

Application Number

P/2015/0961

Site Address

Torquay Pavilion And Marina Car Park And
Office And Adjoining Land
Vaughan Parade
Torquay
TQ2 5EL

Case Officer

Mrs Ruth Robinson

Ward

Tormohun

Description

Change of use and restoration of Pavilion to form hotel reception and spa including restaurant, bars and function rooms. Construction of 4/5 storey 60 bed hotel, 5 and 11 storey block of 43 residential apartments, with ground floor restaurant and retail uses adjacent to harbour. Link between Pavilion and new hotel. Construction of new harbour walkway, provision of 289 car parking places including 74 spaces on Cary Green (42 seasonal; 32 for hotel). Construction of Marina Office and berth holder facilities and erection of Dock masters Office and associated landscaping (proposal revised 5 July 2016)

Executive Summary/Key Outcomes

The application site flanks the west side of the Inner Harbour and comprises the existing MDL car park and associated Marina offices, the Pavilion and includes Cary Green and adjacent areas of public realm.

It is a site of particular significance in heritage terms due to its prominence within the Torquay Harbour Conservation Area and its relationship to nearby listed buildings and the Grade II Registered Princess Gardens.

Discussions on the future development of this site have been ongoing for many years. The need to achieve regeneration of Torquay Harbour, particularly from tourism related uses, was highlighted in the now superseded Local Plan, this site was identified as a development site in the Draft Torquay Harbour Action Area Plan (2006), in the Mayoral Vision (2008) and now in the recently adopted Torquay Local Plan (2012-30) and in the Town Centre Master Plan.

Central to that designation is an ambition to secure the restoration of the Pavilion; a grade II listed building which suffers inherent structural problems and the redevelopment of the existing car park which forms an unattractive edge to the harbour, to create a catalyst for regeneration. The contribution that the development of this site could make to regeneration of the harbour side and town centre is significant.

Two planning applications (with accompanying listed building applications) have been submitted to the LPA. The first application, P/2014/0282 submitted in 2014 now comprises a 14 storey tower block and is as yet undetermined.

The second application, submitted in 2015 provides for a lower rise solution and arose as a response to the scale of objection to the original application.

Both options include a 60 bed hotel, (part of the 'higher end' Harbour Hotel Group). This is to be located to the northern end of the site adjacent to Vaughan Parade on the harbour side using the Pavilion as 'a front of house', including spa, bars and restaurants with a 'bedroom bridge' linking the two.

Commercial floor space occupies the entire ground floor of the harbour side building opening up onto a new waterside walkway, residential accommodation in the form of either 43 or 45 flats occupies the balance of the site. Car parking is largely accommodated within the retained MDL car park with hotel and seasonal/ overspill proposed for Cary Green.

An economic appraisal submitted to support the application estimates that construction costs are in the order of £32m, the equivalent of 20 FTE jobs will be created though construction of the building, the operation of the hotel will create around 98 FTE jobs averaged over the year with 58 FTE jobs estimated to be generated by the operation of the bars and restaurants.

The application which is the subject of this report is a revision to the 2015 application and involves a building which increases from four storeys adjacent to Vaughan Parade to five storeys in the middle section of the building reaching eleven storeys at the most southern end of the site overlooking Fish Quay. It includes 69 car parking spaces on a 'remodelled' Cary Green.

It is principally these two aspects of the scheme, the height and size of the building and the loss of Cary Green to car parking that are at the heart of the significant level of objections from local residents and statutory consultees alike.

The evolving proposals for this site have been scrutinised throughout by the Councils Design Review Panel who favour a 'tall and elegant' solution for the site and Historic England who prefer a scheme that does not impose such a tall building on the harbour.

This revision has sought to fuse the most successful elements of both alternative approaches. The options have all been informed by appraisals of the impact on the historic environment and on views in and out of the site.

The size of the development is driven by the need to fund the restoration of the Pavilion (with an anticipated repair cost of £2.7m) and to deliver a new 4* hotel on the site which is not in itself viable.

A hotel use would be welcome given the sites location in a Core Tourism Investment Area and is beneficial from an economic point of view.

It is argued that a 'subsidy' in the form of this number of high value flats is necessary for

delivery.

This position has been examined via an Independent Viability Assessment. The primary purpose of this is to understand whether the scale of residential development proposed is necessary to ensure delivery of the overall proposal. It is also useful to determine whether the scheme can afford to meet S106 requirements in relation to Affordable Housing and other community infrastructure contributions and whether it has the capacity to deliver wider regeneration aspirations in terms of an exemplar building and appropriate public realm enhancements.

This assessment confirms that this level of development is needed to deliver a hotel led scheme on the site. It identified however, a greater profit margin than the applicant's viability study allowed for and whilst this wasn't sufficient to allow any meaningful reduction in the scale and bulk of the proposed building it did confirm that the scheme could afford to deliver a much improved range of public realm improvements that would help meet Local Plan regeneration objectives.

The applicant initially disputed this, but the scale, range and quality of public realm improvements has been substantially upgraded in recent weeks.

The primary reason for the delay in reaching a determination on the proposals for this site has been attempts to try and find the best way of arranging this rather challenging amount of floor space on the site in a way that minimises harm and to ensure that the quality of the scheme is such that it achieves a transformative scale of regeneration.

This most recent revision is the 'best fit' that has been achieved in terms of its basic form and relationship to the surrounding area and it does now deliver a more 'place making' scale of regeneration.

In policy terms, the decision maker's prime consideration and legal duty is to take fully into account the duty to 'preserve and enhance' the character of the Conservation Area and listed buildings.

S 66 and S 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 impose a duty on LPAs to give considerable weight and importance to the desirability of preserving the settings of listed buildings and preserving or enhancing the character of Conservation Areas. There is a strong presumption against planning permission being granted in the event of there being harm arising from development. This has to be the first consideration.

The NPPF however does allow some discretion and harm, particularly 'less than substantial harm' can be acceptable if there are defined public benefits.

Much of the 'harm' is driven by the inclusion of the hotel as its low value means a significant level of development is needed to pay for it. It is therefore incumbent on the decision maker to consider whether those public benefits can be delivered in a way that reduces the identified harm on the historic environment. An option tested in the IVA

involved deleting the hotel in favour of higher value flats which resulted in a far smaller building.

In a nutshell, is the hotel 'worth' the level of harm?

In order to fully evaluate the implications of this development, in terms of the balance between harm and benefit, this report seeks to explain:

- Why this amount of development is needed.
- What impact the scheme has on the historic environment.
- Whether the scheme is 'good enough' to drive quality regeneration.
- What the public benefits are, whether they are of a scale that will mitigate for the harm and whether they can be guaranteed.
- Whether the identified benefits could be delivered in a way that reduced the level of harm as required by the broad thrust of Historic England's enabling guidance.

Critical to this assessment is the scale of harm and the quality of the scheme. This is a key issue and is essentially a matter of judgment. Historic England's response confirm that this harm is 'less than substantial' although still significant. The Victorian Society, the Garden History Society and the Theatres Trust all consider the scheme to be of a substantial level of harm. Improvements to the quality of the building and to the public realm have been recently secured which have to be further weighed in the balance.

Relevant to considerations of the 'balance' between harm and public benefit is the wider economic context. Recent figures relating to increased poverty levels and deprivation in Torbay reinforce the need to put economic growth high up the agenda. National and local planning guidance promotes economic growth as a priority. Investment to the Bay needs to be encouraged if the economy is to flourish and ultimately that can only be achieved if viable schemes are encouraged and long established development sites such as this are bought forward.

The submitted economic impact report provides a best practice assessment of these benefits in terms of jobs created and wider improvements in the local economy.

In view of the centrality of the economic arguments, the LPA has commissioned its own review of the findings of this report. This confirms that despite some discrepancies in methodology, the assumptions about the overall economic benefit are sound.

The same balance of costs and benefits needs to be applied to the loss of Cary Green. This is as big an issue to local people as the concern about the size of the proposed buildings and the impact on the historic environment. The report explains that the design of this space has moved on from a tarmacked fenced car park to a more shared public space and recent improvements to its design and management have helped maximise public use and deliver a space of some quality that will create a more appropriate setting to the adjacent listed buildings.

The question is whether the recent improvements to the proposed building, to the scale and quality of the public realm and to the treatment of Cary Green are good enough to offset some of the harm on the historic environment.

The following broad conclusions are drawn from an assessment of the scheme against the relevant policy guidelines.

- The level of residential floor space included in the scheme is shown to be broadly necessary for delivery of the hotel and restoration of the Pavilion and this has been confirmed via an IVA (Independent Viability Assessment)
- There will be a significant level of harm to the character of the Conservation Area, on the setting of listed buildings and on the adjacent Registered Garden,
- The quality of the scheme in terms of the detailed appearance of the building, wider public realm improvements and the delivery of place making regeneration has been recently been improved which to some degree offsets the scale of harm.
- The benefits are delivery of a restored Pavilion and for a use that will secure its long term future, the provision of a more active and attractive edge to the harbour as a result of the new walkway and proposed restaurants and bars and the provision of jobs and associated spin off economic benefits.
- The inclusion of flats in place of the hotel would deliver a smaller building and one that could positively enhance the character of the Conservation Area and the settings of adjacent listed buildings and Gardens but it would deliver fewer jobs, reduced economic benefits and although funding would be secured to refurbish the Pavilion it would not guarantee it a secure future use and the increased delay in achieving essential repairs to the listed building would be a concern.

The harm v benefits argument is very finely balanced and reflects priorities about whether the delivery of a hotel of this quality with all its attendant benefits in terms of jobs and economic stimulus outweighs the demonstrable harm to the historic environment and the character and visual amenity of the area.

It also needs to be weighed in the balance that alternative options which didn't include the financial burden of a hotel could deliver a more sympathetic scheme albeit with reduced job generation and lack of certainty about the long term future of the Pavilion. This is a very difficult judgement call. There is clear concern about the scale of harm on the historic environment. However, the Bay faces serious economic difficulties and increasing levels of deprivation which reinforce the need to encourage tourism, economic growth and regeneration.

This application involves delivery of a high end hotel which would be a real coup for the Bay. It would increase visitor numbers and benefit existing businesses. Should the 'public benefit' of greater economic vitality and a secure future for the Pavilion should be given greater weight?

The need for an exemplar scheme and a place making scale of regeneration to help

mitigate the scale of harm is critical. Throughout the lengthy discussions on the site officers have held the line in terms of demanding a better building and a better setting to help offset the harm to the historic environment. The recent revisions to the design of the building and the improvements to the public realm help towards meeting those concerns.

In terms of opting for a revised scheme that deleted the hotel, whilst this would deliver a smaller building there is no certainty that such an option would be taken up. Further it would not deliver the same scale of economic benefit, it would introduce further delay in resolving the future of the Pavilion and it would not secure such a robust long term future use for this building.

Officers therefore are now of the view that on balance, the significant harm to the historic environment is just outweighed by the overall public benefits of the scheme and consider that the application should be approved subject to a s106 agreement, revised plans and appropriate conditions as detailed below.

However, it is entirely legitimate to reach the judgement that the public benefit of the proposal does not outweigh the clear presumption against planning permission being granted and that greater weight should be given to the preservation and enhancement of the historic environment.

For that reason, the recommendation below includes firstly the officers 'on balance' view and secondly a reason for refusal of planning permission should Members take the view that the harm to the historic environment is such that it is not outweighed by the public benefits of the scheme.

Recommendation

On balance, it is the recommendation of Officers that planning permission should be granted for the proposal subject to clarification of the impact of 'shadowing' on the amenity of public spaces, revised plans/clarification of detailed design matters relating to:

- Opportunities for mitigating the impact of the lift shafts.
- Confirmation that the balconies will be constructed as a continuous curve.
- Detail in relation to the harbour walkway and strategy for relocating the traditional railings and form and extent of new railing detail.
- Inclusion of extended resurfacing between Offshore and the stone setts adjacent to the northern elevation of the hotel building.
- External plant in relation to listed building.
- And to the conclusion of a S106 agreement at the applicants expense to secure the following matters and to conditions as detailed below.
- In terms of the S106 agreement:
- To secure deferred contributions towards future public realm enhancements as defined in the body of the report namely re-surfacing of Fish Quay, an extension of the granite paving adjacent to SoHo to an agreed specification and/or a

contribution of £100,000 towards removal and treatment of the Ziggurat or an alternative key public realm master plan proposal. The amount of deferred contributions to be assessed and paid in stages and calculated on the basis of a 50:50 split between the developer and the Council of any increase in income generated from the site over that predicted in the IVA. The contribution to be assessed either in relation to uplift in projected sales values of the residential units or such other method agreed with the applicant (e.g. open book accounting of the entire scheme) Costs/values to be used shall be based on the Savills Supplementary Viability Report dated 26th July 2016.

The maximum deferred contribution will equivalent to the full amount of off-site Affordable Housing and Sustainable Development Contributions that would ordinarily be payable in accordance with the adopted SPD after deducting any contributions/costs paid by the developer towards improvements to the public realm.

- To ensure occupation of the hotel by the applicant (or such other suitably-qualified hotel operator as shall be agreed)
- A commitment, in the operation of the hotel, to procurement of local goods and services as described in the HJA report
- a commitment to use of local labour both during the construction of the development and in the ongoing operation of the hotel
- To secure a financial contribution of £30,000 towards enhancements to Princess Gardens.
- To secure the terms of the car parking strategy, public access to Cary Green and agreement for public use of eastern part Cary Green for markets/events for a minimum of 28 days in any September – May period, consent not to be unreasonably withheld by the developer, calculation of fees for use to be agreed.
- To secure an annual monitoring contribution towards ensuring that Cary Green is used and managed in accordance with the agreed car parking strategy and that the hotel car park is not 'bank parked' as explained in the body of the report.
- To secure modelling of the mini roundabout and implementation of any highway works deemed necessary via a S278 Notice prior to any occupation.
- Performance bond (if required)

However, if Members are minded to refuse the application, due to concerns about the impact of the proposal on the character of the Conservation Area and on the setting of adjacent listed buildings, it is suggested that the following reflects the key reasons why the scheme could be judged to fail when considered against national and local plan guidance.

As a consequence of its size, height and design, the development would be harmful to the setting and significance of key listed buildings, to the setting and significance of the Registered Princess Gardens and to the character and appearance of the Torquay Harbour Conservation Area. The development would harm key public views of listed buildings, eroding their significance in the townscape and will act in a way to limit views between the harbour, the Pavilion and the Registered Park and Garden to their

detriment. The public benefits included in the scheme comprising the restoration of the Pavilion, delivery of a hotel with attendant economic benefits and provision of new dwellings are, on balance, not sufficient to outweigh the presumption against approval embodied in s66 and 72 of the 1990 Act As such the scheme is contrary to paragraphs 133 and 134 of the NPPF and policies SS10 and HE1 of the adopted Local Plan 2012-2030.

