

Southend-on-Sea Borough Council

Report of Strategic Director (Finance and Resources)

To

Cabinet

On

17 January 2019

Report prepared by: Alan Richards, Head of Corporate
Property and Asset Management

**Agenda
Item No.**

**The proposed development of the Seaway Car Park
Policy and Resources Scrutiny Committee – Cabinet Member: Councillor J. Courtenay**

A Part 1 (Public Agenda item).

1. Purpose of Report

To review the proposed development of the Seaway Car Park and associated land (“the Development”) and the Agreement for Lease and Sale dated 10 December 2014 made between the Council and Turnstone Southend Limited (“Turnstone”), hereinafter referred to as “the Agreement”.

It is important to note that this report deals with the proposed Development in the context of the Council’s land ownership, regeneration and economic development responsibilities. While the strategic planning context will be mentioned in this report, the planning application recently submitted for the Development (Ref: 18/02302/BC4M) must be considered quite separately by the Council as local planning authority through the Development Control Committee.

2. Recommendations

2.1 To note that unless either party takes a decision to terminate, the Agreement for Lease and Sale dated 10 December 2014 made between the Council and Turnstone Southend Limited (“the Agreement”) for the development of the Seaway Car Park and associated land (“the Development”) remains in full legal force.

2.2 That the Council does not seek to terminate the Agreement at the present time, but maintains its support for the Development based on the strong and viable economic case, the fresh independent valuations under S.123 Local Government Act 1972, the contribution to the Council’s published Ambition and Outcomes, the level of commitment (including investment) made by Turnstone and the progress which has been made to date

2.3 That the contractual ‘End Date’ of 10 December 2018 be extended to 17 January 2020 for the discharge of all conditions (including obtaining planning permission) in the Agreement to be dealt with so that the Lease

can be granted. Under the Lease, practical completion is then required within 3 years of granting the Lease which necessitates an early start on site.

- 2.4 That amendments are made to the Agreement as set out in section 5.8 of this report, including the extension of time referred to in recommendation 2.3 above, on the basis of the fresh valuations referred to in sections 6.2 (e), 9.2 and attached at Appendices 4 and 5.
- 2.5 That the Chief Executive, in consultation with the Group Leaders and the Cabinet Member for Growth, be authorised to make further minor amendments to the Agreement if required.
- 2.6 That the agreements with Homes England in relation to 1-3 Herbert Grove, 29 Herbert Grove and the Rossi Factory (31 Herbert Grove) as set out in section 5.11 of this report be completed.

3. Summary of previous key decisions:

- 3.1 The principle of pursuing Government funding for the the acquisition of the Rossi Factory (31 Herbert Grove) and 29 Herbert Grove was agreed by Standing Order 46 (SO.46) on 27 September 2005. The details of the acquisition were then agreed pursuant to SO.46 on 26 January 2007 when the funding was confirmed.
- 3.2 The acquisition of 1-3 Herbert Grove, again with Government funding, to further support the regeneration and development of Seaway Car Park was agreed at Cabinet 19 February 2008 (minute 1000 refers).
- 3.3 On 29 November 2012, the Economic & Environmental Scrutiny Committee considered a pre-Cabinet scrutiny report on the Seaway Car Park Development. (Minute 544 refers).
- 3.4 On 8 January 2013 the Cabinet agreed the principles of an Agreement with Turnstone for the development of the Seaway Car Park: Minute 637 refers. The Cabinet decision was noted at Economic & Environmental Scrutiny Committee on 31 January 2013 (minute 744 refers).
- 3.5 On 28 February 2013 the Council noted the minutes 637 and 744 referred to above (minutes 790 and 816 refer).
- 3.6 The final details of the agreement with Turnstone were agreed under SO 46 signed by Councillor Woodley as Leader of the Council in November 2014. This was reported to Cabinet on 6th January 2015 (minute 533 of Cabinet refers). The SO.46 letter records that various “all-Member” briefings had been held and that the terms had been endorsed at the Group Leaders Briefing on 19 July 2013.
- 3.7 See also the information on the Council’s website¹ which includes links to the key minutes above.

