicitors to advise on the appropriate constitution for a HMC, as outlined in this report. This would be arranged through Legal and Democratic Services at WDC to control expenditure and work cost-effectively with the arrangements for the new constitution for East Suffolk Council when it replaces WDC in April 2019.
- 8.2 Please refer to the longer term financial and governance implications described and considered in section 12 of this report.

9 OTHER KEY ISSUES

- 9.1 This report has been prepared having taken into account the results of an Equality Impact Assessment (**EIA**). The EIA is attached to this report at Appendix I.
- 9.2 The EIA was carried out to ensure that the proposed way forward takes into account any potential impact on groups with protected characteristics. These groups may share particular and protected characteristics, such as gender, sexual orientation or disability. Please refer to the EIA for full details, but in particular:
- 9.2.1 As to the physical environment of the SHL, WDC considers that the facility in its current condition is accessible to all groups. Due to the nature of the marine environment, access to vessels may require special adaptations. However, the pontoons and jetties themselves are, where possible, level and accessible. WDC is arranging a review of access to jetties for marine users to better understand parameters for their use and inform planning for future improvements whatever governance structure applies.
- 9.2.2 The facility is free to access. While there are some commercial outlets on the Blackshore and harbour areas, it is not a requirement that people spend money to access the harbour. Therefore, it is considered that the harbour and its facilities are open to people regardless of socio-economic status.
- 9.3 WDC considers that the approach recommended in the December Report and in this report will not adversely affect the status quo and should improve it. For the reasons explained in the December Report, it is clear that the proposed charitable Trust model has run into difficulties and is not appropriate, leaving the SHL managed by officers of WDC, in consultation with SHRBUA, and SCOA. Accordingly, it is important to revisit the 2015 Resolutions. The proposed Harbour Management Committee (**HMC**) would be well placed to enhance equality of access. In particular, external appointees would be engaged following open advertisement, in accordance with the PGGG, and it is proposed that the JC would arrange stakeholder engagement arrangements to consult community stakeholders and all other stakeholders on the improvements (which may well include improved access arrangements) to be planned for the SHL.
- 9.4 No points have been made by consultees during the consultation exercise so far 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. The JC will be in a position to review any new points raised in responses received at the end of the consultation exercise when it considers this report and those responses, and where appropriate to ask the proposed HMC to take them into account in the future planning for the SHL.

10 CONSULTATION

10.1 This report has been based on the consultation exercise explained in section 4 of this report, taking into account the responses produced at Appendix L to this report, but remains subject to any further responses provided by 1 March 2019, as explained above.

11 OTHER OPTIONS CONSIDERED

11.1 The following alternative options have been considered. Based on the results of the consultation exercise so far, it appears that these other options are not appropriate, as explained below, but this remains subject to any new grounds or considerations raised in the ongoing consultation exercise.

11.2 Some consultees have suggested that there should be no change and stated that they are opposed to the proposed HMC arrangements. However, WDC is clear that it wishes to improve the governance of the SHL; while the PGGG is not mandatory, it reflects good practice and should be implemented so far as is practical and appropriate to the circumstances of a given harbour authority. Further, simpler and more direct local influence and better transparency should help to build trust and co-operation with local stakeholders, particularly after review of the previously planned charitable model and historical tensions, rumours and allegations. Accordingly, we believe that the costs and time needed to work on setting up a HMC and related governance improvements is worthwhile.

11.3 Some consultees have suggested that WDC should not retain surplus from SHL income, to recover sums which it advanced to the harbour for previous works, arguing that this is contrary to the Harbour Order. As explained in the documents submitted to the OSC for 7 February 2019 (available at the link at the end of this report), this recovery was supported by the advice given by the District Auditor in 2007. Further, it is difficult to see how WDC could justify advancing substantial further sums from the general fund of the district as a whole for the improvement of the SHL in future, as considered in the December Report and in section 12 below, if it could not recover those sums from surplus income over time. Further, the DfT has already advised that the Harbour Order itself needs to be updated. Accordingly, we believe that this suggestion is not appropriate.

