

**Meeting: Cabinet**

**Date: 23 March 2021**

**Wards Affected: Tormohun**

**Report Title: Pavilion Update**

**When does the decision need to be implemented? ASAP**

**Cabinet Member Contact Details:** Councillor Swithin Long, Cabinet Member for Economic Regeneration, Tourism & Housing, 07419 111618, [Swithin.Long@torbay.gov.uk](mailto:Swithin.Long@torbay.gov.uk)

**Supporting Director Contact Details:** Steve Parrock, CEO TDA, 01803 208973, [Steve.parrock@tda.uk.net](mailto:Steve.parrock@tda.uk.net)

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## **1. Purpose of Report**

- 1.1 To update Cabinet and seek authorisation for Torbay Council to enter into an exchange of letters protocol with Marina Developments Ltd and YG Developments Ltd, which sets out the mutually agreed way forward in respect of the Pavilion. The proposed letters record the process and actions required by both parties prior to commencing the full restoration of the Pavilion building.

## **2. Reason for Proposal and its benefits**

- 2.1 We want Torbay and its residents to thrive.

We want Torbay to be the premier resort in the UK, with a vibrant arts and cultural offer for our residents and visitors to enjoy; where our built and natural environment is celebrated and where we play our part in addressing the climate change emergency.

We want Torbay to be a place where we have turned the tide on poverty and tackled inequalities; where our children and older people will have high aspirations and where there are quality jobs, good pay and affordable housing for our residents.

- 2.2 The proposals in this report help us to deliver this ambition by agreeing the principles and various actions required by both the Council and the current tenant, MDL and their development company YG Developments Ltd, to ensure the restoration of the Pavilion is undertaken as quickly as possible and to provide additional certainty, and commitment from both parties.
- 2.3 This restoration will include the repair of the inherent defects of this strategically important building and a programme of refurbishment that will ultimately see the building bought back into use.

- 2.4 The recommendation and exchange of letters, will only commit the Council to the joint appointment of a specialist surveyor to survey the Pavilion only and the subsequent production of a detailed cost plan. Further Cabinet and/or Council decisions will inevitably be required in the future as progress is made to bring the Pavilion back into sustainable use.

### **3. Recommendation(s) / Proposed Decision**

That the Chief Executive of Torbay Council in consultation with the Portfolio holders for Finance and Economic Regeneration be authorised to:

- i) Agree and finalise the details set out in the Council's response.
- ii) Agree that £75,000 from Economic Development Budget be allocated to match fund the joint appointment of a specialist consultants who will survey the Pavilion and provide a programme of works required with indicative costs.

### **Appendices**

1. **Part 2 EXEMPT**– Letter from YG Developments Ltd dated 16<sup>th</sup> February 2021 (Appendix 1)
2. **Part 2 EXEMPT**– Torbay Letter dated 16<sup>th</sup> February 2021 (Appendix 2), plus attachments (Appendices 3 to 5)
3. Appendix 7 – Site Plan – EM3629

# Supporting Information

## 1. Introduction

- 1.1 The Pavilion, Torquay has been empty and unused for many years. The property is leased to MDL on a 99 year lease from 1985. The marina and adjoining car park is also leased to MDL on a separate 99 year lease agreement from 1987. The Council has been working with its tenant over many years to find a solution which will see the restoration of the Pavilion and ultimately bring it back into use.
- 1.2 Due to a number of inherent defects contained within the Pavilion the cost of repair and restoration has historically prohibited any meaningful action without a substantial development on the immediately adjacent car park which is covered under the 1987 lease.
- 1.3 Members will recall a previous proposal by a hotel developer for the Marina car park which included a mixed use development which would have seen profit from the development being used to fund 100% of the restoration. Due to viability and planning concerns this project did not progress.
- 1.4 MDL have recently requested an exchange of letters prior to fully re-evaluating the condition of the Pavilion and a new enabling development. The noticeable difference with the new proposal is the reduced scale of development being proposed.
- 1.5 The two letters attached set out various actions and milestones that will see proposals come forward in a timely manner.
- 1.6 In the event that the developer secures the necessary consents and funding, this in principle could trigger a surrender of the current Pavilion lease which will 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. The remaining funding would come from Torquay Town Deal.
- 1.7 It should be noted that the exchange of letters proposed is not a legally binding process, but is helpful as sets out the principles and direction of travel and will give confidence to both parties that the approach is supported.

## 2. Options under consideration

- 2.1 The proposal contained within the letters does not remove or replace the contractual landlord and tenant relationship and it's important to note that the Council will continue to ensure the tenant's obligations as defined in the lease are being met.
- 2.2 Due to the nature and extent of the repairs required, a significant investment in the Pavilion is required. A mixed use development on the adjoining car park appears to be the only viable funding option presently with Government match funding from the recently confirmed Torquay Town Deal application.