¹ Seaways information on the website including FAQs
https://www.southend.gov.uk/info/100003/communities_neighbourhoods_and_the_environment/873/seaway_project/2

3.8 Most of the key terms of the Agreement are in the public domain. However a few elements remain commercially confidential. It is important that the Council strikes an appropriate balance between transparency and commerciality and the Council's approach in this case has been upheld by the Information Commissioner.

4. Background and Contractual Summary:

4.1 Section 3 above sets out the authorities for the Council to enter into the Agreement with Turnstone and the principal reasons for doing so were as follows:

- To facilitate an exciting new leisure/recreational development for the benefit of residents and visitors, involving significant private capital investment and creating many jobs.
- To bring forward further town centre regeneration.
- To use the Council's strategic land holdings in a creative way, whilst maintaining and improving its long term income stream and asset value.
- To meet the Council's well documented aspirations for this site in a very challenging economic environment: The proposed Development is an excellent strategic fit and offers so many positives for the Town. **Appendices 1 and 2** set out the current Strategic Planning and Economic Contexts.
- To demonstrate that Southend is a good place to invest.
- To enable the Council to deliver the regeneration envisaged when the strategic property acquisitions at 1-3 Herbert Grove, 29 Herbert Grove and the Rossi Factory (31 Herbert Grove) were made and to meet the requirements of the associated Funding Agreements.
- To include replacement parking and offer additional parking which in turn creates additional strategic future opportunities for the Council in relation to its other town centre car park sites.

4.2 Following careful consideration by councillors and officers, the Council agreed to negotiate directly with Turnstone, in the light of the substantial benefits offered by their proposals; which included Turnstone having an anchor tenant pre-let agreed with Cineworld and an option to purchase a property which could have provided a strategic link through to the seafront. In terms of the potential strategic link to the seafront, the option expired and was not renewed. This was because:

- The route was technically difficult and prohibitively expensive to build due to the gradient;
- The link would have been high-sided, narrow, steep and difficult to make it feel safe or inviting;
- Turnstone tested the issue with likely tenants who were ambivalent about its provision;

- The planning view was that the link, which was located outside the Development area, was not essential; and
- An overage provision was incorporated in the Agreement in part to reflect the absence of the link. The Council could choose to use such overage to provide a link if this was ever felt to be essential.

4.3 Following certification of the transaction by Savills for compliance with S.123 Local Government Act 1972 (Best Consideration) and the Council and Turnstone subsequently finalising detailed negotiations, the Council and Turnstone entered into the Agreement.

The Agreement provided that subject to the Council and Turnstone satisfying a number of conditions, including:

- the relocation of coach parking (Council);
- the relocation of the former waste depot (Council);
- meeting the funding requirements of Homes England² (Council); and
- securing planning permission (Turnstone)

then Turnstone could acquire an interest in Seaway Car Park and associated land. Originally this acquisition was to be in two sections: the main part under a 152 year commercial ground lease under which the Council will benefit from a share of net rents received from the whole development (including the car park), subject to a minimum rent of £282,000 per annum; and an ancillary area under a freehold transfer for enabling residential development. The latter is no longer required – see section 5.4 below.

4.4 The Agreement requires Turnstone to deliver no less than 480 parking spaces as part of the Development which is consistent with the figure in the Southend Central Area Action Plan (SCAAP) (478) - The current figure is higher than this - see section 5.5 below.

4.5 Typically schemes such as this are delivered in two ways.

One option is for the Council to sell the freehold (or long-leasehold) of its land to secure a significant capital receipt. Another option is for the Council to retain the freehold and to grant a long lease for a nominal premium, but subject to a commercial rent: This option enables the Council to benefit from a long-term income stream and to share in the success of the Development.

The Council has been clear from the outset that its main ambition is to secure income under a long lease which is achieved through the structure in place. Reports that the the Council has sold the whole site for £1 are factually incorrect. The Council remains (and will continue to remain) the freeholder even after the Lease is entered in to.

4.6 When the conditions in the Agreement are satisfied (see 4.3 above), the Lease can be granted. The Development must then be completed within 3 years (subject to normal force majeure provisions). Combined with the requirement to pay rent from day one, Turnstone's time-limited arrangements with anchor tenants, and the level of investment made by Turnstone to date, there is a

² The Homes and Communities Agency (HCA) at the time of the Agreement

strong commercial imperative for Turnstone to progress the Development (as well as a contractual obligation) once the Lease is granted.

