

**Municipal Ports Review Working Party      Annex 5 to Report 28/2007**  
**Extract of Review Recommendations & Proposed Action/Comment**

| No | Ref  | Review Recommendation   | Proposed Action/Comment  | Date considered        |
|----|--|---|--|------------------------|
| 1  | Exec Summary 1.25<br>The way forward<br>(page 8)                           | We believe that the trust port model as described in <i>Modernising Trust Ports: a Guide to Good Governance</i> now offers many tried and tested benefits, which are readily transferable to the municipal ports sector and offer a real opportunity to provide municipal ports with an accountable, expert and more responsive form of governance. | All agreed with the statement and all agreed that the Harbour Committee should become a decision making committee instead of Full Council, subject to an agreed MOU.   | 07/11/06               |
| 2  | Exec Summary 1.26<br>The way forward<br>(page 8)                           | We recommend that all local authorities carefully consider whether the experience of Canterbury City Council (Whitstable) and Cumbria County Council (Workington) (detailed in Section 4) could bring similar benefits to their own ports.  | KM distributed copies of the MOU's from Whitstable and Workington's.<br><b><i>KM to continue to get more examples of MOU's.</i></b>  | 08/01/07               |
| 3  | Exec Summary 1.27<br>The way forward<br>(page 8)                           | Municipal ports should consider adopting and adapting the recommendations made in the <i>Modernising Trust Ports: A Guide to Good Governance</i> . This sets out the benchmarks in terms of board composition, appointment, performance and accountability.   | All agreed that the document should be adopted as an appropriate guide to good governance of Tor Bay Harbour.  | 07/11/06               |
| 4  | Exec Summary 1.28<br>The way forward<br>(page 8)                           | The Municipal ports sector should consider establishing a similar scheme to run in parallel with the beacon scheme that has been established by ODPM. This would provide recognition of ports that have adopted the recommendations made within this review.  | All agreed that Torbay should take part in the scheme.   | 26/09/06               |
| 5  | Exec Summary 1.29<br>The way forward<br>(page 8)                           | Department for Transport Ports Division will welcome future opportunities to discuss with local authorities the ways forward for municipal ports.   | DfT representatives attended working party meeting and are open to attending future meetings if required.  | 08/01/07               |
| 6  | Accountability and decision making 3.20<br>Options for change<br>(page 15) | In developing its arrangements, however, it is important that the authority gives full weight to a range of considerations, including stakeholder involvement and for consideration of the appropriate level at which day to day decisions should be taken.   | All agreed with the statement and happy with the current situation. Stakeholders involved through Liaison Forums, day to day decisions made by Harbour Masters & strategic decisions made through Committee. | 26/09/06               |
|    | <b>Ref</b>   | <b>Review Recommendation</b>  | <b>Proposed Action/Comment</b>   | <b>Date considered</b> |
| 7  | Accountability and decision making 3.21<br>Options for change<br>(page 15) | Some councils may take the view that placing responsibility for a port with a committee of the full council is a more effective means of providing for openness and accountability in municipal port management.  | All strongly endorsed the committee approach and felt that meetings should be held in public and with the flexibility to call an emergency   | 26/09/06               |