Statutory Determination Period

The target date for a decision to be made on this application was January 16 2016. The applicant has agreed to an extension of time for the determination of the application. Further time has been needed to negotiate a scheme that accords with the Councils policies and national guidance on this prominent and important site.

Site Details

The application site flanks the west side of the Inner Harbour and comprises the existing MDL car park and associated Marina offices, the Pavilion and includes Cary Green and adjacent areas of public realm.

It is a site of particular significance in heritage terms due to its prominence within the Torquay Harbour Conservation Area and its relationship to nearby listed buildings and the Grade II Registered Princess Gardens.

The Pavilion is Grade II listed, 3-15 Vaughan Parade, the adjacent terrace is Grade II listed as is the Cary Estate Office on Palk Street and 1 Palk Street which overlook Cary Green. The quay walls and the Fish Quay which is to the immediate south of the application site are also Grade II listed.

The Grade 1 listed St Johns Church sits on the nearby hillside which forms backdrop to the harbour and overlooks the site. Part of the application site lies within Princess Gardens, a Grade II entry in the Register of Parks and Gardens. The registered Garden extends to the west of the application site and includes two further (Grade II) listed structures, the Fountain and the War Memorial.

Currently the MDL car park site comprises a semi basement and top deck car park providing 235 car parking spaces for the associated Marina. The lower level is normally used exclusively by MDL berthholders with the upper deck often used for public pay and display purposes.

The car park forms the western edge of the harbour walkway and includes at the northern end, retail and catering outlets with associated seating looking out over the inner harbour. It otherwise presents an inactive frontage to the harbour.

The Pavilion, constructed as a theatre in 1911, has been vacant for several years having previously been in use as a small specialised retail outlet and is now in a very poor structural condition. This largely arises due to corrosion of the innovative steel frame used in its construction and is a common problem in other similar buildings of this era.

Cary Green, a public open space, was laid out in its current form following the construction of the Fleet Walk Shopping Centre in the 1980's comprising a mix of hard and soft landscaping. It is overlooked on three sides by listed buildings, The Pavilion to the south, the Cary Estate Office and 1 Palk Street to the north and 3-15 Vaughn Parade to the east. To the north west of the open space lies the Ziggurat, a rather unappealing means of achieving pedestrian and disabled access from Fleet Walk Car Park to the sea front which dominates this space. There is a detached single storey building with a pitched roof on the south side of Cary Green in use as a taxi office.

The site is located within the defined town centre and adjacent to the harbour with high levels of pedestrian and vehicular traffic. It is very prominent within the townscape both in short and long distance views.

Detailed Proposals

By way of background, two planning applications (with accompanying listed building applications) have been submitted to the LPA for development of this site. They all include a 60 bed hotel, commercial floor space, residential accommodation in the form of either 43 or 45 flats and parking on Cary Green.

These are **P/2014/0282** registered in June 2014 and **P/2015/0961** registered in October 2015.

There were subsequently two revisions to P/2014/0282 both of which included a 14 storey tower block to accommodate the residential flats. The most recent of these revisions is referred to as the 'Tower scheme' and is still to be determined.

P/2015/0961 originally included a 10 storey tower with the displaced accommodation included in a higher six storey middle section of building and is referred to as the 'Stepped scheme'.

This proposal has been superseded by a further revision comprising an 11 storey tower with the higher middle section reduced to five storeys.

It is this version of P/2015/0961, which is the subject of this report. It is referred to as the 'revised stepped scheme'.

This revision involves the refurbishment of the Pavilion and a change of use to provide a 'front of house' facility for a new 60 bed hotel to be constructed on the harbourside. This includes 'public' uses such as bars, restaurants, a spa and function rooms as well as reception facilities for the hotel. The two are linked by an elevated and enclosed walkway with hotel bedrooms bordering both sides of the structure.

The scheme includes the construction of 43 2 and 3 bed flats in a building which increases from four storeys adjacent to Vaughn Parade to eleven storeys at the most southern end of the site and provides for restaurant uses on the ground floor with external terraces and a new public walkway along the harbourside.

43 car parking spaces to serve the residential flats are included in the existing MDL car park.

The scheme originally included 74 car parking spaces on Cary Green with 32 spaces to serve the hotel and 42 'replacement' spaces for MDL. This has recently reduced to 69 spaces.

There is a sister listed building application **P/2015/0962** which relates to the detail of the external and internal alterations to the Pavilion and Quay wall. This will be considered later in the agenda.

The Council is the freeholder of the whole site and MDL have a long lease on the Pavilion building and the car park site. The applicant has a lease from the Council in respect of Cary Green (excluding the site of the taxi office) and incidental areas of public realm required to allow the development to proceed.

Summary Of Consultation Responses

It is to be noted that the comments below are summaries of the responses received to consultation and Members are urged to read the full transcripts which are available on line and have been circulated with the report.

Historic England: They confirm their strong opposition to the fourteen storey tower included in P/2014/0282 and recognise that the shorter scheme (the revised stepped scheme) now under consideration has undergone considerable design revisions some of which would improve the relationship with the historic environment. However they still consider that the taller element of the proposed building included in this application would have an adverse impact on the designated heritage assets. The restoration of the Pavilion is described as a significant heritage benefit along with other less substantial heritage benefits arising from the proposal such as the removal of the inactive and blank edge to the existing car park. The potential of this site to be a catalyst for regeneration of the harbour and to enhance the appearance and vitality of the harbour is also recognised but they stress that it is not their role but the LPAs to consider wider economic/regeneration consequences.

The response recognises the positive improvements to the design achieved in the latest revision but they do not consider that these amendments 'would negate the impact of the proposed tall building' considering that the assertive presence of a tower immediately to the right of the Pavilion when viewed from Princess Gardens would cause considerable harm to its setting.

It is also thought that the height of the Tower would harm the setting of the Grade I St Johns Church through challenging its visual primacy in the townscape and result in the listed Grade II Mallock clock tower being read against a backdrop of development rather than open sky.

The open character of the harbour would also be harmed by the proposed buildings obscuring views from the Strand and Torwood Street across the Bay. Similarly concern

is expressed at the impact the tall building would have on views from the harbourside to surrounding Conservation Areas. They raise no objection to the loss of Cary Green.

The impact of the tall building is however in their opinion exacerbated by the 'challenging design of its upper levels and roof'. The letter also refers to HE Advice Note 4 'Tall Buildings' which they comment should be taken into account in determining the proposal.

In conclusion, HE considers that harm will accrue to the setting and significance of the Pavilion and the character and appearance of the Conservation Area. The proposal would cause some harm to the setting of the Grade I listed church and some harm to the Mallock Clock Tower, the visual connection between Princess Gardens and Vane Hill would be diminished by the introduction of a 'built form' causing some modest harm to the setting of the Grade II registered gardens. The scale of harm is defined as less than substantial although still 'significant'. HE further advises that the LPA needs to be confident that it has been clearly and convincingly demonstrated by the applicant that the perceived wider public benefits offered by the proposals cannot be delivered by a means that reduces the harm identified.

Victorian Society: They confirm continued objection to the scheme and have resubmitted their previous objections. They describe the inclusion of a tall building 'in perhaps the most sensitive location in Torquay' as a 'disaster for the character of the town worse than past planning mistakes'. In their opinion the height of the tower is immaterial it is simply not suited to this site and they describe Torquay waterfront being treated like a piece of recently reclaimed land in Dubai rather than land reclaimed for public benefit. They cite substantial harm to the Conservation Area arising from the height and scale of the development and are also critical of the loss of Cary Green regarding it as an important public space and a quintessential feature of Victorian resort town planning questioning why its loss is necessary when Fleet Walk car park is a matter of metres away. They do not consider that the benefits of restoring the Pavilion are outweighed by the harm the development would cause and urge that these applications are refused or referred to the Secretary of State for determination if the Council is minded to approve.

Devon Garden Trust: Object in the strongest possible terms to this application considering that the design is 'mediocre in terms of design scale and massing resulting in a form of development which would be totally inappropriate when seen from Princess Gardens looking towards the Pavilion'. It is suggested that the design of Abbey Sands is 'most successful and enhances the experience of the seafront and promenade' and an equally simple approach would work better here. They remain convinced that the site is not capable of accommodating the large amount of development proposed and that the brief for the site needs to be radically reconsidered and alternative funding sought for the restoration of the Pavilion.

Theatre Trust: Is keen to find a new and sustainable use for the former theatre. They describe it as a highly significant seaside building and despite past alterations one that is remarkably well preserved. The proposals in the main are supported but they express

concern about the impact of warm humid air from the pool and spa on the stability of the plasterwork immediately above the pool area. They are anxious to ensure that the height of the former auditorium is retained as any loss would be detrimental to the significance of the building. They urge the central void to be enlarged and question the location of the function rooms doors and dias which do not appear to match up with the location of the stairs on the first floor plan. The linked access between the two buildings is not liked and they would prefer the complete separation of the two uses along with review of the car park being retained in its current form which detracts from the appearance of the building. Whilst outside their remit they comment that the tall building proposed in all revisions would affect the setting of Princess Gardens and the Pavilion and that the proposed use of Cary Green would have a negative impact on its setting and it should be retained as parkland. It is requested that if permission is granted that a full update and photographic record is made of all changes to the building.

Design Review Panel: The various proposals for the site have been reviewed by DRP on no less than seven occasions. The currently undetermined Tower scheme and the superseded Stepped scheme were most recently reviewed at its meeting on the 14th August 2015. The panel's view was that a more slender and more elegant tower (such as is included in the current Tower revision) represented the most appropriate way of accommodating the scale of development required by the Developer on this sensitive site. There were a number of detailed design points they felt should be addressed to be confirm quality and to demonstrate 'delight' and a lighter seaside architecture.

In respect of the original Stepped scheme, the architectural treatment was described as weak, lacking in integrity, less elegant, lumpen and unlikely to 'exhibit the national/international award winning design quality previously urged for this incredibly important site'. A number of specific design concerns were detailed namely the increased height of the central section which disturbed the reading of the northern arm of the building, the lack of visual empathy with nearby historic terraces, exposed service cores and other flank/secondary elevations which turned their back to the town.

This critique strongly informed the design approach taken in evolving the revised lower rise stepped scheme currently for consideration.

Conservation Officer: Raises serious concerns about the impact of the scheme on the historic environment particularly the height of the development and the inclusion of the fifth storey on the terrace range which he considers seriously impacts on the views of the Pavilion from Princess Gardens. He draws attention to the importance of views from Princess Gardens of the roofscape and cupolas of the Pavilion against the wooded backdrop of the eastern harbour side which are masked by the scale of the four/five storey building. A similar impact is experienced in views from the west which divorces the harbour side from views of the Pavilion. He questions whether the public benefit of restoring this unique listed building is outweighed by the significant harm.

Strategic Transport/Highways: Offer no overall objection to the proposal in terms of traffic generation subject to the modelling of the roundabout, review of TRICS data and implementation of minor highway works which can be carried out via a S278 Notice.

The main concern is the lack of justification for use of Cary Green for car parking given the relevant local plan policy which seeks to minimise car parking in town centres. The lack of provision for disabled drivers, electric charging points and cyclists is raised as an issue. The means of connecting to cycling networks should be investigated. Highway cycling and pedestrian improvements as highlighted in the TA should be secured to overcome the identified conflicts. The Travel Plan is regarded as inadequate and should aim for a 30% target. Tracking for larger service vehicles should be carried out to ensure that the site is fully accessible.

Principal Natural Environment Officer: Has reviewed the value of Cary Green as a public open space in light of this proposal and also as part of a wider review to consider efficiency savings. This has identified that Cary Green is not considered a 'destination space' but more of a 'transition space' unlike nearby Princess Gardens which has a broader role and function. He raises no objection to the removal of the existing planting and considers the large Palms could be relocated for use elsewhere. He considers the water feature to be of little value compared to the Princess garden fountain although some provision for a more modern water feature would be an attractive component of the new design. He supports the use of the space for events and markets and considers its use for such purposes would be preferable to the continued use of Princess Gardens and the Promenade but it needs to be properly designed to ensure a successful outcome such as lighting, seating and a more robust and visually appropriate surface treatment. The use of materials such as granite setts and paving to link with the palette used at Abbey Sands, along the Promenade and in the Town Centre would be more appropriate. More information is required with regard to the species of trees and their future maintenance.

Arboricultural Officer: Does not raise any specific objection to the loss of planting on Cary Green. He considers the replacement planting to be appropriate but would prefer to see larger specimens along the road side to tie in with the existing plane trees on Torbay Road. He considers that more detail is required in relation to tree pits and the species of trees should perhaps be given more consideration.

Landscape/Green Infrastructure: Considers that the detail of soft landscape plans should be secured by condition with clear management regimes. It is considered that the loss of Cary Green should be compensated by enhancements to Princess Gardens.

Local Access Forum: Object to the loss of Cary Green and consider that use of nearby facilities should be given greater consideration.

Environment Agency: Raises no objection subject to the scheme being implemented in accordance with the submitted FRA

Natural England: Raise no objection to the scheme bearing in mind its relationship to the Marine SAC subject to a Construction Management Plan being in place which can be secured by condition.

Drainage Engineer: Raises no objection subject to the scheme being implemented in

accordance with the submitted FRA. His formal response requested a contribution towards the maintenance of Haldon Pier.

South West Water: Raise no objection.

MMO: Request that the applicant is made aware that early consultation be carried out to establish whether a Marine Licence would be required for the works.

Police Architectural Liaison Officer: Raises detail in relation to security of the hotel guests and future occupants of the proposed buildings.

EHO: Requires the imposition of conditions to secure soundproofing of residential flats to avoid nuisance to future occupiers from the operation of the A3 uses and the achievement of specific targets in relation to food extract systems in terms of odour and noise mitigation. Raises no specific objection subject to food safety standards being adhered to and management of the pool in line with HSE guidance.

Affordable Housing Manager: Considers that the scheme should deliver Affordable Housing Contributions in line with adopted Local Plan policy.

Torbay Development Agency: Are supportive of the scheme due to the need for significant regeneration in and around the town centre and the contribution development of the site would make to the continued economic recovery of the Bay. The delivery of a high quality hotel along with improved food and drink outlets would help boost tourism and compensate for the identified shortfall in quality tourism accommodation. This would increase visitor numbers, footfall and spending which would generate significant economic benefits. The 'Transformation Agenda' and the role sites like this will play in realising its ambitions is stressed along with need to be wary of undermining investor confidence and the impact this could have on the rate and scale of economic recovery.

Summary Of Representations

At the time of writing, 500 letters of objections and 89 letters of support have been received in relation to this application. It is difficult to be absolutely clear on numbers of respondents as there have been several versions of the scheme advertised and some understandable confusion about the relevant application numbers and many responses included both references.

It should be noted however, that significant opposition in the form of letters and various petitions were submitted in response to earlier proposals on the site and it cannot be assumed that the current revision to the scheme has necessarily overcome their concerns.

