

**Meeting:** Cabinet **Date:** 14 May 2024

**Wards affected:** St Peters with St Marys, Brixham

**Report Title:** Nomination to list Breakwater Car Park, Berry Head Road, Brixham TQ5 9AF as an Asset of Community Value – **Additional Information**

**When does the decision need to be implemented?** As soon as possible

**Cabinet Member Contact Details:**

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The following additional information (**bold**) has been provided by the report author, for context the whole section has been provided:

## Supporting Information

### 1. Introduction

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- 1.1 On 02 April 2024, the application to list Breakwater Car Park as an Asset of Community Value, was validated. A redacted version of the application is appended to this report at Appendix 1. The application complies with the requirements set out in paragraph 6 of The Asset of Community Value (England) Regulations 2012.
- 1.2 A local authority considering whether to include land nominated on its Asset of Community Value list must take practicable steps to inform the owner or the holder of any leasehold estate in the land. In this instance, the Council is the freehold owner of the land; the asset is a pay and display car park managed by Parking Services.
  - 1.2.1 **There are some categories of assets which are excluded from listing, the details of which are set out in the Regulations. These include residences, land licensed for caravan sites and operational land owned by organisations defined as 'statutory undertakers' under s263 of the Town and Country Planning Act 1990. Under the**

**legislation, the Council is not defined as a statutory undertaker; therefore, the car park is not excluded from listing. There have been several cases in England relating to car parks which the courts have confirmed, local authorities were correct to list, though each case should be considered on its own merits.**

- 1.3 The decision to list the nominated building or land will only occur where in the opinion of the local authority, it meets the statutory criteria set out in Section 88(2) of the Localism Act 2011 specifically that:
- a) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and
  - b) it is realistic to think that now or in the next five years there could continue to be a primary use of the building/land which will further (whether or not in the same way) the social, wellbeing or social interests of the local community.
- 1.4 Members' attention is drawn particularly to pages 8 and 9 of the application at Appendix 1 regarding the merits of the nomination and established community use. You will note that the car park, as depicted in the plan at Appendix 2, is a widely used amenity, given its proximity to the beach which is considered to enhance the quality of life for residents and visitors alike, promoting a happy, healthier community.