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|    |   |   | meeting if necessary.   |                        |
| 8  | Accountability and decision making 3.22<br>Options for change (page 15) | Whether responsibility is for a member of the executive or a committee, it would be wrong if the relevant executive member/committee took decisions without taking proper account of these considerations. Local authority structures should include appropriate arrangements for scrutiny of that committee or member's decisions. | All endorsed this statement and agreed that there should be full support from the Scrutiny Committee.   | 26/09/06               |
| 9  | Accountability and decision making 3.23<br>Options for change (page 15) | We also accept that ports operate in a very competitive commercial environment and must be flexible, responsive and managed on a commercial basis if they are to survive and grow.  | All accepted that flexibility is necessary and the present Scheme of Delegation provided appropriate powers to allow this.  | 26/09/06               |
| 10 | Recommendations (page 17)   | Each authority should already have in place a mechanism to review and scrutinize decisions and actions by the executive in relation to its port, where these are matters for the executive. Overview and scrutiny committees can be used to question authorities' discharge of their functions in managing their ports.             | All agreed that the first paragraph was not applicable and the second part of the statement is currently in place.  | 26/09/06               |
| 11 | Recommendations (page 17)   | Each authority, where ports are a responsibility of the executive, should keep under review the effectiveness of its existing systems for the delegation of functions, so it is clear what level of decision can be taken by the executive member, by the cabinet as a group and by the full council.                               | This is not applicable, as responsibility is to the Council not the executive. It was agreed that it should be a function of the Harbour Committee to check the delegated powers each year. Committee services have been asked to make this a standing item for each March meeting. It was agreed that the MOU and the Terms of Reference should also be reviewed annually. | 01/08/07               |
|    | <b>Ref</b>  | <b>Review Recommendation</b>  | <b>Proposed Action/Comment</b>  | <b>Date considered</b> |
| 12 | Recommendations (page 17)   | Local authorities must seek to accommodate underlying statutory requirements in their approach to management of municipal ports. They should also seek to address stakeholder requirements and take full account of the commercial realities of municipal port operations.  | All agreed that this is already in place.   | 26/09/06               |
| 13 | Recommendations (page 17)   | Authorities are reminded of the need for decisions relating to municipal ports to be based on sound advice from officers who have a clear   | All agreed that this is already in place.   | 26/09/06               |

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|    |  | understanding of the special needs of ports and the circumstances in which they operate; and for those decisions to be adequately recorded.  |  |                        |
| 14 | Recommendations (page 17)  | Adoption of relevant structures recommended in <i>Modernising Trust Ports: a Guide to Good Governance</i> ( <a href="http://www.dft.gov.uk/stellent/groups/dft_shipping/documents/page/dft_shipping_505328.pdf">www.dft.gov.uk/stellent/groups/dft_shipping/documents/page/dft_shipping_505328.pdf</a> ) adapted as necessary to the local authority structure, could assist in addressing the reported concerns that relevant stakeholders and those with relevant expertise have in practice been excluded from the decision-making process in some ports, to the detriment of important issues such as commercial viability, environmental issues and health and safety.  | All were in favour of involving stakeholders in accordance with the Modernising Trust Ports: a Guide to Good Governance document.  | 26/09/06               |
|    | <b>Ref</b>   | <b>Review Recommendation</b>   | <b>Proposed Action/Comment</b>   | <b>Date considered</b> |
| 15 | Strategy and business planning 3.39 Options for change (page 18) | There would be benefits to local authorities in developing clear plans for what they want to achieve from their operation of a port, bearing in mind considerations of commercial viability and wider activities, such as provision of leisure and tourist facilities. It would be sensible to develop strategies for running ports that are appropriate for authorities' particular circumstances. For example, a leisure port might wish to reflect in its strategy the fact that its facilities are used by the local council tax-payer, and point to the regional income from tourists who visit. A commercial port is not accessible by the public, but can be seen to employ many people from the surrounding area. All these considerations, if properly managed can provide a valuable stimulus to the local and possibly regional economies and generate significant indirect and induced | It was agreed that the strategic plan covers the majority of this recommendation however an annual report/business plan would show stakeholders the annual achievements etc. | 26/09/06               |

