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Complaint Ref: 3C190851

[REDACTED]

Complaint Ref: 3C190851 - Southwold Harbour Dock Wall Contract Final Account & Letter of 4 October 2017

Dear [REDACTED]

Firstly, I would like to apologise for the length of time it has taken for me to complete this Stage 2 - internal review of your complaint reference 3C190851, raised originally on 14 March 2017, though I only became aware of the issue on 27 June 2017. I wrote to you on 28 June 2017, where I explained that my review was deemed Stage 1 of the complaints process, the process has since changed and my review as a Head of Service is deemed the final Stage 2 process in the complaints process.

The following link details the Councils complaint process, <http://www.eastsuffolk.gov.uk/contact-us/compliments-comments-and-complaints/>

If you are not satisfied with my Stage 2 Review of your complaint you may complain to the Local Government and Social Care Ombudsman.

The delay in my response is due to the level of detail I have endeavoured to capture and the availability of parties involved since 2012, moreover the ability to access documents, held in a number of places.

I wish to highlight six key points as I see them:

1. I accept that the communication throughout the original Southwold Harbour Dock Wall Contract should have been managed in a more effective manner.
2. Mr Andrew Jarvis (Strategic Director) and Mr Kerry Blair (Head of Operations), Mrs Homira Javadi (Chief Finance Officer), have stated that the income and expenditure flows of the Southwold Harbour reside with Waveney District Council.
3. The Council's Finance Manager has stated that users of the Southwold Harbour are charged standard rates following a benchmarking exercise, and are not expected to pay separately/additionally for the works undertaken at the Southwold Harbour.

4. Where I concur with the accounting coding anomalies you have identified I have raised with the Councils Chief Finance Officer for correction.
5. The Council has acknowledged in its Annual Governance Statement 2016-17, that contract management needs improving and as such a number of changes have taken place; joint contract procedure rules have been rolled out across both Councils, training has been delivered and will continue to be delivered by the procurement and legal teams at both sites, guidance is published on the intranet, and support is offered by the specialist procurement and legal teams to relevant managers, a corporate contracts register is maintained by the Procurement team, published on the intranet and considered as part of Corporate Governance Days, so that senior managers can monitor that contracts are being effectively managed, new officers recruited for their extensive and proven contract management experience are in post. Furthermore, the Audit and Governance Committee will be reviewing the control improvements made in contract management in December 2017.
6. Mr Andrew Jarvis (Strategic Director) and Mr Kerry Blair (Head of Operations) shall provide explanations for the ongoing works and plans for Southwold Harbour in due course. Moreover, I have emphasised the need to communicate clearly with you and the Southwold Harbour and River Blyth Users' Association and any other interested parties.

For the purposes of accuracy and completeness I have listed each of your points in italics followed by my findings underlined as Internal Review following your number referencing.

- 1.01 *In financial year 2012/13, the debt attributable to the Harbour Account was increased to a figure of £2,210,024 by reason; we were advised; of the cost of the reconstruction of the North Dock wall in Southwold Harbour. This was due to the need of Waveney District Council to raise a loan to meet the match funding of the EU Fisheries Fund grant. Members of the Harbour Users Association have asked me to evaluate the claimed costs to ascertain, figures and figures, the proper cost of the works. Following a request through the Freedom of Information Act 2000, I received a compact disk which purports to show the totality of the invoiced costs incurred in the reinstatement of the Southwold Harbour dock wall*

Internal Review

I acknowledge and note your comment.

- 1.02 *All of the costs disclosed are categorised as Capital expenditure although many of the costs shown are, in my view, clearly Revenue expenditure. I make no issue of this but merely point out the inconsistency.*

Internal Review

Finance has confirmed "The classification of revenue and capital has been through external auditing of the Statement of Accounts and those financial years are closed". I note your view that items appear revenue rather than capital expenditure

- 1.03 *The total expenditure alleged to have been incurred amounts to £3,366,902.00. Having verified the file I can confirm the alleged total is the correct sum for the costs shown. I attach hereto a copy of my analysis of the alleged costs and, inevitably, I have found that there are errors that require correction.*

Internal Review

I acknowledge and note your comments. Your analysis has been passed to the Finance Team who has confirmed that historic records will not be changed given External Audit closure of those years. However, the Councils Chief Finance Officer has a record of your letter.

- 1.04 *The attached schedule appended as Appendix A is in Ven number order; the Ven number being the unique number given to each vendor of goods and services. The left hand column gives the Ven file number for each entry unique to this file whilst the next column gives the number of the same information in WDC's disclosed file.*

Internal Review

I acknowledge and note your comment.

- 1.05 *The column marked Document Date is self explanatory whilst the adjacent column headed Document No contains WDC's own unique document number. These columns allow the cross-referencing from the records disclosed by WDC which are in date order to the individual vendor's final invoiced total. The file is self-checking in that providing the total spend of £3,366,902.00 (identified in yellow at the tope of the file) tallies with the Net Amount column total at the foot of the file every invoice cost has been correctly included and reflects accurately WDC's own records albeit in a more comprehensive order.*

Internal Review

I acknowledge and note your comment.

- 1.06 *The entry highlighted in red appears to be a duplicate entry which I have disallowed. The document date is the same for both documents but WDC's Document Numbers differ. I think this may be a keying error. Suffice it to say it should not appear in the total cost.*

Internal Review

57302 is a holding account, which was used to post transactions relating to capital, which were then analysed at the end of the year by the Capital Accountant. All transactions relating to this project would have initially been coded to 57302. Ideally this would have been recoded but the wrong department code was picked up. The project coding was new at the time of this project and the process has since changed.

