



Meeting: Council

Date: 6 February 2013

Wards Affected: All Wards in Torbay

Report Title: Disposal of Town Hall Car Park, for Redevelopment

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1. Purpose

- 1.1 The Council is seeking a step change in the pace of regeneration and strives to support proposals that lead to job creation in Torbay. The recommendation in this report is consistent with this ambition because it will lead to the delivery of retail investment in Torquay Town Centre where it would encourage shoppers to adopt a town centre first approach and thereby best support other town centre retail businesses.
- 1.2 This report proposes to authorise the lease of land to a developer who wishes to promote a food retail development on the site of the Town Hall Car Park, at Castle Circus Torquay.
- 1.3 The proposal will deliver a capital receipt for the Council, it will make best use of Council assets and it will ensure the Council obtains best value.

2. Proposed Decision

- 2.1 That the Council to enter into a conditional contract to lease the Town Hall Car Park to Hawkstone PLC on the terms set out below.
- 2.2 That the Chief Executive of the TDA be instructed to negotiate terms for a conditional contract to grant a 199 'peppercorn' year ground lease to Hawkstone PLC in return for the developer paying a premium sum of not less than £2.5m.
- 2.3 That the contract to lease the land be subject to the developer achieving a detailed planning approval for a food store development together with associated car parking. The developer to submit a detailed planning application within 6 months and the development should be commenced within 12 months of planning approval.

- 2.4 That the terms of any contract shall not result in a reduction of the number of parking spaces currently available for the public on the site
- 2.5 The remaining terms of the contract negotiated shall be approved by the Deputy Mayor.
- 2.6 The approval to be subject to contract, planning approval and the TDA obtaining an independent valuation of the scheme so as to ensure the Council has (and is been seen to have) obtained best value. In the event there are changes to either the proposed scheme or the contract terms after the terms are agreed that further independent valuation advice will be sought.

3. Action Needed

- 3.1 The decision will require TDA officers to deal with contract negotiations and for Council officers to support the proposal by responding to requests for pre-application and other pre-contract consultation issues.

4. Summary

- 4.1 The scheme proposed by the developer will deliver a food store of circa 4,000 sq mtrs (net sales) and parking spaces.

Supporting Information

5. Position

- 5.1 This is an executive decision however as the Mayor has declared an interest therefore in accordance with the Council's Standing Orders, the Deputy Mayor will be the decision maker. The Deputy Mayor has expressed his wish to consider Member comments and to decide the matter at the Council meeting 6th February 2013.
- 5.2 Hawkstone having submitted an offer for the site had previously requested and were granted an Exclusivity Period from the Deputy Mayor to undertake due diligence. This was in recognition of the cost and professional commitment that they were required to give to the proposed acquisition.
- 5.3 The cross party Town Centre Regeneration Group having received and considered all the expressions of interest and considered other options have unanimously agreed the Deputy Mayor should consider the matter at Council and support the recommendations that are contained in this report.
- 5.4 Entering into a conditional contract is an appropriate next step because:

- (i) The developer will essentially need to engender 'operator' confidence to secure offers from supermarket chains. Those operators will not give credence to the developers' position unless the developer can demonstrate a contractual ability to proceed.
- (ii) There is considerable cost involved in advancing the proposal to planning and to the point at which a supermarket groups will commit to the proposal.
- (iii) Until the supermarket operator's rental offer, floor space requirement, and technical specification is known, and also the development costs are determined, the land value will remain uncertain. The selection of a development partner and the grant of a conditional contract delivers certainty and therefore makes the successful disposal of the site for a capital receipt more likely and the proposals contain safeguards that ensure best value is obtained.

5.5 Best Value is protected in the absence of competitive bidding by ensuring that an Independent Valuer verifies (prior to contract) that the terms of the draft contract deliver best value. The valuation advice and the Best Value Consideration being subject to the satisfaction and approval of the Deputy Mayor and the Executive Head for Finance.

5.6 Town Hall Car Park was a site proposed for Phase 1 of the former Regeneration JV. The Council considered and rejected the Joint Venture Proposals. The quality of Hawkstone's approach to development and retail development credentials were however demonstrated during the Council's consideration of the firm's LABV bid submission. The Council subsequently decided not to proceed with a wider LABV JV. Proposals for single site solutions were considered a more appropriate way to proceed. This proposal therefore does not form a part of any wider scheme linked to other Council owned sites.