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|    |  | employment opportunities.  |  |                        |
| 16 | Recommendations (page 19)  | Municipal ports are in the main a local asset. Local authorities are strongly advised carefully to consider, and to consult on, the impact of their policies on the communities they serve.  | Torbay Council fully supports consultation   | 26/09/06               |
| 17 | Recommendations (page 19)  | Municipal ports should consider producing a business plan that looks at the future prospects of the port and how it will meet the requirements of the stakeholders, who should be fully involved in its development. The plan should review the strategy of the port and present measurable objectives. The plan should be agreed with the local authority.  | As in recommendation 15 it is acknowledged that an <b><i>annual report/business plan would be a good idea.</i></b>                   | 26/09/06               |
| 18 | Recommendations (page 19)  | The authority's overview and scrutiny committee may wish to consider making a specific inquiry into the role and status of the municipal port, including its statutory or other legal status, and whether this is compatible with the overarching objectives of the local authorities. The committee may subsequently wish to review the circumstances of, and decisions taken on, that port on a regular basis, e.g. by including port business as a permanent agenda item for every overview and scrutiny meeting.   | <b><i>It was agreed that GJ would discuss this with Cllr Charlwood to get feedback from the Overview and Scrutiny Committee.</i></b> | 08/01/07               |
|    | <b>Ref</b>   | <b>Review Recommendation</b>   | <b>Proposed Action/Comment</b>   | <b>Date considered</b> |
| 19 | Management and performance review 3.47<br><br>Options for change (page 20) | The number of ports (28% of the total) where day-to-day decisions are made by the port manager is low. Decision-making on how a port is run needs to be closer to the operational and commercial side of ports, especially in view of authorities' statutory and regulatory obligations. Decision-making removed from those running the port could easily result in a lack of understanding of port-specific issues, needs and priorities and also in problems of access to the decision-making chain for port management (especially where they are a small and inappropriate part of a very large portfolio). This would have the effect of constricting their economic flexibility and their ability to discharge their statutory functions effectively. Local authorities are naturally risk-averse but ports are commercial entities operating in a very competitive sector that require prompt decision-making and application of funds if opportunities are to be realised. | It was agreed that the proposed process of checking the delegated powers would provide adequate protection.                          | 26/09/06               |
| 20 | Management and performance review 3.48                                     | We discuss later (see section on municipal port finances) issues surrounding local authorities' approach to selling port assets. We believe the inclusion of people with relevant management skills in the   | <b><i>It was agreed that KM should suggest a phrase to cover this that could be included in the MOU. KM,</i></b>                     | 08/01/07               |

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|    | Options for change (page 20)   | decision-making process would assist in the port being recognised as a valued business asset and managed appropriately as such.  | <b>BN &amp; RT to work on draft MOU.</b>   |                        |
| 21 | Management and performance review 3.49<br>Options for change (page 20) | We believe that local authorities need to better appreciate that, while a port may bring benefits to the local authority, it also brings additional unique statutory responsibilities, and in some cases personal liability for officers. <b>Annex E</b> sets out in more detail these responsibilities.   | It was agreed that the Council does appreciate the responsibilities and <b>that Annex E (Responsibility of the duty holder) could be included in the annual business plan.</b> It was suggested that the statutory responsibilities should be listed in the MOU. | 08/01/07               |
| 22 | Recommendations (pages 21 & 22)  | We recommend that local authorities should commission an audit of the current status of their ports, benchmark themselves against the <i>Modernising Trust Ports: a Guide to Good Governance</i> and adapt their ports structures accordingly.   | <b>A structures document was produced and distributed including a draft proposed structure.</b>  | 08/01/07               |
|    | <b>Ref</b>   | <b>Review Recommendation</b>   | <b>Proposed Action/Comment</b>   | <b>Date considered</b> |
| 23 | Recommendations (pages 21 & 22)  | When a local authority undertakes a review of its municipal port, the review should be tailored to examine the port as a commercial operation, or as a provider of such services and facilities for which the port may be concerned if it is primarily run as a local amenity. This would allow port management the appropriate level of independence and flexibility.   | This recommendation is currently being carried out by the Municipal Ports Review Working Party.  | 26/09/06               |
| 24 | Recommendations (pages 21 & 22)  | In advance of such a review local authorities should, in conjunction with the port managers, carry out a stock-take of their port's statutory powers and obligations. This will allow full account to be taken of the port's statutory obligations which fall largely to the port management to deliver.   | KM provided the working party members with "Tor Bay Harbour Review of Existing Legislation October 2002" produced by Marine Enforcement Ltd.   | 07/11/06               |
| 25 | Recommendations (pages 21 & 22)  | Municipal ports may see benefits in assessing the level of compliance on a regular basis, with the benchmarks of good and accountable practice set out <i>Modernising Trust Ports: a Guide to Good Governance</i> . Each port should set out an implementation schedule for review. Municipal port management have recommended that typically this should allow six months to formulate a plan and two years for implementation. | All agreed that the Working Party should set out a timetable of events. Draft timetable and implementation plan circulated for consideration. Special Harbour Committee meeting arranged for 8 <sup>th</sup> Feb to discuss the review recommendations.          | 08/01/07               |
| 26 | Recommendations (pages 21 & 22)  | In the light of their reviews, local authorities might wish to consider whether there would be any benefits in setting up their port as a local  | This was discussed with the DfT representatives. Most people were  | 08/01/07               |

