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Date: Monday, 14 July 2014

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Dear Member

COUNCIL - THURSDAY, 17 JULY 2014

I am now able to enclose, for consideration at the Thursday, 17 July 2014 meeting of the Council, the following reports that were unavailable when the agenda was printed.

Agenda No	Item	Page
6.	Members' questions	(Page 363)
	Urgent question submitted by Councillor Cowell.	
8.	Submission of the Torbay Local Plan to the Secretary of State	(Page 364)
	Revised officer recommendation.	
19.	Torquay Waterside Regeneration - the Pavilion, Marina Car Park and Cary Green (Mayoral)	(Pages 365 - 379)
	Report marked as to follow on the agenda.	

Yours sincerely

June Gurry
Clerk

Agenda Item 6

Council Meeting – 17 July 2014

Urgent Question – Submitted in accordance with Standing Order A13.2(ii)

<p>Urgent Question by Councillor Cowell to the Mayor and Executive Lead for Employment and Regeneration, Finance and Audit</p>	<p>You will be aware that the agreed timetable for the meetings of the Priority and Resources Panel to consider your budget cuts has now been changed from August due to your unavailability as well as four of your Executive Leads.</p> <p>Given the need for a full and open consultation - will you move consideration of your proposals from the September meeting of full council until the meeting scheduled for October 30th?</p> <p>Would you not agree that by putting back the meeting by a month you will allow the Panel to take evidence, reflect and give you a comprehensive response to what are the most challenging service reductions that Torbay has faced?</p> <p>Do you not also agree that this measure will allow for stakeholders to fully respond given that the current timetable spans the summer months and peak holiday season?</p>
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Council Meeting

17 July 2014

(Revisions shown in bold text)

Revised Recommendation:

2. Proposed decision and reasons
 - 2.1 In order to progress the Torbay Local Plan, the Council is recommended to agree the following actions:
 - a) The Proposed Submission Plan be submitted formally to the Secretary of State for Independent Examination by the Planning Inspectorate;
 - b) **The Senior Service Manager for Strategic Planning and Implementation**, in consultation with the Director of Place and the Executive Member for Strategic Planning, Housing and Energy, be authorised to agree minor editorial changes to the Proposed Submission Plan for submission to PINS;
 - c) **The Senior Service Manager for Strategic Planning and Implementation** be given delegated powers to agree amendments to policy and related matters with the appointed Planning Inspector to facilitate the timely progression of the Independent Examination; and
 - d) **The Senior Service Manager for Strategic Planning and Implementation** keep Members briefed on the evolving Examination timescales, and any issues emerging from the Planning Inspectorate's initial assessment of the Submission Plan.

Agenda Item 19



Meeting: Council

Date: 17th July 2014

Wards Affected: Torquay Town Centre, Tormohun

Report Title: Torquay Waterside Regeneration – the Pavilion, Marina Car Park and Cary Green

Is the decision a key decision? Yes

When does the decision need to be implemented? After the call-in period

Executive Lead Contact Details: Mayor Gordon Oliver, Elected Mayor and Executive Lead for Employment and Regeneration. Tel. 01803 207001, email: mayor@torbay.gov.uk

Supporting Officer Contact Details: David White, Senior Development Surveyor, Torbay Development Agency. Tel. 01803 207919, email: david.white@tedcltd.com

1. Purpose and Introduction

- 1.1 To consider accepting a surrender of the leases of the Pavilion, the Marina and the Marina Car Park in Torquay and granting new long leases of the Pavilion, Marina, Marina Car Park and Cary Green which will:
- allow the delivery of a private sector major regeneration project which capitalizes on the prime waterside location of the existing Marina Car Park and create over 160 jobs
 - see the Pavilion restored and thereafter maintained by the private sector
 - allow a commercially viable use of the Pavilion and thus safeguard the long term future of The Pavilion
 - allow landscaping and car parking on part of Cary Green
 - preserve the existing levels of car parking and revenue to Torbay Council and the Harbour Authority
- 1.2 Marina Developments Ltd (MDL) has 125 year leases of the Pavilion and the Marina and Marina Car Park from 1985 and 1987 respectively. As such they effectively own and control these assets. They pay rents to the Council and Harbour Authority (see later in the report). Working with their chosen hotel operator and developer, and in consultation with Torbay Council and Torbay Development Agency, they have proposed a private sector scheme to restore the Pavilion and redevelop the Marina Car Park.
- 1.3 Their proposals are detailed later in this report but in summary include:

- A 60 bedroom 4* spa hotel
- Refurbishing the Pavilion
- Using the Pavilion for the public facing elements of the hotel
- 45 apartments
- Widening the quay along the inner harbour to provide improved public realm along this prime waterside location
- Creating café, restaurant and shop units facing the inner harbour to maximise the views over and create an active frontage along the inner harbour
- Providing car parking for the Marina users, the occupiers of the apartments and hotel guests within the existing Marina Car Park but also by creating new car parking spaces, and landscaping, within part of Cary Green
- Allow public pay and display car parking on the Marina Car Park and Cary Green

1.4 The above regeneration will create in excess of 160 direct and indirect jobs which will add £2.0 - £3.0m per annum to the local economy. In addition there will be further economic benefits from visitors and additional indirect employment created elsewhere in the local economy, estimated at over £5.0m per annum.

1.5 The 4* spa hotel would diversify the existing hotel offer within the Bay, a strategy which is recommended in the Tourism Strategy, "Turning the Tide for Tourism in Torbay 2010 – 2015."

1.6 The new lease of the Pavilion would remove the Council's potentially significant repairing liability for the Pavilion, and create a sustainable and viable future use for this historic building.

1.7 A report was presented to Full Council on 1st February 2012 (Reference Number I007661) and the Record of Decisions dated 7th February stated:

"That the Chief Executive of Torbay Development Agency, in consultation with the Mayor and Executive Lead for Employment and Regeneration, the Commissioner for Place and the Environment, the Executive Head of Tor Bay Harbour Authority and the Chair of the Harbour Committee, be instructed to negotiate and agree terms for the sale of a long lease or leases of the Marina Car Park, The Pavilion and Cary Green to the Nicholas James Group (or a subsidiary company) ('the Developer'). Such terms to include an obligation on the Developer to obtain planning consent and carry out and complete the redevelopment of the Marina Car Park, the restoration of The Pavilion and the redevelopment of Cary Green" and,

"That the Executive Head of Commercial Services in consultation with the Chief Executive of Torbay Development Agency and the Executive Head of Tor Bay Harbour Authority be authorised to enter into such documentation as may be necessary with the Council's present tenant, Marina Developments Limited ('MDL'), to allow the development to proceed, including but not limited to the acceptance of the surrender of part or all of MDL's existing leases and the grant of a new lease or leases to MDL or such other party on acceptable terms."

Please note, this is not a full record of the decision. Please see the Record of Decision published 7th February 2012.

1.8 Notwithstanding the decision noted in 1.7 above, the Torbay Development Agency has been requested to present this report before a meeting of the Full Council on 17th July 2014.

2. Proposed Decision

2.1 That the Executive Head of Commercial Services in consultation with the Chief Executive of Torbay Development Agency, the Mayor and Executive Lead for Employment and Regeneration, the Director of Place and the Environment and the Executive Head of Tor Bay Harbour Authority, be authorised to enter into an Agreement for Lease which, subject to planning consent, allows:

- **MDL to surrender their leases of the Pavilion and the Marina and Marina Car Park**
- **Torbay Council to grant a new separate lease of the Marina to MDL**
- **Torbay Council to grant a 250 year lease of the Pavilion, Marina Car Park, Cary Green and associated land to Torquay Waterside Developments Ltd (TWDL) which obliges TWDL, subject to obtaining all necessary consents, including planning consent, to carry out a residential and commercial development scheme on the same.**

2.2 That the remaining terms of the Agreement for Lease are substantially as per the Heads of Terms detailed in Exempt Appendix 1, and that the Chief Executive of Torbay Development Agency, in consultation with the Mayor and Executive Lead for Employment and Regeneration, the Director of Place and the Environment, the Executive Head of Tor Bay Harbour Authority and the Chair of the Harbour Committee, be authorised to negotiate different terms if necessary and if they are in the best interests of Torbay Council and the Harbour Authority, providing that before any Agreement is entered into, the Torbay Development Agency shall obtain a satisfactory independent valuation from a firm of Chartered Surveyors with the requisite experience in valuing such developments, demonstrating that the proposed terms represent best value that Torbay Council can reasonably obtain.

