

Minutes of the Southwold Harbour Lands Joint Committee Meeting held at the Stella Peskett Millennium Hall, Mights Road, Southwold on **Wednesday, 18 March 2015 at 10.00 am**

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Members present:

Councillors W Windell (Chairman), M Barnard, I Bradbury, C Law, B Provan, M Rudd, S Tobin and J Winter

Also in attendance

Councillors S Allen and K Flodin

Officers present

A Charvonia (Assistant Chief Executive), J Bussell (Partner at Winckworth Sherwood Solicitors), S Everett (Chief Executive for Sentinel Leisure), D Lee (Democratic Services Manager), L Beevor (Southwold Town Council Clerk) and N Wotton (Senior Democratic Services Officer)

1 APOLOGIES / SUBSTITUTES

No apologies were received.

2 APPOINTMENT OF CHAIRMAN FOR THIS MEETING

Mr Charvonia, Strategic Director & Monitoring Officer, called for nominations for Chairman of the meeting. It was duly proposed, seconded and following a collective vote it was

RESOLVED

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

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

3 APPOINTMENT OF VICE CHAIRMAN FOR THIS MEETING

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

RESOLVED

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

4 DECLARATIONS OF INTEREST

No declarations of interest were made.

5 MINUTES

RESOLVED

That the Minutes of the Southwold Harbour Lands Joint Committee Meeting held on 10 December 2014 be approved as a correct record and signed by the Chairman.

6 FORMER COUNCILLOR JOHN GOLDSMITH

A Minutes Silence was held in memory of former Councillor John Goldsmith. Councillor Law paid tribute to former Councillor John Goldsmith, who had recently passed away. John Goldsmith was held in high regard by those who knew him and he had a vast knowledge about the rivers, coast, Blyth Estuary and land drainage. He was a community champion and a larger than life character, who was well loved and respected. The Joint Committee sent their condolences to Councillor Goldsmith's family and friends.

7 FUTURE GOVERNANCE OF THE SOUTHWOLD HARBOUR LANDS

Mr Charvonja introduced a report, which sought approval for a long term and sustainable future for the Southwold Harbour Lands. It was noted that the Southwold Harbour Lands Joint Committee had been tasked by Waveney District Council and Southwold Town Council to focus upon two main areas, which were:

- (a) The sustainable, long term, ownership, control and delivery of Southwold Harbour Lands
- (b) To optimise investment in, and delivery of, the caravan site.

The Joint Committee had adopted a Communication Strategy and Engagement Plan at its meeting on 10 December 2014. A stakeholder workshop had been held on 7 February 2015, which built upon the original comprehensive public consultation carried out in June 2014.

Waveney District Council had commissioned Winckworth Sherwood Solicitors, on behalf of the Joint Committee, to advise and develop the optimum solutions for the future of the Southwold Harbour Lands. The Joint Committee then received a presentation from Jo Bussell, Partner at Winckworth Sherwood Solicitors, on the advice which had been provided, which was included as Appendix B to the report. A summary of the presentation and discussions are shown below:

- The Southwold Harbour Lands were of great importance and made a vital contribution to the economic, social and environmental well being of the area.
- Any recommendations made about the future governance of the Southwold Harbour Lands would be tested against the key principles of:
 - Local influence and accountability
 - Working in partnership
 - Discharging statutory obligations
 - Financial transparency
 - Investment and local reinvestment
 - Viability and sustainability
- The recommended legal model of future governance was as an Incorporation, which involved creating a separate legal entity. The benefits were that it would have a clear legal structure, limited liability and would be able to enter into supply contracts / leases / employee contracts. Any debts or liabilities would be those of the company and not the individual board members.

