



# Northumberland

## County Council

### **NORTH NORTHUMBERLAND LOCAL AREA COUNCIL**

**DATE: 24<sup>TH</sup> NOVEMBER 2022**

### **NORTH SUNDERLAND HARBOUR COMMISSION APPOINTMENTS**

**Report of Helen Lancaster, Senior Manager, Legal Services**

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#### **Purpose of report**

To provide members with the background, progress and proposed next steps with regard to the Council's appointment of Harbour Commissioners to the North Sunderland Harbour Commission.

#### **Recommendations**

1. That Members receive this report.
2. That Members agree an interview panel consisting of three Councillors (from this Committee – the interview panel) to interview suitable prospective candidates for the two vacant posts of Harbour Commissioners.
3. To agree that the Council's Monitoring Officer in consultation with the interview panel (as agreed above) sets up the selection and interview process.
3. To agree that the interview panel to make the final recommendations for the two Harbour Commissioner's appointments to this Committee for its approval

#### **Key issues**

- North Sunderland Harbour Commission is a statutory harbour authority whose governing instrument is the North Sunderland Harbour Order 1931 (as amended)
- The Council has a power under the Order to appoint two Harbour Commissioners
- On the last two occasions that these appointments have come before the Committee no appointments have been made, the Council having been informed that a new Harbour Revision Order was due to be made which would remove any duty for the Council to appoint Harbour Commissioners
- The Council then in September 2022 received correspondence indicating that a claim for Judicial review was to be brought with regard to the failure to make appointments. This was followed by a claim for judicial review which was issued and served in October 2022 wherein a claim was made to require the Council to appoint two Harbour Commissioners.
- In order to ensure compliance with the Order the Council now needs to appoint two Harbour Commissioners

- Officers are now progressing with an advertising/appointment process which it is anticipated will be reported to the North Local Area Council in January 2023 with a view to members formally making appointments at that meeting.

## **Background**

1. North Sunderland Harbour Commission (NSHC) is responsible for the maintenance and management of North Sunderland Harbour.
2. NSHC's governing instrument is the North Sunderland Harbour Order 1931 (as amended).
3. Article 7(1) of the Order provides that there should be 7 commissioners. Article 8(1) of the Order provides that  
*'the appointment and election of commissioners shall be regulated as follows:-  
(e) two members shall be appointed by the Northumberland County Council'*.
4. The matter of the appointment of Harbour Commissioners came before the Local Area Council on 22<sup>nd</sup> July 2021 where, in view of that fact that a Harbour Revision Order was to be made which would remove any duty on the part of the Council to make appointments, the matter was left in abeyance. The matter came before the Local Area Council again on 19<sup>th</sup> May 2022 when members resolved the following:  
*"North Sunderland Harbour were weeks away from signing a new Harbour Order which would no longer require an NCC representative. The Committee declined to appoint a member"*.
5. On 21<sup>st</sup> September 2022, the Council received a pre-action protocol letter indicating that the claimant was to commence proceedings for judicial review in relation to NSHC and the Council was named, in addition to NIFCA (Northumberland Inshore Fisheries and Conservation Authority) and Lord Crewe's Charity as appointing bodies, as a potential defendant. Within the pre-action protocol letter it was stated that the Council had declined to exercise its statutory discretion to make appointments and that any outstanding appointments should be made as soon as possible.
6. A response to the pre-action protocol letter was sent indicating that a Harbour Revision Order had been applied for by NSHC and that if the Harbour Revision Order had not been made by early November the matter of appointments would be considered by the North Local Area Council of the next meeting when appointments could be made was the committee.
7. On 19<sup>th</sup> October a claim for permission to proceed with a Judicial Review was issued and served on the Council. The remedy sought against the Council was an order requiring the Council to appoint such number of Commissioners to bring the number of serving Commissioners it has appointed to two. Officers have been in discussions with representatives of the claimant and negotiations have progressed on the basis

that the Council will appoint two Harbour Commissioners and that the appointments are anticipated to happen at the meeting of the North Local Area Council in January.

8. This therefore means that the Council must now appoint two Harbour Commissioners.
9. In appointing Harbour Commissioners the Council should have regard to the relevant parts of the Department for Transport's Ports Good Governance Guidance.
10. Looking at the Guidance, factors that the Council may want to consider when appointing Harbour Commissioners are;
  - Being a Fit and Proper Person
  - Independence
  - Accountability
  - Openness
  - Selflessness
  - Integrity
  - Objectivity
  - Honesty
  - Leadership
  - Merit

Guidance on all of the points above can be found in the Ports Good Governance Guide.

11. The process for the appointment of Harbour Commissioners should be open and transparent and officers are now putting together an application process which would be open to both members and members of the public. It is proposed that the two Harbour Commissioner positions are advertised and that interviews would then take place.
12. Members are therefore requested to agree an interview panel of three; a suggestion would be the Chair and Vice Chair and one other member.

### **Implications**

<b>Policy</b>	Not Applicable
<b>Finance and value for money</b>	There are no financial implications within the report except minor advertising costs which will be met from existing budgets.

<b>Legal</b>	<p>The North Sunderland Harbour Order 1931 (as amended) sets out the legal framework requiring the appointment of Harbour Commissioners</p> <p>The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 confirm that the matters within this report are functions which may either be exercised by the Council or the Executive. Under the Constitution the Council has reserved these functions to itself and delegated these functions to the Local area Council under its terms of reference</p>
<b>Procurement</b>	Not applicable
<b>Human Resources</b>	Any persons appointed to the Harbour Commission would not be employees
<b>Property</b>	Not Applicable
<b>Equalities</b> (Impact Assessment attached) Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	The interview and appointment process will be fully compliant with the Equality Act 2010
<b>Risk Assessment</b>	Not Applicable
<b>Crime &amp; Disorder</b>	Not Applicable
<b>Customer Consideration</b>	The appointments will assist the efficient management of the North Sunderland Harbour Commission
<b>Carbon reduction</b>	The process will involve minimal non electronic materials
<b>Health and Wellbeing</b>	Not Applicable
<b>Wards</b>	Bamburgh

**Background papers:**

Ports Good Governance Guidance

**Report sign off.**

**Authors must ensure that officers and members have agreed the content of the report:**

	Full Name of Officer
Monitoring Officer/Legal	Suki Binjal
Executive Director of Finance & S151 Officer	Jan Willis
Relevant Executive Director	Suki Binjal
Chief Executive	Rick O'Farrell
Portfolio Holder(s)	N/A

**Author and Contact Details**

Helen Lancaster  
Senior Manager – Legal Services  
01670 623323  
[Helen.lancaster@northumberland.gov.uk](mailto:Helen.lancaster@northumberland.gov.uk)