

Key Decision Required:	No	In the Forward Plan:	No
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CORPORATE DIRECTOR (OPERATIONS AND DELIVERY)

REPORT OF THE ASSISTANT DIRECTOR (HOUSING AND ENVIRONMENT)

22nd February 2024

A.1 FUTURE PORT HEALTH ARRANGEMENTS AT TENDRING PORTS

(Report prepared by Tim Clarke)

PART 1 – KEY INFORMATION

1.1 PURPOSE OF THE REPORT

To recommend that the Leader of the Council (in the absence of the Portfolio Holder for Environment) agrees to enter into a delegation of functions agreement with East Suffolk Council for it to provide, via Suffolk Coastal Port Health Authority (SCPHA), Port Health services on behalf of Tendring District Council in respect of imported food control in accordance with the existing legislative framework and HM Government's Border Target Operating Model.

1.2 EXECUTIVE SUMMARY

The District Council ("the Council") is the Port Health Authority for the Harwich International Port, Harwich Navyyard and Mistley Quay

Imported food control at Tendring ports is already undertaken by Suffolk Coastal Port Health Authority (SCPHA) under a Service level Agreement.

The EU exit has resulted in a requirement for goods entering the UK from the EU to be subject to monitoring, checking and sampling as has previously been the case for goods entering the EU from the rest of the world.

Hutchison Ports, as operator of Harwich International Port has constructed a new Border Control Post that has now been accredited by DEFRA (BCP code - GBHRW1P). This opens up the opportunity for a much more significant food import service at Harwich involving goods from the EU and the rest of the world.

The levels of monitoring, checking and sampling is determined by HM Government's Border Target Operating Model published in August 2023, with a new approach to importing goods being progressively introduced from the end of January 2024.

At its meeting on 13th November 2020 Cabinet agreed the following recommendations (Decision no. 90):

- RESOLVED that Cabinet –
- a) notes the anticipated increase in demand for Tendring Port Health Authority following the end of the EU exit Transition Period based on current assumptions;

- b) acknowledges the continuation of the joint arrangements with East Suffolk Council and Suffolk Coastal Port Health Authority and that a new legal agreement is necessary;
- c) notes the reliance of Regulation 12(7) of the Public Contract Regulations 2015 to enter into a direct joint arrangement with East Suffolk Council and Suffolk Coastal Port Health Authority for the shared aim of delivering Port Health Authority functions and the public interest in doing so;
- d) authorises the exemption to the Council's Procurement Procedure Rules to allow a direct agreement to be entered into;
- e) agrees that until further reviewed by the Portfolio Holder for Environment & Public Space the Fees and Charges for the Port Health Authority functions should be set in line with those published by Suffolk Coastal Port Health Authority or those suggested by the Government in due course, whichever are the highest;
- f) approves the delegation of the necessary Port Health Authority functions to Suffolk Coastal Port Health Authority, which will be recorded within the Council's Scheme of Delegation and clearly set out within the legal agreement; and
- g) authorises the Corporate Director (Operations & Delivery) to negotiate the final terms and conditions of the legal agreement, in consultation with the Portfolio Holder for Environment & Public Space and the Council's Section 151 Officer and the Monitoring Officer.

Since the Cabinet decision in 2020, Officers from both Tendring and East Suffolk have been working together with the Suffolk Coastal Port Health Authority to negotiate and agree final terms of the legal agreement, which also reflects the changes in approach from Government over the period.

During the negotiations, East Suffolk expressed a preference to shift from a commercial services contract approach to a delegated function motivated by several factors, including, but not limited to:

1. **Flexibility:** Delegated functions allow for tailored management of specific tasks, accommodating the unique needs and requirements of the service, offering more customisation than standard commercial contracts.
2. **Control:** Specific responsibilities, performance metrics, and reporting requirements are outlined, ensuring oversight for both parties and intervention capabilities to address concerns if needed.
3. **Alignment of Objectives:** This fosters better alignment between TDC and ESC, enabling smoother collaboration and outcomes as both parties share common goals and understandings.
4. **Risk Management:** Clearly defining roles, responsibilities, and accountability measures allows for more effective risk management, reducing the likelihood of disputes that may arise in commercial services contracts.
5. **Confidentiality and Security:** With involvement from internal or closely aligned external parties, confidentiality and security protocols can be better enforced, crucial for handling sensitive information and complying with data protection regulations.

