

Meeting: Cabinet **Date:** 13 February 2024

Wards affected: Tormohun

Report Title: Developing a resilient future for Torquay Pavilion

When does the decision need to be implemented? Implementation to follow decision and after the call-in period.

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1. Purpose of Report

- 1.1 To present a way forward for the restoration of Torquay's Pavilion. Torquay Pavilion has been empty and unused since 2013. The property is leased to Marina Developments Ltd (MDL) on a 99-year lease from January 1985. The Marina and adjoining car park are also leased to MDL on a separate 99-year lease agreement from 1987. The Council has been working with MDL to find a solution which would see the restoration of the Pavilion and ultimately bring this important landmark building back into use.
- 1.2 The Pavilion has extensive repair and maintenance needs with the cost of repairs a significant obligation. Under the Lease, neither the landlord nor the tenant has responsibility for inherent defects. Therefore, over many years, there has been a stalemate on this matter. In more recent years, the tenant and landlord have explored solutions that involve the potential to deliver a development of the adjacent car park which is demised under the separate 1987 lease, to ensure the restoration and renewed use of the Pavilion.

2. Reason for Proposal and its benefits

- 2.1 Torquay Pavilion has been allocated £2million towards its restoration, from the Torquay Town Deal. This funding is intended to support a restoration of the Pavilion to allow the

building to be returned to an active life contributing to the vibrancy of the Torquay harbour area in line with the objectives of the Torquay Town Deal.¹

- 2.2 In the Town Investment Plan the Pavilion's situation is described as *“Owned by Torbay Council but leased to Marina Developments Limited the site was included in a proposed development scheme that has ultimately failed. There is desire from the community for the site to be restored as part of a revitalised harbour area which could provide an ideal facility for waterside dining, leisure, culture or heritage uses supporting both the day and night time economies. The Pavilion has significant liabilities which require remediation.”*
- 2.3 Since the Town Deal was secured, work has developed the understanding of the structural issues within the building. These issues and external events, ranging from the collapse of regional contractors, the impact of the war in Ukraine, inflation and the extent of alternative opportunities in construction, have all contributed to higher costs for construction projects across the country. This means that the expected restoration costs are now forecast to be significantly in advance of those contained in the 2020 Town Investment Plan and the business case approved by Cabinet in 2021².
- 2.4 Cabinet will be aware that Torquay's Pavilion is a prominent Grade 2 listed Victorian landmark and seafront building. It has been in state of disrepair and vacant since 2013. The property is leased to MDL Marinas Group Ltd (MDL) on a 99-year lease from January 1985. The Marina and adjoining car park are also leased to MDL on a separate 99-year lease agreement from 1987. The Council has been working with MDL over the recent years to find a solution which would see the restoration of the Pavilion and ultimately bring this important landmark building back into active use.
- 2.5 Defects with the Pavilion have made the cost of repair a significant obligation with the lease ambiguous on where liability for rectifying these defects lies. Therefore, over many years, there has been a stalemate on this matter. In more recent years the tenant and landlord have explored solutions that involve the potential to deliver a development of the adjacent car park which is demised under the separate 1987 lease, to ensure the restoration and renewed use of the Pavilion.
- 2.6 The negotiations with MDL have now resulted in a surrender premium being offered by MDL to the Council. Agreement to the offer will result in the site reverting to the Council at a date to be confirmed in the spring or summer of 2024. MDL is seeking as part of the proposal an extension to their marina lease and are requesting that landlords consent is not unreasonably withheld to a development on the adjoining car park site. Recognising the history of development proposals on that site it is important to highlight that landlords consent is separate and without prejudice to the proper considerations of any planning application that might come forward. In committing to the heads of terms the Council is not

¹ <https://www.torbay.gov.uk/leisure-sports-and-community/regeneration/torquay-towns-fund/>

² <https://www.torbay.gov.uk/DemocraticServices/ieListDocuments.aspx?CId=741&MIId=18600&Ver=4>

predetermining an application which will be properly considered by officers and presented to Planning Committee as and when any application is made. The Council would expect that the applicant would engage in pre application discussions and engage with the community as part of that process.

- 2.7 Assuming the recommendations of this report are agreed, work will begin to specify the works and confirm the procurement route, to allow for the restoration works to begin in late summer to avoid additional disruption to the harbour area over the peak months and to secure the relevant consents required to undertake the restoration works.
- 2.8 Agreement to the recommendations of this report will also ensure that the Town Deal grant allocated to Torquay can be committed in line with the vision and objectives of the Torquay Town Deal.
- 2.9 Despite the surrender premium and the Town Deal grant, additional investment will be required. Officers are in discussion with National Lottery Heritage Fund in respect of the key heritage assets in Torbay, to understand how the Council can work most effectively with the Fund to support the restoration of these sites which include the Pavilion and Oldway Mansion. It is anticipated that some Council investment will be required to complete the funding arrangements with such funding expected to be borrowing underpinned by the payment of rent from an occupier(s).
- 2.10 The future use of the Pavilion has not been determined as part of this process. The Council has previously sought advice as to potential uses which have include culture, food and drink, heritage and leisure uses. Given the range of options this report recommends an early expression of interest process to highlight to potential occupiers that the scheme is coming forward which will allow for a more informed consideration of potential uses and how they align to the Town Investment Plan and related Council strategies such as the Destination Management Plan and Heritage Strategy.