2.3 That, subject to the outcome of the independent valuation referred to in 2.2 above, negotiations address the need to preserve the existing income to Torbay Council as Harbour Authority during the construction phase.

3. Reason for Decision

3.1 The Pavilion is in need of substantial repair and investment, beyond what MDL is obliged to do under the terms of their 125 year lease. This proposal places all responsibility for the Pavilion on to the developer (TWDL). TWDL will restore the Pavilion and create an economically viable use for the Pavilion, thus safeguarding the

historic building for the future and devolving Torbay Council of any responsibility for the building. The costs saved in terms of the repair costs are contained within Appendix 3 (exempt appendix). Further details are provided later in this report.

- 3.2 The proposed redevelopment represents an investment at a level contained within Appendix 3 (exempt appendix) into Torbay and will create over 160 jobs (using data based on statistics from the Homes and Communities Agency), many of which will *not* just be seasonal work as the hotel will trade all year round.
- 3.3 The additional jobs will represent an additional £2.0 – 3.0m per annum for the local economy. Furthermore the tourism spend is forecast to be £5.m per annum.
- 3.4 The tourism strategy entitled “Turning the Tide for Tourism in Torbay 2010 - 2015” identifies the need to diversify the existing hotel offer in Torbay and recommends further investment in spa hotels and boutique hotels to broaden the appeal of Torbay and “attract new visitors from a broader market profile.” Such development will help to increase the tourist spend in Torbay.
- 3.5 The proposed development will capitalise on the prime waterside location that is currently used as a car park. It will add vitality to this side of the inner harbour, both during the daytime and in the evening.
- 3.6 Torbay Council and the Harbour Authority will continue to receive the same levels of annual income that it currently enjoys, once the development is complete. MDL will be hoping that the investment will improve their marina business (including car parking revenue), and the Council will receive a percentage contained within Appendix 3 (exempt appendix) of this improved business as well. Further details are listed later in section 4 of this report.
- 3.7 Torbay Council will receive a new homes bonus for each of the 45 new apartments, as well as a share of any additional national non-domestic rates (NNDR) resulting from the new development (assuming the base level of NNDR continues to be collected).

Supporting Information

4. Position

4.1 History and Construction of the Pavilion

- 4.1.1 The Pavilion was constructed in 1911 and 1912 and is a very early example of a steel frame construction. It was seen as pioneering at the time. The steel frame is finished with Italian faience blocks, which are solid blocks with a ceramic glaze. It is Grade II listed.
- 4.1.2 There are a number of design defects with this building which the building and engineering professionals are now aware of, but which were not known at the time the Pavilion was constructed. The faience blocks do not have any expansion joints which means they crack as the building expands. This allows moisture, often containing salt

water, to enter the block work. This in turn expands and causes further damage. This then allows water to penetrate through to the steel work, causing it to rust. The roof design, which includes a number of flat roof areas, does not allow for rainwater to run off the building adequately. In addition the intricate roof has a number of joints (known as details) which allow rainwater to penetrate the building. Unfortunately the ingress of rainwater only forces the steel to rust and expand which exacerbates the problem. The block work is built tight up to the frame with insufficient air circulation. The structure is cold in the winter and the condensation causes further damage to the steel frame, worsened by the lack of ventilation around the steel columns.