The net effect shows a debit of only one £19,975. There is a credit entry against the second £19,975 transaction, resulting in only one payment transaction of £19,975. This amount has not been paid twice.

- 1.07 *Entries highlighted in yellow are invoices and costs which, prima facie, have nothing whatever to do with the dock wall contract. Here again I believe these to be keying errors which should not appear in the dock wall final costs.*

Internal Review

The items included within the "rejected costs" column have been reviewed. Whilst some transactions could be verified as attributable to the Harbour project; I could not conclude

that the following transactions relate wholly and specifically to the Harbour project and as such I have asked the Chief Finance Officer to make appropriate corrections:

PET000033 – v000316746 EURO RSCG RILEY 474493 Public Relations	0.17
PET000033 – v000316746 EURO RSCG RILEY 474493 Public Relations	176.86
PET000041 – V000318466 euro RSCG RILEY I76478 Public Relations	176.86
PET000041 – V000318466 euro RSCG RILEY I76478 Public Relations	0.17
PET000083 - J000030087 WP/130 Capital & Land Drainage Rec	3460.51
J0002615 – Fishermans Facilities, Southwold Harbour	350.00
J0002616 – Fishermans Facilities, Southwold Harbour	522.00
J0008091 DC/12/1077/FUL	340.00
J0008799 Planning Refund DC/13/0685/EXT	195.00
	5221.57

- 1.08 *Entries highlighted in green are invoices which are, from WDC's records, known to exist but which cannot be found amongst the records disclosed. I have had to take a pragmatic view of these costs and allow the costs where the description indicates that they might be relevant and disallow the same if they appear irrelevant. I do not believe that these costs are in anyway fictitious but the relevant paperwork has just been lost somewhere in WDC's filing system. If WDC are able to find any of the missing invoices then I reserve the right to amend my figures to reflect any changes.*

Internal Review

I acknowledge and note your comment. We were unable to find further data.

- 1.09 *The four columns to the right hand side of the sheet divide the costs incurred between the four headings shown. I have split the costs to separate out fees and expenses from construction costs and identify extras to the contract being items of work etc not included in the contract sum. These columns identify the individual vendor package costs.*

Internal Review

I acknowledge and note your comments. Specific review points are captured later in this letter.

- 1.10 *By way of example only VEN number 002943 relates to the sums paid to May Gurney (MG) which total £2,733,046.90 which is £9,715.40 more than the total certified by NPS in their final certificate. The reason for this discrepancy is due to some preliminary investigation works undertaken by MG in April of 2011 for which they invoiced the sum of £9,715.40 (vide line 37 Appendix A).*

Internal Review

I acknowledge and note your comment.

- 1.11 *The final column lists those items which I have disallowed as being either duplicate entries or not relevant to the construction contract.*

Internal Review

Conclusion provided at 1.07 above.

Scope of the works

- 2.01 *The contract signed (but not dated) between WDC and MG was the Smarte East Framework Agreement based upon the nec3 form. We were advised at the time by WDC that the form of contract chosen was a "Design and Build" form of contract, chosen because it gave the maximum protection to WDC and the Harbour Users from unexpected additional costs occurring during the execution of works by placing all the design and contracting risks on the contractor, MG. I concur with this advice.*

Internal Review

I acknowledge and note your comment.

- 2.02 *At Section 2 of the contract "The Contractor's Main Responsibilities the Works information is stated to be in the following documents" which cites, at sub-section 15, as a contract document "H R Wallingford Report ... EX 6204 Release 6.0 Option 5a". which is attached hereto as Appendix B. The scope of works here identified as Construction Option 5 is the option agreed and adopted by all parties after extensive public consultation before commencement of the construction contract. It defines the scope of the works to be undertaken.*

Internal Review

I confirm that the Works Information provides the HR Wallingford Report as a document under "The Contractors Main Responsibilities". The Procurement Manager has confirmed that the HR Wallingford Report (WR) was a suite a documents that formed part of the contract documents. The WR Report detailed the preferred option (5A) be taken forward. However, this did not define the scope of the works agreed between WDC and May Gurney (MG). The works to be undertaken were agreed between the both parties as part of Initial Target Price and Final Target Price meetings. The budget available was insufficient to implement Option 5A as set out within the WR. Ways to ensure the project proceeded and remained affordable was discussed between WDC and MG. The Final Target Price (FTP) sets out the works to be completed by MG under the contract.

- 2.03 *Wallingford's estimate of the cost of option 5 in February 2010 is shown as £2,994,037 but this figure included the sum of £551,441 for the supply of sheet piling which was, in the*

event provided to MG free issue. Without the supply cost of the piling Wallingford's estimate for the whole of the works would have been £2,442,596.

Internal Review

The WR identified the wall length at 278 metres with an estimated cost of piling at £551,441. Whilst the contract does refer to "free issue" steel sheet piling, 175m is the amount specified. The final contract price agreed states that after a topographical survey completed by MG the total wall length is 315m, therefore 140m of steel sheet piling needed to be supplied by MG. The 140m is nearly half of the original estimate of 278m; therefore there would still be a cost of supply in the region of £275,000 for the supply of steel sheet piling by MG.

The FTP presented by MG is therefore comparable when deducting £275,000 from the WR estimate of £2,994,037, leaving £2,719,037 against a FTP from MG of £2,723,749.23. Whilst this is broadly comparable WR and the Final Contract price. This would appear acceptable as an estimate provided within a report is unlikely to be the exact same pricing at a later date.