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|    |  | authority owned company.   | comfortable with the recommended structure.  |                        |
| 27 | Municipal port finances 3.74 (pages 24 & 25) | The fact that some ports are loss-making and receive subsidy from the local authority presents a problem in terms of distorting competition between those ports and either ports with trust status or in the private sector. If a port operation is not self-sustaining, the underlying causes need to be addressed. Structural changes may be required in order to deliver best value to the public. If an operation would not otherwise be viable (e.g. because of excess capacity) subsidy simply exports the difficulties to other communities. Subsidy also makes the operation subject to constant competition with other pressures on local authority funding.  | Not applicable as self financing.  | 26/09/06               |
|    | <b>Ref</b>                                   | <b>Review Recommendation</b>   | <b>Proposed Action/Comment</b>   | <b>Date considered</b> |
| 28 | Municipal port finances 3.75 (pages 24 & 25) | If a harbour is subsidised then the local authority may wish to consider the feasibility of establishing a strategy to put the port back onto a commercial footing or examine the alternatives. There should be consultation on this strategy with stakeholder groups, setting out a progressive plan to bring the port back into profitability.   | Not applicable as self financing.  | 26/09/06               |
| 29 | Municipal port finances 3.76 (pages 24 & 25) | We believe that municipal ports, like those in any other category, should be primarily funded by dues which are levied on the right to use the facilities to pay for their provision and maintenance. Local authorities may properly seek a dividend as sole shareholder from commercial revenues but income should have 'assured accounts', which are protected from outward virement, to ensure that the interests of the port and its users are properly safeguarded.   | This recommendation was discussed with the DfT representatives, they explained that "assured accounts" are the same as "ringfenced accounts". RT informed the working party that the situation with the dividend was very similar to the current arrangements. | 08/01/07               |
| 30 | Municipal port finances 3.77 (pages 24 & 25) | Local stakeholders need to be identified in order to target the operation and development needs of the port in an effective manner. Ports should consider the need, in certain narrow circumstances, to subsidise (or cross-subsidise from commercial activities). This may be acceptable in order to balance commercial operation against public service provision. For example, where there are leisure facilities, dues should be pitched at affordable levels for local residents (akin to residents' parking schemes), who may be on low seasonal incomes, yet may already be indirectly subsidising the port through the council tax. However, all dues should take into account the obligations set out in the Port Marine Safety Code. | KM provided Members with an updated list of stakeholders and the possibility of weighting the stakeholders was discussed.  | 08/01/07               |
|    | Municipal port                               | Any formal memorandum of understanding between the port and the  | It was agreed that the MoU and the   | 26/09/06               |

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| 31 | finances 3.78<br>(pages 24 & 25)                | local authority should agree that the port accounts will be assured. The memorandum of understanding should also set out the charges the port will have to pay to the local authority.  | charges due to the local authority should be based on MoU's from other harbours.   |                        |
|    | <b>Ref</b>                                      | <b>Review Recommendation</b>  | <b>Proposed Action/Comment</b>   | <b>Date considered</b> |
| 32 | Municipal port finances 3.79<br>(pages 24 & 25) | Most owning authorities consider existing accounting methods effectively provide information on ports' financial position. However, some consultees expressed concerns that current methods were not capable of giving full details of the commercial aspects of ports' operations. There may therefore be benefits for local authorities in local authority accounts being shadowed by accounts which show the commercial standing of the port as a separate business. Such shadow accounts (which in any event are required under Section 42 of the Harbours Act 1964) are already in place in some ports such as Portsmouth and Whitstable. Although Government has not been enforcing compliance with this particular requirement in recent years (and currently has no such intention) the production of shadow commercial accounts by municipal ports would be a useful tool for business planning. | Members were not sure if this would provide any real benefits. All agreed that it would depend on the final outcome of the review i.e. if became a limited company would need to produce full accounts. Otherwise all agreed that the accounts should be kept as simple as possible i.e. only one set of accounts. | 07/11/06               |
| 33 | Recommendations<br>(pages 25 & 26)              | We believe that all municipal ports could benefit from the introduction of 'assured accounts'. We believe that any rental levy imposed on a municipal port by the owning authority should be the subject of a binding agreement between the port managing body and the owning authority.  | All agreed that assured accounts should be kept but that the rental levy is not applicable.  | 07/11/06               |
| 34 | Recommendations<br>(pages 25 & 26)              | Where a municipal port is in receipt of an operational subsidy the owning authority should explore, as a priority, the feasibility of adopting a strategy for delivering a commercially viable service for the benefit of all stakeholders.   | This is not applicable   | 07/11/06               |
| 35 | Recommendations<br>(pages 25 & 26)              | We believe that prudent and adequate provision should be made for capital asset replacement and future development.   | All agreed with the principle  | 07/11/06               |
| 36 | Recommendations<br>(pages 25 & 26)              | We believe that local authorities should produce commercial-style accounts for their ports, as these would be helpful in explaining the financial position of ports to board members without much local authority accountancy training.   | All agreed that it would depend on the final outcome of the review i.e. if became a limited company would need to produce full accounts. Otherwise all agreed that the accounts should be kept as simple as  | 07/11/06               |