3. Recommendation(s) / Proposed Decision

1. To delegate to the Director of Pride in Place, in consultation with the Cabinet Member for Place Development and Economic Growth and the Director of Finance, agreement of the final heads of terms for the surrender of the lease in respect of the Pavilion. (the draft heads of terms are set out at exempt Appendix 1).
2. That the Director of Pride Place seek expressions of interest from investors and occupiers, to work with the Council for uses aligned to the Torquay Town Investment Plan 2020 with this process to begin before the end of February 2024.
3. That the Director of Pride in Place prepares a funding strategy for the restoration of the Pavilion.

Appendices

Heads of Terms

Background Documents

Torquay Town Investment Plan & Pavilion Business Case

1. Introduction

- 1.1 Torquay Pavilion has been empty and unused since 2013. The property is leased to Marina Developments Ltd (MDL) on a 99-year lease from January 1985. The Marina and adjoining car park are also leased to MDL on a separate 99-year lease agreement from 1987. The Council has been working with MDL to find a solution which would see the restoration of the Pavilion and ultimately bring this important landmark building back into use.
- 1.2 The cost of repair and restoration represents a significant obligation and, under the Lease, neither the landlord nor the tenant has responsibility for inherent defects. Therefore, over many years, there has been a stalemate on this matter. In more recent years the tenant and landlord have explored solutions that involve the potential to deliver a development of the adjacent car park which is demised under the separate 1987 lease, to ensure the restoration and renewed use of the Pavilion.
- 1.3 In the summer of 2021, MDL and Torbay Council entered a Memorandum of Understanding (MOU), whilst not legally binding, essentially meant the initial costs to fully re-evaluate the condition of the Pavilion were split 50/50, up to a cap of £250,000 for each party. The MOU set out various actions and milestones, that meant proposals would come forward in a timely manner. This was predicated on an assumed repair cost of circa £3,500,000 which was a figure used to inform the inclusion of the Pavilion in the Town Investment Plan submitted to Government in 2020.
- 1.4 The MOU also provided comfort to MDL that should they secure the necessary consents and funding, this in principle would trigger a surrender of the current Pavilion lease which would see the Pavilion building returned to the control of the Council, either fully restored or with sufficient match funding to cover 50% of the restoration costs.
- 1.5 The intervening period from 2020 to the present day has seen construction costs increase significantly and the contractor market regionally has seen the failure of established businesses which has seen risk and cost move to clients. The consequence of this is that the repair costs now are circa 300% of what they were in 2020.
- 1.6 Since 2020, there has been some initial progress. This has included works to ascertain the condition including various surveys, scaffold design work, internal soft strip etc. However more intrusive surveys have not yet commenced on site, these will follow if the recommendations are accepted.
- 1.7 Running in parallel, have been discussions with MDL regarding the potential for a surrender of the Pavilion Lease. It has been considered that having direct control over the asset is a preferable position for the Council. Potential surrender premium values for the Pavilion lease, alongside some Heads of Terms, have been subject to ongoing discussions throughout 2023.

- 1.8 Alongside these negotiations, officers considered a variety of options to provide a clear direction of travel for the Council, the community and the tenant. These options are summarised under section 2 of this supporting information.
- 1.9 A backdrop to reaching an agreed position with MDL has been the complexity of the lease terms, the condition of the building, repairing obligation and the inherent defects. The Council has previously obtained Counsel opinion (in the 1990's), specifically on the issue of the repairing liability.
- 1.10 The Pavilion lease requires the lessee to keep the premises in good tenantable repair and condition. On the face of it, a clear and simple covenant. However, the whole matter rests on the central issue as to whether the remedial works, which are needed, go beyond what is required under the covenant to repair. It has been documented that the original design defects (faience block with no expansion joints have cracked over time, moisture / salt water and air have entered blocks resulting in further damage and rusting to the steels causing exacerbation of the issue, flat roofs with inefficient rainwater goods, condensation, and lack of ventilation) have resulted in the more minor repairs becoming serious items of disrepair over time. The works required to remedy the issues are now likely to be considered a mix of improvements and repairs. Counsel is of the opinion that much of the work now required, would not come under the definition of repair. The lack of certainty on these lease terms means that for the Council and MDL a collaborative solution is better than pursuing through the lease.
- 1.17 Turning to the funding available for the repair and restoration, £2,000,000 sits within the Town Deal funding, allocated to the Pavilion. Increasing this figure from within the Town Deal is possible but it would be to the detriment of other projects.
- 1.18 It was originally anticipated that the full restoration costs would be met 50/50 by the Council and MDL. The Council would find circa £5m from a combination of Town Deal funding (£2m), council borrowing, (against rent from a new tenant), and other sources. The recommendations of this report seek approval to explore options with other external funding sources which might include the Government's Long-Term Plan for Towns for Torquay and potentially heritage funding. However, Cabinet is asked to note that the National Lottery Heritage Fund (NLHF) has also been identified as a partner for the Resilient Future for Oldway project.