- 2.04 *The contract sum of MG's offer, 18 months later, was £2,723,749.23 or some £280,000 higher than Wallingford's estimate. This difference is likely to be due, in part; to 18 months inflation which, at the time, was minimal and in part; I am advised, due to MG not being the lowest tenderer. Why the lowest tenderer was not selected is not known. The contract sum of £2,723,749.23 included a design fee (redacted in my copy) and a management fee at 4.9% or £127,229.47. By Contract clause "Optional Statement – Additional Insurances" the Contractor provided Professional Indemnity Insurance for his design/management team of £5 million in respect of any one claim or series of claims.*

Internal Review

I acknowledge and note your comment. I can confirm that the contract with MG was let under the Smarte East Alliance Construction Framework. <http://contracts.eelga.gov.uk>. The £280,000 difference is comparable when removing the full amount for providing steel sheet piling, which is not the case as concluded in 2.03 above.

- 2.05 *The date for possession of the site was 21st November, 2011 and the date for completion was 18th September, 2012. The actual date of alleged completion was recorded on the final certificate as 18th December 2012. The three month delay in the alleged completion of the contract is unexplained.*

Internal Audit Review

The NPS Final Certificate identified the date of completion as 14th December 2012. The Works Package Order states "The Completion Date for the whole of the works is 18 September 2012."

Monthly Site Meeting Minutes for 10th August 2012 state that MG provided a revised programme end date. The Project Manager at NPS stated that works were complete on the site but there was a snag list to be worked through before the Take Over Certificate was issued. A delay to the completion of the contract was known and agreed by WDC during monthly site meetings with the contractor. Whilst works were complete on the site, the snag list needed to be completed before the Take Over Certificate was issued.

Incomplete works

- 3.01 Although NPS Group (NPS) certified the completion of the works on 18th December, 2012 and certified that *“The final amount shown is agreed as being in full and final settlement of all claims against this contract”* it was patently obvious that the works remained incomplete. Between the date that NPS certified that the works were complete and the final invoice from MG dated 28th March 2013, MG claimed and was paid a further £49,884.89 on an apparently complete contract. These extra payments had nothing whatever to do with the release of retention monies as the retention percentage had been set at 0%. Only NPS can explain why completion was certified as being achieved on the 18th December, 2012 but the certificate was not signed by MG until 8th April in the following year.

Internal Review

The following MG invoices were paid after the completion date of 18th December 2012:

Invoice Date	Description	Amount £ (Net)
02.01.13	Valuation 12 for works complete to 31/12/12	24,687.69
22.01.13	Valuation 13 for works complete to 31/12/12	9,512.73
25.02.13	Valuation 14 for works complete to 31.01.13	2,303.86
26.03.13	Valuation 15 for works complete to 31.01.13	13,380.61
29.07.14	To supply and install additional ladders	166,522.14

Each invoice uses a month end date so it is deemed acceptable that Valuation 12 and 13 specify 31/12/12, totalling £34,200.42. The Project Manager (Richard Varvel) confirmed that “A QS was appointed as part of the services to WDC. Each month they would complete a valuation of works completed and produce a valuation certificate. It is quite common on construction projects for the accounts to catch up with the works completed as the contractor has to wait for any sub-contractors to bill etc.”

The Interim Valuation and Final Account spreadsheets were provided to Internal Audit. Whilst the invoices state “for works complete to 31/01/13” there are no additional works recorded, these are the final payments to be made against the contract. The Project Manager (Richard Varvel) verified that works were completed in December when the Take Over Certificate was signed and issued. The totals on the final account spreadsheet agree to the Activity Schedule set out in the Works Package Order. The invoice paid to MG after

December 2012 relate to works completed as part of the contract, as specified in the Works Package Order. Whilst the Valuation Certificates were issued after December 2012, the accounts for construction project needed to “catch up”.

- 3.02 *Section 11.2 (2) of the contract states thus:- “Completion is when the Contractor has + done all the work which the works information states he is to do by the Completion Date + corrected notified Defects which would have prevented the Employer from using the works and others from doing their works” As at 18th December 2012, the works were not fit for purpose which NPS must have known as the works, five years later, are still not fit for purpose and cannot be used by the Employer, visiting vessels or fisherman.*

Internal Review

I acknowledge and note your comment.

- 3.03 *Notwithstanding the obvious nature of the incomplete works NPS absolved MG of any further obligation or liability for the same.*

Internal Review

I acknowledge and note your comment.

- 3.04 *Perhaps the most significant omission was the failure to provide fendering to the working face of the piled wall. Such fendering is listed in Option 5a (Appendix B) but during the pre-contract negotiations MG stated that they had not included the provision of the fendering as required following discussions with the Project Team. Harbour Users were not consulted on this or for that matter any other issue but the Project Team must have been aware that the omission of the fendering would mean that the works could never be fit for purpose.*

Internal Review

I acknowledge and note your comment. As you state at 3.05 below, a provisional sum was included for chains and tyres in lieu of timbers and fenders. After the works had commenced, a decision was made to proceed with timber fenders and omit the chains and tyres. The additional timber fenders were installed in early 2013.

The Final Target Price (FTP) document states “Timber Fenders – removed as per discussions with Project Team. Provisional sum included for chains and tyres in lieu of timber fenders. It can be confirmed that the FTP of £2,723,749.23 included a provisional sum of £30,600 for chains and tyres (page 2 of the FTP dated 15th November 2011).

The Project Manager, Richard Alexander (WDC) confirmed that after the construction phase had started, it was identified that budget would be available for timber fendering. A Site Meeting report dated 15.11.12, stated under Any Other Business, “WDC to arrange for additional timber fenders and handrails as a separate work package (not part of this contract).