- 4.1.3 The results of the design and subsequent water ingress mean that it has been necessary to construct new, additional steel columns inside the building to support some of the roofs. Furthermore a large section of the south west corner (which is more exposed to the sea air and prevailing winds) has been reconstructed. During these works large sections of crumbling steel were exposed, removed and replaced / supported.
- 4.1.4 The water ingress has damaged the ornate internal plasterwork. Scaffolding and netting has been constructed to catch falling debris.
- 4.1.5 The TDA has commissioned specialist conservation engineers to assess the structure of the building. They have ascertained that the roof and rain water management need redesigning, and that additional supporting columns are needed internally. Some cross-bracing is also required, especially if too much of the later 1980s additions are removed. The dome (cupola) on top of the roof needs removing and the steel members replacing to support it; the large triangular shaped gable wall (at roof height) at the southern end of the building (closest to the marina) needs taking down by hand and rebuilding. A proportion of the faience blocks also need replacing. It is not possible to insert expansion joints in this wall so this will need ongoing management.
- 4.1.6 The building was always designed to front Princess Gardens. There was a coal yard where the Marina Car Park currently is and the Pavilion was designed to turn its back on this coal yard. It was until some time after the coal yard was redundant that the rear of the Pavilion was more visible. Following this a fly tower was added and the Pavilion was used as a theatre. Still, it was not designed to face what is now the car park.
- 4.1.7 The cost of repairing the Pavilion depends on how many interventions, or corrections, are carried out. The very basic works to redesign the roof, rainwater management, replace some of the faience blocks, insert additional columns, rebuild the dome and the gable wall and paint internally around the central dome area, is in the order of a figure contained within Appendix 3 (exempt appendix). This makes the building wind and water tight and supports the roof.
- 4.1.8 It does not address all of the problems and does not allow for all internal or external decoration. The internal plasterwork will require highly skilled tradesmen, and then it will need painting. The external painting alone is estimated to cost £60,000.
- 4.1.9 The exact cost of repairing the redecorating the Pavilion will depend upon the exact specification and how much of the steel work from the 1980s additions is retained, as

this also provides some structural cross-bracing. These costs could realistically amount to a figure which is contained within Appendix 3 (exempt appendix).

4.1.10 The above costs results in a structurally sound and presentable building. They do not allow for any fit out works. Any occupier of the building will need to fit out the building before they can use it. The high standard of the fit out works proposed by TWDL, befitting of a 4* spa hotel, including reception, spa facilities, function rooms, bars, café and restaurant, will amount to several million pound. The exact figures are not listed for commercial confidentiality.

4.2 The Leases to Marina Developments Ltd (MDL)

4.2.1 Marina Developments Limited (MDL) has a 125 year lease of the Pavilion from 1985, which expires in 2110. They also have a second lease of the Marina Car Park and Marina, being 125 years from 1987.

4.2.2 A description of the repairing obligations and a Counsel's opinion are contained within Appendix 3 (exempt appendix).

4.2.3 The Nicholas James Group (NJG) has an agreement with MDL to develop their leased assets, subject to reaching an acceptable agreement with Torbay Council. NJG and MDL have formed a joint venture company, Torquay Waterside Developments Limited (TWDL) to deliver a redevelopment of the MDL assets.

4.2.4 TWDL require Torbay Council, as landlord, to consent to the changes of use that TWDL propose. TWDL will also require planning consent, which is a separate consent.

4.2.5 In October and November 2011 the TDA sought expressions of interest along with outline proposals for the leasing of part or parts of Torbay Council's prime waterside assets in the vicinity of the Pavilion. Advertisements were placed in the Western Morning News and the Estates Gazette (national property press). A number of parties initially expressed an interest but their interest waned when they realised the nature of MDL's leases. Only one party (other than the Nicholas James Group) supplied any proposals for the site. The party in question was only interested in a small piece of land and was not proposing the wider regeneration of the area. The TDA advised the party that such a small proposal would not be considered as it may prejudice the desired outcome of a more comprehensive regeneration proposal.

4.2.6 After completing the above exercise the TDA advised that Torbay Council entered into negotiations with the Nicholas James Group in order to secure the proposed regeneration of the Pavilion and Marina Car Park. This resulted in a report to full Council on the 1st February 2012, Reference Number I007661.

4.3 The Financials

4.3.1 The Marina and the Marina Car Park are part of the harbour estate. The Harbour Authority receives a percentage of the income from the Marina and Marina Car Park site, being a percentage of MDL's turnover. The Pavilion is not on the harbour estate and the income from the Pavilion goes to Torbay Council.

- 4.3.2 An outline of the income currently received by The Harbour Authority and Torbay Council is contained within Appendix 3 (exempt appendix).
- 4.3.3 The proposed income as per the heads of terms agreement with TWDL is contained within Appendix 3 (exempt appendix).

There are currently 235 car parking spaces. MDL charge their berth holders for parking permits and also receive income from allowing pay and display car parking on the first deck at times when this deck of parking is not required for their berth holders. At present they only close this top deck to the public during the peak weeks of the summer. MDL currently issue 238 berth holder parking permits (ie 3 more than there are spaces).