2. Options under consideration

Option A – Do nothing

- 2.1 A do-nothing option will see the status quo persist with progress towards the vision and objectives set out in 2.4 above limited. There is a cost of doing nothing financially and reputationally. Doing nothing will see pressure on the repair and maintenance budget continue to grow. As the site degrades this is likely to have a short-term financial impact. It is also likely that do nothing would have an impact on the NLHF's willingness to support the Council at other sites. The recent designation of Oldway by Historic England as an at-risk site, emphasises the challenges of the site and the importance of the site beyond Torbay.

Option 2 – Surrender Premium – Heads of Terms

- 2.2 Negotiations have been ongoing with MDL on the potential surrender premium linked to some specific Heads of Terms. These Heads of Terms include that landlord's agreement to development on the adjacent car park in the future should not be unreasonably withheld, subject to any development gaining planning permission. Following protracted negotiations, the surrender premium, while not meeting 50% of the forecast repair costs, is at a level which officers are prepared to recommend (subject to a full condition survey).

Option 3 - Enforcement Action

- 2.3 Whilst the Council could argue that the property is in disrepair and therefore MDL is technically in breach of its repairing obligation, the ultimate sanction by the Council is to forfeit the lease. This would result in the Council being responsible for the property and MDL would jettison their liability without having to pay a surrender premium.
- 2.4 Whilst the Council as landlord would be entitled to damages for breach of the repairing covenant, such damages would be the difference between the value of the property as it stands and the value it would have had if the tenant had carried out its obligations. Such damages would be a fraction of the extensive sums required to restore the building.

Option 3 – New lease/tenant post restoration

- 2.5 JLL, an international property consultancy, was instructed by the Council, through TDA, to provide an update to the original Market Assessment Report dated July 2021, with reference to the restoration and repurposing of the Pavilion. As a further year or more has passed since the first report, market conditions have changed, and it was felt that an update was prudent.
- 2.6 JLL believe the location and nature of the building is likely to be attractive to both the food and beverage and leisure sectors. Many casual dining operators undertook some form of financial restructuring during the pandemic, leading to several venues closing. This enabled many to continue to trade by shedding underperforming sites and cutting costs and debt. Whilst not at the pace witnessed during the pandemic, should we enter a recessionary period, it is anticipated some companies will look to restructure further. This has led to operators tightening their expansion criteria, to prioritise the best locations.
- 2.7 Within the leisure sector, operators continue to seek long term (10+ year) leases, primarily due to the fit-out costs involved. Tenants are however seeking greater incentives from landlords in the form of capital contributions and extended rent-free periods. Flexibility is paramount, not only for the occupier regarding the lease terms, but also for the developer on the planning consent and layouts, as a more open consent allows for greater marketability and the line between each 'use class' is becoming increasingly blurred.
- 2.8 JLL believe the profile of the Pavilion and the opportunity it presents is likely to attract potential interest from companies active in a range of sectors, including brewers and pub companies, restaurant operators, food hall operators and possibly live music / events and

experiential leisure. Some will have a requirement for the whole, whilst others, such as casual dining operators will have smaller space requirements and potentially have greater confidence if a cluster of smaller units is created.

- 2.9 Anticipated rental levels have not changed since July 2021. The overall rent to be achieved is nevertheless dependent upon whether the building is let as a whole or split to create multiple lettings. JLL advise the best approach is to seek expressions of interest, guiding parties at a global rent of £10 per sq. ft. Should it be decided to explore multiple lettings in the property, dependent on the split and size of units, they would anticipate higher quoted rents of c.£20 per sq. ft, as operators will approach this by considering the overall quantum of rent, against their trading projections. A fully occupied unit is therefore likely to achieve a rent in the range of £175 – £250k per annum.

Option 4 – Cease all restoration-based activity

- 2.10 This option would bring negotiations to a halt at this point. Because of the anticipated rising costs of restoration, an inability to reach agreement with MDL, along with MDL's own reluctance to push on with their intended development of the adjoining car park site, the Council may decide to postpone the project until such time as market conditions improve.
- 2.11 Some community representatives have suggested a demolition and rebuild of the building. The Pavilion project board instructed some initial work on this option, the estimated cost was £28,000,000 and this option was discounted.