An Additional Works – Summary Report was prepared by NPS in April 2014 stating “A number of outstanding issues remained for the facility to be fully operational as set out within the original business case together with subsequent operational needs identified by site users.” WDC commissioned NPS to arrange and manage the additional works to be undertaken which included:

- Install 5 new access ladders along the quay wall

- Install timber fenders at each ladder location
- 2 new service bollards to the western end of the quay wall
- Install additional mooring rings & replace 1 deformed ring
- Concrete repairs to quay wall coping
- Replace ironmongery to buildings with galvanised fittings
- Modification to fuel store door
- Replace pump within cold store.

The report confirms that all works above were completed. 28 Fenders were installed as part of the works, with WDC invoiced by Mobile Welding Services on 29.11.12. A further 14 fenders were installed, with WDC invoiced by Mobile Welding Services on 07.06.13. Mr Kerry Blair (Head of Operations) has confirmed the fenders have been installed.

- 3.05 *There was, apparently, some discussion with the Project Team concerning the provision of old motor tyres and chains but design details of this lash up were never released. In the event even this proposal was too omitted from the contract (at a saving of £32,038.20) leaving the wall unfit for purpose.*

Internal Review

I acknowledge and note your comment. Please see 3.04 above.

- 3.06 *As a consequence of the omission of the fendering, the first fishing boats to attempt to use the wall impacted the capping beam damaging both capping beam and the boat. It has been suggested by WDC that this damage was caused because the fishermen were using the “wrong type of boat with square transoms”. The fact of the matter is that the wall could not be used without the fendering.*

Internal Review

No damage has been reported to WDC that Richard Alexander is aware of. During the one year Defects Inspection – Summary Report 4th October 2013 an area of concrete coping was identified as damaged requiring repair. The reports states “The damage appears to have been caused by vessels hitting the concrete or inadequate mooring practices.”

Richard Alexander stated that at the time of the defects inspection report, vessels significantly larger than detailed in the design brief and business case were berthing against the North Dock Wall.

The Business case set out Southwold Vessel Registration which showed all vessels under 10m in length, and the highest registered tonnage of 11.97. I reviewed the Marine Management Organisation website data for following years.

The fishing vessel data at 1st January 2014 did not identify any vessels over 10m in length. At 1st January 2015 “CLANSMAN” was registered with Southwold as its home port. This vessel has an overall length of 12.47m and registered tonnage of 21.03. Source: <http://www.marinemanagement.org.uk/fisheries/statistics/vessel.htm>

The Works were completed based on data set out in the Business Case of registered vessels in 2010. It is acknowledged that larger vessels are now using the Harbour, and fendering was installed in 2013. Mr Kerry Blair has confirmed that further works will be undertaken to provide facilities for larger vessels.

- 3.07 *Fendering was provided, post contract, at an extra cost of £41,593.56. It would have been less costly to have had this work done during the contract.*

Internal Review

I acknowledge and note your comment.

- 3.08 *The design of the dock wall provided for the creation of sixteen new berths, each berth requiring a galvanised access ladder. For reasons that have never been explained, NPS omitted nine of the access ladders during the course of the contract, possibly in an attempt to drive down the cost of the works. The natural consequence of removing nine ladders was to reduce the number of new berths from sixteen to seven. This reduction had a disastrous affect upon the business plan which relied upon the provision of sixteen lettable berths to meet income requirement.*

Internal Review

The Business Case stated that mooring spaces would be increased by 16. Due to initial budgetary constraints, 9 access ladders were included in the Works Package Order as part of the contract with May Gurney.

Funds were then identified for additional ladders which were installed in early 2013. This was known to be a separate work package and not part of the works to be completed by MG. Mr Richard Alexander has stated that the RNLI requested they retain only one set alongside their section of quay heading. As a consequence of this, 14 ladders was the maximum that could be installed, satisfying the requirements to moor vessels 10m-12m in length.

- 3.09 *MG had, by this time not only been absolved by NPS of any liability for the work not done but had also been taken over by Kier (MGK). MGK were instructed to retro-fit the nine additional ladders including cutting out the capping beam and reforming the same and to carry out various remedial works to rectify defects in design/construction for which they were paid, in total, the sum of £166,522.14.*

Internal Review

I acknowledge and note your comment. The work completed by MG was as set out within the Works Package Order. The additional works performed were not set out in the Works Package Order.

- 3.10 *The schedule of work provided by Wallingfords included the provision of 10 ton mooring bollards i.e. bollards capable of withstanding a ten ton pull and their estimate of the cost was £64,000. At the time Councillor Alan asked for the pre-existing cast iron bollards that had stood immovable for a hundred years to be reinstalled. This was ruled out by MG because, as they put it, they could not provide certification for them.*

Internal Review

I acknowledge and note your comment.

- 3.11 *In the event MG provided mooring rings with a single bolt fixing fixed, in error, on the face of the capping beam instead of being let in flush. When the fishing boats started to distort the rings and pull them out of the capping beam it transpired that the rings had been manufactured to no particular specification and were totally uncertifiable. They are not fit for purpose.*

Internal Review

I acknowledge that the rings are not fit for current use. I have been advised by the Project Manager, Mr Richard Alexander, that the mooring rings installed met the specification as set out within the Business Case, and were considered suitable, if used correctly. However, I do not have technical evidence to support this.

WDC now acknowledge that larger vessels are berthing at the dock wall. Further action is being taken regarding this, referred to at 3.12 below.