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|    |  |  | possible i.e. only one set of accounts.   |                        |
|    | <b>Ref</b>   | <b>Review Recommendation</b>   | <b>Proposed Action/Comment</b>  | <b>Date considered</b> |
| 37 | Recommendations (pages 25 & 26)                              | Local authorities should consider applying the benefits and principles of prudential funding to ports by allowing them to seek approval for borrowing that can be funded from revenue from agreed business plans, without increasing the overall borrowing requirement of the local authority.   | All agreed with this concept but that the last sentence was confusing. The DfT representatives explained that the last part of the recommendation highlights the fact that the port should use its own income to borrow rather than have to compete with other Council departments. | 08/01/07               |
| 38 | The way forward 4.8 (page 27)<br><br>Local authority company | An alternative approach could be the reconstitution of the port as a local authority company. This would serve to 'assure' harbour management and finances. However, this would mean that management of the port and its assets became a strictly commercial imperative, whilst an HMC would retain a community focus and is therefore probably a more effective vehicle through which to spark local regeneration and retain community controls.  | The DfT representatives explained that the port should choose the option that will suit it best.  | 08/01/07               |
| 39 | Trust port status 4.9  | Local Authorities could consider reconstituting their ports as a fully independent trust. However, this would remove the ports entirely from their control and would require the local authority to divest itself of a potentially valuable asset for no concrete return. It would also require the owning authority to provide the newly established trust with a dowry to underpin its first years of existence. This should be the equivalent to at least two years turnover. In the case of a medium sized municipal port this could amount to over one million pounds. In addition, the owning authority would need to ensure that any critical infrastructure problems were addressed in order that the port could be transferred in a good operational condition. This could potentially increase the settlement by several million pounds. | All agreed that this is not an option, due to the unnecessary release of Council assets and the burden of finding a sizable dowry.  | 07/11/06               |
| 40 | Making harbour management committees work 4.15               | The HMC can be constituted as a committee within the current local authority structure, provided that the local authority has chosen ports to be a function of the full council, and not reserved to the executive   | All agreed that the current constitution allows this to happen.   | 07/11/06               |
|    | <b>Ref</b>   | <b>Review Recommendation</b>   | <b>Proposed Action/Comment</b>  | <b>Date considered</b> |
|    | Making harbour   | The formation and membership of the committee is critical. Ideally it will   | All agreed that this would provide the  | 07/11/06               |