- 4.7 In accordance with normal commercial practice, the expectation is that the Lease will be granted directly to a major financial investor (e.g. a pension fund) which will fund the Development. In no way does such an arrangement indicate a lack of commitment on the part of Turnstone. Turnstone's role is to facilitate the Development and, when funding is required, to secure funding, not to directly fund it. This will result in the Council receiving a long-term commercial income stream, with a solid commercial tenant. The Agreement does however permit Turnstone to be granted the Lease, subject to the company meeting the requisite financial requirements..
- 4.8 A notional £1 premium is payable on the grant of the Lease, with the Council receiving a commercial rent of £282,000 per annum. This rent is payable from the date the Lease is completed, continues throughout the construction phase and up to the first rent review in year 7 when it's reviewed. Turnstone's role will be to obtain planning permission and facilitate the construction, letting and delivery of the scheme. There is nothing unusual about this arrangement and most major schemes are owned by property, pension or investment funds.
- 4.9 At the rent reviews in years 7, 12 and 17 of the Lease, the rent is reviewed to the greater of £282,000 p.a., the passing rent, or 11% of the net income received across the whole scheme. The Council is not required to make any capital contributions during the Lease. There are rent-smoothing provisions to ensure that the effects of any voids on the Council's rental income are mitigated. The Agreement includes the option for either party to serve notice on the other to terminate after four years (10 December 2018) if the conditions, including those as referred at part 4.3 above have not been satisfied but subject to such extensions as provided in the Agreement. The Agreement does not automatically come to an end on this date, but remains in full legal force in the absence of either party pursuing termination. It is commercially standard to have such a date whereupon if reached the parties would re-evaluate the position with a view to progressing the transaction or termination.

5. Developments since completion of the Agreement of 10 December 2014

- 5.1 Turnstone and the Council have been working to address the various conditions and to move the scheme forwards during the last 4 years. Whilst Cineworld subsequently withdrew from the Development, Turnstone have signed a pre-let agreement with another cinema operator (therefore securing the anchor tenant) as well as two further major anchor tenants as detailed at 5.6 below.
- 5.2 The Council has discharged its primary conditions by relocating the coach parking and ensuring that the former waste depot is no longer operationally required.
- 5.3 The Council has worked with Homes England to agree terms for the requirements in the Funding Agreements to be satisfied in relation to 1-3 Herbert Grove, 29 Herbert Grove and the former Rossi Factory (31 Herbert Grove) and has agreed a clawback payment of £166,000 pursuant to the terms of those Funding Agreements. It is therefore recommended at 2.6 above that

the agreement finalising these terms be completed with Homes England. Further information on these elements are set out in section 5.11 below.

- 5.4 The Development no longer includes any residential development as this is not required to assist with viability and the additional land can be better used for additional car parking. Therefore the Residential Land referred to in section 4.3 will now not be sold but will be included in the Lease of the site.
- 5.5 The amount of publicly available parking in the Development has been increased. The parking survey in May 2016 recorded 478 spaces at Seaway Car Park (before the coach parking was relocated). This is the baseline figure accepted by the Planning Inspector and included in the Southend Central Area Action Plan (SCAAP) which was adopted in February 2018.

The relocation of the coach parking gave the opportunity to provide some temporary car parking which was introduced to support local businesses, and raise further parking income for the Council. The Council's parking management system operates on 630³ spaces at Seaway currently, reflecting the temporary increased provision.

The Agreement requires no less than 480 spaces, however Turnstone has agreed to this figure being increased to no less than 542 now that the scheme has been further designed. The recently submitted planning application includes 555 publicly available surface and multi-storey car park spaces representing an increase of 77 spaces above the 478 SCAAP baseline figure.