- 3.12 *The dock wall remains unusable five years after it was allegedly` completed and vessels may not use the berths provided. The cost, yet to be incurred, for providing and fixing bollards capable of a ten ton pull is likely to be in the order of £10,000 and the rectification of the drainage to the capping beam is likely to be in the order of £10,000 and the rectification of the drainage and capping beam is likely to cost a further £5,000. The works remain incomplete and unfit for purpose.*

Internal Review

I acknowledge and note your comment. WDC are in the process of agreeing funding to install bollards during 2018 to resolve any further issues. It is now acknowledged that vessels larger than 12 tonnes are berthing at the Dock wall. Southwold Harbour Meeting Minutes of 04.09.17 state that a paper is being presented to Cabinet in October to approve capital spend to replace the rings with bollards. Mr Kerry Blair confirmed during a meeting on 28.09.17 that engineering drawings have been received to identify where bollards can be installed.

- 3.13 *The fact of the matter is that the additional sum of £239,092.80 was paid to other people to carry out contract works that NPS had certified were complete but which MG had patently failed to carry out.*

Internal Review

I have been unable to form a conclusion on two amounts as I could not agree them back to invoices. These were Fixings £753.34 and Statutory Services £300. All other transactions were works not included within the Works Package Order and therefore were not expected to be completed by MG.

Further unexpected costs

- 4.01 *Section 24 subsection 1 of the contract states thus:- "The contractor either employs each key person named to do the job stated in the contract data or employs a replacement person who has been accepted by the Project Manager."*

Internal Review

I acknowledge and note your comment.

- 4.02 *Within “Contract Data Part One” of the contract the Project Manager is identified as Richard Varvel and the Supervisor as Simon Will, both of NPS Property Consultants Ltd and the CDM Coordinator as Andy Fleckney of NPS South East Ltd. These three named individuals were employed by MG to provide the services identified and the cost of the services so provided were, and can seen to have been, included in the contract sum.*

Internal Review

NPS Property Consultants Ltd was contracted by Waveney District Council and not MG. Points 4.04 to 4.08 below cover the appointment and working relationship between WDC and NPS. The Business Case sets out at page 17 “Waveney District Council, applicants for this grant, have appointed NPS Property Consultants Ltd to supervise the infrastructure works.”

- 4.03 *The inclusion of the design and management fee is shown on the face of the tender sum analysis.*

Internal Review

I acknowledge and note your comment.

- 4.04 *There might appear to be some confusion over the role of NPS in the contract management structure. NPS had been, I am advised, a department within WDC but had subsequently become an organisation independent of WDC albeit still sharing the same offices. It is believed that it was during this period that the Dock Wall contract was carried out. Sometime after the contractor left the site it is understood that NPS reverted to being a department within WDC. The actual dates and times of these various changes to NPS’s structure have not been revealed but could be significant.*

Internal Review

Norfolk Property Services (NPS) is a Strategic Partner with WDC for the purposes of Asset Management, and this is stated as such in the Statement of Accounts during the time of the project (2011/12 and 2012/13).

NPS and WDC entered in to a Strategic Partnering Agreement for Asset Management on 28th July 2009. “It is a requirement of the Contract that the Asset Management Partner will occupy (with other third parties as may from time be deemed expedient by the Council) the Accommodation under licence at nil consideration for the purposes of providing the Services” The accommodation referred to is the Town Hall complex in Lowestoft.

Section B8 of “General Provisions” refers to TUPE and states:

“B8.1 The Parties hereby acknowledge that, pursuant to the Transfer of Undertakings....., there will be a relevant transfer on the Commencement Date and the contracts of employment for those employees who are wholly or mainly assigned in the Services immediately before the Commencement Date..... will take effect as if originally made between the Contractor and the employees.”

The Southwold Harbour North Dock Wall works were completed after the Strategic Partnering Agreement was entered into on 28.07.09. The Final Tender Price for the project was not submitted until July 2011.

The NPS Group (property, design and management services) is wholly owned by Norfolk County Council. The Norse Group is the parent company for NPS. NPS Group Ltd was incorporated on 09.06.2008.

- 4.05 *In accordance with the design and build contract signed between the parties, NPS were retained by MG to provide the agreed services and their fee for the provision of such services was included in the contract sum.*

Internal Review

NPS were appointed by Waveney District Council, not MG. The Works Package Order states at page 22 520 "WORKS BY THE CONTRACTORS DIRECTLY EMPLOYED BY THE EMPLOYER

- Removal, re-location and reinstatement of the tidal gauge is the responsibility of the Environment Agency and to be coordinated by NPS Property Consultants Limited.
- Free issue of the steel sheet piles by Waveney District Council includes 175 metres in length of 15 metre high sheet piles.
- Design of the buildings including but not limited to fixtures, fittings and M&E are the responsibility of NPS Property Consultants Limited.
- Temporary relocation of the Life Boat Station prior to the works is the responsibility of NPS Property Consultants Limited.
- Provision of all licenses and consents is the responsibility of NPS Property Consultants Limited.

Additionally, a Strategic Partnering agreement is in place between WDC and NPS for the purposes of Asset Management, which specifically stated within the "Total quantity or scope" within the Contract Notice (2009/S 18-025614):

"Property Management will include, but not be limited to items such as strategic planning, managing the day-to-day maintenance and repair of corporate assets, managing capital projects in respect of asset issues including providing project management, technical support, architectural services, submitting planning applications, contract supervision and administration, and service planning."

