

**Report to the Overview and Scrutiny Committee,**

**Waveney District Council,**

**Feb 7<sup>th</sup> 2019**

**By Cllr David Beavan**

**5(b)**

**With the help of Simon Flunder and Ian Bradbury**

**Graham Hay Davison of Southwold and River Blyth Users Association**

**and Bill Steele of Southwold Haven Port Stakeholders Group**

This report to the Overview and Scrutiny Committee seeks to expose failings in the way Waveney District Council (WDC) has managed Southwold Harbour Lands and makes recommendations so that the Council complies with the recently released guidance from the Department for Transport (2).

**1. Accounts and ring fencing**

1.1 Southwold Harbour is governed by the Southwold Harbour Order 1933 which states in Section 39 that Harbour revenues should be retained within the Harbour. The Council accepts this - see paragraph 2.4.11 of their report to the Joint Harbour Committee on December 18<sup>th</sup>, 2018, (1).

1.2 The Ports Good Governance Guidance (PGGG) (2) states in Section 4.18:

*“The local legislation of SHAs owned by LAs often contains provisions in relation to the use of income generated by the SHA. In some cases, this can require income from the harbour to be used for purposes related to the harbour. This means that LAs can be legally precluded from transferring income generated by the harbour for use on other services provided by the LA.”*

1.3 WDC claim that the Harbour currently owes them £1.2m which they are clawing back from annual profits. Some of this is the investment that WDC made in the North Wall which is quite right and proper, however most (**£715k**) is the result of losses incurred by WDC in harbour operations prior to 2010, which I contest. Last summer, WDC supplied me with evidence to back their claim, Appendix A.

1.4 Confusingly, the profits are shown in brackets and in red, whilst the losses are in black type.

1.5 The summary shows that the camping and caravan site regularly lost an average of £100k a year prior to 2010, but then suddenly made over £100k a year after 2010. I asked for more detail to explain this difference but was told that this was not available as the accounting system changed in 2010. I was however able to investigate the statement of accounts which I report in Appendix B.

1.6 I found a copy of the 2004/2005 general ledger for the caravan site amongst the papers submitted by a resident, Steve MacFarlane, to an enquiry by the District Auditor in 2005 (Appendix C). I was then able to compare the accounts for 2004/5 when the caravan site allegedly lost £171k to 2017/18 accounts when there was a profit of £179k as well as two previous years, by adjusting for inflation (appendix D).

1.7 This is the summary:

	Summary for Caravan site accounts £'000's			
	2005	2018	2017	2016
Income	416	586	493	458
Actual expenditure	196	299	286	214
Internal recharges	<b>99</b>	46	45	42
Profit after direct ex	120	240	163	203
Support services	37	39	34	48
Depreciation	<b>63</b>	22	21	21
Capital finance	<b>21</b>	<b>0</b>	<b>0</b>	<b>0</b>
Final Profit	<b>4</b>	179	107	176

1.8 The income is comparable. The actual expenditure on employees, premises, transport etc is commendably low in 2005 despite wasting £28k on the aborted attempt to sell off the caravan site. However the internal recharges, where WDC charged the site for their services, apart from usual support services, was double present day values, so that the profit after direct expenditure was halved in comparison. The support service charges were similar, but the 2004/5 charge for depreciation and capital finance wiped out any profit.

1.9 Depreciation can cause confusion. If you buy a new car for £10k every 10 years, it makes sense to spread the cost and account that as £1k every year instead of £10k every 10 years, but you can't do both. We will come back to this point, but here we see that depreciation is charged at three times the present rate in 2004/5.

1.10 Further, a capital finance charge was also applied. The logic seems to be that assets should carry this charge because their purchase as an asset has to be financed, but WDC did *not* buy the harbour undertaking. This charge has now been dropped from modern accounts.

1.11 There is a danger that depreciation is double charged if £1k is charged every year **and** £10k is charged every 10 years, then the bill comes to £20k not £10k. This could well explain the very high depreciation charge in 2004/5. You cannot charge an annual depreciation for harbour repairs **and** then charge for the repairs themselves later.

