

## **TORBAY COUNCIL**

Report No: **F/46/04**

Title: Breakwater Café, Breakwater, Brixham

To: Executive

on 13th July 2004

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### **1. Purpose**

- 1.1 To obtain an in principle decision in respect of either a disposal of the freehold interest or the grant of a long year lease in the above café and adjoining public toilets/site as shown on the plan, to facilitate redevelopment of the public toilets and future management of the same by the purchaser-tenant (being the current tenant).

### **2. Relationship to Corporate Priorities**

- 2.1 The proposal is connected to the aims of the Council to have a clean and attractive environment for the community to enjoy and ensure facilities are available for locals and visiting Tourists alike.

### **3. Recommendation**

- 3.1 That Members consider the content of this report in particular as to whether either:

- (i) the disposal of the freehold interest in the Breakwater Café or
- (ii) the grant of a long lease, the period to be determined

can be supported in principle, subject to further negotiation by the Director of Finance in consultation with the Directors of Environment, Learning and Cultural Services and the Torbay Development Agency. It is also considered appropriate to consult with Brixham 21 given the location of the premises.

### **4. Reason for Recommendation**

- 4.1 Either proposal would secure redevelopment of the Council's toilet block, and pass the running costs on to the purchaser/tenant.

### **5. Background**

- 5.1 The Breakwater café is leased for a period of 30 years from 30<sup>th</sup> November 2000. The main terms of the lease are set down in Appendix 1 (Exempt).
- 5.2 Some time ago the previous tenant approached us with a proposal to refurbish the public toilet block at Breakwater at his own expense, subject to the

Council permitting the roof area of the new block being used as a sitting out area in connection with the use of the café.

The Council would have remained liable for the running costs of the toilets.

The detail was set out in report No. ENV/72/03. with the relevant Record of Decision being :-

"that the Acting Director of Environment Services, in consultation with the Assistant Chief Executive (Law Administration and Human Resources) and the Executive Member for Finance, be given delegated powers to conclude negotiations and enter into a lease with the tenant in respect of the proposed development".

- 5.3 Very shortly after the above Resolution was passed the lease was sold

The new tenants have altered the original proposals, developing their own facilities within the area let to them, and therefore the proposal as approved above is no longer relevant.

## **6. The Revised Proposals**

- 6.1 The new tenants have approached the Council with two options regarding the café and the nearby public toilet block at Breakwater beach.

Firstly they indicate a willingness to renew the public toilet block, place seating on the roof, and pay us a capital sum if we would agree to the disposal of our freehold interest in the café, and the public toilet block. They would be expected to maintain and operate the new toilets to an agreed specification

As an alternative the tenants have indicated that they are prepared to accept the grant of a 125 year lease and renew/carry the running costs of/ the public toilet block At present the tenant is not offering any payment, but this should be open to negotiation.

## **7. Key Risks for the Council.**

### **7.1 (a) Freehold Sale**

(i) A freehold disposal would limit any future development in the Breakwater Beach area.

(ii) The only route of access is over the Council's adjoining Car Park. Whilst this is also true for disposal of a leasehold, a lease gives greater flexibility, which the Torbay Development Agency, through the Harbour Master considers important.

(iii) The Council as landlord could lose any ability to ensure that the café would be kept in a reasonable state of repair in the longer term.

Similarly whilst negative requirements relating to use could be inserted, enforcement would be more difficult against a freehold.

This loss of control may well impact on the Blue Flag Status of the adjoining beach, at some stage in the future, even though the intentions and proposals of the existing operator appear genuine.

(iv) The income from the premises would be lost, with consequences for the relevant revenue budget. However, there would be savings in at least equal measure to the toilet revenue budget.

(v) In order to ensure the redevelopment of the toilets was carried out, I would recommend that the freehold would only transfer upon satisfactory completion.

(vi) Ensuring that the toilets are managed properly by the tenant could prove difficult.

(vii) We would probably need to offer the Council's freehold interest ,subject to the existing tenancy on the market generally subject to an obligation to redevelop the toilets in order to ensure we obtain the best deal in the market in accordance with section 123 of the 1972 Local Government Act.

I am even more cautious about this possibility since the purchaser could then subsequently sell on to the tenant without any input from us whatsoever.

## 7.2 (b) Leasehold

(i) there would be no option for early termination by the Council as currently exists, removing flexibility.

