



SOUTHWOLD HARBOUR LANDS JOINT COMMITTEE

Wednesday 18 March 2015

FUTURE GOVERNANCE OF THE HARBOUR LANDS (SHLJC02)

EXECUTIVE SUMMARY

1. A joint working group of Waveney District Council's Cabinet and Southwold Town Council ('the Councils') conducted a detailed consultation, between 2 June and 11 July 2014, with regard to their draft vision for the future of the Southwold Harbour Lands ('SHL').
2. Following that consultation the joint working group made a series of recommendations to the Councils at a simultaneous meeting on 28 July 2014. In summary the Councils determined at that meeting to:
 - a) adopt the draft key principles and vision outlined in the consultation document;
 - b) establish a Joint Committee of Waveney District Council ('WDC') Cabinet and Southwold Town Council ('STC') to replace the joint working group;
 - c) delegated authority to the Joint Committee to act as the 'Initial Strategic Board' for the SHL;
 - d) investigate the options for optimising investment in and delivery of the Caravan site;
 - e) develop the optimum options for the sustainable, long term, ownership, control and delivery of the SHL;
 - f) develop and implement a Community Engagement Strategy to ensure the ongoing involvement of all relevant stakeholders.
3. The Joint Committee is now asked to consider in detail 2(e) above.

Is the report Open or Exempt?	Open
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Wards Affected:	Southwold
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Supporting Officers:	Arthur Charvonia, Strategic Director Lesley Beevor, Town Clerk
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1 BACKGROUND

- 1.1 A joint working group of the Councils conducted a comprehensive consultation, between 2 June and 11 July 2014, with regard to the future of the SHL.
- 1.2 In response to that consultation exercise the Councils adopted a set of key principles and vision for the SHL and created a new Joint Committee to act as the 'Initial Strategic Board' for the SHL.
- 1.3 The Joint Committee has been established and has been tasked by the Councils with two main areas of focus. These are:
 - a) the sustainable, long term, ownership, control and delivery of the SHL; and
 - b) optimising investment in, and delivery of, the Caravan site.
- 1.4 This report focuses solely upon 'the sustainable, long term, ownership, control and delivery of the SHL'.

2 CONSULTATION & ENGAGEMENT

- 2.1 The Joint Committee adopted a communication strategy and engagement plan at its meeting on 10 December 2014.
- 2.2 In line with that strategy and plan the Joint Committee held a stakeholder workshop on 7 February 2015 to consider both 1.3(a) and (b) above. This workshop built upon the original comprehensive public consultation carried out in June 2014.
- 2.3 Following the workshop the Joint Committee circulated copies of all of the comments made during the four workshop sessions to all the stakeholders. In addition the Joint Committee received a number of emails that helpfully provided additional clarity to the points raised during the workshop.
- 2.4 The Joint Committee then developed and circulated an additional document to all stakeholders to confirm what it changed as a result of the feedback from the workshop, together with what it can also still change, and what it can not change (see Appendix A).

3 SUSTAINABLE, LONG TERM, OWNERSHIP, CONTROL AND DELIVERY

- 3.1 Following the decision made at the simultaneous meeting on 28 July 2014, WDC commissioned Winckworth Sherwood solicitors, on behalf of the Joint Committee, to advise and develop the optimum options for the sustainable, long term, ownership, control and delivery of the SHL.
- 3.2 Winckworth Sherwood presented their initial views and advice to the stakeholders at the workshop on 7 February 2015. Following consultation at that workshop and consideration of Appendix A, Winckworth Sherwood have now produced their more detailed advice for the Joint Committee (Appendix B).
- 3.3 This advice comprehensively considers a number of critical issues. Based upon this advice the Joint Committee is now asked to make six decisions, listed as recommendations below.
- 3.4 In addition, however, there are a number of aspects, highlighted in Winckworth Sherwood's advice, that will require further consideration by the Joint Committee before they can be decided. These include:
 - Members – including WDC and/or STC being Corporate Members (see Section 6)
 - Trustees (see Section 6)
 - Election of Trustees (see Section 6)
 - The terms of reference of the Stakeholder Advisory Group (see Section 6)

- The continued role of WDC and STC, as well as the Joint Committee (see Section 10)
- TUPE and pension implications (see Section 11)
- Whether or not the disposal will be for less than best consideration and if therefore consent will be required from the Secretary of State (see Section 12)
- Consideration of long term lease of the assets by WDC and / or STC; or freehold disposal (see Section 12)
- Consideration of loan, licence or disposal of other assets (see Section 13)

4 OTHER MATTERS

4.1 A number of other outstanding matters also remain for consideration by the Joint Committee and will form the basis of future discussion and reports. These are:

- The development of an appropriate phased transition mechanism so that all income earned by the lands is directly reinvested in the lands, rather than supporting WDC's revenue budget (offset by capital investments);
- The continued investigations identifying options for optimising investment in and delivery of the Caravan site in line with the adopted Vision.