Under the proposals there will be 288 car parking spaces, of which 45 will be reserved for the apartments and the hotel will have 34 spaces. This leaves 209 spaces from which MDL will receive income, from berth holders and the pay and display income. MDL will not charge the hotel operator for using some of the car parking spaces.

MDL will issue 214 berth holder parking permits (a reduction from 235).

Please note that the final parking regime is subject to clarification and planning approval.

The use of the car park should be intensified, due to people (non-hotel guests) parking in the evenings and visiting the new hotel and restaurants along the inner harbour.

If approved the Harbour Authority / Torbay Council should continue to receive the same levels of income and have the potential to benefit from a share of any increased business (at the rate set out in Appendix 3, which is an exempt appendix) that MDL may enjoy as a result of their marina and car parking revenues increase.

- 4.3.4 There are covenants which seek to prevent development on Cary Green. These are referred to as the Cary covenants as they benefit the Cary estate. We have obtained legal advice and are told that these covenants cannot prevent development but that a payment might be needed to avoid legal costs. This payment will be met by TWDL.
- 4.3.5 There is a realistic chance that the Harbour Authority will lose *some* of its income from these assets during the construction process. Typically the income from these assets, as set out in 4.3.2, averages at a figure contained within Appendix 3 (exempt appendix).

The TDA will endeavour to negotiate some payment to the Harbour Authority as per the minute of the Harbour Committee meeting on 31st January 2012 and the minute of the Full Council meeting on 1st February 2012, which reads:

“That, subject to the outcome of the independent valuation [referred to in 2.2 of this report], negotiations address the need to preserve the existing income to Torbay Council as Harbour Authority during the construction phase.”

The income from the marina is unaffected at a figure contained within Appendix 3 (exempt appendix). Furthermore TWDL will pay the £33,700 pa during the construction process as well. As such, the risk to the harbour authority is mitigated.

- 4.3.6 Torbay Council will receive a New Homes Bonus for each new open market apartment that it provides. Central Government will pay the Council the equivalent of a Council Tax bill for a band D property for each new home. Assuming that the 45 proposed open market apartments are granted consent, and a council tax band D bill of £1,499.48 pa, this will result in an income of £67,476.60 pa. The New Homes Bonus will be received annually, subject to Central Government continuing to fund the scheme.
- 4.3.7 Torbay Council will receive revenue from a share of additional national non-domestic rates (NNDR) created by the new commercial development (this includes the hotel and the commercial units on the ground floor), assuming the base level of NNDR continues to be collected by Torbay Council.
- 4.3.8 Torbay Council will avoid a figure contained within Appendix 3 (exempt appendix), to remedy the construction and design defects in the Pavilion (the exact figure will be subject to tender). In addition Torbay Council would also be liable for repairing some of the internal decorations. This would be an additional cost.
- 4.3.9 The development will create over 160 direct and indirect jobs which will add approximately £2.0 – 3.0 m per annum to the local economy.
- 4.3.10 In addition, analysis suggests that there will be further economic benefits estimated at around £5.0 m per annum from visitors and additional indirect employment created elsewhere in the local economy. These figures have been provided by TWDL.
- 4.3.11 TWDL will maintain all aspects of the public realm within their development proposals, including the quay alongside the inner harbour, Cary Green, the areas closest to the Pavilion and the outside seating between the Pavilion and the Marina. These are all contained within the red line shown on the plan in Appendix 2 (page 379). This results in savings to Torbay Council.
- 4.3.12 The premium (upfront payment) for the new 250 year lease is will £1 (one pound). The Council will receive the annual income but the premium will be £1. TWDL has agreed to take on full liability for the Pavilion, but this means their development appraisal is showing a level of return which is significantly less than the industry standard. The result is that many developers might not consider a deal of this nature. However, NJG (a party to TWDL) will operate the hotel. Thus their interest is more than just developing and selling the completed property project. However, at this level of return they cannot afford to pay a premium for the lease as well as the annual rents detailed above.
- 4.3.13 The level of affordable housing and developer contributions is related to the viability of the development proposals. A development such as this would be deemed to be high risk by the Planning Inspectorate and the independent experts. Funding for apartment schemes slowed down dramatically after the recessions in 2007, and hotel

developments are also considered to be specialised. Coupled with the risks of taking on a listed building of this nature, lenders will require to see a development appraisal showing at least a 20% return on costs. As noted above the profit on this proposal is appreciably less than this figure. As such, the Planning Inspectorate and the Courts would not require any affordable housing or other developer contributions. This statement is made on the basis that the detailed independent viability assessment (IVA) which will be submitted as part of the planning application shows a similar level of profit to the appraisals that the TDA has considered to date.