### **3. Financial Opportunities and Implications**

- 3.1 If successful this proposal will eventually see the current tenant surrender the Pavilion lease back to the Council either restored or with a surrender payment equal to 50% of the works costs.
- 3.2 The other 50% of the works costs will need to be funded by the Council and it should be noted that if the Council accepts a surrender of the building then it will become liable for the future running costs of the building. It is very likely that the Council will need to find a new tenant for Pavilion. Potential use would include those falling under the new Use Class E (a) & (b) retail and the sale of food and drink and those formerly classed as A4 drinking establishments which are now defined as 'Sui Generis' in addition this may also potentially include event planning, entertain, community use and exhibitions. There will be no permitted development on Cary Green under any circumstances. Whilst it may be possible to pass most future repair liabilities onto a future tenant it may well be too challenging to fully offset all risks and a wider perspective may be necessary with regards to the visitor economy and economic benefit.
- 3.3 Other than a contribution at this stage towards the initial survey work and cost report, any request for monies from the Council to contribute towards these repairs will be part of a separate paper and report to Cabinet/Council, as indicated in 2.4 above).

### **4. Legal Implications**

- 4.1 The exchange of letters are not a legally binding documents beyond the immediate request to carry out surveys and reports up to the value of £150,000 in total.
- 4.2 The Pavilion Lease will remain in place for the duration of this first phase and entering into this document will not prevent the Council from enforcing any tenant obligations contained within that lease.

### **5. Engagement and Consultation**

- 5.1 This is an extremely sensitive location and full engagement and consultation is explicitly required. The tenant has committed to engage widely and in accordance with a list to be provided by Torbay Council.
- 5.2 The tenant will also need to obtain planning consents for any proposal that may come forward and therefore the normal engagement associated with planning applications will also take place as part of this process.
- 5.3 A consultation strategy will be prepared by consultants on behalf of the tenant at the earliest pre planning opportunity.

### **6. Purchasing or Hiring of Goods and/or Services**

- 6.1 There are no procurement issues as MDL Ltd are the existing tenant under the current lease. However, where surveys are to be commissioned for use by Torbay Council and the tenant, the tenant has agreed to adopt the Council's procurement policies.

## **7. Tackling Climate Change**

7.1 Before works can be undertaken a planning consent, listed buildings consent and building control approval for the works will be required, which will involve meeting environmental standards required under policy.

## **8. Associated Risks and Delivery Options**

8.1 Presently there is insufficient information available to identify all of the risks and that is why extensive surveys and feasibility studies are required.

8.2 The works envisaged however can be broken down into two projects. The restoration of the Pavilion as described and the development of the Car Park with retail and residential use which is primarily required to fund the restoration and incentivise the tenant.

8.3 At this juncture it is not possible to determine who is best placed to manage the restoration of the Pavilion project although the tenant has indicated that they would prefer the Council to assume responsibility in return for a fixed price contribution based on the cost plan report to be commissioned and a full surrender of the Pavilion lease.

8.4 Clearly major restoration projects carry significant risk and any unforeseen works that are identified after the surrender will ultimately become the Councils liability. Should the Council decide to accept a surrender of the Pavilion and undertake the restoration in return for a fixed price contribution and the works turn out to cost less than first envisaged then the Council would benefit from this saving. The opposite is true, should the tenant be prepared to take the restoration risk. A possible solution is that both parties share the risk and jointly appoint a profession team. This situation would require a future decision once more information is available. The main advantage of the Council accepting the delivery risk is that it guarantees an outcome and for the most part, the Council retains control of the programme.

8.5 Once the restoration works are complete it should be noted the Council will have the ongoing liability for the Pavilion. It is very likely therefore that the Council will want to find suitable tenants for this space at the earliest opportunity and as part of this arrangement pass on the repairing liability to that third party. It is proposed therefore to further investigate letting options whilst the surveys are being undertaken.

8.6 The two letters attached set out the expected outputs, the immediate scope of work, a breakdown of the consultancy fees and a programme for delivery of this phase.

## Equality Impacts

9.	Identify the potential positive and negative impacts on specific groups		
	Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
Older or younger people			There is no differential impact
People with caring Responsibilities			There is no differential impact
People with a disability			There is no differential impact
Women or men			There is no differential impact
People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i>			There is no differential impact
Religion or belief (including lack of belief)			There is no differential impact
People who are lesbian, gay or bisexual			There is no differential impact
People who are transgendered			There is no differential impact
People who are in a marriage or civil partnership			There is no differential impact

	Women who are pregnant / on maternity leave			There is no differential impact
	Socio-economic impacts (Including impact on child poverty issues and deprivation)	The subsequent refurbishment and potential re-development of the adjoining site is likely to have a positive impact on the locality.		
	Public Health impacts (How will your proposal impact on the general health of the population of Torbay)			There is no differential impact
<b>10..</b>	<b>Cumulative Council Impact</b> (proposed changes elsewhere which might worsen the impacts identified above)	N/A		
<b>11.</b>	<b>Cumulative Community Impacts</b> (proposed changes within the wider community (inc the public sector) which might worsen the impacts identified above)	N/A		