- Incorporation would have only minor disadvantages, which were that it would require the Administration of a company or other corporate entity and that Board Members would have duties and responsibilities under Common Law or other relevant legislation.
- It was also recommended that the legal model of future governance should be a charitable organisation, which would be recognised as a charity in law. This would have a number of benefits including public confidence in charities, it would become a trusted 'brand', charities established as companies limited by guarantee were regulated by the Charity Commission which was an independent and effective regulator. Charities were also exempt from corporation tax and were 'tax attractive' in terms of gift aid, corporate donation, sponsorship, philanthropic donations and legacies. Charities can only give to other charities and they are also eligible for up to 100% rate relief from National Non Domestic Rate (business rates). In the event of the winding up of a charity, any assets remaining must be transferred to another charity with similar charitable purposes.
- The disadvantages of becoming a charitable organisation were minor, in that it would require regulation by the Charity Commission, a charity can only carry out charitable activities and any non charitable activities or high risk activities would need to be carried out by a trading subsidiary.
- There were a number of charitable legal models available, however it was advised that a charitable company limited by guarantee was the preferred option. This would ensure a legal entity was established under the Companies Acts and would be regulated by Companies House. The company would have members rather than shareholders, who would act as guarantors of the company and any liabilities would be capped at £1 per member.
- The advantages to becoming a charitable company limited by guarantee were numerous including it would operate within a modern regulatory regime, would be subject to Companies Acts which were regularly reviewed and updated, would be regulated by Companies House which was an efficient and helpful regulator, companies could be incorporated quickly and registration costs were low. The company model was also very flexible and it would be easy to create subsidiaries and group structures for new business ventures.
- The disadvantages of becoming a charitable company limited by guarantee were that the company would be required to file annual reports and accounts at Companies House and that the board members would be the directors and have duties and responsibilities under the Companies Acts.
- The legal model for the new governance arrangements was recommended to be a charitable company limited by guarantee, referred to as the 'Harbour Trust'.
- The objects clause would set out the purposes for which the charity had been established and it would be established for exclusively charitable purposes. Model objects would be used where possible, as they had been tested and approved by the Courts.
- The proposed objects would include the following:
 - Maintain the Harbour Infrastructure
 - Preserve the sites of Historical Interest
 - Conserve the Natural Environment
 - Promote Education
 - Promote Sustainable Development
 - Promote Recreation
 - Pursue such other charitable purposes consistent with the Harbour Lands as the Trustees shall determine

- The Harbour Lands themselves could be defined by reference to the plan included in the 1933 Harbour Order.
- The objects should contain the short and medium term aspirations, whilst long term aspirations should be discouraged from being included.
- The members would be equivalent to 'shareholders', however the members would undertake to guarantee the debts and liabilities of a company in the event of insolvent winding up. The guarantee would be capped at £1.
- There would be no dividends and a prohibition on distributing profits.
- The Board should consist of a minimum of three and a maximum of nine members. The suggested composition would be: 2 Trustees nominated by Waveney District Council, 2 Trustees nominated by Southwold Town Council and up to 5 Independent Trustees with the relevant skills and expertise.
- Clarification was provided that the Trustees nominated by the two Councils could be Councillors or any other person they deemed to possess the relevant skills, experience and qualifications.
- Trustees could be removed from their position if they chose to resign, were disqualified from being a Trustee due to gaining a criminal conviction or they became incapable due to mental illness.
- Trustees would be appointed for a fixed term of office. It was suggested that they be appointed for three years in the first instance and that they then be retired by rotation, with a third leaving each year. It was reported that Trustees could re-apply for a position once their term of office had ended.
- The Board would be required to meet four times a year, however it was suggested that they should meet monthly initially, due to the amount of work which would be required.
- In response to a query, it was reported that Board meetings would be held in private, however individuals could be invited to attend at the discretion of the Trustees. Additional recommendations could be made on how the meetings would take place in future, to ensure transparency.
- It was suggested that the quorum for Board meetings should be three. It was noted that the Charity Commission did not like caveats stating that the meeting was only quorate if certain representatives were present.
- The Chairman of the Board would be a critical position and it was noted that an Independent Chairman would be recommended.
- The Board would be able to create Sub-Committees and Working Groups to undertake specific pieces of work or projects. Clarification was provided that non-Trustees could be invited to attend these meetings, however there would need to be Trustee representation on any Sub-Committees or Working Groups.
- The Harbour Trust could be required to provide regular reports to both Waveney District and Southwold Town Councils, however there would be regular dialogue taking place.
- Clarification was provided that Trustees could not have substitutes. It was possible for Directors to have substitutes however this option was not recommended due to the in-depth knowledge and expertise required for the role.
- A Councillor commented that the public would be keen to learn how the work of the Harbour Trust was progressing and it was suggested that there could be an annual

meeting, rather like an AGM, to keep the public updated on developments. It was noted that the accounts would also be published annually for transparency.