- 5.6 In difficult economic conditions, particularly the decline in demand for retail and restaurants, Turnstone has now successfully assembled pre-lets including Empire, Hollywood Bowl and Travelodge to anchor the scheme and the planning application has been tailored to the requirements of the prospective tenants.
- 5.7 The 8 January 2013 Cabinet report emphasised that the proposed mix of uses was indicative and subject to variation as detailed designs and development appraisals proceeded through planning and changes would be needed to meet tenant demand.
- 5.8 With the scheme now sufficiently developed and pre-let, some amendments to the Agreement are required to enable the scheme to be competitively funded. This is important for the Council, for Turnstone, incoming tenants and for institutional funders. The amendments required are;
 - A. Removal of the the residential land. All the site will remain in the Council's freehold ownership and will be subject to the Lease when drawn down for development.
 - B. Now that the primary anchor tenants have been secured and are on RPI-linked rent reviews (ensuring long-term rental growth over a substantial part of the scheme), the Council can adjust the rent review arrangements, such adjustments will improve the rate at which the scheme can be institutionally funded, improve its viability and also the prospect of the Council achieving

³ https://southendparking.apcoa.co.uk/parking_map

overage. This involves the upward-only rent review provision being maintained until year 17 after which the rent will be directly geared to 11% of the income across the scheme.

- C. The minimum contractual parking number can be increased from 480 to 542 spaces.
- D. The balance of restaurant to leisure units can be adjusted to reflect pressures in the market, enhance the leisure offering and reduce the reliance on restaurants.
- E. The extension of the date by which contracts must be unconditional (defined as the 'End Date' in the Agreement) to 17 January 2020. One of the conditions is the obtaining of a satisfactory planning permission. This will keep the pressure on for delivery, whilst also providing Turnstone with certainty for the next tranche of their investment (from planning to start on site). Under the Lease, practical completion is then required within 3 years as explained in section 4.6 above.

- 5.9 The contractual changes A to D in 5.8 above have been agreed with the Group Leaders and were awaiting S.123 certification which has just been received: Accordingly they are now recommended for approval at 2.4 above.
- 5.10 Further minor amendments may be required as the Development progresses and a delegation is set out at recommendation 2.5 to enable these to be dealt with.
- 5.11 Government Funding re 1-3 Herbert Grove, 29 Herbert Grove and the Rossis Factory (31 Herbert Grove)

5.11.1 29 and 31 Herbert Grove

(a) The former Rossi Factory site (31 Herbert Grove) and 29 Herbert Grove were acquired in a single transaction by the Council with East of England Development Agency (EEDA) funding on 29 March 2007. The full funding supplied externally was allocated to enable these properties to be acquired, demolished and incorporated in to the regeneration of the wider Seaway site, subject to an element of clawback being paid back by the Council as referred to below – this was a condition of the funding.

(b) The principle of the acquisition was agreed on 27 September 2005 with the detailed terms of the acquisition then being approved by SO.46 dated 26 January 2007.

(c) The combined site was acquired for £1.75m, that sum comprising £1.55m for the Rossi factory and £200k for 29 Herbert Grove. The values were verified and recommended by a Red Book Valuation undertaken by Drivers Jonas on the instructions of Renaissance Southend Limited.

(d) The purchase price had regard to the intention to lease the Rossi Factory back on a short-term lease at a rent of £20,000 p.a. which contained a requirement to fully strip the property on vacation. The income received from the property was only ever intended to be a short term income stream and the Council has in fact benefitted from this for longer than envisaged.

(e) As a condition of the funding, the Council is required to progress the wider Seaway regeneration and once a scheme is settled, it is required to seek the consent of EEDA (subsequently the Homes and Communities Agency (HCA) and now Homes England). This translates in to the Agreement as a condition on the Council to satisfy the HCA Condition so that the restriction on title can be lifted.

(f) Full details of the original scheme were provided to Homes England (then HCA), their surveyors and solicitors so that they could satisfy themselves in relation to the scheme and in order that the clawback sum may be settled. This figure has been settled at £166,000. There is already provision for this in the Capital Programme following previous SO46 approval to settle the terms with the (then) HCA based on the initial scheme.

(g) This agreement has been revisited with Homes England in relation to the final scheme. Their advisers have re-assessed the scheme and Homes England has confirmed that the final scheme meets their approval and that the clawback figure will remain the same at £166,000. It is therefore recommended that the Council complete the agreement with Homes England and recommendation 2.6 above refers.

5.11.2 The demolition of the Rossi Factory

It was originally envisaged that Turnstone would demolish the property as part of the scheme. However given the time delays to the development, the relocation of the Rossi business to Temple Farm and in order to mitigate the costs and risks of holding the property vacant, the Council has demolished the property, Turnstone will fully reimburse the Council for the demolition costs of £113,237.80 when the Agreement goes unconditional. This includes the Council's internal costs of managing the demolition as well as the contractor's price.