The Works Package Order specifies as Data Provided by the Employer:

- Employer – Waveney District Council
- Project Manager – Richard Varvel – NPS Property Consultants Ltd
- Supervisor – Simon Will – NPS Property Consultants Ltd
- CDM Coordinator – Andy Fleckney – NPS South East Ltd

The Works Package Order specifies as data provided by the Contractor:

- Contractor – May Gurney Limited
- Key people are: Colin Wescomb – contracts Manager, Perry Dale – Project Manager, Gareth Dowrick – Managing Quantity Surveyor, Kelly Wilkinson – Site Quantity Surveyor.

The final contract sum submitted by MG would not have included fees for NPS Property Consultants Ltd as they were engaged directly by Waveney District Council.

- 4.06 *Inexplicably when the work commenced on site NPS submitted their fee invoices, not to MG as one might expect but to WDC who paid them apparently without complaint. The whole concept of a Design/Build contract is that you pay only the contractor and the contractor is responsible for all other costs including statutory fees and charges and the professional fees of any consultants he deems necessary. The contractual obligation is to “Design and Build”.*

Internal Review

Please see 4.04 and 4.05 above. NPS Property Consultants Limited are specified within the Works Package Order to have been directly employed by the Employer – Waveney District Council, as well as under the Strategic Partnering Agreement to provide the roles listed at page 3 of the Works Package Order.

- 4.07 *Whether NPS thought that WDC were their client or considered itself to be a department of WDC for payment purposes is simply not explained. The fact that they were charging VAT would lead one to believe that they were, at this juncture, an independent company carrying their own Professional Indemnity Insurance.*

Internal Review

See 4.04, 4.05 and 4.06 above. WDC is the client of NPS who are contracted to undertake work for WDC, as part of the Strategic Partner Agreement and as specified in the Works Package Order.

- 4.08 *What is also curious and not explained is who it was who secured the services of NPS. It does not appear that they tendered for the work in competition as they should have done, neither is it clear whether they were here working as an independent organisation or were believed to be an internal department of WDC. NPS should have been appointed by MG as the contract requires. Suffice it to say that whosoever appointed NPS did so appoint them on an hourly charge basis which was completely open ended and not suited to the concept of a Design/Build contract. No contractor, whilst bound by a fixed sum contract, would appoint his consultants on an hourly charge open ended basis with no limit to the fee charged.*

Internal Review

NPS were commissioned directly by WDC. A Contract Notice (2009/S 18-025614) was issued in January 2009 for an asset management partnership. A Contract Award Notice was published on 25.07.09, awarding the contract to NPS Property Consultants Ltd. The scope of this contract included “Property Management will include, but not be limited to items such as strategic planning, managing the day-to-day maintenance and repair of corporate assets, managing capital projects in respect of asset issues including providing project

management, technical support, architectural services, submitting planning applications, contract supervision and administration, and service planning.”

WDC’s Procurement Manager, Mr Ian Purdom has stated that a benchmarking exercise was completed following receipt of NPS proposal for providing the project management services for the Southwold North Wall project. Benchmarking of NPS fees was undertaken to compare to Crown Commercial Service Framework costs.

The letter issued to NPS Property Consultants Ltd confirmed that the project management services were to be provided under the Asset Management Partnership contract – 2009/S 18-025614.

- 4.09 *Whilst such an arrangement was very much in the interests of NPS and I am sure that MG would not complain at seeing their consultants funded directly by the client thus relieving themselves of the financial burden, it certainly was not in the interests of the Harbour Users who it is intended will end up footing the bill.*

Internal Review

I acknowledge and note your comment.

- 4.10 *It was, I believe, this total lack of financial constraint upon NPS that led them to deploy, during the currency of the work, fourteen named individuals on what was really a fairly straight forward engineering project. Cost, to them, was no barrier. NPS billed WDC and were paid by WDC £249,805.49 for professional services. This fee should have been paid to MG who made provision for the same in the contract sum. In that there appears to be no recognition in the final account that WDC had paid NPS’s fees direct, these fees have been paid twice, once under the contract, which monies MG presumably retained, and once direct by WDC.*

Internal Review

I hope that responses provided at 4.04 to 4.07 above provide some clarification to the different roles and responsibilities of NPS and MG.

NPS and MG were both commissioned by WDC, there was no expectation that NPS were working for or on behalf of MG. NPS were appointed to manage the project, whilst MG were contracted to deliver the works set out in the Works Package Order. There has been no duplication of costs.

- 4.11 *As NPS have issued a final certificate absolving MG of all liability for claims under the contract when the works were not complete. I think we can regard this money as lost.*

Internal Review

The works completed by MG prior to the final certificate being issued were completed in line with the Works Package Order alongside any omissions or changes identified and agreed by WDC during the project.

Cost reconciliation

- 5.01 *I append hereto at Appendix C my reconciliation of the cost incurred against the reasonable expectation of the proper cost of the works shown in the three columns to the left. I am*

able to agree, figures as figures, that the reasonable expectation of the out-turn cost of the Design/Build contract entered in to by WDC with MG would likely have been achieved in the sum of £2,782,281.43. This sum is arrived at by deducting from the contract sum of £2,723,749.23 the value of the omissions achieved by PMI's instructions and the savings achieved in compensation events amounting to £206,112.90. I have no reason to believe that these figures do not accurately represent the savings NPS made during the contract.

Internal Review

I acknowledge and note your comment.