The **Torbay Friends of the Earth** originally submitted a petition signed by 345 people against the proposal on the grounds of overshadowing, loss of open carefree character, impact on views, contrary to the Councils Building Heights Strategy, creating a precedent for further development along the sea front and opposition to the loss of Cary Green on the grounds of traffic congestion and loss of open space. This has since been

supplemented by a further petition with 2014 people voicing opposition and 13 support on similar grounds.

Objections have been received from the **Torquay Neighbourhood Plan Forum** and the **Town Centre Community Partnership**.

The former take issue with the loss of Cary Green and the impact of the development on the historic environment. The latter object to the failure to comply with the NPPF in terms of sustainability, the protection of the natural built and historic environment and that it fails to take account of the proposals included in the emerging neighbourhood plan. It represents poor design and involves the loss of public open space. Cary Green is identified in the Draft Neighbourhood Plan as a protected space.

Local hotel operators object to the proposal. The **Rew Group** consider the economic justification for the scheme unconvincing and that it will have an adverse impact on existing hoteliers. **Richardson Hotels** consider the proposal 'monstrous' casting shadows over the harbour and obscuring views out to sea. An alternative community based approach is suggested to saving the Pavilion.

Mervyn Seal, a local architect of note has commented extensively on the proposals finding it damaging to the historic and architectural character of the area and has drawn up an alternative scheme for the site.

Two principal areas of concern have emerged from the consultation: the size and design of the building and the loss of Cary Green along with a number of more functional matters relating to the design and impact of the building.

The big issues are:

- The height and scale of development on the site and its impact on the character of the Torquay Harbour Conservation Area, on the settings of adjacent listed buildings and on Princess Gardens.
- The quality of the design being out of keeping with the quaint 'domestic' character of the harbour and comprising overdevelopment of the site.
- Whether further hotel development is needed and whether this will only deflect investment from existing sites, whether there are enough visitors to fill the bed spaces, that a priority should be to sort out the town centre and that the economic justification is unconvincing. It is also thought that those responsible for the decline of the building should pay to have it repaired rather than it being funded on the back of this damaging development.
- Whether the restoration of the Pavilion and delivery of the hotel can be guaranteed.
- The loss of Cary Green for car parking. The concerns are the loss of a green public space and its historical associations, that it is not shown to be necessary as the existing MDL car park is not heavily used, that more shared use of the existing facility should be encouraged and that the loss of this space can't be

justified when nearby public car parks are underused.

The design and functional concerns are:

- The 'shadowing' impact of the 11 storey structure on premises on Victoria Parade and on Offshore.
- The possible impact of wind funnelling.
- The impact on the listed quay walls from the construction.
- The design and impact of the 'bedroom bridge' linking the Pavilion to the proposed harbour side hotel.
- The width and design of the new waterside walkway and loss of traditional railings.

There has also been a petition and letters of support which has been more pronounced in relation to the current revision. There is support from some parts of the business community, the **Torbay Chamber Of Commerce** submitted a petition signed by 270 businesses in support of the proposal and the **Chairman of the Torbay Business Forum** offered support on the grounds that it is essential to achieve regeneration of the harbour and will act as a spring board for further investment.

The **Torbay Civic Society** supports the proposals as does the **Torquay Yacht Club**.

South Devon College have voiced support for the proposal and would hope to use the new hotel for student training experience.

There has been a specific request from **Mencap** to find space within the scheme to provide changing facilities for disabled people which the applicants have said they can accommodate. This can be secured by condition.

The reasons given for supporting the scheme are:

- The benefits to tourism and the provision of jobs and economic growth.
- The ability to save the Pavilion.
- That the Bay needs to be brought into the 21st century and needs to embrace change.
- The creation of an iconic development that will complement Abbey Sands, encourage further investment and encourage regeneration.

Relevant Planning History

Planning permission was granted in the 1980's for a three storey terrace building situated on the quay wall and of a similar height to Vaughan Parade.

Application P/2014/0282 was submitted in early 2014 and followed an extensive period of pre application consultation. It is as yet undetermined as is the sister listed building application P/2014/0283.

This first submission as part of this application was relatively low rise, achieving a maximum height of 8 storeys however it was not considered that the quality of the scheme was acceptable. It achieved a more consistent height across the whole building and a wider footprint and so did not relate well to Vaughan Parade and due to the width of the 'bookend' encroached unacceptably on the setting of and views of the Pavilion.

This scheme was widely criticised by the public and statutory consultees alike resulting in a review by the DRP who suggested a taller more slender building may be more successful as a way of accommodating the scale of development proposed for the site.

The opportunity was taken to look at how Cary Green should be developed to create a quality hard and soft landscaped place within which overspill parking could take place when necessary but which could revert to public use for events or markets at other times.

A revised scheme was subsequently submitted which included a 14 storey tower and the application re-advertised. This involved a lower run of building in relation to Vaughan Parade but the 14 storey lozenge shaped 'bookend' which was considered a fine response to the site by the DRP in its further review was condemned by Historic England as causing substantial harm to the historic environment due primarily to the height of the tower. This scheme did however include Cary Green as a more dual use space with improved surfacing and tree planting.

Further revisions to the Tower scheme were suggested to try and create a more slender 'lightweight' appearance to the tower.

This further revised Tower scheme was advertised concurrently with a new application, P/2015/0961, for a lower rise 'stepped scheme' which sought to accommodate the required level of floor space in a different format.

Whilst the 'stepped scheme' reduced the scale of the bookend to 10 stories, the 'lost' floor space was simply reapplied across the rest of the block with consequent impacts particularly on the views of the Pavilion from Princess Gardens. The DRP considered the stepped scheme weak and uninspiring but Historic England were more positive given the reduction in height which they consider a major factor in achieving an acceptable character and form of development.

There were however a number of detailed areas of concern in relation to the new design of both the revised Tower and the stepped scheme.

The revisions to the Tower scheme did not overcome concerns about the dominance of the structure and the shorter tower in the stepped scheme was 'anywhere' architecture and had none of the 'delight' considered important by the DRP.

The northern elevation of the tower was dominated by service cores and lift shafts, the rear of the hotel by extract systems and vents and the stepped increase in height and busy design of the backdrop to the Pavilion was considered damaging to the setting of

the Pavilion and on views from Princess Gardens. It also included a two storey link to the Pavilion which was particularly clumsy.

This again generated significant and understandable concerns from statutory consultees and members of the public.

The applicants were asked to look again at whether the more successful elements of both the 'Tower scheme' and the 'Stepped scheme' could be merged to achieve a more comfortable fit with its surroundings.

This was submitted as a formal revision to P/2015/0961 and has again been subject to formal consultation and advert. It is this proposal that is being considered today.

Key Issues/Material Considerations

There is a long history to discussions on this site. This report will provide a background to those discussions in terms of planning policy, explain the evolution of proposals on the site, examine the key issues emerging from consultation and how these have been responded to in terms of changes to the scheme.

Principle and Planning Policy -

The now superseded Torbay Local Plan for the period 1997-2011 recognised the need to encourage regeneration of the Harbour through a series of measures including new development. The Draft Torquay Harbour Area Action Plan, from its inception in 2006, considered in more detail how key waterfront sites such as this should be developed to help 'fulfil the Harbour area's potential'.

Policy TH4 1 proposed the development of this key site as a 'significant waterfront destination' including hotel use, niche retail, restaurants, bars, residential accommodation and a new use for the Pavilion.

Whilst this document was not formally adopted, the broad principles embodied were picked up and developed as part of the Mayoral Vision (2008) which anticipated a significant amount of development on this site. This identified the potential to upgrade the 'unattractive single storey concrete structure on North Quay comprising the Pavilion car park' which it regarded as an underutilised resource in a prime waterside location. It also identified the need to secure substantial investment to repair and refurbish the Pavilion building. The current applicant has been in discussions with the Council and LPA about bringing development forward on this site since the Mayoral Vision was first mooted.

Time has passed and these problems have not gone away or been resolved so the need to develop this site to improve the waterfront and to secure the future of the Pavilion figures in the newly adopted Local Plan as it did in its predecessor.

The site is located in a Core Tourism Investment Area and within the defined town centre where there is need for regeneration and investment. Policy TO1 seeks investment in tourism related uses, Policy SDT1 underpins the need to secure

regeneration and large scale investment in the town centre and harbour areas and policy SDT2 requires a mix of suitable town centre uses to come forward in the harbour area. The Torquay Town Centre Master Plan identifies the whole application site as a key regeneration site.

In the Draft Neighbourhood Plan Cary Green is identified as a protected public space.

The need to encourage and promote sustainable economic growth is a key objective in the Local Plan (Policy SS1) and the 'golden thread' in the NPPF.

The principle of development is therefore not at issue but the concern strongly emerging though consultation is over the scale and impact of the proposals in terms of both the size of the proposed building and the loss of Cary Green to provide car parking and the impact this could have on the wider Conservation Area, on the setting of nearby listed buildings and on the Registered Park and Garden.

Whilst successive revisions have sought to reduce this impact it is clear from responses from both statutory bodies and the public that this remains a key issue.

In terms of legal context, sections 66 and 72 of the 1990 Planning (Listed Buildings and Conservation Areas) Act requires LPAs in reaching determinations on applications to have 'special regard' to the desirability of preserving the character of conservation areas, listed buildings and their setting. It is clear from case law that the impact of harm on the historic environment has to be given considerable weight and the presumption has to be in favour of preservation.

In terms of judging the impact of development on the historic environment, NPPF paragraphs 132, 133 and 134 are of primary significance. Paragraph 132 explains that great weight should be given to the conservation of the heritage assets as set out in law.

Paragraph 133 and 134 however do provide some discretion and allow a degree of harm to the heritage asset providing this can be balanced against public benefit. Development which causes substantial harm is only acceptable in exceptional circumstances. Development which causes less than substantial harm is subject to a less onerous test but must still demonstrate clear evidence of public benefit. This is not however a simple balancing exercise but an assessment of whether there is justification for overriding the presumption in favour of preservation.

Paragraph 140 of the NPPF also explains that LPAs should assess whether a proposal for enabling development which would otherwise conflict with planning policies but would secure the future of a heritage asset would outweigh the dis-benefits of departing from those policies.

In this context HE Guidance in respect of Enabling Development which is still extant guidance (although in the process of being updated to reflect the NPPF) provides useful guidance about how the merits of a scheme should be evaluated. This particularly exhorts LPAs to ensure that in the event of harm, ways of minimising that harm are fully

explored.

HE's Guidance Note 4 Tall Buildings is also of relevance in assessing applications on this site.

Adopted Local Plan, policy SS10 reflects the requirements of s. 66 and s.72 of the 1990 Act in terms of an expectation that development will 'sustain and enhance' the historic environment but then reflects the more discretionary NPPF guidance in terms of assessing the impact of proposals on the historic environment and lists factors that will be taken into account in reaching a decision such as the need to encourage appropriate adaptations and new uses and whether the impact is necessary to deliver demonstrable public benefits.

Policy HE1 requires development proposals to have 'special regard' to the desirability of preserving listed buildings or their settings. It also confirms that new development should respect the significance, scale, form, orientation and architectural detailing of any listed building it affects.

Policy H1 encourages the delivery of new homes, Policy H2 specifies that a percentage of affordable homes should be delivered as part of any scheme in excess of 15 units on brownfield sites. There are a number of functional and design policies in the NPPF and the Local Plan which are of relevance. These are paragraphs 56-64 in the NPPF and in the Adopted Local Plan, policies DE1, DE2, DE3, and DE4 in relation to design, amenity and building heights, ER1 in relation to flood risk, ER3 in relation to contamination, and ER4 in relation to ground stability. The hotel and commercial uses will contribute to the night-time economy in line with Policy TC5.

The scheme is required to reduce carbon emissions and the use of natural resources in its design and operation in line with policy SS14 of the Local Plan and a condition will be applied requiring the submission of a statement confirming how it will meet sustainability objectives. In terms of meeting equality and diversity objectives as required by policies SS11 and DE1, the delivery of changing facilities in line with 'Changing Places' guidance will help increase access to and use of local facilities.

In relation to movement, access and car parking, policies TA1, TA2 and TA3 are relevant. These recommend a sustainable approach to transportation promoting development in well located, accessible locations where the use of the car is reduced. In relation to town centre development TA3 indicates no minimum threshold and expects new development to be serviced by existing car parks and on street parking.

Key Issues.

The response to consultation confirms that there are two principle areas of concern which is the size and height of the development and its impact on the historic environment and the loss of Cary Green to car parking. These matters are dealt with in 1-9 below. The questions seek to address most significant points in assessing the scheme. There are also a number of specific design/functional matters which are dealt with in 10-14.

1. The scale of development proposed for the site and why this is needed.
2. What impact does this have on the character of the historic environment?
3. Is the scheme of exceptional quality?
4. What are the public benefits of the scheme?
5. Is this harm mitigated by the scale of public benefit?
6. Can the delivery of the public benefit be guaranteed?
7. Can this benefit be delivered in other less harmful ways?
8. Is the loss of Cary Green to provide car parking acceptable?
9. Is this loss mitigated by the proposed public use of the space and is this secured in any meaningful way?

10. Does the height of the structure result in unacceptable 'shadowing' of the harbour and adjacent premises?
11. Is it likely to create wind funnelling?
12. Is the construction likely to adversely affect the listed quay walls?
13. Is the design of the 'bedroom bridge' linking the Pavilion to the proposed harbour side hotel acceptable?
14. Is the width and design of the new waterside walkway acceptable?

Each will be addressed in turn.

1. The scale of development proposed for the site and why this is needed.

There have been ongoing discussions on an appropriate scale and form of development for this sensitive site for several years. All the proposals have been informed by an appraisal of the heritage significance of the site and its surroundings and an assessment of sensitive viewpoints through an LVIA (Landscape and Visual Assessment Appraisal).

An urban design analysis was then carried out which recommended that the most suitable form of building, in terms of achieving 'a good fit' with the established character of the area would be to continue the form and scale of the listed Vaughan Parade terrace terminating at the southern end of the harbour with a taller bookend of a similar height to the 5 storey 'Harbour Point' on Victoria Parade. All the schemes submitted to date follow this basic model but have included significantly more floor space than anticipated in this early appraisal.

This scheme provides for a 4/5 storey building in a terrace form fronting the harbour adjacent to Vaughan Parade to be used for hotel purposes increasing to an 11 storey 'bookend' comprising private flats to the south of the application site overlooking Fish Quay.

The 'terrace' element will be a recessed storey higher than the ridge height of the adjacent Vaughan Parade increasing to two storeys higher closer to the 'tower' or 'bookend element' of the scheme.

To give some idea of the height of the tower it is useful to consider comparisons with existing structures in the area.

Shirley Towers on Vane Hill Road are 9/10 storeys and Warren House, the block of flats on St Lukes Road South with the 'Pagoda' lift overrun is the equivalent of a 9/10 storey building. Ridgeway Heights and Kilmorie both achieve 8/9 storeys. This block at 11 storeys will be taller than those structures.