3. Financial Opportunities and Implications

- 3.1 The current estimated cost of restoration and conversion of the Pavilion and repair is circa £11 million. Securing the balance of the funding required to complete the restoration will require additional grant funding and is highly likely to require additional Council funding to complete.
- 3.2 The report seeks permission to agree that funding strategy and preliminary approaches have been made already to National Lottery Heritage Fund to understand how Torbay can best work with NLHF to unlock the opportunity at Oldway and Pavilion. Additional opportunities may include Arts Council England and the Long-Term Plan for Towns which will be submitted to Government by June 2024.
- 3.3 Any Council funding will need to be based on a clear business plan relating to the future use of the building hence the importance of understanding the interest of the occupier market. Subject to the expression of interest and any required procurement or letting process there will be an opportunity for rental income and possibly business rate income as the site is returned to active use.

- 3.4 The restoration costs are not yet finalised and there is a requirement for works over the next quarter to establish what the final costs may be. The extent of these works and agreeing permission to carry them out is an issue still to be resolved between the parties.
- 3.5 There is a cost of doing nothing financially and reputationally. Doing nothing will see further pressure from the community and potential enforcement action levelled to the Council for repair and restoration works. This would see the Council have to commit officer time and budget to deliver these works. Reputationally allowing such a position to come to pass would weaken the understanding and commitment of partner agencies in the Council's role as a custodian of these assets.
- 3.6 Additionally there would be non-financial benefits of any associated employment or visitors that would be expected to come forward depending on the end user.

4. Legal Implications

- 4.1 The heads of terms for the surrender, the required lease alterations and the relevant issues regarding any future development on the car park site have been supported by the Council's legal team.
- 4.2 Should a private partner be identified there will be a requirement for a lease to be drafted and agreed. Indicative terms that the Council will consider will need to be developed linked to the call for proposals referenced in 6.1 below.
- 4.3 The Council will need to consult its insurers throughout the process to ensure that its insurance cover reflects the changing risks as the project develops.

5. Engagement and Consultation

- 5.1 Historically there has been engagement with the community in the development of the Torquay Town Deal Investment Plan. That engagement continues through the Community Board, which sits underneath the Town Deal Board and the Town Deal Board itself.
- 5.2 The responses to expression of interest process will be reported through to Cabinet and Group Leaders at its conclusion with any emerging recommendations tested with the Town Deal Board in due course.
- 5.3 Should MDL bring forward a planning application for the adjoining car park site consultation and engagement for that application will be subject to the normal expectations of the planning process.

6. Purchasing or Hiring of Goods and/or Services

- 6.1 To take forward the recommendations of this report, it is likely that a call for proposals will be issued seeking responses from potential private sector partners to work with the Council. Officers will follow the Council's Financial Regulations and Contracts Procedures in respect to ensure that the Council is compliant with the Public Services Value (Social Value) Act 2012 in consultation with the Director of Finance and the Procurement Team.
- 6.2 The Council will also seek to maximise the opportunity for local employment and local supply chain benefits through the contractor procurement.

7. Tackling Climate Change

- 7.1 No direct implications from the recommendations, the Council will seek to support the objectives of the Climate Emergency Action Plan in delivering the recommendations set out in this report.

8. Associated Risks

- 8.1 The key risk in the short term if the recommendations are not taken forward is reputational harm to the Council. This would be a risk from the community based on the historic deterioration in the condition of the site and the lack of progress hitherto in identifying a clear way forward for the site.
- 8.2 In taking forward the recommendations securing the finances to allow this project to progress will be a challenge and as such presents a risk to delivery.
- 8.3 In line with the Council's programme and project management approach a full risk register will be compiled for this project.

9. Equality Impacts - Identify the potential positive and negative impacts on specific groups

	Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
Older or younger people			No discernible impact anticipated.
People with caring Responsibilities			No discernible impact anticipated.
People with a disability			No discernible impact anticipated.

Women or men			No discernible impact anticipated.
People who are black or from a minority ethnic background (BME) (Please note Gypsies / Roma are within this community)			No discernible impact anticipated.
Religion or belief (including lack of belief)			No discernible impact anticipated.
People who are lesbian, gay or bisexual			No discernible impact anticipated.
People who are transgendered			No discernible impact anticipated.
People who are in a marriage or civil partnership			No discernible impact anticipated.
Women who are pregnant / on maternity leave			No discernible impact anticipated.
Socio-economic impacts (Including impact on child poverty issues and deprivation)			No discernible impact anticipated.
Public Health impacts (How will your proposal impact on the general health of the population of Torbay)			No discernible impact anticipated.

10. Cumulative Council Impact

10.1 None

11. Cumulative Community Impacts

11.1 None