(ii) the land and adjoining car park would still be affected for the length of the new lease- a significant period of time.

(iii) the capital receipt would be at a reduced figure-or there may be none at all.

(iv) similar comments apply in respect of loss of income to the beaches budget, balanced by savings to the toilet budget.

## 8. Conclusions

8.1 Whilst the proposals have some merit, Members will need to balance the benefits with the risks. Capital receipts and redevelopment of the toilets aside the disposal of a freehold in this location does not appear an attractive proposition given the Council's retained interests in adjoining land.

8.2 The grant of a 125 year lease at a premium removes many concerns but it still involves a significant period of time. Members are advised that the Council

have only tended to grant leases for periods between 25 and 40 years in recent times.

- 8.3 In order to ensure that we are obtaining market value, it is recommended that if either option is supported in principle, independent professional valuation advice be obtained in relation to any capital receipt that the Council ought to obtain.

**9. Alternative Options (if any)**

- 9.1 To leave the status quo. This would mean that the Council would continue to bear the cost of operating the public toilets, They would only be open ion the Season -and any costs associated with alterations in order to ensure compliance with relevant Statutory requirements. e.g provisions for disabled persons.
- 9.2 To deal with the two aspects separately ie to obtain a capital receipt from the tenant and then spend some of the same on upgrading the toilets.
- 9.3 However, again under this option, we would still face the revenue costs of running toilets.

Richard Thorpe  
Director of Finance

Contact Officer: Mike Palfreman  
Extension: 7924

## IMPLICATIONS, CONSULTATION AND OTHER INFORMATION

### Part 1

Does the proposal have implications for the following issues?

Insert name of  
responsible officer

<b>Legal</b> (including Human Rights)	The relevant conveying procedures and any associated agreements would need to be accommodated within existing resources.	Tony Chidlow
<b>Financial</b>	Although a sale or the grant of a long lease at a premium of the café would generate a capital receipt it would also lead to a loss of rental income to the Beaches revenue budget within Learning & Cultural Services. However there would be cost savings as set out in this report. Both proposals are likely to have VAT implications which will need to be addressed through further discussion and negotiation	Adrian O'Rourke  Sarah Woodward
<b>Human resources</b> (including equal opportunities)	No	
<b><u>Property</u></b> (a) Corporate Property Management		Chris Sexton
(b) Estates Management	The Estates Management implications are set out in the report.	Sam Partridge
(c) Property Services		Parvis Khansari
<b>Finance - Capital Plan</b>	The Council's approved Capital Plan is dependant upon the generation of new capital receipts to fund expenditure. Any proceeds from this sale would help towards this requirement but needs to be weighed against other considerations.	Steve Warren

### Part 2

Does the proposal have implications for the following issues?		
Please give details as appropriate		
Sustainability	Yes	The proposal should ensure the future of the public toilets, and ensure they meet current requirements.
Crime and Disorder	No	
*OfSTED Post Inspection Action Plan	No	
*Social Services Action Plan	No	
*Change Management Plan	No	

- not applicable to reports to Licensing, Development Control and Area Development Committees

### Part 3

Does the proposal have implications for the following Directorates? If so, please inform the relevant Director.		
Please give details as appropriate		
Managing Director, Corporate Governance, Finance and HR	No	
Environment Services	Yes	Cost savings for toilet budget. Either option would constrain our options in respect of the car park at Breakwater
Social Services	No	
Torbay Development Agency	Yes	Adjoins Harbour Estate. Express concerns as to inhibiting of future development and use of the Breakwater and Breakwater Hard area
Learning & Cultural Services	Yes	Loss of rental income. Loss of control of the premises if freehold sold

### Part 4

Is the proposal contrary to or does it propose amendment to the Policy Framework or contrary to (or not wholly in accordance with) the Council's budget?		No
1. Details of the nature and extent of consultation with stakeholders and relevant select committees.		
2. Details and outcome of consultation, as appropriate.		

### Part 5

Is the proposal a Key Decision in relation to an Executive function?	Yes	Reference Number	No	✓
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### Part 6

**Wards** Berry Head with Furzeham.

**Appendices**  
Appendix 1 Terms of Lease on the café(exempt)

### **Background Papers:**

The following documents/files were used to compile this report:  
Relevant letters on file Z322(b)(Exempt.)