It is 36 m tall and so is some 14m shorter than the Observation Wheel which is 50m in height. Its height particularly has drawn strong criticism from statutory consultees and residents alike on the grounds of its adverse impact on the historic environment.

This amount of development is needed, according to the applicant, to deliver a viable scheme that achieves regeneration of the site in line with adopted national and local policies, to secure economic growth and to secure the refurbishment of the Pavilion with costs of around £2.67m.

For this reason, attempts to reduce the scale of building on the site which would help overcome the anticipated impacts have been resisted on the grounds of 'viability'.

This latest revision, as will be explained in a subsequent section, does involve some reduction in size and height achieving greater compatibility with its surroundings but it does still present a challenging scale of development.

It is necessary however to be mindful of commercial realities. There is a clear desire reflected in Local Plan policies to secure a scheme that will deliver a tourism related use, save the Pavilion and provide a catalyst for regeneration. To happen, it has to be demonstrably viable. This requires a certain amount of development to ensure delivery. Achieving this in such a sensitive context is difficult. This is recognised in the NPPF and lies behind the greater flexibility included in its policies which now accept a degree of harm in conservation areas in order to secure development that will deliver defined public benefit.

Many have commented that the Council should 'give' the building to the community but it must be noted that the Council whilst freeholder does not have control of the building. MDL have control of the Pavilion and the existing car park under the terms of a long lease. It is also suggested that those responsible for the condition of the building should finance the repairs. However, the problems with the building are a product of its steel frame construction and not entirely attributable to neglect or lack of maintenance. This is a significant inherent defect and a means of raising the funds for repair are needed along with a robust and guaranteed future use for the building.

It is important therefore to consider the evidence supporting the need for this amount of development.

A 'supplemental viability study' has been submitted by the applicant in relation to the current scheme to demonstrate that this amount of development is necessary to deliver

a hotel of this quality on the site and to fund restoration of the Pavilion.

Such a study is also of relevance in terms of understanding the capacity of the scheme to deliver an exemplar building and a place making scale of regeneration and whether there is scope to meet S106 contributions towards Affordable Housing and Community Infrastructure Contributions.

The applicant was requested to submit a detailed summary of this supplemental study to be available for public comment. This document reflected only a 7% profit margin but was based on outdated figures and gave rise to comments from the public about the deliverability of the improvements to the Pavilion.

The data included in this study has been independently assessed via an Independent Viability Assessment (IVA) and it is now agreed by both parties that the predicted profit margin is closer to what would be regarded as 'viable'. Members have been fully briefed.

Developers would normally expect to achieve a profit margin of 20% but in this case they claim they are prepared to proceed on the basis of their estimated 14.89% margin. The viability study explains that the developer is prepared to do this due to his 'place making' motives to enhance the offer in the town centre which will increase the long term value of the hotel.

The outcome of the IVA indicated a possible profit margin of around 20% whilst still being able to 'afford' a S106 contribution of £270,000 along with around £1m towards public realm improvements. Whilst this doesn't represent enough profit to allow any meaningful reduction in the bulk of the scheme it did mean that the scheme should be able to afford to deliver in terms of quality, wider public realm enhancements and/ or S106 contributions.

Until recently there was some considerable distance between the LPA and the applicant in terms of what the scheme could 'afford' to deliver. This was largely based on a disagreement about the likely values of the residential development which the IVA assessor considers to be underplayed but also from the low value of the hotel which according to the applicant costs significantly more to build than it is worth at least in the short term.

As a means of trying to resolve the impasse it was suggested that this 'surplus' profit, as a compromise, should be invested solely in the public realm in order to mitigate harm on key public spaces, to uplift the quality of spaces around the building and to achieve quality regeneration.

In the circumstances of the site, and the pressing need to deliver quality, this would be more beneficial than trying to meet Affordable Housing or wider S106 related objectives. This would benefit the operator of the hotel, deliver his place making aspirations and help achieve the required scale of regeneration from the LPA's perspective.

Significant progress has been achieved on this front and the applicant has now agreed

to fund key public realm improvements 'up front' as well as to a range of public realm improvements to be funded through deferred contributions in the event that the scheme is more profitable than anticipated.

The Independent Viability Assessment (IVA) therefore confirms that there is limited scope for any appreciable reduction in the scale of development beyond that already achieved and that this number of high value flats is required to fund the restoration of the Pavilion and delivery of a 4* hotel. The recent concession by the applicant in terms of agreeing to fund wider public realm improvements goes a long way towards closing the 'viability gap'

It is necessary to then consider what harm this scale of development creates.

2. What Impact does this size of building have on the character of the historic environment?

The evidence in relation to the significance of the heritage asset and the impact of the scheme on the historic environment is contained in a Heritage Impact Assessment and its subsequent addendums to reflect later revisions to the scheme and in a LVIA (Landscape and Visual Impact Appraisal).

These documents identify the sensitivities in terms of the character of the place and assess the impact of the proposal on them.

In relation to the impact on visual amenity which is addressed via the LVIA, this scale of harm is graded to provide a more objective assessment of impact. There is not a similar objective assessment of the impact of the scheme on the heritage assets despite requests for this to be supplied.

This section considers the changes to the scheme that have taken place to try and overcome concerns about the impact on the historic environment and then evaluates the components of the current proposal.

a) How this scheme has changed from earlier proposals.

This revision does involve some reduction in floor space, unlike its predecessors, which has allowed some concession to be made to achieving a better fit with its surroundings.

In the previous 'stepped' proposal the higher six storey middle section disrupted the architectural language of the lower range of building. It no longer picked up the 'terrace theme' identified as an important design concept but appeared disjointed and inconsistent with adjacent building typologies.

The height and elevational treatment of this middle section seriously affected views of the Pavilion from Princess Gardens. The location of plant, service cores and lift shafts impacted on the visual quality of the overall scheme but particularly the tower element by creating blank elevations which would have been readily visible from the town. The

recessed upper storeys, designed to achieve some consistency with the scale of Vaughan Parade, were brought flush through the inclusion of relocated bedrooms into the setback, the link to the Pavilion was two storey and clumsy. The tower looked like a standard residential block and did not reflect any kind of 'sense of place' or seaside character.

In this 'revised stepped scheme', a floor has been deleted from the higher middle section thus allowing a return to a lower more streamlined terrace to form the northern arm of the building, service cores and lift shafts have been internalised, the recessed roof line has been reinstated, balconies have been made a more pronounced feature of the tower to lighten its profile, add delight and more of a seaside character and the link has been returned to single storey.

In order to recapture some of this lost space however, the 'bookend' has increased from 10 to 11 storeys.

Notwithstanding these amendments, the size of the scheme continues to generate a number of concerns, namely the height and dominance of the 'bookend', the scale of enclosure of the Harbour and relationship to Vaughan Parade, the impact on views from Princess Gardens and the impact on views from the Conservation Area to the surrounding area.

It is useful to break down the scheme into the component parts and consider the impact of the tower, the height and form of the terrace and the overall scale and form.

b) Impact of the Tower.

There are clearly understandable concerns about the height of the bookend which at 11 storeys is imposing on the more domestically scaled harbour.

The tower has been reduced in size from that included in P/2014/0282 and the 'bookend' has been redesigned to create a far more visually appealing building and has been rotated slightly to try and reduce its impact on key views. It has a more 'seaside appearance' with a sharper more dramatic prow to the building. It provides for a dark central core encased in a pronounced white aluminium 'skeletal' frame with generous balconies. The top two storeys are set back and designed to try and reduce its dominance. This produces a more lightweight appearance which reduces the dominance of earlier schemes.

Historic England raise a series of concerns in their response about the impact of the tower on key views although in relation to this scheme it is described as 'less than substantial' and that design modifications to the roof and upper level could reduce its impact further. Since then, revised plans have been submitted which simplify the upper levels of the tower though a change in roof profile and the framework encasing the upper levels has been made less asymmetrical. It is considered that this does reduce the impact of the upper levels of the tower although it now exposes the lift shaft to view which the architects are trying to remedy.

Historic England have commented on this revision and whilst they confirm that the 'geometry of the roof in the revised proposal is less assertive and will be less of a draw to the eye' it is only considered to offer a modest improvement and does not alter the substance of their advice which is that the scale of harm is considerable. Any progress on mitigating the impact of the lift shaft will be provided at the meeting.

The Devon Garden Trust is a statutory consultee as the development affects the Registered Park and Garden but their consultation response does not specifically suggest that the height of the proposed building is an issue. Their comments relate clearly to the overall mass and quality of the design which they consider mediocre and not providing 'an elegant building of the highest quality'. The Theatre Trust raised concerns about the impact on the setting of the Pavilion but accept that this is beyond their remit.

The Victorian Society expressed serious concerns about the level of harm arising particularly from the height of the 11 storey tower.

The impact of the tower is a serious matter of concern to many local people.

There are two sources of guidance in respect of the acceptability of tall buildings. The Councils Building Heights Strategy 2010, the principles of which are now included in the Adopted Local Plan (policy DE4) and HE Advice Note 4 'Tall Buildings'.

In broad terms, the potential of tall buildings to promote regeneration particularly in accessible locations and where nodes of activity can be reinforced such as harbours and along sea fronts is recognised. Tall buildings may be acceptable if they enhance the vitality of an area, contribute to the regeneration of Torbay, strengthen the character of the area, are appropriate in terms of their visual impact, provide wider urban design or socio-economic benefits, make a positive contribution to the built form townscape and surrounding landscape, and preserve or enhance local long distance views and key vistas subject to full impact testing.

HE guidance note 4 'Tall Buildings' requires that great weight should be given to the assets conservation in cases where tall buildings have an adverse impact on a designated heritage asset and that any harm requires a clear and convincing justification. It goes on to say, that in assessing this justification and weighing any public benefits offered by a tall building proposal, particular regard should be paid to the policies in paragraphs 8 and 9 of the NPPF which state that economic, social and environmental gains are to be sought jointly and simultaneously in order to deliver positive improvements in the quality of the built, natural and historic environment. This, it suggests may involve looking at alternative designs or schemes that might be more sustainable because they can deliver public benefits alongside positive improvements in the local environment.

Thus in policy terms a tall building in this location would not be precluded as a matter of principle providing it was thoroughly tested, shown to deliver quite significant wider

public benefits and that alternative ways of delivering those benefits had been fully considered.

c) Height and Form of the Terrace

The northern arm of the building takes the form of a terrace as identified in the Urban Design Appraisal as being the most appropriate approach to developing this part of the site. At four to five storeys it is a taller structure than envisaged in this study which recommended a more consistent height relationship with Vaughan Parade so that the domed roof of the Pavilion could still be read from Victoria Parade and to avoid overwhelming views of the Pavilion from within Princess Gardens.

Whilst the relationship of the four storey section of the terrace to Vaughan Parade is considered broadly acceptable, the increase to five storeys along about half of its length does act in a way to impede views and disrupts the visual relationship of the Gardens and its Pavilion building to the Harbour and its wooded backdrop.

It appears particularly imposing in views from Princess Gardens. It is this aspect of the proposal that the Councils Conservation Officer finds the most harmful and it is certainly picked up as a particular concern in the Devon Garden History Society's comments.

In response to this concern, the applicant has looked again at whether this element of the building could be removed or whether it could be set back a further metre to potentially reduce its visual impact. It is clear that removal would make the scheme unviable and it has been shown through modelling that setting it back would have a negligible impact on the visual relationship between Princess Gardens and the harbour side.

This element of the building is harmful to the historic environment. It does impact on views between the Harbour and Princess Gardens. However the severity of impact is dependent on where views are taken from and there are positions within the Gardens where the new building succeeds in blocking views of Shirley Towers which might be regarded as an advantage.

d) Overall Scale and Form.

The proposed building is clearly of a size and scale that is challenging and despite design modifications, is difficult to accommodate without harm to the historic environment.

It will form a fairly imposing edge to the harbour and whilst the mass is broken down to pick up the verticality of the adjacent terrace it will appear out of kilter with the fine grained more domestic scale of the majority of the harbour side. It will enclose the harbour to a degree that will fundamentally affect its character and it will impact on views in and out of the Torquay Harbour Conservation Area. It will also affect the setting of the Grade II listed Pavilion and the Registered Park and Garden.

There will be some harm to the Grade I Listed St Johns Church as from a number of key views its primacy in the townscape will be eroded. It will also affect, through the backdrop it creates, views of the Grade II listed Mallocks clock tower. These concerns are reflected in the responses from statutory consultees who consider the benefit of saving the Pavilion to be outweighed by the harm the development will cause.

However, this scheme is an improvement on previous proposals. It is well designed and has inherent merit. It has sought to fuse the best elements of both the original tower scheme and the original stepped scheme to produce a building that, notwithstanding its size, has tried to reflect the rhythm, verticality and appearance of the adjacent listed terrace in the design of the northern arm of the building and includes a tower element that has been substantially redesigned to face all ways, has eliminated the blank elevations that marred the previous iteration and includes an architectural treatment that succeeds in creating a more lightweight and less dominating appearance. This relieves some of the dominance of the previous proposals.

e) Assessment of impact.

Key views have been thoroughly assessed on a Member site visit. The viewpoints considered are included as an appendix to the report. Comparisons with structures of a similar size were also made to ensure clarity about height.

Additional viewpoints were requested by Members following the site visit and these have now been submitted and forwarded to Members and included on the Councils web site.

The impact of the development on these viewpoints have been more objectively assessed as part of the LVIA which specifically looks at the impact of the proposal on visual amenity and townscape.

This describes a 'slight beneficial' impact on views along Torwood Street when the development is operational. A 'moderate adverse-slight adverse' impact is described on views from Parkhill Road due to the screening of the Pavilion in views across the Harbour. Views from Beacon Hill are classified as 'slight adverse' as the Royal Terrace Gardens will remain as a back drop to the site.

Views from Haldon Pier, Beacon Quay and South Quay are described as 'slight adverse' as partial views towards the Pavilion will be maintained by the form of the proposed building. Views from the Terrace will experience a 'moderate adverse' impact due to the screening of views towards the sea. Views from Rock Walk will experience a 'slight adverse' impact as will views from Princess Gardens according to this assessment. Members will be able to consider whether this assessment correlates with their impressions following the site visit.

In relation to views down Torwood Street, which are currently quite open and include vistas of the sea and countryside beyond, these would be largely obscured by any development of the site which is inevitable if the unattractive car park edge to the harbour is to be remodelled as anticipated in various local plan proposals both now and

in the past.

The same applies to views of Mallocks Clock Tower: its backdrop will fundamentally change through any development of the car park site whatever its size.

A beneficial impact of development on this site and an aspect missed in the Historic Impact Assessment and the LVIA is the degree to which views of the rear of the Fleet Walk shopping centre will be screened from positions along Beacon Quay and South Quay.

An objective matrix base evaluation of the impact of the proposal on the heritage assets, similar to that included in the LVIA is not provided in the Heritage Impact Statements to help a greater understanding of the scale of harm on the defined heritage asset. It offers a commentary on the evolution of the proposals and makes presumptions about relative scales of harm but does not attempt to quantify the level of impact on individual heritage assets.