- 5.02 *The contract sum, less omissions, amounts to £2,517,636.33 to which one must add authorised extras occurring during the contract. Again I have accepted all NPS's figures as being correct, or, if not correct, reasonably so. I have however deducted from the claimed additional costs the value of £15,335.50 being the costs claimed by MG in rectification of their own mistakes and/or the project team's mistakes and/or the client's mistakes, the cost of which should not form part of the ascertained project cost.*

Internal Review

I am unable to determine which transaction/s the £15,335.50 relates to and therefore accept the probability that your comment is correct and have advised the Chief Finance Officer accordingly.

- 5.03 *After adjustment as aforesaid, the anticipated project cost is £2,709,522.77. To this figure one must add all agreed changes to the scope of the works as defined in the contract. My estimate of these costs, again using the NPS's figures is £77,758.66; the largest single addition being the reinstatement of the timber fendering which in my view should never have been omitted in the first place.*

Internal Review

I acknowledge and note your comment.

- 5.04 *The total project cost should therefore have been £2,782,281.43 from which one can deduct the contribution made by the EU Fisheries Fund of £1,221,077.00 leaving a residual ascertained project cost of £1,561,204.43 which I can accept, figures as figures.*

Internal Review

I acknowledge and note your comment.

- 5.05 *Appendix C sets out, under the heading "Reality" what might seem to be the actuality of the costs incurred and where those costs lie. MG was actually paid the sum of £2,733,046.90 which being derived from the tender sum plus the charge for investigation works.*

Internal Review

I acknowledge and note your comment.

- 5.06 *In addition to the foregoing the sum of £239,092.80 was spent on engaging others to complete the work that should have been in the contract but was not completed when MG left the site. The largest single sum was £166,522.14 paid to MG to replace the nine ladders omitted during the contract that then had to be added back.*

Internal Review

Please refer to response provided at 3.08 above.

- 5.07 *A further sum of £74,008.66 was expended upon items which are considered to be true additions to the scheme. Again the largest single item of £41,593.56 was spent upon providing and fixing the timber fendering to the face of the wall which as I have indicated earlier was omitted from the scheme during tender negotiations. The wall was un-useable without the fendering. It should never have been omitted in the first place.*

Internal Review

I acknowledge and note your comment. As you state at 3.05 above, a provisional sum was included for chains and tyres in lieu of timbers and fenders. After the works had commenced, a decision was made to proceed with timber fenders and omit the chains and tyres. The additional timber fenders were installed in early 2013. It was agreed and documented at a site meeting in 2012 that the additional fenders were identified as a separate work package and were not being installed as part of the current contract (in 2012) with MG.

- 5.08 *The final constituent of the total cost expended encompasses professional fees and charges in the total sum of £272,399.20; the largest single fee being that of NPS which amounted to £249,805.49. None of these fees should have been an addition to the contract. Under a design and build contract the contractor is responsible for paying the design/management team and obtaining all necessary statutory permission from all authorities holding jurisdiction over the site and the construction works.*

Internal Review

Please see 4.04 to 4.08 above.

- 5.09 *I am not at all sure that I have correctly categorised the fee of £4,599.65 for services provided by Winkworth Sherwood to WDC and might more properly be a matter for settlement direct between WDC and Winkworth. Quite why the Harbour Users should be charged for WDC's own legal advice if they found the need to take separate advice is not understood.*

Internal Review

It would be reasonable to include legal costs in connection with the project, as they are a specific project related cost. Invoices received from Winkworth:

19.10.11 -Professional services in relation to Southwold Harbour Wall – NEC3 contract with May Gurney Limited £300.00 Net

25.08.11 - Professional services in connection with Southwold Harbour Construction works £2059.10 Net

10.10.12 - Ongoing legal advice and support re: Southwold Harbour £2240.55 Net.

- 5.10 *The total of professional fees charged to the contract was £272,399.20 which costs should all have been met by MG.*

Internal Review

The £272,399.20 referred to by Mr Hay Davison is made up of the following:

SCC Fees & Charges	12,799.71
NPS Fees	249,805.49
Winkworth Sherwood	4,599.65
MMO Annual License	5,038.00
Inspection fee	83.33
Weights & Measure	73.02
	<u>272,399.20</u>

The items referred to above were not expected to be costs borne by MG as set out in the Works Package Order. NPS were appointed by WDC, not MG. The annual license fee was not included to be paid by MG and was not included within the Works Package Order.

- 5.11 *The actual gross amount expended, by analysis of WDC's disclosed figures amounts to £3,318,547.56 as shown at the end of Appendix A. From this figure one must deduct the value of the European Fisheries Fund grant of £1,221,077.00 leaving a residual cost to be borne by WDC of £2,097,470.56; this, however, is not the end of the story as the works remain incomplete and not fit for purpose.*

Internal Review

I acknowledge and note your comment.

- 5.12 *Missing from the dock wall are the 10 ton pull bollards which would enable vessels to tie up to the wall as they have done since 1908 when the old wall was built until it was judged to be unsafe and could no longer be used in 1994 or thereabouts. In the absence of any details of what is proposed I have estimated that these bollards might cost in the order of £10,000.00 to supply and fit whilst correcting the defective capping beam drainage might add a further £5,000.00 to the cost.*

Internal Review

I acknowledge and note your comment.

- 5.13 *Adding the foregoing estimates to the residual project cost given an out-turn cost of £2,112,470.56 which, less the reasonable expectation of the anticipated cost of £1,562,454.43 as calculated above, gives an unplanned excess cost of £535,016.33 or an addition to the original contract sum of a scarcely credible 19.65%.*

Internal Review

I acknowledge and note your comment.

- 6.01 *At the commencement of this report, I have referred to the loan we were advised that WDC had taken out to meet the cost of match funding the cost of the reinstatement and improvement of the North Dock Wall provided by the EU Fisheries Fund. I have subsequently been informed that WDC took out no such loan and provided the match funding from the Council's reserves.*

Internal Review

I acknowledge and note your comment.