11.4 The JC previously considered and adopted the charitable Trust model described in section 4 of the December Report. For the reasons described in sections 5 and 6 of the

December Report, and updated in paragraph 12.2 below, it has become clear that the charitable model is not appropriate.

- 11.5 The JC had previously been considering developments informally and consulted with stakeholders on an alternative proposal for a local authority trading company model, as described in section 4 of the December Report. However, for the reasons explained in sections 5 and 6 of the December Report, it became clear that this would not be appropriate, at least with the Harbour Order in its current, outdated, form. Further, several consultees were opposed to the local authority trading company model.
- 11.6 Some consultees have suggested that the SHL should be transferred to STC or a majority of other “*locals*”. We believe it is unlikely that STC would have the resources to take on the substantial potential liabilities of the SHL or, accordingly, be willing to do so. Similarly, the DfT is likely to require a guarantee from WDC or a provision for the SHL to revert to WDC in the event of insolvency of any such transferee, and the risks of transferring the SHL but remaining liable (directly or indirectly) for them is unlikely to be acceptable to WDC, as explained in this report and in more detail in the December Report. Further, as explained in the December Report, the DfT has indicated that it would be concerned about any transfer to a third party with the Harbour Order in its current, outdated, form. For these and the other reasons set out in the December Report, this suggestion would not be appropriate.

12 REASONS FOR THE RECOMMENDATIONS

- 12.1 As with the preceding sections, all of the comments made in this section and the recommendations made at the end of this report are subject to any new grounds or considerations submitted by any potentially interested person by 1 March 2019, which will be provided to the JC for consideration on 6 March 2019, as explained above.
- 12.2 For the reasons explained in the December Report, it has become clear that the charitable Trust model previously adopted by the JC is not appropriate. A number of consultees have opposed any move away from the 2015 Resolutions which adopted the charitable model and it appears that the SHPSG was established with the purpose of opposing any such move. However, consultees have not produced any new grounds to contradict the reasons explained in the December Report, other than a suggestion that the 2015 Resolutions constitute an agreement which cannot be changed. This suggestion is wrong. The 2015 Resolutions are not contractual. They are the resolutions of a joint committee which depends on authority from WDC and STC. Moreover, the JC and each Council cannot be prevented from changing their approach on good grounds (which they could be criticised for failing to do) and that is what they are being asked to do. Accordingly, the 2015 Resolutions to adopt the charitable model should be rescinded.
- 12.3 The December Report explained why it appeared to be in the interests of all stakeholders to investigate the (informal) suggestion made by the DfT to establish a harbour user’s group or Harbour Management Committee (**HMC**) to enable short term governance

improvements in line with the PGGG (including more local involvement) and plan for longer term improvements (whether by application for a Harbour Revision Order or otherwise) in due course.

- 12.4 Some consultees have opposed this, but the only alternative proposals which have been made so far are those explained in section 11 of this report. For the reasons explained in the December Report and in section 11 of this report, these proposals are not viable. Other consultees have been positive or have suggested specific points for the constitution of any HMC, or practical works or other matters to be addressed for the improvement of the SHL. Some of these points are for the future, but where practicable references are made to these points in the suggestions below for ease of reference in future work on this.
- 12.5 The recommendations at the end of this report would be in line with the terms of reference of the JC, which (as explained in section 4 of the December Report) were adopted following the 2014 consultation exercise and have not been challenged by any of the consultees so far. Those terms of reference provided for the JC to seek to enable:

“In the short term, more local involvement and engagement in the management and delivery of Southwold Harbour and all other activities on the wider Southwold Harbour lands; and

In the medium term, implementation of a revised local model for the delivery of Southwold Harbour and its associated lands that addresses the future ownership, and long term sustainability, responsibility, liability and delivery.”

- 12.6 As explained in the December Report, the proposed approach would enable planning of the new governance arrangements for the harbour to:
- 12.6.1 take into account the practical issues which have come to light since 2015, as summarised in the December Report and updated in this report;
- 12.6.2 arrange consultation with stakeholders and look at examples of good practice from comparable harbours;
- 12.6.3 take into account the results of the external harbour study which is being commissioned in relation to the harbour structures to assess the likely options and potential costs in respect of these in more detail (as described in section 5 of the December Report);
- 12.6.4 check that new governance arrangements would comply with the requirements of the 2018 PGGG and explain any proposed divergence; and
- 12.6.5 take professional advice on the appropriate structures, documents and processes and recommend these to WDC and STC.