Neither does it deal satisfactorily with the cumulative impact of this scheme on the character and appearance of the place which is largely defined by the relationship of these individual assets. The Councils Conservation officer considers the assessment of harm in relation to the historic environment to be inadequate.

There is unquestionably a degree of harm arising from development of this site and in the absence of any evidence to support an alternative position it has to be concluded that the level of harm is at least of a 'significant' or 'considerable' scale which is reflected in the advice of Historic England.

Overall it can be concluded that in policy terms for the scheme to be acceptable it should be of exceptional quality and deliver quite exceptional public benefits if the presumption in favour of preservation is to be overridden.

It is also necessary to consider whether the benefits of the proposal can be delivered in less harmful ways. This forms the substance of the following sections.

3. Is the scheme of exceptional quality and will it drive regeneration forward?

For a scheme to drive genuine regeneration it has to deliver both in terms of the building and its setting. This is well demonstrated by the Abbey Sands development where the quality and extent of the new public realm is of equal importance in terms of creating a sense of place as the building itself.

The delivery of a scheme of exceptional quality and a transformative scale of regeneration is a key policy requirement. Policy SDT2 explains that 'high quality development is needed which improves the public realm'.

If delivered, it would fall to be considered as a defined public benefit due to the long term

beneficial impact it could have on the quality of the place. It may also be sufficient to mitigate some of the harm described on the historic environment. The DRP in their assessment of proposals stressed the need for an exemplar scheme and setting to offset any harm on the historic environment.

a) The quality of the building

The quality of the building design is a product of satisfying broad principles of scale, form and mass along with ensuring that the detailed appearance and use of good quality robust materials is fully resolved and secured.

Setting aside issues of size, there have been ongoing discussions regarding challenging elements of the design that could be improved on to better meet the anticipated levels of quality. These were:

- The harmful impact of the 'fifth storey'
- The detail in relation to north elevation of the terrace building.
- Means of better integrating the bedroom link.
- The need to pick up more strongly the character of the adjacent Vaughan Parade in terms of the window detailing, scale, proportion and relief.
- Measures to reduce the visual impact of the Tower.
- Establishing a base line quality in terms of the use of materials and detailed design matters.
- Further information/revised plans have now been submitted which clarify that;
- The 'fifth' storey cannot be removed for viability reasons or its impact on views mitigated by setting it back. The choice of materials to be used will be important as will be the detailed design in terms of achieving a recessive appearance. This could be secured by condition.
- Options testing in relation to the north elevation show it to be broadly acceptable providing the large scale detail demonstrates sufficient quality in terms of relief, detailing and signage which can be secured by condition.
- The bedroom link has been marginally improved by the inclusion of a glazed set back at the western end of the link where it joins the new building to match the lightweight glazed box which separates the link from the listed building. This provides a more balanced appearance to the link. There is still a need to ensure that in terms of detail it is acceptable and that its underside is treated in a way that will lighten and add interest to pedestrians passing beneath. This can be secured by condition.
- The Design Review Panel were anxious to ensure that in terms of the detailed handling of the façade to the new building, the relationship to Vaughan Parade was fully reflected in terms of proportions, relief and solid to void ratios to provide 'an ordered and finessed façade'. Larger scale sections have been provided but there is still some need for further detail to ensure a wholly satisfactory approach particularly in terms of achieving relief and shadowing across the scheme. This can be secured by condition.
- It is considered that the distinctive framework to the tower is shown to be

adequate in terms of relief although the use of aluminium as a material rather than render needs to be fully demonstrated through detailed drawings showing how a continuous curve can be maintained and that joints are properly handled. On a similar point, there is some concern that the glazed balconies which are shown to be frameless are nonetheless sectional or faceted rather following a continuous curve as secured at Abbey Sands and this should be remedied. If the applicant is agreeable, this detail can be secured by condition.

- The upper storeys of the tower have been revised to reduce its dominance although the change to the roof profile does expose the lift shaft to view. It is confirmed by Historic England that the geometry of the roof profile is less assertive although it does not change their advice.
- Whilst sections through the façade have been supplied in relation to the hotel building and the apartment building larger scale details in relation to key features of the building are required before the quality of appearance can be confirmed. The specification of materials show a commitment to the use of good quality materials but there are some notable omissions which will need to be satisfied before this matter is assured. This matter could be left to appropriate conditions.
- The impact of external plant in relation to the Pavilion is not fully resolved and requires further information to be submitted which is picked up in more detail in the listed building application.

b) Quality of the public realm

As originally submitted, the only public realm improvements included were a 'new' harbour side walkway as a replacement for the existing public right of way and the delivery of good quality stone paving immediately adjacent to the front elevation of the Pavilion building and the new hotel building extending only across to the proposed car park on Cary Green.

A 'public square' was included in the submitted landscape proposals occupying the area between the rear of the Pavilion and the Promenade but this was only to be half completed up to the 'redline'.

There were no other proposals to lift the quality of the adjacent public realm and attempts to remedy this lack of a more comprehensive approach to secure wider regeneration objectives were met with resistance on the grounds of viability.

The submitted LVIA specifically recommends a strategy for mitigation of harm to reflect guidance in the Councils Urban Design Guide to create a landscape design that 'alleviates negative visual impacts and integrates the site within the urban fabric of Torbay'. It states that the design of external spaces shall be integrated into the wider landscape setting to reinforce local distinctiveness and that the design of the public realm shall create successful places that respect natural features and are accessible to all. Particular regard it says should be paid to Princess Gardens anticipating improvements to the quality of this open space through 'improvements to the spatial design of areas adjacent to the Pavilion and to Cary Green which forms a visual

extension to the Gardens reinforcing the connectivity between these green spaces that will strengthen both the visual and physical quality'. It is fair to say that the submitted scheme fell far short of this ambition.

In an attempt to move this forward, Officers identified where enhancements should be secured. Some of these improvements are 'site related' and should be delivered as a matter of course due to the impact of the proposed development. Others are related to wider regeneration aspirations which should be funded either through S106 contributions or from the surplus profit identified through the IVA to mitigate the impact of the scheme on the wider area.

As a result of the 'viability gap' identified through the IVA and the fact that good quality and extensive public realm improvements are vital to any successful scheme officers have pushed for significant improvements to the scale, range and quality of the public realm improvements.

It has recently been agreed that the following additional public realm improvements are to be delivered 'up front'.

- **Princess Gardens:** The applicant has offered a financial contribution of £30,000 towards enhancements in Princess Gardens. A Conservation Management Plan is in the process of being put together to direct investment in the Gardens and this document will clarify the most appropriate way for this money to be spent. The Gardens are 'at risk' and as the significance of the heritage asset is diminished as a result of the development it is wholly appropriate that there should be some mitigation arising as a consequence of this development.
- **Cary Green:** Setting aside issues of principle, there had been ongoing debates about the quality of the proposed surface treatment of the car park area and the 'patchwork quilt' effect of not dealing with the whole area on a comprehensive basis. In order for this space to function as a key public space when not used for parking and for it to form an appropriate setting to the key listed buildings that directly overlook it a high quality and more holistic approach was considered vital. A revised scheme has now been submitted which extends granite paving across the whole of Cary Green and includes replacement of the brown herringbone paving adjacent to the rear of properties on Vaughan Parade. It would be preferable if this extended further to pick up the area between the new stone setts at the foot of north elevation of the proposed building and Offshore and included the area alongside 1 Palk Street and the SoHo Bar. Although this represents a significant improvement on the submitted scheme, the further extensions should be secured. The former should be delivered 'upfront' as part of the Cary Green revised scheme and the latter as a 'deferred contribution' as it is not so critical to the delivery of a quality setting to the Pavilion. The revised layout for the most part confines hotel car parking to the west of the site adjacent to the road leaving the eastern side adjacent to the Vaughan Parade listed terrace for seasonal overspill parking and for the most part available for public use. It presents a far more attractive, consistent and coherent approach in terms of delivering a space that will be of public value and will provide an appropriate setting to key listed

buildings.

- **The Promenade to the rear of the Pavilion:** It has been agreed that the short stretch of the old hexagonal paving slabs that are still in place here will be replaced with granite paving to match that which exists to the west of the site.
- **The public square to the rear of the Pavilion:** It has been agreed that this will be completed in accordance with the submitted detail rather than left half finished.
- **Fish Quay:** The loss of the traditional railings arising from construction of the new harbour walkway is of concern. The applicant has agreed to mitigate this by relocating these railings to South Quay to replace the existing poor quality galvanised railings. In order to provide a cohesive public realm adjacent to the new development and along Fish Quay they have also agreed to replace the poor quality galvanised railings which extend along Fish Quay to the bridge and introduce a more modern form of enclosure to match that on the new development which would provide some visual integration between the application site and the bridge. Details to confirm an acceptable approach have not as yet been supplied.

In terms of deferred contributions, the following is agreed:

- **The Ziggurat:** The removal of this structure is identified as a key element in the Torquay Town Centre Master Plan in terms of public realm enhancements. Its removal and appropriate treatment would to some degree compensate for the loss of Cary Green as a public space. A contribution of £100,000 towards this ambition has been offered but only as a deferred contribution.
- **Fish Quay:** Whilst resurfacing of this would be better 'upfront' it was agreed that if the proposals for Cary Green fully delivered in terms of scope and quality then this could be considered as a deferred contribution.
- **Cary Green:** As explained above, the extension of the granite paving adjacent to SoHo should be secured as a deferred contribution depending on the resources available and the priorities at the time. This option can be reflected in the s106 agreement.

The proposals in relation to the public realm have been considerably upgraded since submission and now begin to meet the ambition identified in the LVIA to deliver integrated improvements to the public realm. One of the identified benefits of development on this site is to act as a catalyst for regeneration and it is considered that is now reasonably met.

This scheme now delivers appropriate enhancements to lift the quality of spaces around it and achieves 'place making' regeneration to offset some of the harm to the historic environment.

4. What are the public benefits of the scheme?

As has been explained, the public benefits of the proposal can outweigh the strong presumption against approval which arise from concerns about the scale of harm on the historic environment identified in the sections above.

However, by law, the harm has to be given considerable weight and therefore the public benefits also need to be considerable to outweigh the harm.

The public benefits are:

- The restoration of the Pavilion and for a use that will guarantee its long term future and maintenance,
- The delivery of a 4* hotel and the contribution this will have to maintaining Torbay as a premier tourist resort.
- The creation of jobs and associated economic activity.
- The regeneration of the harbour side and wider public realm improvements.
- Provision of new homes in a town centre location.

The Pavilion is in a poor state and its restoration has been a key driver in pursuing development proposals on the site. It was an innovative building at the time of its construction, conceived as a complete steel frame from the foundations upwards. The steel frame was then built into the external walls which were constructed of faience blocks and brickwork. Many of these first generation steel framed buildings have corrosion issues. It was identified as being in need of substantial investment in the draft Torquay Harbour Area Action Plan in 2006. An assessment of the current condition of the building was carried out in 2013 by Alan Baxter Associates who are specialist structural engineers.

The building suffers from severe water penetration which has led to corroded steelwork and cracked faience. The costs of correcting these defects to give the building a robust 25 year 'life' has been recently estimated at £2.76 million. There is no grant aid available to rectify the faults whilst the building remains under private control. A repairs notice, which the LPA could serve would only achieve basic weatherproofing to arrest further decline, it could not require the fundamental intervention that is needed to secure the long terms future of this listed building.

Restoring the Pavilion and identifying a robust long term future for the building is a key public benefit. Use as a front of house for the proposed hotel is a very good use for the Pavilion. It secures public access and gives the building a long term future. This satisfies two public benefit tests in that it saves a listed building at risk and it secures a use that will ensure its long term maintenance.

The delivery of a good quality hotel in a prime location can be seen as a public benefit as it delivers jobs, promotes economic activity and generates vitality. The anticipated

future occupier is the Harbour Hotel group owned by the applicant the Nicholas James Group. This is a 'high end' chain operating mainly 4* hotels and it would have a significant impact on visitor attraction putting Torbay firmly on the map.

An economic impact assessment submitted to support the application, evaluates the potential of the scheme to benefit the local economy by looking at three measures of impact, employment generated, wages and Gross Value Added (GVA) which is a measure of how much value the proposed development adds to the local economy.

These impacts arise from the construction of the development, the ongoing operation of the hotel, the ongoing operation of the commercial uses. The report estimates that, based on the £32m costs of construction, the equivalent of 20 FTE jobs will be created though the building of the scheme, the operation of the hotel will create around 98 FTE jobs averaged over the year, 81 jobs are estimated to be generated by the operation of the bars and restaurants, cumulatively this will generate wages in the order of £3.7 m per annum and the GVA (i.e. the value of the scheme to the local economy) is in the order of £4.27 m per year.

The report also looks at the 'net additional local impact'. This considers a range of factors that will have an impact on the contribution that this scheme makes to local economy such as how much employment and economic impact is displaced from elsewhere in the bay, how much of this will leak outside the local area and the multiplier effect of the spending practices of the operator. Based on the Harbour Hotels policy of local sourcing of produce and services it estimates this to add in the order of 136 jobs, £2.5 m in wages and an estimated GVA of £2.9m to the overall scale of benefit.

The report also points out the unquantified impacts of the scheme in terms of encouraging regeneration of the harbour, helping to deliver the wider proposals set out in the Town Centre Master Plan and meeting the various economic objectives embodied in the Economic Development Strategy, the 'Turning the Tide' Tourism strategy and the newly Adopted Local Plan.

The need for jobs and economic growth is one of the Councils key objectives and the recent data in relation to increasing poverty levels reinforces the need to put the creation of jobs as a high priority. The Indices of Multiple Deprivation (IMD) is the means by which the wellbeing of a community is measured. Torbay performs poorly when compared to the country as a whole. The Community Investment Areas (CIA's) included in the Local Plan are based on the top 20% most deprived areas relative to England and the 2015 data show that deprivation is worsening across the Bay with CIA's growing in extent and the scale of deprivation.

The most up-to-date tourist data confirms that visitor numbers and turn over has increased and 'Turning the Tide' indicates that there is a shortage of the higher ranking hotels in the 4 and 5* categories. Torbay's economy relies heavily on tourism. In 2013 the value of tourism to the local economy was £445m with the equivalent of 9234 full time jobs which is 22% of all employment in Torbay. This confirms that there is a demand for new and tourist improved facilities.

The report concludes that employment and GVA generated by the development are estimated to be an equivalent of around 1% in the tourism sector of Torbay and it would suggest that a good quality hotel with all the spin off benefits entailed will deliver a significant boost to the local economy.