1.12 You may also notice that the general ledger delivers a profit on the caravan site of £3 for 2004/5, but WDC aver in Appendix C that it lost £171,000. The difference can be explained by the North Denes Caravan site which lost all that money. WDC minutes of July 2005 state:

*“North Denes Caravan Site returned £258 to the General Fund, excluding recharges, capital charges, legal and consultancy fees. Southwold Camping and Caravan Site returned £170,630 to the General Fund in 2004/5” (pp40,41 WDC Executive Agenda, 21<sup>st</sup> July 2005).*

- 1.13 Southwold Harbour is being asked to pay back losses on the North Denes Caravan Site.
- 1.14 So WDC are not correct to say that the Harbour owes the General Fund £171k for the losses on the caravan site in 2004/5. In fact, the General Fund owes the Harbour about £120k for unreasonable charges (vis - recharges £54k, depreciation £42k and capital finance charge £21k) extracted from the harbour revenues in that year. Adjusted back to 2004 values for inflation this figure becomes £200k (=171k+120k/1.46). The alleged debt should be reduced therefore by £200k as no money was lost and because of unreasonable charges – leaving a debt of **£515k**.
- 1.15 Further investigations by Mr Macfarlane revealed that in the four years 1999 to 2003, WDC extracted £129k in depreciation and £127k in capital finance charges from the caravan site. WDC also extracted monies from the Harbour itself and the Car park to the tune of £413k over the four years. (appendix C)
- 1.16 Just looking at these five years 1999 to 2004, we can correct the alleged debt of £715k by subtracting £200k for 2004/5 and £413k for 1999 to 2004, **leaving £102k only**. If WDC figures are £600k out over these five years, we could surmise that over the 35 years from when they started running the harbour in 1974 to 2010 when accounts started to be recorded properly they have **extracted in the region of £4.2m plus interest**.
- 1.17 WDC currently seem to want to follow the opinion of the District Auditor (3) that “I conclude that the income and expenditure and surplus retained (by WDC) in relation to the caravan and campsite are not to be treated as part of the income and expenditure of the Harbour undertaking save for a reasonable internal transfer or recharge for the use of harbour lands for the General Fund” (p5, Audit of Accounts 2004/5, Audit Commission, 19 February 2007.
- 1.18 In this case, I would expect the annual rent paid to the Harbour Undertaking for the use of the caravan site to be independently assessed by a qualified valuer. The rent should reflect the fact that the site is a going concern with assets and goodwill that generates an annual profit of more than £150k.
- 1.19 This stance also makes it more difficult for WDC to claim monies from the harbour for their previous losses on the caravan site. They can't take the profits in good years and expect someone else to pay for the losses in bad years!
- 1.20 In conclusion, local potential trustees have worked with WDC to improve the accounting system since 2010, however the remaining debt of £715,000 that WDC allege is owed by the Harbour to the General fund should be written off. The evidence for this debt is at best shaky and at worst fraudulent.

## References:

1. Report on the Future of the Southwold Harbour Lands (SHLJC05), Waveney District Council, 18 December 2018
2. Ports Good Governance Guidance (PGGG) “Moving Britain ahead” Department for Transport, March 2018 - [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/684839/ports-good-governance-guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684839/ports-good-governance-guidance.pdf)
3. Audit of Accounts 2004/5: Objection: Southwold Harbour Undertaking, Audit Commission 19 February, 2007

Appendix A - FOI28964272 – revenues from Southwold harbour and caravan site (842) – 18 July 2018 WDC customer services

Appendix B - Statement of accounts WDC summary for harbour – D Beavan, September 2018

Appendix C - Objection to the Waveney District Council Accounts for the Financial Year 2004/5, Steve Macfarlane, of Reydon 1<sup>st</sup> September 2005.

Appendix D - Comparison of caravan site accounts between 2004/5 and 2017/18, adjusted for inflation – D Beavan, January 2019

Appendix E - SHPSG WDC meeting notes

## 2. Governance – The North Wall Contract

- 2.1 An overspend on the £3m North Wall contract cost ratepayers £600k under WDC mismanagement in 2011. The project was signed off by WDC incomplete and three months late. The contractors did not do the job properly – fendering was still needed, only 7 out of 16 berths built, water leaks, inadequate mooring equipment. It cost £250k to finish the job to specification.
- 2.2 The contractors signed a design and build contract, whose price included the provision of project management. They would supply the specified works complete for the price. However WDC then paid Norse Property Services a further £250k to do the same job.
- 2.3 Both contractors were at fault, as was WDC’s management.
- 2.4 An independent qualified surveyor should have overseen the project, and contractors should have been engaged through competitive tendering, in the opinion of Graham Hay Davison a Chartered Quantity Surveyor who has worked as an expert witness in High Court negligence cases, and was also chairman of the Southwold and Rover Blyth Harbour Users Association.
- 2.5 The framework tendering process used by WDC is not fit for purpose. The list of approved contractors is often out of date and does not give best value for money. May Gurney the principal contractor had just sold its piling gear and was in financial trouble until taken over by Kier in 2013. Norse Property Services is part of the Norse Group which includes a privatised arm of WDC.
- 2.6 Before any future substantial harbour work, the council needs to use an open commercial tendering process to select contractors including an independent qualified surveyor.