4.4 The Heads of Terms for the Lease to TWDL

4.4.1 A full copy of the Heads of Terms is provided in Appendix 1 (exempt appendix).

4.5 The Current Development Proposals

4.5.1 The Marina Car Park is situated on the harbour estate and given its current use, in this location, it represents an under-utilised asset. The car park serves an important function in providing car parking spaces for the marina users, but it does not add to the appearance or vitality of the inner harbour. The current proposal is to create a 4 star resort hotel and spa with new waterfront restaurants and cafes built around a new car park structure which will retain a similar number of parking spaces for the marina users plus create additional spaces for the hotel guests. The development will significantly improve the areas of public realm around the inner harbour. The increased vitality of the area will encourage more interaction between the marina users and visitors, and the town centre.

4.5.2 The proposal contained in this report represents an evolution of several proposals to regenerate Torquay's waterside. The initial proposals were aimed at restoring the promenade, Princess Gardens and The Pavilion (and possibly Princess Pier) with private sector funding. Following several public consultation events, guidance from the Mayor of Torbay and publically funded works to the Princess Promenade and "banjo," the regeneration scheme became focused on the Pavilion, Marina Car Park and Cary Green. For the avoidance of doubt, the proposals do *not* include Princess Gardens, the promenade or Princess Pier.

4.5.3 Details of the previous and wider regeneration proposals were discussed in earlier Torbay Council Reports, numbers 41/2011 and 194/2010.

4.5.4 The proposals to redevelop the Pavilion, Marina Car and the wider waterside areas have been presented to the Torquay Design Review Panel (DRP) on a number of occasions over the last 4 years. These are summarised below:

- DRP 13th May 2010, a larger scheme involving elements of Princess Promenade as well
- DRP 1st December 2011, Pavilion, Marina Car Park and Cary Green. The DRP had suggested that Cary Green be considered as part of the overall regeneration of the area. The scheme in December showed residential and commercial buildings on Cary Green. Cary Green was at this stage presented in outline form only. The DRP commented, "the proposed development has the

potential to offer an elegant solution to finding a viable future for the Pavilion, resolving the poor public realm of Cary Green and introducing new vitality to the west side of the Inner Harbour, Marina's water edge and eastern end of Princess Gardens..."

- DRP 2nd February 2012, which focused on Cary Green, looked at an apartment scheme on Cary Green with ground floor restaurants. The DRP found that any development on Cary Green might not add to the commercial viability of the wider regenerative scheme and that Cary Green development "may not deliver the needed financial contributions to repair the Pavilion." The panel concluded that there was a "potential need to consider more intense development of the marina hotel site in place of Cary Green in order to raise capital for the repair of the Pavilion."
- DRP 31st May 2012 Pavilion, Marina Car Park and Cary Green as over-flow parking.

4.5.5 The current scheme is also going before the Torquay Design Review Panel on 18th July.

4.5.6 The current scheme has now formed a detailed planning application that has been submitted to Torbay Council. This application has been validated and it is anticipated that a decision will be sought from the Development Control Committee in August / September 2014. The planning application number is P/2014/0282 and is for:

"Change of use and restoration of the Pavilion to form hotel reception and spa including restaurant, bars and function rooms. Construction of four storey 60 bed hotel, and five to seven storey block of 45 residential apartments with ground floor restaurant and retail uses adjacent to harbour. Construction of new harbour walkway, provision of 73 car parking spaces on Cary Green. Construction of Marina Office and berth holder facilities and associated landscaping."