In view of the nature of appraisals, the centrality of the economic argument and the disputes about the methodology used the LPA has sought a review of the Economic Appraisal submitted in support of the application. This confirms a substantial economic benefit although it points out that the number of jobs likely to be generated in the hotel is less than the average 98 FTEs suggested in the HJA Economic Appraisal. Based on the HCA Employment Density Guide a figure closer to 60 FTE's would be expected. However the study concludes that it would make little difference to the overall prediction of economic benefit as the consultants used 'conservative' GVA multipliers and omitted to include additional new visitor spend in their calculations. Their verdict is that the overall employment and GVA impacts predicted is robust.

It should be noted that a range of figures have emerged from various studies and appraisals used to help inform a judgment about the overall economic benefit of the proposal and the viability of the scheme itself. Construction costs have varied between studies along with discrepancies in likely values. Whilst these differences have been identified and where possible resolved they are not of a scale to undermine any decision and it should be recognised that economic appraisals and IVA's are predictions based on best practice and not an exact science.

The Chamber of Commerce support the scheme on the grounds of the benefit to the local economy as do other businesses in the Bay. Some hoteliers notably the Rew Group and Richardson Hotels consider the economic benefits overplayed and that further hotel development would be damaging to the economy when there are so many hotels struggling and in need of investment. The point has been made in responses to consultation that a new hotel here will simply divert investment from other hotels in the area. The argument is that the Bay is not short of hotels but of good quality ones and surely it is better to invest in existing business than to build new hotels particularly given the harm arising.

In this context it is useful to note that the Imperial Hotel has been sold to a quality operator who clearly wasn't deterred in his investment decision by the prospect of a competitor setting up on the harbour side.

In relation to wider benefits, the applicants have agreed to include within the commercial space an adult changing facility to the 'Changing Places' standard which will be of significant benefit to people who need this kind of facility and to their carers.

The delivery of new housing would be beneficial from an economic point of view, it would contribute to delivery of a five year land supply and deliver new homes bonus.

To sum up, the scheme delivers in terms of achieving restoration of the Pavilion and for

a use that will secure its long term future. It will be of significant benefit to the local economy.

5. Can the delivery of the public benefit be guaranteed?

In terms of the delivery of the restored Pavilion and the hotel building, the lease the applicant has negotiated with the Council indicates that an agreed schedule of works would be undertaken prior to occupation of any of the apartments on the site. It also indicates a commitment to construct the hotel to shell and core prior to occupation of the 20th apartment on the site. This can be secured by condition.

Given the condition of the building, more detailed discussions will be needed about the scope and scale of these works which should be more fully specified and should reflect the recommendations of the specialist engineer and include implementation of the range of works included in the submitted listed building application. A prompt start should be secured and if there is a delay in implementation a further review maybe necessary of the scope of works needed.

A 'performance bond' to ensure delivery in the event of any unforeseen financial difficulties may be of benefit.

It would also be necessary to ensure that the hotel to be delivered is of the promised quality that will have the best chance of securing the anticipated spin offs in terms of economic growth and regeneration.

The Harbour Hotel Group are a good quality high end operator. Members visited the Salcombe Harbour Hotel to assess the quality of the offer and the facilities. It has a policy of local procurement both in terms of construction and sourcing of produce. This was stressed in the HJA Economic Impact Report and contributed to scale of economic benefit predicted. The S106 should therefore include a signed lease or other means of confirming occupancy on completion of the scheme and a commitment to local procurement included. Given the potential impact of construction works on the harbour a clearly and tightly defined phasing programme would be required.

Whilst economic benefits of the scale suggested cannot be guaranteed, the HJA Economic Impact Report was independently reviewed and despite some quibbles about methodology, it found the predictions regarding the likely economic benefit to the town to be sound.

The public realm improvements could for the most part be secured through a S278 notice and appropriate conditions. The financial contribution towards the Princess Gardens enhancements and any deferred contributions will need to be secured through the S106 agreement.

6. Can this benefit be delivered in other less harmful ways?

This is a key test in assessing the acceptability of a scheme that is harmful but

predicated on the need to fund, in this case, restoration of a listed building.

A common theme in Enabling Development Guidance and explicit in Historic England's consultation response is that the LPA needs to be confident that it has been clearly and convincingly demonstrated by the applicant that the perceived wider public benefits offered by the proposals cannot be delivered by a means that reduces the harm identified.

The work carried out as part of the IVA to assess whether this scale of development was necessary to deliver this hotel led scheme identified that the low value ascribed to the hotel was driving the large number of flats to effectively subsidise its delivery and to pay for restoration of the Pavilion.

It is therefore evident that harm might be minimised by deleting the unprofitable bit of the development and replacing this with a higher value land use. The applicants were asked to look at what sized building would be needed if it was to deliver ground floor commercial uses with residential flats in place of the hotel and derive enough profit to restore the Pavilion.

This produced a smaller building, much closer in form and size to that identified in the Urban Design Assessment as capable of being accommodated in this location with minimal impact on the historic environment.

The Pavilion would lend itself to a variety of alternative uses that would become more feasible once fully repaired although its use as a 'front of house' facility for an established high end hotel chain does provide a long term guaranteed use and resolves future maintenance liabilities.

The inclusion of a hotel delivers evident economic benefit although this has to be set against the harm identified to the historic environment.

The 'residential option' would clearly not deliver the same scale of economic benefit as inclusion of a hotel but it would still deliver some economic growth during construction and from the operation of the commercial uses on the ground floor. This has been assessed by the consultants appointed by the LPA to review the economic benefits of the scheme who conclude that in terms of a summary of all benefits, the number of jobs would be reduced from 116 to 47 this would generate £1.4m less in wages and £1.7m less GVA per year. This would on a proportionate basis reduce the economic benefit by over a half.

Such a scheme may have the capacity, through greater profitability, to deliver more in the way of wider regeneration enhancements. It also needs to be recognised that achieving investment and new hotel accommodation in this location may act in a way to deflect investment from other hotel sites. After all, there is no shortage of hotel sites in Torbay just a lack of interest in bringing them forward.

This point emerged as a common theme in consultation and the consultants were asked to consider to what extent deflection of investment was likely to affect other players in

the tourist sector. They did not consider it significant: in an extreme case a competitor operating at their margins might be forced to close but it may also spur existing hotels to 'up their game' and respond with renovations of their own.

The transformation secured by the development of Abbey Sands shows that a similar essentially residential scheme can secure economic benefits and regeneration. It must be acknowledged however that there is no certainty that such an application would be forthcoming, it would introduce further delay in resolving the future of the Pavilion and would not secure such a robust future use for the building.

To conclude, the benefit of restoring the Pavilion (albeit with a less secure future) can be achieved in a less harmful way although it won't deliver the same scale of economic benefit and may involve further damaging delay in securing the future of the Pavilion.

7. Is the harm mitigated by the scale of public benefits?

The report has so far concluded that the scheme will have a significantly harmful impact on the historic environment. S 66 and S 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 impose a duty on LPAs to give considerable weight and importance to the desirability of preserving the settings of listed buildings and preserving or enhancing the character of Conservation Areas and that there is a strong presumption against planning permission being granted in the event of harm whether it is substantial or less than substantial. This has to be the first consideration.

Paragraph 134 of the NPPF does allow, once this duty has been fully taken into account, to weigh the harm against the scale of benefit and to make a decision accordingly. In this context, it has to be accepted that delivery of a scheme on this site of a tourism related use will guarantee the future of the Pavilion and deliver clear economic benefits. The quality of the scheme has been improved particularly with regard to the range of public realm improvements and its capacity to drive a 'place making' or transformative scale of regeneration. It has also evident that a different package of uses would achieve some of those key benefits but in a way that would minimise the impact on the historic environment.

Approval can be justified providing the decision maker is satisfied that the scale of harm is outweighed by the public benefit. If the scale of harm is less than substantial then the test is less onerous. This is a matter of judgement and there is no consistent view emerging from consultees. Historic England consider the harm to be less than substantial but still significant, The Victorian Society consider it to be substantial. The Devon Gardens Trust find it unacceptable but for different reasons to the others. Officers concur with Historic England that the degree of harm is less than substantial although still significant.

It is necessary therefore to weigh the public benefits against the harm.

A compelling case for the development has to be:

- A more speedy resolution to the future of the Pavilion and its more robust and guaranteed future as the 'front of house' serving the hotel.
- The delivery of a 4* hotel and new commercial space with all the attendant economic benefits this will bring. It will help put Torquay on the map, deliver jobs, increase visitor numbers and drive local economic growth and vibrancy.
- The regeneration of the currently rather run down and unattractive harbour edge and wider public realm improvements which will help deliver place making regeneration.

Against the development is the very real harm to the historic environment.

This arises essentially from the fifth storey of the 'terrace building' and the top 3/4 stories of the tower building. If these elements were removed the building would be similar in form and size to that which emerged from the initial Urban Design Study as forming an acceptable form of development compatible with the character of the conservation area. It also reflects that which would be delivered if a wholly residential scheme were pursued on the site. It would also be more consistent with suggestions made by consultees about a more suitable scale of development.

Is the fifth storey on the terrace building and the top 3/4 stories of the tower building a price worth paying for the hotel with its attendant economic benefits and a confident long term future for the Pavilion?

This is a very hard judgement call and Officers find on balance, given the vital need for jobs, investment and economic stimulus coupled with recent modifications to the design and the significant improvement in terms of the scale, scope and quality of the public realm improvements that the strong presumption against approval enshrined in the 1990 Act is just outweighed by the identified benefits.

However this is a very finely balanced judgement and it is entirely legitimate, having considered all the matters raised in this report for Members to decide to give greater weight to the need to preserve and enhance the character of the Torquay Harbour Conservation Area, the settings of adjacent Listed buildings and the Registered Park and Garden and to consider that the development should be refused planning permission.

There is no right or wrong answer, it is a judgement based on the scale of harm against the public benefit and reflects whether priority should be given to a proposal that will generate economic benefit over preservation of the historic character of the town.

There are, however, a number of other matters to consider in terms of reaching a decision on this application.

8. Is the loss of Cary Green to provide car parking acceptable?

The loss of Cary Green to provide car parking is a hugely significant issue particularly

for local people. The objections in summary relate to the physical loss of the green space, its replacement by car parking, the impact this will have on the character of the Conservation Area and the setting of adjacent listed buildings, it is questioned why it is necessary given the existing MDL car park is not often used to capacity as evidenced by the fairly consistent use of the existing top deck of the car park for public pay and display parking, why more 'shared use' of MDL's existing car park has not been considered to meet the needs for car parking and why spaces in adjacent underused car parks could not be used.

The scheme provides for the removal of all planting and structures within Cary Green. It is proposed to be resurfaced, include some tree planting and laid out to provide, in the revised scheme, 69 car parking spaces. 32 spaces are allocated for the hotel to use on a permanent basis and the balance for MDL to use on a seasonal basis.

The applicant contends that the provision of this scale of parking is essential to delivery of this project.

Cary Green is not within the curtilage of the Registered Park and Garden nor does it benefit from any statutory landscape protection.

In relation to the value of open space per se, it is recognised as being of intrinsic value from a health perspective and paragraph 74 of the NPPF indicates that 'open space, sports and recreational buildings and land should not be built on unless there is an assessment to show it is surplus to requirements and it would be replaced by other better provision. The focus of this policy is in relation to retaining land and buildings which encourage sports and associated activity which is not the primary function of this site. It is also not lost beneath buildings but could remain in use as public space for a proportion of the year.

Nonetheless, its 'value' in terms of the contribution it makes to the recreational needs of the area has been assessed by the Principal Natural Environment Officer as part of a wider review who finds that Cary Green is essentially a 'transition' rather than destination space and given its future use, which includes public access and its proximity to Princess Gardens he does not consider the development to cause detriment to the availability of open space. He does point out some design changes and refinements which would help the area to continue its function as a transition space and makes suggestions which would enhance its use for events and markets.

The main value of the site is its contribution to the character and appearance of the Conservation Area and in creating a valued setting to the adjacent listed buildings which frame it on three sides. These are 1 Palk Street, 3-15 Vaughn Parade and the Pavilion itself. It is therefore of heritage significance.

Historic England raise no objection to its loss nor did the DRP in considering the various proposals for the site. The Victorian Society consider its loss to be of significant concern as does the Theatres Trust although it is not their statutory function to comment on townscape issues.

In policy terms, the assessment is the same as that for the development as a whole. Development should 'preserve or enhance' but some harm can be weighed in the balance if the harm is deemed to be less than substantial and there are key public benefits.

It is also necessary to consider what local plan policies suggest in respect of car parking in relation to these specific uses and what provision there should be in a town centre location such as this.

Policy TA3 indicates minimum thresholds for car parking for the uses comprised within this application. Overriding this however, the policy states that there is no specified minimum threshold for town centre uses. It says that in general, existing car parks and on-street car parking will be able to service new development and that car free development will be permitted within town centres where there is good access to public transport and the potential to utilise spaces within existing car parks. On site provision would only be in exceptional circumstances where a change of use could lead to problems with overspill and discriminate parking.

There are a number of issues to consider therefore, is the parking necessary to the delivery of the development, is it acceptable in terms of the thrust of town centre parking policies, is the character of the Conservation Area and the setting of listed buildings adversely affected, what is the scale of harm, can this be mitigated and does it secure a public benefit?

It is claimed to be necessary from the applicant's point of view and essential for delivery.

MDL currently have 235 car parking spaces on two decks. 126 on the lower deck and 109 on the upper deck. This serves 300+ berthholders and in in peak months, a minimum of 214 spaces is apparently needed.

Following redevelopment of the site, 134 spaces will be available on the lower deck and only 81 on the upper deck. 43 of these are allocated to serve the residential flats leaving 38 'residual' spaces which will, as is currently the case, be used either for MDL berthholders or public pay and display if not needed for operational purposes.

To meet the minimum 214 spaces MDL claims is necessary to meet berthholders needs, it was proposed to include 42 overspill spaces for MDL on Cary Green along with 32 spaces for the hotel.

Evidence has been requested for many months now to support the underlying claim that 214 spaces is an operational minimum for the Marina in peak weeks and to help define when their peak demand is. This should be fairly easy to confirm from MDL's own records and from occupancy levels for the existing car park.

Observation suggests there are very few occasions even during the busiest part of the summer period when the existing MDL car park is used to capacity for operational

purposes. This would suggest that there would be periods of time, particularly out of these peak weeks when there is capacity within the existing MDL car park for more shared use of spaces.

The use of spaces in nearby underused car parks such as Fleet Walk is also promoted in the Local Plan. The applicant considers this would be inconvenient to beholders potentially affecting the long term viability of the Marina.

The inclusion of parking to serve the residential flats is considered, by the applicant to be important from a viability point of view as convenient secure parking will increase the value of the flats. The future success of the hotel is claimed to be heavily reliant on the availability of car parking close by.

Whilst these requirements might be valid, there is no reason why a more effective use of the existing MDL car park should not be given greater consideration as it would substantially reduce the scale and frequency of occupation of Cary Green, would thus comply more closely with local plan requirements and to some extent mitigate local objection.