- 12.7 The JC would be well placed to take on the recommended new role of arranging the necessary consultations about the proposed approach and advising WDC and STC on how to improve governance of the SHL.
- 12.8 It is suggested that the following specific points arising out of the previous and current consultations and investigations should be taken into account in the design of the proposed HMC. For consistency and in line with the recommendations made, these are grouped below under the headings of the key principles from the 2014 consultation which were adopted by WDC’s Cabinet and STC on 28 July 2014.

Improvements that reflect the culture & character of Southwold

- 12.9 The PGGG states that where local authorities provide a substantial or continuing subsidy to a harbour authority, they should seek to establish and implement a strategy to put port operations on a commercial basis wherever this is possible.
- 12.10 Some consultees emphasised the need for conservation and some the need for a balance between commercial and community considerations. Consultees have proposed a range of potential changes, from car parking charges and upgrading the harbour facilities to add lavatories and washrooms to improvements to the caravan site including electricity, water and waste services for static caravans and upgrading the facilities in general, better use of “green” and carbon neutral materials/facilities, green waste management, a club house, better integration between the caravan site and the camping site and possible expansion. Several consultees confirmed their view that funding and additional staffing will be needed, but some expressed concerns about increases in rents when improvements have been made to recover the investments made to enable those improvements.
- 12.11 WDC has already confirmed that it wishes to make arrangements to enable investment in and improvement of the caravan site, in line with the resolutions made in 2014, in particular. However, it is well aware of the need for improvements to the caravan site and elsewhere to be in keeping with the culture and character of Southwold and recognises the comment from one consultee that the harbour is an integral part of Southwold’s overall attraction. A wide range of interim governance and reporting improvements would be proposed, as outlined below. Further, the longer term project of updating the Harbour Order (whether by applying for a Harbour Revision Order or otherwise) would be a subject for the HMC to address.
- 12.12 It is intended that consultations and the representation of STC and other local stakeholders on the proposed HMC, as proposed under the following heading, will help to ensure that improvements are appropriate and reflect the culture and character of Southwold.

Local influence and accountability

- 12.13 This principle is in line with the confirmation in the PGGG that ports owned by local authorities should be *“governed and operated in the interests of stakeholders including the local community”*.
- 12.14 The PGGG notes that ports owned by local authorities operate within the overall decision making structure of the local authority, and that such ports are ultimately accountable to elected Council members and the local electorate.
- 12.15 While of course that applies to WDC as the harbour authority, it is suggested that STC should also be represented on the proposed HMC. This will automatically assist with accountability and encourage representative influence for local requirements. It should help the HMC to take into account plans for Southwold as a whole, including its *“Neighbourhood Plan”*, and ensure that improvements are suitable.
- 12.16 Direct involvement of suitable external appointees to a HMC to represent other stakeholders should naturally help with direct local influence and accountability (compared to the current situation, where a number of different groups/individuals represent or purport to represent stakeholders and liaise directly with WDC). Different consultees have suggested that commercial and recreational users of the harbour, SCOA, all caravan owners, owners of adjacent land, Walberswick Parish Council, other local people and/or a harbour user’s group should be represented.
- 12.17 The number of such appointees will naturally need to be balanced with:
- 12.17.1 the need to appoint any suitable external agency representatives or specialists to a HMC when appropriate to comply with the requirements of the PGGG or to deal with specific needs from time to time, as noted under the following heading; and
- 12.17.2 the need for WDC to retain control of the SHL, at least for so long as it has the risk of direct or indirect liability in respect of the SHL, as mentioned in this report and explained in more detail in section 5 of the December Report. Some consultees have argued that STC, *“locals”* or others should have control of any HMC without any veto for WDC, but these arguments are unlikely to be acceptable to WDC as matters stand unless the HMC is an advisory body. Other consultees have stated that WDC will need a strong presence on any HMC and that the HMC should not have control unless WDC have a veto on major decisions.
- 12.18 It is suggested that the examples given by the DfT of Langstone and Littlehampton harbours are useful points of reference/comparison, as explained in section 6 of this report. A HMC similar to the former would enable a greater range of external representatives to be appointed to an advisory committee and a HMC similar to the latter would enable fewer external representatives to be appointed to a governing committee, so far as is compatible with the new constitution adopted by East Suffolk Council in April 2019.