RECOMMENDATION

1. That the legal model for the new governance arrangement should be a charitable company limited by guarantee ('Harbour Trust'), supported by a trading subsidiary.
2. That the key provisions of the governing document (as set out in Section 6 of Appendix B) be approved in principle, subject to further consideration being given to:
 - The name of the new company;
 - Members – including WDC and/or STC being Corporate Members of the Harbour Trust;
 - Trustees;
 - Election of Trustees; and
 - The terms of reference of the Stakeholder Advisory Group.
3. That the mechanisms for the recruitment, selection and appointment of trustees (as set out in Section 7 and Appendices 2 to 4 of Appendix B) be endorsed.
4. That statutory function of the Harbour Authority should be transferred to the new Harbour Trust.
5. That the indicative implementation timetable (as set out in Section 15 of Appendix B) be endorsed.
6. That any land / property transfers, creation of the Harbour Trust and transfer of statutory function of the Harbour Authority should take place simultaneously.

APPENDICES

Appendix A	Joint Committee confirmation of changes following the 7 February 2015 Workshop
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Appendix B	Winckworth Sherwood's governance advice
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BACKGROUND PAPERS		
Please note that copies of background papers have not been published on the Council's website but copies of the background papers listed below are available for public inspection free of charge by contacting the relevant Council Department.		
Date	Type	Available From
2 June 2014	Southwold Harbour Lands Consultation document	www.waveney.gov.uk
28 July 2014	SHL – Review of consultation and recommendations report (REP1127)	www.waveney.gov.uk
10 Dec 2014	Community Engagement (SHLJC01)	www.waveney.gov.uk

The Joint Committee has now issued (16 February 2015) copies of the transcripts of the flipchart comments recorded by facilitators and scribes at the stakeholder workshop held on 7 February 2015.

In addition the Joint Committee considered it important to confirm what it has changed as a result of the feedback from the workshop, together with what it can also still change, and what it can not change. The Committee has sought to do this by directly drawing from the flipchart comments in the tables below. For convenience and consistency two tables have been used – one for ‘governance’ and a separate one for the ‘caravan site’.

For completeness the Joint Committee thought it would be useful to set out, ahead of each table, the key elements as originally recorded in the consultation document in June 2014. Overall the Joint Committee is satisfied that the importance of these key elements (as set out in the grey boxes) have been further reinforced through the recent stakeholder workshops. The Joint Committee will now however be drawing together its final conclusions ahead of its next formal meeting in March 2015. It is anticipated that the Joint Committee’s report will be published in early March and a copy of it will automatically be forwarded to all stakeholders.

Governance

Consistent principles that underpin the entire vision for the Harbour Lands:

- Local influence & accountability
- Working in partnership
- Discharging statutory obligations
- Financial transparency
- Investment & local re-investment
- Viability & sustainability (both financially and in terms of governance)

It is also proposed to commission external solicitors to develop sustainable long terms models for revised ownership and control of the Harbour Lands. In doing so the solicitors will be asked to consider and address a number of issues, including:

- Providing an open & transparent model that encourages local involvement;

<ul style="list-style-type: none"> • Any competing charitable, local government and harbour authority considerations; • Ensuring legal compliance in the operation of the Harbour Lands • The need to capitalise on the potential of the lands and to get an optimum return on all investments; • Ensuring reinvestment back into the Harbour Lands of all surpluses generated within lands (NB Southwold Town Council are clear that they have no interest in making a financial gain from the Harbour Lands but there is a collective recognition that Waveney District Council's revenue is currently supported year on year by income derived for the Council from the Harbour Lands – which is then offset by capital investments. This arrangement will therefore require some form of phased transition so that all income earned by the lands is directly reinvested in the lands); • Addressing the financial sustainability challenge of needing to balance long term large scale investments (including preventative investments) with ongoing balanced revenue budgets; • Maximising tax and VAT opportunities; • Addressing concern with regard to potential liabilities.

Summary of Flipchart comments	Joint Committee's (JC) initial response
<p>Harbour Users submission to recreate the Southwold Harbour Board (supported by a written submission provided in advance of the workshop)</p>	<p>JC is broadly supportive of these proposals and in particular the creation of a charitable body, trading arm company and TUPE transfer of staff. Winkworth Sherwood have been asked to directly comment to JC on the Harbour User's full proposal in comparison to their current options. The issue of local representation by elected Councillors is considered in more detail below.</p>
<p>Type of legal structure:</p> <ul style="list-style-type: none"> • Charitable incorporated organisation – 100% reinvestment of profits & safeguarding asset, with accountability and transparency • Diversity of use 	<p>JC has not settled on a final model of legal governance but its own initial support for an incorporated charitable trust was further strengthened by the views expressed at the workshops. JC does believe it is important to ensure that the Harbour Lands are properly safeguarded by any new legal vehicle but that in addition that there is sufficient flexibility to enable any new arrangement to diversify its activities as much as it wishes to, as long as this does not compromise its role with regard to the Harbour Lands and is to the wider benefit of Southwold. The JC currently anticipates that a series of linked matters will need to be determined and</p>