5.7 The Council's gross income from the Town Hall Car park is currently £144,000 per annum.

6. Possibilities and Options

6.1 Other options considered included:

- i) Using the land for the existing use / other purposes:
 - (a) The land has the benefit of an office consent that was obtained as a part of the Office Re-organisation Project (ORP). That proposal provided for the inclusion of office space for external occupiers. The ORP has been implemented without the need for this provision due to amendments made in the ORP. The option of building office space would be an acceptable use of the land however a) the current economic viability of office development is uncertain and b) office provision could be provided elsewhere.

- (b) Do Nothing - The car park could be retained as a car park without the food store development. The recommended action re-instates same amount of parking provision whilst obtaining a capital receipt for the Council.
 - (c) Residential, other retail or other uses. Other options were considered at the point when the decision to promote the office proposal at a) above were considered. These options were rejected then and no reason is known to reconsider that decision.
- (ii) Dealing with the disposal in other ways.

The Town Centre Regeneration Group considered and rejected the option of openly and competitively marketing the Castle Circus site. It arrived at its recommendation on the basis of advice from Officers for the following reasons:

- (a) The opportunity had been tendered and openly marketed during the bidding for the LABV process. Interested firms had the opportunity to express interest in site through this process; Hawkstone's offer was the only offer remaining. Other expressions of interest subsequently received have been considered.
- (b) In view of the need for expedience caused by competing and emerging food store proposals elsewhere in Torbay the Town Centre Regeneration Group is of the opinion that adequate time is not available for the Council/TDA to undertake a marketing exercise.
- (c) Were the Council to invite competitive bids in circumstances where development costs and the proceeds of development would not (and cannot) be adequately be known by bidders during a bid process reliable offers would not be likely to be obtained; The risk to the Council and bidders of any proposals not being deliverable and the cost of implications of such is high. Furthermore the capital receipt will be linked to rental offers from food stores some of whom would not reveal their interest at this stage due to their backing for other competing schemes.

7. Preferred Solution/Option

- 7.1 The Council enters into a Contract with Hawkstone PLC on the terms set out.
- 7.2 The Council does not have an active requirement for new or additional car parking resulting from the disposal of the land. The contract will not oblige the Developer to develop the scheme once it has planning approval. It will be the Developers decision to commence development and for it then to address all of the relevant planning policies including the likely need for re-provision of public shoppers car parking within the immediate vicinity of the site along with any other planning obligations that may be agreed with the Council's planning department. It is not therefore considered that the disposal of the site is a procurement for the purposes of the Public Contracts Regulations 2006.

7.3 The deal will also be subject to two open market valuations and this is sufficient to address the Councils obligation to secure best value under S123 of the Local Government Act 1972.

7.4 The costs of contracting the Lease will be met from existing TDA budgets. All the subsequent development costs will be met by the Developer

8. Consultation

8.1 Torquay Neighbourhood Forum has been consulted. Food retail use of the site is proposed in the consultation draft of the Neighbourhood Plan.

8.2 The proposal has previously been discussed by the steering group of the Torre & Upton Community Partnership, the Chair confirms her support. The proposal will be further discussed at the meeting on 23rd January – a verbal update will be given.

8.3 The proposal will be discussed by the steering group of the Steering Group of Torquay Town Centre Community Partnership at a meeting on the 5th February – a verbal update will be given.

8.4 The Coalition of Disabled people and Shop Mobility have been contacted and will be given support for relocation. The developer intends to provide similar units as part of the development for the use of the present tenants however this will not be a requirement of the contract. The TDA will ensure interim arrangements are implemented.

8.5 The grant of the exclusivity period to Hawkstone has been widely reported.

8.6 Highways, Drainage and Planning officers have been consulted.

9. Risks

9.1 These are summarized in Appendix 1 however the principal issues can be summarized as follows:

9.2 That Planning Consent is not forthcoming. Consultation has taken place the issue will be considered on its merits in due course.

9.3 Public opposition, not considered to be a significant risk.

9.4 Legal challenge on procurement grounds. This issue has been considered and for the reasons given above it is not considered that the Public Contract Regulations 2006 apply to the disposal.

9.5 Lack of operator demand, discussions with at least one operator confirms there is operator demand. The developer will conduct a full marketing exercise once the contract is exchanged with the Council.

9.6 Technical impediments prevent development. As with any 'brown field' town centre site there are inevitably development constraints with the site. The developer is aware of all the likely issues and is content to proceed. The cost risk of any such impediment would rest with the developer.

Appendices

Appendix 1 – Equality Impact Assessment

Additional Information

- Council Report in 2009 Minute 356: Delivering Regeneration Through Joint Ventures, Report 244/2009.
- Cabinet Report in 2011 Minute 514.2: Delivering Regeneration Through Joint Ventures, Report 20/2011.
- Equality Impact Assessment (EIA)

All are available on the Council's web site or available on request