4.5.7 There are currently 126 car parking spaces on the lower deck of the Marina Car Park, reserved for marina users only, and a 109 spaces on the top deck where public pay and display parking is allowed when MDL's berth holders do not require these spaces. We understand that MDL only reserve the top deck for the berth holder during the peak weeks of the summer. This gives a total of 235 spaces.

4.5.8 The proposed scheme includes 136 spaces on the lower deck, 81 spaces on the higher deck and 71 car parking spaces on Cary Green. This gives a total of 288 car parking spaces for the whole development.

4.5.9 The planning application proposes 1 parking space for each of the apartments and 34 for the hotel's use (free of charge). MDL will issue 214 berth holder permits. These numbers total more than the proposed 288 car parking spaces. This is just like the current situation whereby MDL issue more permits than there are spaces.

MDL will continue to reserve the parking for their permit holders and, as is currently the case, close the top deck to the public during the peak summer weeks. However, outside of these times they will allow public pay and display parking. The Council will

continue to receive a level of this income to MDL. See Appendix 3 (exempt appendix) for further details of this level of income.

- 4.5.10 We are told that the hotel needs a parking space per hotel bedroom. 34 spaces is less than the 60 hotel bedrooms. As such the hotel will operate valet parking off-site.
- 4.5.11 Cary Green will act as an overflow car park (subject to final design and approval by the Development Management Committee). At times all of the 288 spaces will be occupied and valet parking will be used off-site. At other times, there will be spaces free at Cary Green. The final design for Cary Green is subject to planning consent.
- 4.5.12 The inclusion of Cary Green is proving to be contentious. NJG (who are part of TWDL with MDL) are hotel operators. They have looked at the alternative parking options but they are certain that they cannot operate a 4* spa hotel without parking immediately adjacent to their hotel. They already have a shortfall in the number of parking spaces that their 60 bed hotel requires and already will require some valet parking. They are certain that their hotel in this location will not function on purely valet parking and that the other car parks are too divorced from the hotel entrance for a 4* spa hotel.
- 4.5.13 Full details of the planning application can be seen on the Torbay Council planning portal.
- 4.5.14 Pedestrian and vehicular access to the Fish Quay will be maintained at all times.

5. Possibilities and Options

- 5.1 Do nothing. The Marina Car Park will remain as it is. The repairing liability for the Pavilion will need to be addressed which may result in a repair bill in excess of a figure contained within Appendix 3 (exempt appendix), for the structural elements of the building alone. Negotiations will be needed to agree how much of the internal redecoration is done by Torbay Council and MDL. The final cost to the Authority could be higher than a figure contained within Appendix 3 (exempt appendix).
- 5.2 Consider a smaller scale redevelopment project. However, the existing proposals are not deemed to be viable under normal industry standards. Any reduction in the scale of the project will result in a shortfall in the costs of repairing the Pavilion. Furthermore, a smaller scheme may not deliver the desired physical and economic regeneration (as well as the restoration of the Pavilion).
- 5.3 Following on from 5.2 above the Council could consider a smaller scheme and make a capital contribution towards the repairs of the Pavilion. In order to avoid any parking on Cary Green, for instance, the scheme would have to omit the parking for the residential apartments. This would materially affect the viability of the scheme as the value of the apartments would be reduced dramatically. This highlights the fact that solving the matter of Cary Green is not just a case of the Council contributing to the cost of repairing the Pavilion.
- 5.4 The Council could reject the proposals (from a landlord and tenant point of view, as distinct from the Development Management Committee aspect). This would require

MDL to find alternative development plans for the site or for MDL and Torbay Council to address the repairs to the Pavilion. This would not deliver any regeneration of the Marina Car Park or the public realm improvements along the inner harbour. A viable use for the Pavilion would also be needed if the building is to be maintained in future years.