	<p>then completed simultaneously as 'back to back' agreements. These are:</p> <ul style="list-style-type: none"> • The conveyancing transfer of the Harbour Lands from STC & WDC to the new legal vehicle; • The transfer of the Harbour Undertaking to the new legal vehicle; • The TUPE transfer of staff to the new legal vehicle; • The financial agreement supporting the phased reduction of WDC's financial support.
<p>Structure of any Board:</p> <ul style="list-style-type: none"> • Size • Appointment (& removal) process • Diversity of membership • Person specification • Integrity with no conflicts of interest • Skills & Abilities • Future appointment of trustees • Length of term • Connection with area 	<p>JC agrees that the structure of any new Board will be critical.</p> <p>JC does not know yet whether it will be in a position to determine the final structure and appointment mechanism for any Board in March 2015 but it is fully supportive of the issues and ideas raised in this regard at the workshop.</p> <p>In particular the JC will ensure, in accordance with its previously stated vision, that any new Board is fully compliant with all legislation, including the Harbour Act 1933.</p> <p>The JC will ensure that its decision making regarding this process remains fully open and transparent.</p> <p>JC will ensure that any new structure is set up to be fully accountable.</p> <p>Trustees would not be paid positions and are likely to be forced to retire by rotation.</p>
<p>Recruitment of any Board:</p> <ul style="list-style-type: none"> • Advert for trustees • Skill set audit • Targeted advert • Invite application • Shortlist • Interview • Stakeholder / Independent involvement <p>A board of trustees already set up</p>	<p>As set out above JC does not know yet whether it will be in a position to determine the final recruitment process by March 2015. JC is however fully supportive of the approaches raised at the workshops.</p> <p>JC will ensure that a fully open and transparent recruitment process is put in place.</p> <p>JC believes that a proven track record in business, together with financial, legal and maritime experience are key skills that it is likely to be seeking from any new trustees.</p> <p>JC can confirm that there is not any board of trustees in existence.</p>
<p>Ongoing stakeholder representation & role</p>	<p>JC is clear that it needs to ensure that there is an ongoing stakeholder role within the future structure. In doing so the JC is mindful of avoiding conflicts of interest that could be created by stakeholders directly becoming trustees, but that in any event there does need to be in place a clear and structured mechanism for ongoing engagement with all stakeholders.</p>

<p>Ongoing role of STC & WDC - Democratic representation</p>	<p>The Harbour Lands are a key strategic asset within the context of Waveney and Southwold. The JC and the two Councils recognise that in setting up any new legal vehicle there may be a desire, and a temptation, to entirely remove any future involvement of either WDC or STC. The JC agrees that the new arrangements must operationally be fully independent of both Councils. The JC believes however that the two Councils do however have a democratic role and responsibility for both supporting any new Trust and holding it to account. The JC fully expects to retain the right to appoint some of the new trustees (although these would not automatically mean that Councillors are appointed). The JC also believes that it will perform the principle role in the appointment of all the new trustees. In doing so however it will not act alone and it will (as stated above) do so in a fully open and transparent way. The JC does expect however, that once any new Trust has established itself and is proven to be functioning well, then the role of the Councils and JC will diminish proportionately.</p>
<p>Legal ownership – Freehold v Leasehold</p>	<p>The JC agrees that it is important to put in place a structure to ensure local ownership is preserved. The JC is also mindful though that despite everyone's best intentions it is possible that the new legal vehicle could, for a variety of reasons, fail. In those circumstances the JC is keen to ensure that the ownership of the Harbour Lands has been protected and can not be lost to creditors. For these reasons the JC is currently more inclined towards a land transfer by very long (perhaps 125 years) lease, rather than a simple freehold transfer. In these circumstances land ownership (the landlord) could sit either with WDC and STC jointly or just with STC.</p>
<p>Money established within harbour lands will stay. All money will be ringfenced from the decision date (March 2015)</p>	<p>It is the collective desire of the JC to get to a position whereby all monies generated in or on the Harbour Lands are ringfenced to the Harbour Lands. This will certainly be the position from the creation of the new legal vehicle but for the practical reasons explained above this will be subject to the phased reduction of WDC's financial support. In the meantime however STC and WDC are, through the JC, managing the Harbour Lands in collaborative way to ensure that funds are being reinvested into the Harbour Lands where available and needed.</p>

Caravan Site

Consistent principles that underpin the entire vision for the Harbour Lands:

- Improvements that reflect the culture & character of Southwold

It is the working group's desire to maximise the revenue return that the caravan site can deliver in order to subsidise investments in other areas of the harbour lands. The working group also recognises that the current site is neither fulfilling its financial potential given its Southwold location and brand, nor providing a facility that is befitting of the character of Southwold. Comparison of the current site against the model standards for such sites, and initial scoping investigations, have also demonstrated that significant financial investment is required in the site. The working group recognises that the leisure park business is a significant industry in the UK. In order to optimise the potential of the Southwold site it needs to be run as a professional business, and with greater technical expertise than can be achieved by either Council.