- 6.02 *I take no issue with this, save for the original unacceptable mis-information provided, as, in my view, using the reserves, to which we all contribute, to meet capital expenditure is perfectly acceptable, as in exchange for the expenditure, WDC were to receive a renewed and substantially improved asset.*

Internal Review

I acknowledge and note your comment.

- 6.03 *WDC have, however, added to the Harbour Account, in financial year 2012/13 as a purported "debt", a figure in excess of £2.2 million pounds which is being "repaid" by annual substantial deductions by WDC in the order of £200,000 to £300,000 from the Harbour Account contrary to law and in apparent violation of Article 39 of the Southwold Harbour Order 1933.*

Internal Review

A Copy of the Southwold Harbour Summary has been provided by Finance. This shows at 2017/18 capital investment to date of £2,348,559 with funding allocated against this of £651,000 resulting in a balance to be funded carry forward of £1,720,559. The Finance Manager has confirmed that the intention is to fully repay the general fund all monies owed to it. Of specific relevance is that the District Auditor reviewed the application of Article 39 of the Southwold Harbour Order 1933, and confirmed to WDC in 2007 that the Council had not unlawfully credited surplus revenues of the Harbour Undertaking to the General Fund.

- 6.04 *If, which is denied, the Harbour Users have any liability to refund to WDC the cost of the Dock Wall contract one is obliged to consider just what we shall receive in return when repayment is complete. So far as I can determine the answer is nothing.*

Internal Review

WDC has liability for the Harbour debt as the Harbour Authority and uses Harbour income to reduce that debt.

- 6.05 *To allow WDC to charge the full cost incurred will mean that the Harbour Users will be reimbursing WDC for all the excess costs incurred including all and every cost incurred through their mal-administration of the contract, the excess fees paid to NPS and for all the mistakes and incomplete works of MG amounting, in total to £535,016.13 as set out in Appendix C for which the Harbour Users refute all and any responsibility and/or liability.*

Internal Review

The liability of the debt rests with WDC as Harbour Authority.

- 6.06 *In my researches into the expenditure incurred I can find absolutely no indication as to how the sum added to the Harbour Account as a "debt" was arrived at. There appears to be absolutely no comparison between the records set out in Appendix C, which represents WDC's factual evidence, and the alleged "debt" which WDC have imposed upon the Harbour Account.*

Internal Review

The Southwold Harbour Account is cumulative and includes any capital spend each financial year, reduced by grant income and any surpluses identified to fund capital investment. I have reviewed the Southwold Harbour summary figures provided to you by Finance and can confirm that all amounts listed on the spreadsheet agree to the capital investment figures on the Harbour Account. The capital investment balance to be funded Carry forward totals £1,620,559.

- 6.07 *I have, through a specific request under the Freedom of Information Act 2000, asked for further and better particulars as to how the sum added to the harbour account as an alleged "debt" was arrived at. Unfortunately the information provided in response to this FoI request provides no further or better particulars as to from where the figure charged to the Harbour Account is derived.*

Internal Review

I acknowledge and note your comment.

- 6.08 *It is difficult to comprehend the business ethic of WDC spending £3.318 million upon a dock wall that remains incomplete; still cannot be used for the purpose for which it was intended and thereafter apparently failing to take any responsibility whatsoever for the patent waste of public funds over and above what should have been the proper cost of the works.*

Internal Review

I acknowledge and note your comment.

- 6.09 *It might appear that WDC's relaxed attitude upon the sums expended and their failure to complete the work is engendered by their predilection to simply push the whole cost onto somebody else; in this case, the Harbour Users. If there was ever a case for a public enquiry into the mal-administration of public funds, this surely must be it.*

Internal Review

I acknowledge and note your comment.

- 6.10 I am advised, however, that WDC have approved all expenditure and confirmed that all payments are correct and the whole project wrapped up and closed. WDC aver thus:- *"The project accounts have been through appropriate process and procedure at the Council and have been closed following the completion of the project. All items associated with the project were paid in accordance with the financial procedure required at the time. The project account has been closed for some time."*

Internal Review

I acknowledge and note your comment.

- 6.11 *I reiterate that according to the contract signed between the two parties, the project is not complete until such time as it may be used for the purpose for which it was intended (vide Section 11.2 (2)). It remains incomplete and WDC appear to have just walked away.*

Internal Review

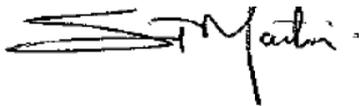
I acknowledge and note your comment.

Further, I acknowledge your letter of 4 October 2017, wherein you express concern over the continued expense of mooring bollards, sheet steel piling and your statement that such costs are being recovered from the Harbour Users. In summary, I have answered your concerns throughout my responses above, namely the costs are not to be borne by the Harbour Users and there is a programme of further works in relation to the Southwold Harbour.

Please contact me if you require any clarification over this letter.

I have emailed this letter to you today and also placed a copy in the post.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Siobhan Martin', with a stylized flourish at the end.

Siobhan Martin (Mrs)
Head of Internal Audit

cc Leader of the Council Mark Bee
cc Mrs Joanne Jonas (Personal Assistant to the Leader)
cc Cllr Sue Allen (Chairman of Overview and Scrutiny)
cc Strategic Director, Mr Andrew Jarvis
cc Head of Operations, Mr Kerry Blair
cc Chief Finance Officer, Mrs Homira Javadi
cc Complaints Team