Notwithstanding in principle objections to the level of car parking, Highway Officers have raised specific concerns about pedestrian/cycling conflicts which are generated by the use of Cary Green for car parking and have requested design modifications to reduce conflict. They also raise a need for modelling of traffic flows in relation to the mini roundabout if car parking is included on the site.

Any parking will need to satisfy requirements in relation to disabled drivers and the provision of electric charging points and there will be a need to include provision for cycling to ensure that the site is developed in as sustainable way as possible.

In terms of the impact on the Conservation area and setting of nearby listed buildings, and in recognition of the strength of public feeling, officers sought to find a compromise to the future of Cary Green in terms of its design and management to deliver more of a public space and to confine its use to those times that were shown to be operationally necessary.

The concept of a 'French Square' with a good quality hard and soft landscape scheme, trees and good quality street furniture would create a space that could accommodate overspill car parking when required but would otherwise lend itself to recreational use, allow it to be used for events and markets and would, depending on the quality of the final scheme and the extent and nature of the parking deliver a place that would not harm the Conservation Area or the setting of listed buildings.

It is essential therefore to consider whether the quality of the scheme is good enough and whether the public use of the space is guaranteed in any meaningful way.

9. Is this loss mitigated by the quality of the replacement scheme, the proposed public use of the space and is this secured in any meaningful way?

There have been long term outstanding issues with regard to the quality of the space, the degree to which the public are guaranteed access to it and the heads of terms to secure this.

a) Quality of the Replacement Space.

As originally submitted the design of the replacement space did not lend itself to public use and enjoyment at times when not in use for parking. It left an irregularly shaped area which would have been the space the public would have had the ability to 'use' as a public space and for events. It did not have any of the qualities that a successful public space should have. It had no relationship to its surroundings, no focus and was simply 'left over' space. In terms of finish, it was proposed to use bound gravel for surfacing the car park and to do little to the adjacent areas of public realm leaving a 'patchwork quilt effect' of varying surface treatments.

It was not considered that this approach was good enough. The gravel finish was neither robust enough for the likely use or visually appropriate for this context and the lack of a comprehensive response to the treatment of this new space meant the visual quality of the space was poor with adverse impacts on the historic environment.

In response to this concern the applicant suggested an alternative of 'conservation grade tarmac' across a wider area which was even less suitable as an approach for this sensitive location. It was suggested to the applicant that the resurfacing should be extended to include the wider area in a more comprehensive and cohesive approach to improve the setting of listed buildings and that it should include natural stone setts and granite paving to tie in more closely with the local palette of materials and those to be used immediately adjacent to the Pavilion.

Such an approach was supported by the Principal Natural Environment Officer but the applicant considered this unaffordable and unnecessary.

This position has recently been modified and the resurfacing is now to be wholly in granite setts and paving and the treatment is to be extended to the frontages of adjacent listed buildings replacing the existing herringbone setts and overcoming concerns about the 'patchwork quilt' effect. Whilst this is acceptable as a matter of principle there are a number of design matters that need further thought, for example, whether a darker colour stone would be preferable in terms of reducing staining, the species and layout of hedging and trees, the quality of the street furniture and some physical means of controlling random parking. These matters could be secured by condition.

As has been noted in previous sections, the extent of resurfacing could be usefully

extended to include the area between Offshore and the new stone work abutting the northern elevation of the proposed building and alongside 1 Palk Street. As explained above, it is suggested that the extension of resurfacing abutting the northern elevation of the new building is delivered upfront whilst the latter is included as a 'deferred contribution' to be delivered if the profitability of the scheme is better than anticipated.

The design of the space is also rationalised to provide a better relationship to existing routes and focal points which will facilitate and encourage public use of a majority of the space when not needed for car parking. This revised layout concentrates hotel car parking to the west of the site adjacent to the busy road and on an axis with the Pavilion and the more sporadic MDL berthholder parking to the eastern part of the site.

Following agreements in relation to the car parking strategy this space will only be available to MDL for parking during the Easter weekend, June July and August and only then when the whole of the MDL car park is fully occupied by MDL berthholders. Thus the eastern part of the new space will be available for the public to use for a majority of the year.

The previous layout generated conflicts between the car park layout showing 74 spaces and the proposed landscape scheme with insufficient space available for trees to be planted yet alone survive. These concerns have been ameliorated in the revised layout and the design now reinforces the public nature of the space and underpins the 'overspill' nature of the car parking.

In terms of highway comments, they consider that the revised scheme eases conflicts inherent in the previous layout but wish to see provision for disabled users and electric charging points introduced along with adequate provision for cycle parking. They consider that pedestrian safety needs further thought and can be achieved with bollards/changes in surface material. They have no in principle objections to the kerb modifications but require modelling/more detailed plans for confirmation.

b) Proposed public use.

The use of the space for parking needs to be tied to that which is shown to be necessary for operational reasons and for as restricted a period as possible in order to comply with town centre car parking policies. The submitted car park strategy indicated in summary that Cary Green could be used for car parking by MDL during peak months defined as March- October when the existing car park was 80% full and by the hotel for 12months of the year.

A more detailed assessment of operational need was requested to help define when peak months were and to assess whether the needs for car parking could be met though more shared use of the existing car park. This information has been requested since the original application was submitted in 2014.

In the absence of any reliable data confirming the scale of use of the MDL car park it was put to the applicant that the peak weeks should be confined to those times that are

demonstrably busy i.e. Easter weekend June July and August (rather than March-October) and that MDL should not occupy any spaces on Cary Green unless both decks of the MDL car park are 100% occupied by berthholders (i.e. no pay and display use) and that outside this defined period these areas are primarily devoted to public use. It was also suggested that the hotel car parking should only take place on Cary Green during the defined summer period and that outside this time hotel car parking should be accommodated within the existing MDL car park. This would free the whole of Cary Green for public use and enjoyment for a more substantial part of the year.

The applicant has agreed to the more restrictive periods of occupation for MDL but has not agreed that the hotel car parking should use the existing MDL car park outside the defined peak weeks. The applicant claims it is essential that hotel guests can park on the spaces allocated for hotel use on Cary Green all year long and the matter is non-negotiable.

It must be noted that no firm evidence has been supplied regarding the ability (or otherwise) of the MDL car park to accommodate the hotel car parking outside the peak weeks which would lend some support for the need for Cary Green for hotel car parking during the winter months. However the revised strategy, whilst not ideal, does mean that the eastern part of Cary Green is only used for car parking for restricted periods and only when there is a clear operational need as Cary Green cannot be used unless berthholders occupy 100% of both decks of the existing car park.

This revised strategy would in effect exclude public 'pay and display' use of Cary Green which would be significant from a planning point of view. The loss of this valued green space would be difficult to justify to provide public car parking which is not exactly in short supply in the area.

There will be a need to monitor the use of Cary Green to ensure compliance with the strategy and to ensure that 'valet parking' does not result in the hotel spaces being 'bank parked' to allow inclusion of more than 32 vehicles. This will need to be dealt with by conditions and an appropriate monitoring contribution to be included in the s106 agreement.

The use of Cary Green for parking is only supportable in policy terms if the quality of its design is exemplary, if there is evidence to support operational need that cannot be accommodated through shared use of existing facilities, it shown to be clearly necessary for delivery of this scheme and the use of Cary Green for overspill car parking is minimised.

It is considered that following recent improvements to the quality of the scheme and the revised car parking strategy which secures use of Cary Green (generally) when operationally required then the scheme is now acceptable and represents a significant improvement on the original submission.

Whilst the scheme in relation to Cary Green is now considered broadly acceptable it could be improved if the grass verge alongside Cary Parade were included within the

application site. This would allow the permanent hotel car parking to be shifted towards the Cary Parade which would maximise the amount of space to be made available primarily for public use. It would be important however to introduce hedging and substantial tree planting along the back edge of pavement to screen the visual impact of vehicles. The inclusion of this additional space would also allow better provision to be made for bin storage for the commercial units on Vaughan Parade which currently occupy the foot of the Ziggurat.

It may also be possible to re-use some of the existing Palm Trees in the proposed soft landscape scheme which would provide some landscape continuity.

In addition to the major issues as set out in sections 1-9 above, there are a number of design and functional concerns, these are:

10. Does the height of the structure result in unacceptable 'shadowing' of the harbour and adjacent premises or create wind funnelling?

This has been a key concern for many respondents and climatic studies have been requested for many months to show to what extent the building will overshadow nearby premises and whether there will be any impact on wind funnelling.

The impact of shadowing on the harbour and on adjacent premises was originally evaluated using the 3D model for a series of times throughout the day for the 21st June and the 21st September. The images show little overshadowing in mid-summer with the lower terrace block shading only the car park and the new walkway.

According to this study, the shadow of the tower element passed over a corner of the Pavilion in the early morning and only shaded the development itself without affecting other properties.

The shadow of the tower was shown to reach across the inner harbour only after 7.00 pm an hour before the sun retreated behind Waldon Hill. This appeared to confirm that only a small part of Victoria Parade was shaded for a relatively limited period of time in the late evening with all areas north of Harbour Point unaffected.

However it was considered necessary to have this more robustly tested due to the scale of concern.

More detailed climatic studies were submitted in January 2017.

In relation to daylight, it is shown that adjacent properties are generally not adversely affected but that five window locations on the south facing façade of Offshore are affected by the development along with three window locations on the south east elevation of the Pavilion. The report concludes that the degree of harm is low with only 1% of assessed locations not meeting minimum guidelines. In terms of sunlight, the report concludes that all window locations tested are acceptable when judged against industry guidelines. However, this does not deal with the impact of daylight or sunlight

on public spaces only the impact on windows.

In relation to wind funnelling, this finds that the tower represents an obstruction to prevailing south westerly winds over open water and that faster moving upper level winds 'impact the façade' and are drawn to ground and podium levels as downdrafts and subsequently channelled along the building front and accelerated locally around building corners. It finds that the impact of this is mainly felt within the development itself on the car park deck, some balconies and on the public route at the podium of the tower. It suggests mitigation in the form of increased landscaping, raised balustrades, balcony dividing screens. It suggests that the areas removed from the building are little affected by the impact of wind.

It is disappointing that the information supplied particularly in relation to shadowing doesn't deal with the impact of the development on the enjoyment of 'spaces' given the harbour side is valued by the public for its wider amenity value. Specifically the impact on the outside 'café' space associated with Offshore was asked to be investigated along with any shadowing of Victoria Parade. The applicant has been requested to provide some updated information in relation to this so that the full impact is understood. However, it is unlikely based on the preliminary studies considered that it would be of a scale to justify a refusal of planning permission.

11. Is the construction likely to adversely affect the listed quay walls?

Piled foundations were installed when the existing car park was constructed and it is anticipated that these can largely be used to support the new development minimising any impact on the listed quay wall. The same structural engineers, Ove Arup, have been commissioned to provide advice and there is no suggestion that this will present any threat to the quay. However a geotechnical report should be secured by condition.

12. Is the design of the 'bedroom bridge' linking the Pavilion to the proposed harbour side hotel acceptable?

An advantage of this scheme is that it provides a new use for the Pavilion as front of house for the hotel. Clearly this requires it to be physically linked to the hotel and numerous options have been considered for minimising the visual impact of this structure. The current location for the link is acceptable as it has minimal impact on the fabric of the listed building being attached to a more modern extension constructed in the 1980's and is largely viewed in the context of a modern car park.

The link however does include displaced bedrooms which are attached to both sides of the pedestrian link thus creating a more dominant structure than originally anticipated. The quality of the design is therefore crucial and to lighten the impact of the structure, the link is separated from the listed building by a lightweight glass box and the sides are decorated with vertical copper fins.

The applicant has agreed to include a similarly recessed glazed box to the opposing end of the link to give a more balanced appearance. It is important to review the

effectiveness of the copper fins in terms of visually integrating this structure. It is also important to carefully consider the underside as this will be widely viewed. The plant previously located on the roof has been relocated.

13. Is the width and design of the new waterside walkway acceptable?

The existing walkway along the harbour side is quite narrow and bounded by the existing car park. One of the potential benefits of this scheme is the opportunity to upgrade the quality of this experience. It is proposed to include A3 restaurant uses opening onto an elevated terrace at a half storey above the existing walkway and to link the two with a series of terraced timber steps and ramps. It is also intended to widen the existing walkway by 300mm through a small extension of the walkway over the Harbour wall. This will introduce a more modern finish to this part of the harbour in terms of materials and enclosure. The principle and design is not favoured by several objectors on the grounds of its untraditional appearance and the creation of pinch points.

The applicant has supplied further information in respect of the pinch points which shows that the existing walkway reduces down to 1.7m in places which is approximately the same as the narrowest points in the proposed walkway. The width cannot be increased due to the constraints set by the building. It is also the case that over a significant part of its length there is greater width (albeit on varying levels) than exists currently and it presents a much improved pedestrian experience.

The detailed design of the walkway is in need of clarification and a key area of concern, the loss of the traditional bollards can be mitigated as explained in section 3.

In summary, the bollards, which are attached to the quay have to be removed as the new walkway is elevated above and extends 300mm out from the existing harbour edge. This necessitates the use of a more modern lightweight enclosure to the harbour more akin to that used along Beacon Quay.

If these bollards are used to replace the existing poor quality galvanised railings that enclose the southern edge of the harbour and the opportunity taken to rationalise the poor quality railings running alongside Fish Quay to create a more visually consistent and integrated form of enclosure extending up the bridge then the impact of the loss of the bollards in this location would be fully mitigated.

14. Does the scheme generate Highway concerns?

The impact of the scheme on the highway network has been assessed and it was requested that modelling of the roundabout should be carried out if parking took place on Cary Green. Any modifications necessary to its layout can be secured via a S278 Notice. The revised layout for Cary Green better resolves cycling and pedestrian conflicts and the need for cycling, electric charging points and spaces for disabled users can be secured via condition.

Provision for servicing and storage of waste are reflected in the submitted plans and is

mainly accommodated within the remodelled MDL car park but a servicing plan, along with tracking information is required which will ensure that deliveries, collections and waste removal are carried out in a way that minimises impact on the public highway.

There a number of technical issues that need to be briefly considered.

In respect of flood risk, the EA and the Councils Drainage Engineer are satisfied that if the scheme is constructed in accordance with the submitted Flood Risk Assessment then the risk of flooding is not worsened.

In respect of the relationship to the Marine SAC and the need for a Habitat Regs. Assessment, Natural England have confirmed that providing a Construction Management Plan is in place then there would be no adverse impact on habitat. An EA screening exercise has been carried out which confirms that an EA is not required.

There are no outstanding contamination issues. The site was largely cleared of all possible contaminants when the car park was constructed in the 1980's.

S106/CIL -

The scheme should, if shown to be viable, deliver on site Affordable Housing and Community Infrastructure Contributions in line with Policy H2 in the Torbay Local Plan the Adopted SPD 'Planning Contributions and Affordable Housing'. This should deliver 20% affordable housing to be policy compliant. The cost of this if an off-site contribution was agreed coupled with the community infrastructure contributions would amount to approximately £2m.