## References:

1. Works package order Southwold Harbour Dock Wall, 19 Dec 2011
2. The Final Account for the Southwold Harbour Dock Wall, Graham Hay-Davidson, SHRBUA, 2014
3. Complaint Ref: 3C190851, Southwold Harbour Dock Wall, and correspondence with WDC, October and November 2017

### 3. Governance – Joint Harbour Committee secrecy

- 3.1 One of the first agenda items for the Joint Harbour Committee on December 18<sup>th</sup>, 2018 was to approve the minutes of its previous meeting in October 2015, three years before.

- 3.2 Port Good Governance Guide (2), p38 para 4.15 states:

*“SHAs that are part of LAs should be aware of the Government’s commitment to open and accountable local government. Amongst other things, this requires that meetings of a council’s executive, including meetings of its committees and sub-committees must be open to the public except in limited defined circumstances where the national rules require or allow the meeting to be closed to the public”*

- 3.3 In the terms of reference of the Southwold Harbour Lands Joint Committee, it shall “adopt the legal procedures required by executive committees of Waveney District Council for the arrangement of meetings and decision-making,” p1 (1)

- 3.4 The constitution of WDC states:

#### *“5. TIME AND PLACE OF MEETINGS*

*The time and place of meetings will be determined by the Proper Officer and notified in the summons. There will be a minimum of six meetings per year.*

#### *6. NOTICE OF AND SUMMONS TO MEETINGS*

*The Proper Officer will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. At least five clear days before a meeting, the Proper Officer will send a summons signed by him/her by post to every Member of the Council or usual place of residence.”*

- 3.5 The JHC was charged with the implementation of the 2015 Harbour Trust agreement. However, between the meeting in Oct 2015 which decided to appoint the project manager, effected in July 2016, and an informal meeting in December 2016, a decision was made to change the job description. He was apparently told to stop implementing the 2015 agreement and start preparing for a different model more suited WDC purposes. This change of plan is evidenced in the WDC report of December 18<sup>th</sup> 2018 (1) para 4.10 to 4.12 and 7.2.

*“The JHC was not formally consulted on this imposition; merely being advised that a new plan was being assembled. Meanwhile, the 2015 Agreement was not rescinded, as might have been anticipated and, theoretically, it remains in place. The JHC was thence sidelined (effectively stood-down), despite continued requests from Southwold Town Council for it to meet,”* said Southwold Town Council representative on the Joint Harbour Committee, Cllr Ian Bradbury.

- 3.6 The Harbour is run by a board, chaired by WDC CEO. Nobody seems to have seen any minutes or agendas, let alone annual reports as required by PGGG (2) p 10

*“Accountability Principles*

*The board should present a fair, balanced and understandable assessment of its position and prospects. This responsibility covers annual reports and information required to meet statutory requirements. “*

- 3.7 The secrecy of WDC Committees contravenes modern standards of transparency and needs to be addressed urgently if the Council is to establish a relationship of trust with ratepayers.

4. **Department for Trade Accounts**

- 4.1 WDC should have been submitting annual accounts for the Harbour Undertaking to the Department for Transport for the last 44 years, however a FoI request to the Department for Transport in May 2018 revealed that the department had not received any accounts from WDC.

*“I refer to your request under the Freedom of Information Act 2000 for information about the accounts for Southwold Harbour for the years 2016/17 and 2017/18.*

*I am writing to advise you that following a search of our paper and electronic records, I have established that the information you requested is not held by this Department.”* Dean Muir, Policy Advisor, Ports Governance and Trust Ports, Department of Transport, 20 May 2018

- 4.2 Simon Taylor however emailed me copies of accounts for 2016/17 and 2017/18 which had been submitted in September 2018.

- 4.3 The PGGG (1) p15 states:

*“2.18*

*This section discusses statutory requirements applying to SHAs in relation to providing information as well as good practice in making information available and operating in a transparent way.*

*Principles*

*•SHAs have a statutory obligation under the Harbours Act 1964 to produce annual accounts and reports in line with the requirements of the Companies Act 2006 and to provide these to the Secretary of State for Transport”.*

- 4.4 Now that the accounts have been submitted there are two problems.

- 4.5 Firstly they cannot be reconciled with the management accounts. The Dft accounts add £235k ‘other income’ and a campsite contribution of £179k to inflate total income from £297k to £709k. The contribution from the caravan site is used to offset some of the £250k repayment of capital investment, but I am not sure it should be accounted for in this way. WDC seemed to have conflated a profit and loss account with a balance sheet in an unacceptable form of accounts. Equally it is not really acceptable to itemise £270k of income but describe the remaining £235k as ‘other’, with no supporting management accounts.