Tendring District Council Officers were satisfied that the revised approach was reasonable

and still met the intentions of Cabinet to continue joint working arrangements with East Suffolk and Suffolk Coastal Port Health Authority to deliver the Port Health service on behalf of the Council. However, due to the time lapse since the Cabinet decision and the slightly different delivery model, the Monitoring Officer has advised that the decision to agree the final terms, should be at Member level. The Leader has been briefed separate to this report being produced and endorses the approach.

Officers from both Councils agreed the final terms of the draft agreement on 21st February 2024 and a final document for completion is being prepared.

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1.3 RECOMMENDATION(S)

That the Leader of the Council agrees to:

1. Enter into an agreement for delegation of functions relating to imported food control at the Border Control Post situated at Harwich International Port with East Suffolk Council; and
2. Adopt the fees and charges for imported food control services as set by East Suffolk Council for Suffolk Coastal Port Health Authority.

PART 2 – IMPLICATIONS OF THE DECISION

2.1 DELIVERING PRIORITIES

The decision contributes to the following priorities in the Council's Corporate Plan for 2024 – 28:

- Pride in our area and services to residents
- Raising Aspirations and creating opportunities
- Working with partners to improve quality of life
- Financial sustainability and openness

2.2 FINANCE, OTHER RESOURCES AND RISK

East Suffolk Council will charge an annual fee of £30,000 for the provision of the delegated functions and associated services covered by the agreement. A budget of £40,000 has been set and agreed at Full Council on 13th February 2024. This fee will increase annually in line with the Consumer Prices Index (CPI) and therefore there is a risk that the annual fee will increase. There is also a risk that this fee increase will not be to the level that East Suffolk Council expects and through the change control procedure included in the agreement may request an increase that is greater than CPI. Should this occur the relevant decisions will be required internally within the Council to agree variations and budget accordingly.

East Suffolk have set fees and charges for the services they provide and the majority of these fees will be recovered from importers as part of their normal day to day business operations. There may be circumstances where SCPHA are unable to recover fees from an importer and in such situations will seek reimbursement from the Council. These instances are expected to be rare but nonetheless there is a risk that additional costs above the £30,000 could be incurred, hence the budget for the service being set at £40,000.

2.3 LEGAL

Port Health control in the Port of Orwell Haven was formerly the responsibility of a Joint Board called the Harwich Port Health Authority (established by The Port Health Authorities (England) Order 1974). This Order was abolished by The Port Health Authorities (Tendring and Suffolk Coastal) Order 1981 – 1281 (Article 9). The Order constitutes two areas within the Port of Orwell Haven as port health districts and the District Councils of Tendring and Suffolk Coastal (now East Suffolk) each to be port health authority for one of those districts (Articles 2 and 4). The jurisdiction and powers of the District Councils as port health authorities are specified in Articles 3, 5 and 6. Article 7 provides for the transfer from the Joint Board to the District Councils of property held by the Board together with related liabilities and contracts and makes provision in respect of accounts and legal proceedings.

Article 6 of the Order sets out the functions of the Port Health Authority.

Currently, services related to the import of food through Harwich International Port, Harwich Navyard and Mistley Quay, Essex are carried out by East Suffolk Council, through their Port Health Authority – Suffolk Coastal Port Health Authority (SCPHA), in accordance with:

- the Official Feed and Food Controls (England) Regulations 2009 (as amended) in relation to products of non-animal origin;
- the Trade in Animals and Related Products Regulations 2011
- The Plastic Kitchenware (Conditions on Imports from China) (England) Regulations 2011
- The Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009; and
- other applicable legislation and official guidance concerning the import of food.

The remaining statutory responsibilities are carried out in-house by the Environmental Health team.

Port Health Authorities are responsible for monitoring all food imports but will not physically check all food imports. Although detailed import checks may be carried out on any food products from non-EU countries ('third countries'), the actual checks carried out are determined on a risk basis. For products that have been declared as high risk at an EU/UK level, special health controls are in place, and checks must be carried out at import stage.

Future Agreement for Delegation of Functions and Delivery of Service:

Since the EU exit there have been a number of delays to the implementation of new border controls with HM Government publishing the Border Target Operating Model in August 2023, This document sets out a phased implementation with three key dates – 31 January 2024, 30 April 2024 and 31 October 2024.