The IVA demonstrated that the viability of the scheme precludes meeting this requirement. Any increase in the size of the building to generate the extra profit would increase the harm on the historic environment.

As explained in the body of the report it was considered more appropriate in view of the need to achieve regeneration of the site, that any surplus profit should be invested in delivering an improved public realm which is the course followed.

As the scheme will not be providing Affordable Housing or other sustainable development contributions as required by the SPD, viability must be re-assessed towards completion of the scheme, when actual figures are available. If the scheme turns out to be more profitable than originally anticipated, 'deferred contributions' will be payable. In order to mitigate the effects of the scheme the deferred contributions will be used by the Council as contributions towards future public realm enhancements in the vicinity of the site.

The site would be liable for CIL if the decision is not issued by the 9th May. This would amount to £260,000 which would probably prevent the scheme being implemented. This does mean that matters have to progress quickly.

As has been identified in the text of the report, the s.106 will ensure that the high end hotel user is guaranteed along with securing local procurement and labour/service agreements.

Securing public access to and use of Cary Green for events should be reflected in the s106.

Given the condition of the Pavilion, it would be preferable to see renovation works started earlier in the process than currently offered. It may be necessary to consider a Performance Bond or other means of ensuring delivery in the event of financial problems.

The public realm improvements can largely be secured via a S278 notice and suitable conditions, the financial contributions towards the Princess Gardens enhancements will have to be secured via the S106 agreement as will any deferred contributions towards resurfacing Fish Quay and/or extending the resurfacing of Cary Green and/or the removal of the Ziggurat and its treatment or other town centre public realm improvements.

A monitoring contribution towards ensuring the use of Cary Green is in accordance with the conditions and terms of the car parking strategy will be needed as will an agreement to ensure that the developer permits use by the public

Any works deemed necessary to the mini roundabout to accommodate parking on Cary Green will either have to be secured through the terms of the S106 agreement or via a s278 notice.

Conclusions

The fact of harm to the historic environment cannot be disputed. It is evident in the responses of statutory consultees, concerns from local residents and the applicants own consultants who acknowledge a level of harm.

There is a debate about whether this is 'substantial' or 'less than substantial' but whatever the level of harm decision makers must understand that there is a duty on them to preserve and enhance listed buildings, their settings, Registered Gardens and Conservation Areas all of which are compromised to some degree by this proposal. There is therefore a strong presumption against planning permission being granted.

Paragraph 134 of the NPPF does allow some harm to the historic environment providing the harm is outweighed by the public benefits of the proposal. The level of benefit necessary to justify overriding the presumption against granting approval should be broadly commensurate with the degree of harm. Substantial harm to the historic environment would require wholly exceptional public benefit, less than substantial harm a lower scale of public benefit. However it is not a simple balancing exercise but the need for a clear justification to override the presumption in favour of preservation.

The extent of harm is a matter of judgment. Officers concur with Historic England that

the harm is 'less than substantial' but still significant and therefore requires quite an exceptional scale of public benefit to justify approval.

In terms of public benefit the scheme delivers:

- The restoration of the Pavilion for a beneficial purpose that will secure its long term future.
- A top end 4* hotel that will significantly enhance the tourist attraction of the town, deliver jobs and economic growth.
- Creation of a more active edge to the western flank of the harbour in place of the existing poor quality car park.
- This in turn will facilitate further investment and confidence in an area in need of regeneration.
- 43 new dwellings that will provide new homes bonus income to the Council
- The predicted provision of 179 jobs and an uplift of 1% in the tourism sector of Torbay.

In terms of 'harm' the scheme would:

- Have a 'significant' impact on the quality of the historic environment though impact on the setting of listed buildings, on the Registered Princess Gardens and on the character of the Conservation Area.

This impact largely arises from the fifth storey of the terrace building which impedes public views between the harbour and Princess Gardens and the top 3/ 4 stories of the tower element of the proposal which creates an imposing presence and inevitably impacts on a range of public views.

The IVA identified that there wasn't sufficient profit in the scheme to appreciably reduce the scale or bulk of the building but there was enough profit to achieve a full developer return and to deliver a 'better' scheme particularly in terms of the quality of spaces surrounding the building.

It was considered essential, if a scheme of this size was to be acceptable that it delivered a place making or transformative scale of regeneration. This has now been secured which helps tip the balance.

In line with tests in the HE Enabling Guidance and Historic England's advice, consideration was given to whether these public benefits could be secured in a way that minimised the level of harm on the heritage asset. The IVA identified that the hotel is relatively low value which drives the need for a large number of higher value flats to subsidise the development. This assessment did produce a smaller building which would have a better fit with its surroundings and subject to design had the potential to positively enhance the historic environment by replacing the poor quality edge to the harbour but in a more contextually appropriate way.

On the down side, such an option may not come forward and it would inevitably introduce further delay in resolving the future of the Pavilion. Whilst it would fund the structural repairs to the Pavilion it would not have secured such a robust long term future use as front of house for a high end hotel nor would it have delivered the scale of economic benefit in terms of jobs and growth of the local economy.

In respect of Cary Green, the recently revised scheme for this space, which involves extensive new granite paving across the whole of the site and the agreement to confine the MDL overspill parking to a defined period and then only when the existing MDL car park is 100% occupied by berthholders overcomes concerns about the visual quality of the space and ensures that public access to and use of the majority of the space is maximised.

This is a significant improvement from the initial proposal for the use of Cary Green which involved it being fenced and tarmacked to provide virtually unrestricted car parking for both the hotel, MDL and 'pay and display' parking.

There is a clear emphasis on the need to achieve economic growth in the Local Plan (and in the NPPF) which identifies the crucial need to create jobs to lift the economic profile of the Bay. The advice from the TDA about the impact of a refusal of permission on investor confidence is relevant. Recent figures about increased poverty levels and deprivation reinforce the need to put economic growth high up the agenda.

Officers are therefore, on balance, of the opinion that the scale of public benefit justifies setting aside the presumption against approval being granted.

This position has not been reached easily and reflects the need to achieve a speedy response to the future of the Pavilion and securing a robust and guaranteed future use for it, the importance of securing a 4* hotel and the vital need for investment, jobs and reinforcing the Bay as a premier tourism destination.

It is fully recognised in reaching this decision however that the wrong scheme has the potential in the long run to be hugely damaging to the special quality of the place. Whilst officers have sought to deliver the best scheme possible bearing in mind issues around viability and the need for a defined scale of development it is quite legitimate to take the view that the cost of this development on the historic environment is just too high and that the application should be refused and the applicants encouraged to submit an alternative proposal that excluded the hotel and delivered a smaller building that was easier to accommodate in such a sensitive location.

On balance, it is the recommendation of Officers that the application be approved subject to further clarification with regard to design detail as explained in the body of the report, conclusion of a s106 agreement and conditions as detailed below.

Recommendation

The recommendation covers two options; the officer recommendation which is that on balance approval should be granted and a second option in case Members are minded

to refuse permission.

A. On balance, it is the recommendation of Officers that planning permission should be granted for the proposal subject to clarification of the impact of 'shadowing' on the amenity of public spaces, revised plans/clarification of detailed design matters relating to:

- Opportunities for mitigating the impact of the lift shaft.
- Confirmation that the balconies will be constructed as a continuous curve.
- Detail in relation to the harbour walkway and strategy for relocating the traditional railings and form and extent of new railing detail.
- Inclusion of extended resurfacing between Offshore and the stone setts adjacent to the northern elevation of the hotel building.
- External plant in relation to listed building.

And to the conclusion of a S106 agreement at the applicants expense to secure the following matters and to conditions as detailed below.

In terms of the S106 agreement:

- To secure deferred contributions towards future public realm enhancements as defined in the body of the report namely re-surfacing of Fish Quay, an extension of the granite paving adjacent to SoHo to an agreed specification and/or a contribution of £100,000 towards removal and treatment of the Ziggurat or an alternative key public realm master plan proposal. The amount of deferred contributions to be assessed and paid in stages and calculated on the basis of a 50:50 split between the developer and the Council of any increase in income generated from the site over that predicted in the IVA. The contribution to be assessed either in relation to uplift in projected sales values of the residential units (based on Appendix B of the IVA dated 31st August 2016, specifically the Savills estimates of values); or such other method agreed with the applicant (e.g. open book accounting of the entire scheme)
- The maximum deferred contribution will equivalent to the full amount of off-site Affordable Housing and Sustainable Development Contributions that would ordinarily be payable in accordance with the adopted SPD after deducting any contributions/costs paid by the developer towards improvements to the public realm.
- To ensure occupation of the hotel by the applicant (or such other suitably-qualified hotel operator as shall be agreed)
- A commitment, in the operation of the hotel, to procurement of local goods and services as described in the HJA report
- A commitment to use of local labour both during the construction of the development and in the ongoing operation of the hotel
- To secure a financial contribution of £30,000 towards enhancements to Princess Gardens.
- To secure the terms of the car parking strategy, public access to Cary Green

and agreement for public use of eastern part Cary Green for markets/events for a minimum of 28 days in any September – May period, consent not to be unreasonably withheld by the developer, calculation of fees for use to be agreed.

- To secure an annual monitoring contribution towards ensuring that Cary Green is used and managed in accordance with the agreed car parking strategy and that the hotel car park is not 'bank parked' as explained in the body of the report.
- To secure modelling of the mini roundabout and implementation of any highway works deemed necessary via a S278 Notice prior to any occupation.
- Performance bond (if required).

- B. However, if Members are minded to refuse the application, due to concerns about the impact of the proposal on the character of the Conservation area and on the setting of adjacent listed buildings, it is suggested that the following reflects the key reasons why the scheme could be judged to fail when considered against national and local plan guidance.

It is considered that the development is harmful to the setting and significance of key listed buildings, to the setting and significance of the Registered Princess Gardens and to the character and appearance of the Torquay Harbour Conservation Area as a consequence of its size, height and design. It will harm key public views of listed buildings eroding their significance in the townscape and will act in a way to limit views between the harbour, the Pavilion and the Registered Park and Garden to their detriment. The public benefits included in the scheme comprising the restoration of the Pavilion, delivery of a hotel with attendant economic benefits and provision of new dwellings are, on balance, not sufficient to outweigh the presumption against approval embodied in s66 and 72 of the 1990 Act As such the scheme is contrary to paragraphs 133 and 134 of the NPPF and policies SS10 and HE1 of the adopted Local Plan 2012-2030.

Conditions

1. Prior to commencement of development the submission and approval of an agreed and specified schedule of works to fully repair and restore the Pavilion based on the submitted specialist engineers report and the schedule of works included with the application drawings. The works to be completed in full prior to occupation of any of the proposed residential units.
2. No more than 19 residential units to be occupied until the core and shell of the hotel is completed.
3. Submission and approval of a phasing agreement which includes a timetable for delivery of the public realm enhancements as identified in the report and as included in Plan No.3152-1-17 SK2 rev A (subject to revised plans and any detail required by condition) through a S278 Notice. No occupation of any of the

residential units until the public realm enhancements have been completed unless a revised phasing plan is agreed in writing with the LPA.

4. Submission of a Conservation Management Plan to provide relevant detail with regard to internal and external works of repair, reinstatement of key features along with a timetable for delivery. It should also include measures to deliver a 30 year maintenance programme.
5. Prior to commencement of development to secure a signed lease or other legally enforceable means to ensure occupation of the hotel by the applicant (or such other suitably-qualified hotel operator as shall be agreed).
6. Large scale details of key features
 - A) Windows/Doors
 - B) Shopfronts
 - C) Aluminium framework confirming construction as a continuous curve rather than faceted and detailing joints/relationship with main structure
 - D) Balconies confirming construction as a continuous curve rather than faceted and detail of handrails/ fixings
 - E) Eaves/roof profiles
 - F) Fascia's/Soffits/rainwater goods
 - G) Elevations of fifth storey
 - H) Underside of balconies/bedroom link
 - I) Louvres/screens
 - J) Screening measures for bedroom link.
7. Samples or detailed specification of all materials to be used in construction of the building and all hard surfacing.
8. Full details of all public realm enhancements included in Plan No. 3152-1-17 SK2 rev A and full details of the proposed harbour walkway including strategy for mitigating loss of traditional railings. The detail to be based on the submitted concept plans.
9. Full details of works to Cary Green to include:
 - a) Specification of materials to be used including colour and treatment to avoid staining
 - b) Specification, size and species of tree and hedge planting including 10 year maintenance regime. Proposals to include more substantial tree planting along Cary Parade and relocation of the trees provided to screen views of the car park to fully enclose the proposed car parking spaces. Consideration of re-using existing planting
 - c) Details of tree pits and all street furniture
 - d) The means of managing fly parking through appropriate design
 - e) Inclusion of measures to protect pedestrian safety, provide for disabled users, include electric charging points and satisfy cycle parking standards.

10. Full landscape details including species, sizes densities and 10 year management regime and securing implementation in line with agreed schedule.
11. The restriction of use of Cary Green in line with agreed strategy, namely to only allow the use of the area allocated for MDL overspill car parking during the Easter weekend and throughout June, July and August only and then only when both decks of the MDL car park are 100% occupied by berthholders.
12. To ensure that hotel car parking is restricted to defined car parking bays only and that valet or bank parking on this space is prevented from occurring.
13. Implementation of all vehicle parking including cycle parking, provision of spaces for disabled users and electric charging in line with adopted Local Plan policy prior to operation of the hotel or occupation of the proposed flats.
14. Full details of all plant and extract systems in relation to the use of the site for hotel and commercial purposes including external appearance and measures for satisfying the EHO with regard to odour control and noise emission.
15. Details of soundproofing of the residential flats to mitigate noise nuisance from the operation of A3 uses.
16. Details of shopfronts including a strategy for consistent signage across the entire site.
17. Servicing and refuse plan across the whole site including tracking information to confirm access by larger service vehicles.
18. Submission of revised Travel Plan to reflect the 30% target required by Strategic Transport and including measures to secure implementation and review.
19. Modelling of roundabout and implementation of any works deemed to be necessary to ensure highway safety via a S278 Notice prior to use of the car park.
20. Construction Management Plan to be in place prior to any works including permitted hours for demolition, piling or clearance taking place on the site.
21. Submission of a Geotechnical Report in relation to the impact of development on the quay walls.
22. The submission of details to secure the provision of adult changing facilities within the scheme in accordance with 'Changing Places' guidelines as agreed in the applicants email of the 25th January 2017.
23. Implementation of the approved FRA.

24. Submission of sustainability statement to demonstrate how the proposal meets the requirements of policy SS14 in the Local Plan.
25. Timetable for re-instatement of statue.
26. Any mitigation required to balcony design/soft landscaping to deal with wind impact.
27. Sample panel of stone to be made available for approval.
28. Restriction of the use of commercial floor space i.e. A1, A2, A3.
29. Prohibition on the siting of satellite dishes on the building by flat owners.
30. Lighting strategy for the building and public realm.