6. Fair Decision Making

- 6.1 The proposals regarding the Pavilion and indeed the wider Princess Gardens area have been consulted upon for a number of years.
- 6.2 The TDA highlighted the scale of the repairing liability for The Pavilion, Princess Promenade and Gardens and the associated infrastructure at a meeting of the Tormohun Community Partnership on 22nd February 2010. MDL's developer, NJG, also presented their proposals at this meeting, and again on 26th May 2010 following further design. At the time the proposals were aimed at privately funding the vast majority of the Council's £10.5m repairing liability, and as such the proposals were on a larger scale. English Heritage and the Torbay Civic Society both, in principle, commended the developer's proposals at this meeting at the time.
- 6.3 NJG held a 3 day public consultation event in May 2010 and feedback on the proposals was invited. Some 72% of the respondents to NJG's consultation provided positive feedback and welcomed some private sector development to fund the works. However, following on from this there was a petition signed against the development proposed at the time.
- 6.4 In February 2011 the TDA updated Torquay Town Centre Community Partnership on the status of the proposals surrounding The Pavilion and Princess Promenade.
- 6.5 In October 2011 the TDA and the Nicholas James Group presented to the Tormohun Community Partnership. The proposals were now focused on the Marina Car Park and The Pavilion: no development was suggested on Princess Promenade.
- 6.6 The TDA has presented to the Harbour Committee in January 2011 and, in November 2011, the Torquay Harbour Users' Groups and the Harbour Liaison Forum.
- 6.7 The TDA presented the proposals to the Harbour Committee on 30th January 2012.
- 6.8 The TDA has presented the history of the Pavilion, the background issues and updates on the developer's proposals at a number of the Mayor's Forums in 2012 and 2013, as well as most recently on 8th April 2014.
- 6.9 The TDA has, with and without the developer and / or their architect, presented the issues and proposals to the Torbay Business Forum in April 2014; Torquay Neighbourhood Plan Forum in both 2013 and 2014; Torquay Town Centre Community Partnership in both 2013 and 2014 the Torre and Upton Community Partnership in 2014.

- 6.10 The TDA and Harbour Authority have met with the fishermen who operate from the Fish Quay and we are arranging a further, final pre-planning submission meeting to ensure they are fully aware of the proposals. Access to the Fish Quay will be maintained at all times.
- 6.11 Over the recent years that these proposals have been discussed, there has been coverage in local Herald Express newspaper.
- 6.12 Throughout the consultation process the TDA and Torbay Council has also run a number of press releases.
- 6.13 The development proposals by TWDL are also subject to public consultation that forms part of their current planning application.

7. Public Services (Social Value) Act 2012

- 7.1 Not applicable.

8. Risks

- 8.1 There are several technical risks associated with the delivery of the proposed regeneration of the Marina Car Park, Pavilion and Cary Green, including risks relating to planning consent. As mentioned above the proposed Agreement will be subject to detailed planning consent.
- 8.2 The risks associated with this report relate primarily to the actual granting of the Agreement for Lease and the new leases to MDL and TWDL (which shall be subject to planning consent). The primary risk is that the legal process and the involvement of solicitors means that some of the terms are amended from the heads of terms attached. Paragraphs 2.2 and 2.3 seek to cover this point. The agreed terms will be verified and subject to an independent valuation. See 2.2 above.
- 8.3 If the recommendations are implemented and planning consent is granted, the Council should be aware that delivering the redevelopment could take some months. The construction process may span more than one summer season. During this process access will be affected but by careful project management, sufficient access will be maintained to the Fish Quay at all times.
- 8.4 That TWDL commence the works and do not complete them. The Council would be left with a part complete building project which it, or the bank / funders, would seek to assign to another developer to complete. TWDL have carried out their due diligence. TWDL have instructed a global firm of engineers who have assessed the car park structure and are satisfied that the TWDL scheme can be constructed here.
- 8.5 If TWDL do not proceed with this project then there is the risk of the Pavilion remaining empty and falling into further disrepair. Please see section 4.2.2 above. MDL will need to find a party willing to invest in the building with a use that can pay for

the repairs to the building and operate a business which can afford the annual maintenance costs.

Alternatively, Torbay Council might have to carry out these works to the Pavilion, including redecorating the damage due to the water ingress (see 4.1.7 – 4.1.10 above) and find a tenant to operate a business from this building; the business would need to be able to afford the ongoing maintenance costs for this building. This option would not result in the car park being redeveloped and would not attract the inward investment or result in the same level of job creation.

Appendices

Appendix 1 - Copy of the Heads of Terms (Exempt appendix)

Appendix 2 – Proposed Lease Plan (page 379)

Appendix 3 – Financial Consideration (Exempt appendix)

Additional Information

None

Agenda Item 19

Appendix 1