- A Councillor stated that the world may be very different in 10 years time and they sought reassurance that the Southwold Harbour Lands would never be sold. It was reported that it would be written into the governing documentation and enshrined in law that the Southwold Harbour Lands would not be sold.
- It was noted that there would be an obligation to meet regularly with the Stakeholder Advisory Group (SAG) and it was suggested that this could be achieved by having further workshops, which had been very well received recently.
- It would be essential to recruit Trustees with a range of skills and experience, who could contribute to the success of the new organisation and who shared the vision and objectives for the Southwold Harbour Lands.
- The recruitment process would need to be robust and transparent and would consist of the following:
 - Prepare the recruitment pack
 - Prepare the draft advert to be placed in local, region, national and specialist press
 - Contact the press to get some editorial content alongside the advert
 - Place the advert
 - Hold an open day or evening to provide more information
 - Receive completed applications
 - Shortlist applications received
 - Hold formal interviews
- It was confirmed that the shortlisting and interviews would involve representatives from Waveney District and Southwold Town Councils, as well as Independent advice and support from Winckworth Sherwoods Solicitors.
- It was reported that local, national and specialist press would be used for the adverts, however candidates would need to be able to demonstrate that they had a connection to the local area.
- It was suggested that it would be useful for the shortlisted candidates to give a presentation to stakeholders as part of the interview process. The stakeholders would then give their feedback on each candidate to the interview panel. It was noted that this approach had been very positive for the recent senior level appointments at Waveney District Council and it was confirmed that this approach could be used for the Trustee interviews.
- Once the Trustees had been appointed, they would need to have an induction and familiarisation process to help them fulfil their roles.
- It would be recommended that the Harbour Trust take a transparent approach to their work and they would be encouraged to publish minutes of meetings, their objects, terms of reference and sub-committee membership on their website, in order to be open and transparent in their dealings and to maximise the amount of information available to the public.
- The Harbour Trust would have responsibility for staffing as the Harbour Master, the Caravan Site Manager and their respective teams would be transferred to the Trust under the Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE). This would provide protection and reassurance for the staff, as their current terms and conditions of employment would be maintained. The Trust would need to ensure that all staff were consulted in accordance with the current guidance. There would also need to be careful consideration of any pension liabilities.

- Local Authorities have statutory restrictions on the disposal of any assets, whether by freehold or leasehold, as they need to demonstrate that they have secured the Best Value for that asset. The express consent of the Secretary of State is required for certain disposals if Best Value was not sufficiently demonstrated.
- A Member queried why the Harbour Trust would want to dispose of any assets. It was reported that a freehold transfer of assets to the Harbour Trust meant that the land or property would become an asset of the Trust. In the unlikely event that the Harbour Trust got into financial difficulty, there would be a risk that the property and other assets of the charity could be seized and sold to settle debts of any creditor. However, it would be possible to safeguard any assets by issuing a long term lease instead. A 99 year lease would be the equivalent to having a freehold title but if the Harbour Trust got into financial difficulty, the lease would terminate automatically and the asset would revert back to Waveney District Council or Southwold Town Council.
- A Member requested that the possibility of a Local Government Review be considered, as it could potentially result in the District Council boundaries changing, so that if Waveney District Council no longer existed in its current form, the assets would be returned to the most appropriate organisation.
- Members were reassured that restrictions could be included within any leases, which would prohibit sub-leasing, and would therefore manage risk for the future.
- The Harbour Trust would need to have regular meetings with key stakeholders, including Waveney District Council and Southwold Town Council, to ensure that the Trust was meeting its objectives and remained viable and sustainable.
- Waveney District Council was currently responsible for the statutory function of the Harbour Authority, however this responsibility could be transferred to the Harbour Trust in accordance with Article 27 of the Harbour Order 1933. It was noted that this could be a lengthy process as it would require the permission of the Secretary of State for Transport and they could also potentially impose a number of conditions on the transfer. Confirmation was provided that it would be legal to transfer the statutory function of the Harbour Authority in this manner.
- It was reported that the transfer of the statutory function of the Harbour Authority could be commenced at the same time as establishing the Harbour Trust, as it was anticipated that it would be a lengthy process. It was noted that there could also be delays due to the General Election in May 2015, which could result in a change of government. It may also be necessary for permission to be sought from two Secretaries of State, as there could be an overlap of responsibilities.
- It was reported that authorisation for the transfer of the Harbour Authority responsibilities could also be sought from the Marine Management Organisation (MMO). The MMO would require an application for a Harbour Revision Order under Section 14 of the Harbours Act 1964. There followed some discussion in this respect and it was noted that although approaching the Secretary of State for Transport was the preferred option, it may be necessary to contact the MMO to perform the transfer in due course.
- The key stages in the establishment of the Harbour Trust would be:
 - Draft the Memorandum and Articles of Association
 - Incorporation of the Company
 - Recruitment of the Trustees
 - Selection and Induction of the Trustees
 - Registration of the Charity
- It was reported that it would take between 3 and 6 months to establish the Harbour Trust.

The Vice Chairman took the opportunity to thank everyone who had been involved in the work on Southwold Harbour Lands to date. It was a significant achievement to find a way forward that would deliver a sustainable and robust solution for the future of the area.

The Chairman thanked the Southwold Harbour Lands Joint Committee, the Strategic Director & Monitoring Officer, Southwold Town Clerk, the stakeholders and public for their ongoing support over the past three years.

RESOLVED

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 the 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.

The meeting concluded at 11.25 am.

Chairman