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| 41 | management committees work 4.16                | need to remain protected against short term thinking and be subject to a coherent and consistent treatment by the council. It should also be apolitical.  | protection that is required.   |                        |
| 42 | Making harbour management committees work 4.17 | Before recruiting, local authorities should undertake a skills audit to assess the balance of skills required to effectively govern the port and deliver against the business plan. These skills should be considered for all committee members.  | All agreed with the principle of this recommendation. All agreed that training should be compulsory and that it should be made part of the Constitution. All agreed that Members should be chosen for their skills and have a willingness to learn.  | 08/01/07               |
| 43 | Making harbour management committees work 4.18 | <p>The committee should ideally compromise:</p> <ul style="list-style-type: none"> <li>• 50% local authority appointees. These do not have to be local authority employees and councillors, but can be co-opted by the local authority to represent the interests of other bodies (such as the Environment Agency) or provide specific skills in support of port management. The harbour master or chief executive officer should be included within the local authority appointees.</li> <li>• The remaining 50% of the committee should be made up from external appointees, including stakeholder representatives</li> <li>• The external members should be appointed by public advertisement using the rules applicable to public appointments<sup>7</sup>. This is in line with the advice given in the <i>Modernising Trust Ports: A Guide to Good Governance</i>.</li> <li>• The chairman should be a local authority member. This will ensure that the local authority maintains overall control of the port business and strategy.</li> <li>• Any committee member who declares an interest in a particular area may remain in the meeting, but may only raise factual issues and must leave the room for the vote.</li> </ul> | <p><b><i>It was suggested that the MOU should include a proposal for the Mayor to propose a representative member (normally from the Cabinet). It was agreed that the Harbour Master should not be a Harbour Committee member and should not vote but should attend the Harbour Committee meetings as a non voting Harbour Committee member in an advisory capacity.</i></b></p> <p>All agreed but noted the word “should”. It was agreed that one of the TDAL board members should sit on the Harbour Committee.</p> <p>All agreed with this point</p> <p>All agreed with this point</p> <p><b><i>BN to look into this further.</i></b></p> | 08/01/07               |
|    | <b>Ref</b>                                     | <b>Review Recommendation</b>  | <b>Proposed Action/Comment</b>   | <b>Date considered</b> |
| 44 | Making harbour management                      | The Combined Code published by the Committee on Corporate Governance reinforces the overall approach we are recommending,   | There was general agreement for this. <b><i>It was felt that the word</i></b>  | 08/01/07               |

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|    | committees work 4.19                           | <p>suggesting that:</p> <ul style="list-style-type: none"> <li>• The chairman and harbour master together on a committee provide an effective balance of power and authority (no individual has unfettered powers of decision);</li> <li>• A balance of executive and non- executive (independent) directors is required so that no one group of interests can dominate the committees decision making;</li> <li>• There should be a formal and transparent appointments procedure for the committee members;</li> <li>• All directors should be required to submit themselves for re-election at regular (3 year) intervals.</li> </ul> | <p><b>“directors” should be replaced with the word “members”</b>. The DfT representatives suggested that each harbour choose their own terminology. It was agreed that planning would be required regarding a rolling programme for re-election.</p> |                        |
| 45 | Making harbour management committees work 4.20 | A particular benefit likely to derive from the HMC model is that the mixture of members on the governing body should provide relevant expertise, local representation and independence. The local authority appointees would include those with a direct professional interest, including harbour masters, and members of interest groups, guaranteeing that the principle of local accountability and the need to provide a relevant skills base are incorporated at the centre of the decision-making process.   | All agreed with this and it was noted that the recruitment could be used to appoint appropriate skills to the committee.   | 07/11/06               |
| 46 | Training 4.21                                  | Committee members may require training to fulfil their roles on the board. The Department for Transport with help from DCLG and the British Ports Association will develop a training programme specifically aimed at local authority members/officers and HMC members.  | All agreed that this had been covered by recommendation 42.  | 07/11/06               |
| 47 | Training 4.22                                  | This training should cover port operation, statutory and regulatory obligations and governance issues.   | All agreed with this recommendation.   | 07/11/06               |
|    | <b>Ref</b>                                     | <b>Review Recommendation</b>   | <b>Proposed Action/Comment</b>   | <b>Date considered</b> |
| 48 | Recommendations (page 35)                      | We believe that the trust port model as described in <i>Modernising Trust Ports: a Guide to Good Governance</i> now offers many tried and tested benefits which are readily transferable to the municipal ports sector and offer a real opportunity to provide municipal ports with an accountable expert and more responsive form of governance. It also sets out the benchmarks in terms of board composition, appointment, performance  | See recommendation 1.  | 07/11/06               |

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|    |                              | and accountability (with regard to Municipal Ports the Secretary of State will not be involved with the board selection process).  |                      |          |
| 49 | Recommendations<br>(page 35) | We recommend that all local authorities carefully consider whether the experience of Canterbury City Council (Whitstable) and Cumbria County Council (Workington) could bring similar benefits to their own ports. We are willing to discuss the ways ahead with any local authority.                      | See recommendation 2 | 07/11/06 |
| 50 | Recommendations<br>(page 35) | The Municipal ports sector should consider establishing a similar scheme to run in parallel with the 'beacon scheme' that has been established by DCLG. This would provide recognition for ports that have adopted the recommendation made within this review, and we would be happy to discuss any ideas. | See recommendation 4 | 07/11/06 |