- 4.6 Secondly, we are still having trouble with depreciation which is added into the management accounts at £11k actual (against a budget of £38k?). Depreciation is then added again in the Dft accounts at £146k.
- 4.7 I had an hour's meeting with Simon Taylor when we could not resolve these issues which are summarised below.
- 4.8 Summary WDC accounts - Comparing the two accounts

<b>£'000 2017/2018</b>	<b>Management ac.</b>	<b>Dept for Trans ac.</b>	<b>Difference</b>
Sales, dues, rents, car park income	297	297	
Contribution from Campsite		179	179
Other income		235	235
<b>Total income</b>	297	706	+409
<b>Operating expenses</b>	171	167	4
Support service	29	38	
Depreciation	11		2
Depreciation 2		146	146
Loss on disposal of assets		7	7
<b>Repayment of capital investment</b>		253	253
<b>Total expenditure</b>	211	611	+400
Profit	86	95	9

- 4.9 The 2016/17 accounts are similar.
- 4.10 These accounts should be submitted on time to the Department for Transport and must be clear and accurate.

## 5. **Consultation**

- 5.1 The JHC decided on December 18<sup>th</sup> to initiate a consultation to review the 2015 Trust agreement and consider a model in line with DfT advice in PGGG. At the time of writing, January 11<sup>th</sup>, we have no idea of the programme or exactly what we are discussing. Are we just consulting on whether to discuss a new model at some future date, or do WDC have a plan for a specific model that they want to use?

- 5.2 PGGG (2) again

### *Section 2 -Stakeholder engagement -Introduction -2.6*

*Effective engagement with stakeholders is essential for all SHAs to maintain or improve understanding of the harbour by its stakeholders. Engagement is equally important to understand stakeholder's views about the harbour and key issues from their perspective. All SHAs should therefore seek to engage effectively with a wide range of stakeholders.*

- 5.3 We learnt at the JHC December 18<sup>th</sup> that WDC would like to close the consultation on March 1<sup>st</sup>, so that the business can be concluded before the demise of WDC. However the caravan owners are not allowed to return until March 1<sup>st</sup>, so it will be difficult for them to have their say.
- 5.4 The JHC meeting was held in public but was not a public meeting – so people could not speak – and on a weekday morning. There is strong feeling in Southwold that there should be a public meeting in the evening as part of the consultation, and that it should be advertised well in advance.
- 5.5 There have been issues with stakeholder consultation. The Southwold Haven Port Stakeholders Group was set up as an umbrella organisation to represent all stakeholders in the harbour – harbour users, residents, businesses and caravan owners together.
- 5.6 I arranged a meeting between this group and WDC on October 29<sup>th</sup>. The report is appended in Appendix D. We expressed our concerns about the former plan to set up a trading company. WDC listened to our concerns but did not take the opportunity to discuss their new plans with us. We were kept in the dark whilst Waveney officials and favoured JHC councillors planned their moves, and did not have an inkling of the new plans until just before the JHC meeting on December 18<sup>th</sup>. We do wonder if the consultation has already been done and what we have now is a PR exercise to persuade us that the plan is right.
- 5.7 Bill Steele, a harbour resident and secretary of SHPUG, said,
- “WDC needs to consult all stakeholders in a properly constituted consultation process. Whilst WDC consulted with the Southwold Caravan Owners association (SCOA) and the Harbour Users Association (SHRBUA) when promulgating the March 2015 Agreement, no such consultation took place when WDC unilaterally decided to drop the Trust Model in favour of their NDM last autumn.*
- It seems that WDC have been consulting with SCOA whilst excluding other stakeholders. It has also come to light that the SCOA Committee has so far failed to inform its members of the outcome of this consultation. SHPSG sees this as a deliberate attempt to divide and rule.”*
- 5.8 Stakeholder groups with an interest in the Harbour include business owners, home owners, caravan owners, fishermen, stage owners and fishing hut owners. The harbour which currently makes £250k profit on a turnover of £750k is a thriving hive of industry. Business owners are Adnams at the Harbour Inn, Harbour Marine Services, Sole Bay Fish Co, Harbour Café, Coastal Voyager, Southwold-Walberswick foot ferry, Mrs Ts Fish and Chips, Novoboats, Justin Ladd Marine Services, Samantha Ks fish shop, Nick Curtis.
- 5.9 WDC should extend the consultation by two weeks to ensure a full and transparent engagement with all stakeholders.



## **RECOMMENDATIONS:**

- 1. The outstanding debt of the Harbour to General Funds should be reduced by £715,000.**
- 2. Before any future substantial harbour works, the council should use an open commercial tendering process to select contractors including an independent qualified surveyor.**
- 3. All Committees of WDC should meet openly and formally with notice and minutes at least once a year.**
- 4. Department for Trade accounts should be submitted on time and be clear and accurate.**
- 5. The current JHC consultation should be extended by two weeks to enable all stakeholders to make a contribution.**