- 12.19 This, and the need for consultation with a wide range of stakeholders, is considered further under the following (“*working in partnership*”) heading.
- 12.20 Accountability would be further improved, in line with the PGGG, by the measures described under the “*financial transparency*” heading below.

Working in partnership

- 12.21 As mentioned above, a HMC could decide and keep under review how best to ensure appropriate representation and consultation with other agencies, organisations and potentially interested persons.
- 12.22 While of course local influence and accountability will be vital, as described above, the PGGG confirms that the harbour authority should engage with a wide range of stakeholders. The PGGG notes that this will assist the authority in setting out its position on its current performance and future proposals, as well as allowing it to hear and take account of stakeholder views in formulating its future plans.
- 12.23 These stakeholders might include a wide range of potentially interested persons, including those described under the previous heading, various departments at WDC, the DfT, the Marine Management Organisation, the Environment Agency, the Internal Drainage Board and/or the Blyth Estuary Partnership, particularly in relation to any projects which might extend beyond the SHL.
- 12.24 As to the constitution of the HMC itself, the following guidance from the PGGG should be considered taking into account the points made under the previous heading above. The PGGG states that key features of HMCs are that they should be strategic and aware of the commercial and legal framework within which ports operate, ideally comprising:
- 12.24.1 approximately 50% elected members of the local 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;
 - 12.24.2 the port chief executive/harbour master, who should have access to the HMC in an advisory role, but as an officer of the local authority they should not serve on the committee or have voting rights;
 - 12.24.3 external appointees who are stakeholder representatives or individuals with valuable skills and experiences and should be appointed by public advertisement; and
 - 12.24.4 a Chairman appointed on merit, skills and suitability.
- 12.25 As explained under the previous heading above, it will be important to consider whether the HMC will be advisory and what its constitution should be. 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.

- 12.26 At least one consultee opposed the idea of the Harbour Master being involved with a HMC, but at least one consultee supported input from the Harbour Master. The HMC will plainly need to liaise with the Harbour Master and consider his advice on matters, so it seems sensible for them to have access to the HMC in an advisory role as the PGGG suggests.
- 12.27 At least one consultee argued that the Chairman should not be a councillor of WDC. However, the PGGG states that the Chairman of the HMC should ideally be an elected representative of the local authority, as this will automatically maintain reporting lines and accountability to the local authority. The PGGG notes that, should the local authority favour the appointment of an independent Chairman, it is important that reporting lines and voting arrangements are clear and in line with local authority corporate governance practice.

Discharging of statutory obligations

- 12.28 The PGGG confirms that the harbour authority should have a good understanding of the duties and powers set out in the relevant legislation, as well as the common law and fiduciary duties of harbour authorities, and ensure these duties and powers are applied in the governance and management of the harbour authority.
- 12.29 Under the proposed arrangements, WDC would remain responsible for statutory compliance and the Harbour Master would still be employed by WDC. The HMC should enable focus on improvements, monitoring and resourcing, particularly by bringing in specialist expertise through suitable external appointments and/or seeking advice as appropriate.
- 12.30 The Harbour Order will need to be updated. In particular, as explained in the December Report, the DfT have indicated that the current Harbour Order is extremely restrictive and out of date, such that they would be concerned about any new governance model transferring statutory duties to a third party based on the Harbour Order in its current form. However, this would require careful planning and would be a longer term project because the application process for a Harbour Revision Order is lengthy and potentially costly. Accordingly, the HMC would need to work within the restrictions of the current Harbour Order in the interim, but work towards updating the Harbour Order as part of the longer term improvements recommended.
- 12.31 While the Port Marine and Safety Code (**PMSC**) is not mandatory, it sets a national standard for every aspect of port marine safety and should be complied with. As explained in section 6 of this report, the new governance arrangements will need to be clear about who (whether members of the HMC individually and collectively or senior management officers) will be the “*duty holder*” responsible for ensuring that the harbour authority complies with the PMSC.