SCPHA indicated that they would be able to provide the increased upscaling of the current operation under a new agreement for the delivery of the Port Health functions. Fees and Charges apply to the Port Health functions and these would be set by Tendring District Council but retained by SCPHA with a management fee, similar to a service recharge or management costs. The recharge to deliver the service on behalf of Tendring District Council has been set by SCPHA at £30,000 per annum.

SCPHA are very experienced in their field, running a large scale operation at the port of Felixstowe. They are well regarded in the port health arena with their officers providing

specialist training to other authorities. Both TDC and SCPHA have worked in a successful partnership for many years in respect of the arrangements at Harwich Port.

The Council originally sought exemptions from procurement as it was looking towards a contract for services but for reasons set out in the Executive Summary, preference moved towards a delegation of functions agreement, which is an alternative model the Councils can use to deliver services through joint arrangements.

The legal agreement is therefore made pursuant to the Local Authority (Goods and Services) Act 1970, Sections 101 and 113 of the Local Government Act 1972, Section 9EA of the Local Government Act 2000 together with the Local Authorities (Arrangements for the discharge of functions) Regulations 2012 and all other enabling powers.

The arrangement being proposed builds upon the existing partnership approach between the two authorities with more formalities due to the scale of the operation. However, essentially the two Port Health Authorities are working together to deliver their statutory functions in the public interest with some specifically being delegated from Tendring to SCPHA, on a non-commercial basis. Executive functions can be delivered solely by the Council, through joint arrangements or delegated functions to another local authority.

The Councils Financial Procedure Rules set out a framework to ensure value for money is obtained through a robust procurement process. Even where the Public Contract Regulations do not apply, internal rules should still be observed. Where services sought are of a specialist nature it is possible to seek an exemption from the usual procurement process and this is one such situation. SCPHA are the closest Port Health Authority with the relevant experience to run a large scale operation. Given the pressures on port health authorities currently, whilst this is not a procurement exercise or now contract for services, it is important to acknowledge and record, it is very unlikely that another authority would be interested in taking on the functions at Harwich.

2.4 OTHER IMPLICATIONS

Crime and Disorder / Equality and Diversity / Consultation

No significant issues have been identified.

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PART 3 – SUPPORTING INFORMATION

3.1 BACKGROUND

The introduction of Post EU exit import checks on food and fresh produce arriving in Britain was originally due to be introduced in 2021 via the government's post EU exit border strategy. After delays in implementation the Border Target Operating Model published in August 2023 set out that import checks were due to be introduced in three stages over the course of a year from October 2023. This timescale was further delayed to commence on 31 January 2024.

A new Border Control Post (BCP) has been constructed at Harwich Port by Hutchison Ports and it is at this facility that checks will be undertaken on the goods that are imported through Harwich. Imports are expected to increase as Hutchison seek to maximise use of the new BCP and it is likely that there will be an increase in goods arriving from the rest of the world as well as from the EU.

Since the November 2020 Cabinet decision officers have been working with their counterparts at East Suffolk Council / SCPHA to develop a new agreement between the two councils. Due to the increased range of border controls the agreement has required a complete review to reflect the level of work that is now delegated from TDC to SCPHA. The agreement now takes the form of a delegation of functions with TDC delegating its statutory functions in respect of imported food control to SCPHA. TDC is not delegating other port health functions to SCPHA such as ship sanitation inspections or food safety on board ships.

The agreement in place currently sees TDC paying an annual fee of £6,000 to SCPHA. Under the new agreement that fee will increase to £30,000 to reflect the increase in volume of work and the associated management of that. For consistency TDC will adopt SCPHA's fees and charges for imported food control and SCPHA will levy those charges directly to importers. The agreement allows for SCPHA to recover charges from TDC in some circumstances although the likelihood of this occurring is considered to be low. TDC will also need to provide legal resource should any legal action in respect of a consignment of goods be required. The likelihood of this occurring is also considered to be low.

3.2 BACKGROUND PAPERS FOR DECISION

HM Government Border Target Operating Model - [Final Border Target Operating Model.pdf \(publishing.service.gov.uk\)](#)

Cabinet decision No. 90, 13th November 2020

3.3 APPENDICES

None