Even more critically it is recognised that investment is required which is beyond the current capacity of the councils. It is therefore proposed to explore the options for private investment and operation of the site. In developing such options the working group recognises the need to balance what may be competing priorities, including:

- Supporting current users
- Local operational delivery
- Length and format of any agreement
- Level of investment required
- Expected levels of revenue generation
- Compliance with Model Standards
- Risk appetite of the Councils

Recorded Flipchart comments	Joint Committee's initial response
<p>What type of caravan site:</p> <ul style="list-style-type: none"> • Southwold does not need a 'flash' caravan site 	<p>The JC agree entirely with the sentiment expressed at the workshops with regard to the style and feel of any improved caravan site.</p>

<ul style="list-style-type: none"> • Aesthetical design in keeping with area • Remain modest & affordable • Keeping with Southwold & Marsh environment • No additional amenities 	
<p>How to make the Caravan Site fit for purpose:</p> <ul style="list-style-type: none"> • Lack of historical investment • Site Licence issues • Level of financial investment in the caravan site is questionable and it is not understood what it would provide • Support management agreement but commercial company would require profits – how much would come back and when • Owners manage the site • Year on year contracts mean owners will not upgrade • Security of tenure 	<p>The JC agree entirely that there has been a lack of historical investment in the Caravan Site but that this can not be undone and that the JC must now look to the future.</p> <p>The JC agree that it will work with WDC to ensure that on any transfer of ownership of the caravan site away from WDC then the site would not automatically be closed down as not being compliant with the requirements of a site licence. WDC will work to put in place a necessary phased transition for the necessary improvements to be made.</p> <p>The JC is clear that financial investment will be required in the site but does not have a sufficient sense of the scale and detail of such investment. JC will therefore carryout further research in this regard.</p> <p>If a management agreement were put in place then that private funding partner would of course seek to recover its investment and some profit over time. JC understand that the time period involved and level of investment will vary depending level of initial investment required to create the preferred style of caravan site. Again JC will therefore carryout further linked research in this regard.</p> <p>JC believe that the direct management of the caravan site by the caravan owners should remain an option but that the owners would need to satisfy the JC and any future trust that they were capable of doing so in a financially sustainable way (also see below).</p> <p>JC agree that the current year on year contracts and lack of security of tenure act as a disincentive for caravan owners to invest in their caravans and plots. It is the clear expectation of the JC that this must change.</p>
<p>Financial role of the Caravan Site:</p> <ul style="list-style-type: none"> • Cash flow - Clarity in income & transparency • Current owners would not be able to pay costs on new vans & lease costs 	<p>JC is entirely clear it must put in place an improved caravan site that will be attractive both to the current caravan site users and to future users. In doing so however the JC is clear that the strategic role of the caravan site is for it to generate significant surpluses that can be invested both in the caravan site itself but more importantly to assist to subsidise the broader</p>

Southwold Harbour Lands

APPENDIX A

<ul style="list-style-type: none"> • Diversity of users • All funds from caravan site should be ring-fenced at point of decision • Investment needed to south harbour Arm • Caravan site must not be sold 	<p>loss making activities of the wider Harbour Lands and particularly to maintain the critical infrastructure of the Harbour Lands e.g. the south training arm. It is for this reason that the JC is clear that the freehold of the caravan site must not be sold.</p> <p>JC also believes however that the Harbour Lands and Southwold would be ill served overall if the Caravan Site became too exclusive and not affordable to a variety of users. JC therefore supports the idea of creating an additional hire fleet, for users who traditionally will also spend a greater proportion of their money in the wider town.</p> <p>Overall JC will also ensure that greater clarity and transparency is brought to the flow of this money and the associated decision making.</p>
<p>Decision on investment should be deferred until ownership model is agreed.</p>	<p>For the reasons stated above the JC is unlikely to be in a position to make any final decision regarding investment in the Caravan Site by March 2015.</p> <p>The JC is sympathetic to the view that this decision should not be made by the JC but should be deferred to be made by any new legal vehicle. The JC however is of the view that there will be a significant amount of work to be completed before any new trust has been recruited to and established. In the meantime the JC can therefore usefully further explore and research the various issues linked to future investment in the caravan site (as set out above).</p>