- 12.32 The PGGG confirms that the duty holder is responsible for ensuring that the harbour authority complies with the PMSC. As set out at para 1.8 of the PMSC, in order to do undertake this role effectively, a duty holder should:
- 12.32.1 be aware of the harbour authority's powers and duties related to marine safety;
 - 12.32.2 ensure that a suitable Maritime Safety Management System (**MSMS**) which employs formal safety assessment techniques is in place;
 - 12.32.3 appoint a suitable designated person to monitor and report on the effectiveness of the MSMS and provide independent advice on matters of marine safety;
 - 12.32.4 appoint competent people to manage marine safety;
 - 12.32.5 ensure that the management of marine safety continuously improves by publishing a marine safety plan reporting performance against the objectives and targets set; and
 - 12.32.6 report compliance with the Code to the Maritime and Coastguard Agency every three years.
- 12.33 The PGGG notes that duty holders cannot assign or delegate accountability for compliance with the PMSC to others, such as a Harbour Master.
- 12.34 The PGGG further advises that:
- 12.34.1 duty holders should take time to gain an appropriate insight and understanding of their port marine activities, MSMS and supporting policies and procedures;
 - 12.34.2 serious consideration should be given to appointing a board member with relevant maritime experience who can act as the initial point of contact to a designated person.
 - 12.34.3 The duty holder should also ensure that appropriate resources are made available for discharging their marine safety obligations, with the level of harbour dues set accordingly.

Financial transparency

Openness and transparency in future HMC finances is something which respondees to the consultation have made frequent comment on

- 12.35 It is suggested that, in line with this key principle, WDC and a HMC should investigate the following points and improvements in particular.
- 12.36 WDC 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 relevant legislation. This accounting meets the legal requirements, but has been the subject of questions in the past because WDC is obliged to prepare its accounts in accordance with specific requirements for local authorities but then has to convert

extracts from these into Companies Act 2006 format in accordance with the different requirements for harbour accounts to be filed with the DfT

- 12.37 WDC have confirmed that arrangements have now been made for a separate audit opinion to be issued by external auditors in relation to the harbour accounts to give reassurance to stakeholders about these. Further, in accordance with the PGGG, a HMC should consider preparing accounts on a commercial accounting basis for its ports to help stakeholders understand its performance.
- 12.38 To assist with general transparency, the following points should be considered.
- 12.39 The PGGG confirms that local authority owned 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:
- 12.39.1 Annual reports and regularly updated websites are likely to be important ways of complying with this; and
- 12.39.2 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.
- 12.40 WDC has already confirmed that it wishes to ensure Committee or Cabinet level responsibility for the SHL and to see arrangements for governance to be more open and transparent, with annual reports, better reporting and monitoring through websites and other improvements to enable compliance with the PGGG.
- 12.41 The HMC should be tasked with working collaboratively with WDC to achieve this, taking into account the representations from consultees that minutes should be published (with some suggesting that they should be published in local newspapers as well as on a website) and/or that there should be annual public meetings, and consideration given to production of a business plan or plans as described in the PGGG, when the harbour study (as described under the following heading) is available, to enable meaningful Projections.
- 12.42 Further, the PGGG notes that, in order for the HMC to operate effectively, a formal memorandum of understanding could be established between the HMC and the local authority. This could set out the recommended ground rules for a framework between the HMC and the local authority. One consultee has suggested that the HMC should be appointed under article 7 of the Harbour Order, but that will need to be reviewed because article 7 provides only for specific types of external appointees to a local authority management committee and a different approach may be more appropriate. This will need to be considered with suitable professional advice, together with the arrangements for ensuring Cabinet or Committee level responsibility for the harbour within the Council, when the new constitution for East Suffolk Council has been adopted

in April 2019. However, several consultees have requested that the constitution of the HMC should be published online with the other transparency information, which would clearly be appropriate.

Investment & local re-investment

- 12.43 As explained under the *“Improvements that reflect the culture & character of Southwold”* heading above, WDC is considering a range of improvements, for the SHL
- 12.44 As explained in section 5 of the December Report, WDC expects, based on the advice from Coastal Partnership East, that advances of several million pounds would be needed over the coming years to bring the caravan site up to date, repair harbour structures and address upstream changes on the River Blyth.
- 12.45 As described in the December Report, to refine this, and in view of disagreement from stakeholders in respect of advice from Coastal Partnership East in relation to the SHL infrastructure, WDC is commissioning a study to advise on the likely natural effects on the SHL over the coming years, to fulfil the following objectives:
- 12.45.1 to better understand the hydrodynamic regime and performance of the harbour entrance;
 - 12.45.2 to better understand the impacts of flood risk management strategy on the harbour; and
 - 12.45.3 to develop an investment plan.
- 12.46 Accordingly, while the amounts will partly depend on the results of the above study and the precise plans for improvements of the SHL and elsewhere, WDC expects to be asked to advance very substantial sums for the repair, maintenance and improvement of the SHL in future. It is unlikely that WDC could justify advancing substantial public funds without the ability to oversee and control precisely how such funds are applied and ensure they are properly recovered from surplus income over time. The proposed HMC should be designed with this fundamental consideration in mind.

Viability & sustainability (both financially and in terms of governance)

- 12.47 The proposed HMC arrangements should enable WDC to have the confidence and control it needs to make the advances described above and procure the improvements sought for the long term viability and sustainability of the SHL.
- 12.48 The proposed approach will enable the JC to make recommendations for a HMC which would enable short term governance improvements, including direct local involvement and engagement in line with all of the key principles in the June 2014 consultation document and the PGGG, as described above. These governance improvements should themselves facilitate the design and implementation of the practical improvements which are proposed.

12.49 The proposed approach will enable the HMC to plan for long term improvements to the SHL and the Harbour Order itself by designing proposals (which are likely to be made by application to the Marine Management Organisation for a Harbour Revision Order, but could be made by further or other means), addressing future ownership and long term sustainability, responsibility, liability and delivery, in line with the terms of reference of the JC and this key principle.

RECOMMENDATIONS

Subject to the consideration of any further consultation responses or representations made by any potentially interested person between the now and the close of the consultation, on 28 February 2019, which shall have been tabled at the meeting on 6 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 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 long term sustainability, responsibility, liability and delivery,
3. arrange to instruct professional advisers to advise on the appropriate constitution for a Harbour Management Committee as outlined above; and
4. make stakeholder engagement arrangements to consult community stakeholders and all other relevant stakeholders on the improvements outlined above.

| APPENDICES | |
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| Appendix A | Southwold Harbour Order 1933 |
| Appendix B | Copy plan of the harbour undertaking |
| Appendix C | Southwold Harbour Lands Consultation – June 2014 |
| Appendix D | Report to WDC Cabinet and STC for 28 July 2014 (REP1127) |
| Appendix E | Minutes of the WDC Cabinet and STC meetings on 28 July 2014 |
| Appendix F | Winckworth Sherwood report – March 2015 |
| Appendix G | Report to the JC for 18 March 2015 (REPSHLJC02) |
| Appendix H | Minutes of the JC meeting on 18 March 2015 |
| Appendix I | Equality Impact Assessment |
| Appendix J | Report to the JC for 18 December 2018 (December Report) (REPSHLJC05) |
| Appendix K | Minutes of the JC meeting on 18 December 2018 |
| Appendix L | Copies of consultation responses received to date (25.2.19) with any further consultation responses or representations made by any potentially interested person up to the close of the consultation (28.2.19) being tabled at the meeting on 6.3.19. |

| BACKGROUND PAPERS |
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| <p>Allegations made about Southwold Harbour to the Overview and Scrutiny Committee at WDC (OSC) and response documents considered by the OSC on 7 February 2019, available at: https://www.eastsuffolk.gov.uk/yourcouncil/council-meetings-and-decisions/agendas-reports-and-minutes-of-council-meetings/waveney-district-council-meetings/2019-meetings/february-2019-meetings/wdc-overview-and-scrutiny-committee-07-february-2019/</p> |