5.11.3 29 Herbert Grove

(a) This is a residential property which was vacant at the time of acquisition. It was acquired together with the Rossi Factory. It was originally intended to hold this property vacant however given the housing pressures, however the Council opted to use the property for housing in the interim period. The property was therefore leased to South Essex Homes who in turn have managed the tenancy arrangements.

(b) The current residents have been notified of the Seaway proposals and are aware that the planning application has been submitted. South Essex Homes will work with them to secure alternative accommodation if planning permission is granted.

(c) As with the Rossi Factory, the funding arrangement requires the Council to include this area in the wider development plans. This will be part of the area which will form the new public square to the East of St John's Church, enhancing the public realm.

5.11.4 1-3 Herbert Grove

(a) Once again with the full £550k of EEDA funding (now Homes England), the Council also acquired 1-3 Herbert Grove (the Elizabeth Guest House) on 25 March 2009 so that it may also be included in the scheme to assist with the public realm enhancements and improve connectivity between Seaway and the Town Centre. The acquisition was agreed at Cabinet 19 February 2008 (minute 1000 refers).

(b) The comparative architects' impressions at Fig. 1 and 2 below clearly show the improvement achieved through the inclusion of 1-3 Herbert Grove into the scheme.



Fig 1. Approach to Seaway Leisure with 1-3 Herbert Grove (circled) remaining.

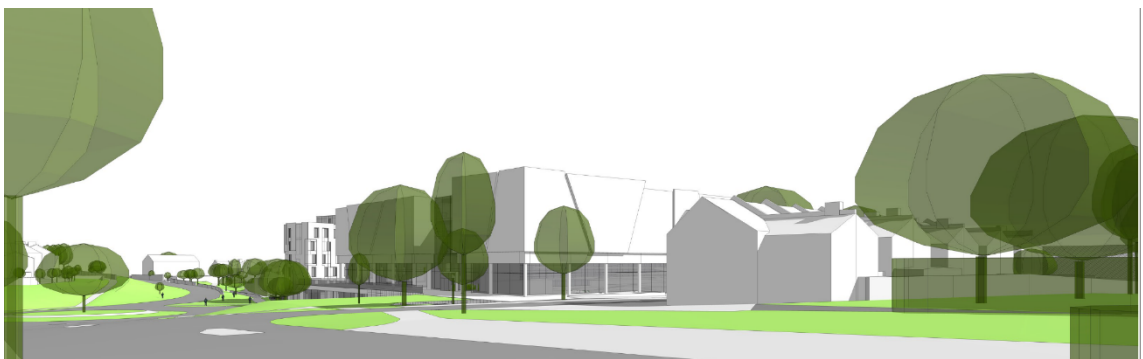


Fig 2.: Approach to proposed Seaway Leisure with 1-3 Herbert Grove area incorporated into public realm.

(c) The grant funding was allocated on the basis that 1-3 Herbert Grove is included within the scheme and the consequence of not doing so is that the Council would have to payback the funding applied to the acquisition in the sum of £550,000 (£500,000 purchase price, £10,000 goodwill payment and a sum to cover the acquisition costs).

(d) No land transaction is required to incorporate 1-3 Herbert Grove in to the scheme and it is proposed that a simple licence is entered in to which enables Turnstone to take possession of the land once vacant possession has been secured, demolish the buildings and construct the new public realm for the Council to adopt going forward. The costs of ongoing maintenance (adoption) will be dealt with in the planning process.

(e) When 1-3 Herbert Grove was acquired, part of the agreement was for the building to be leased-back to the occupier on a short term basis. The lease has

been renewed several time on very short terms and remains excluded from the security of tenure provisions of the Landlord and Tenant Act 1954. The existing lease expires in August 2019 and the tenant has been advised that in the event that planning permission is granted for the scheme, the lease would not be renewed and the Council would require vacant possession of the property. The income received from the property is approximately £21,000 p.a. This was only ever intended to be a short term income stream and the Council has in fact benefitted from this for much longer than envisaged. The current Rateable Value is £4,500 providing an additional income to the Council through Non Domestic Rates of approximately £2,200 p.a. (the Council retains 49% of this (£1,056)

(f) Homes England is supportive of the proposal in relation to 1-3 Herbert Grove, especially because the scheme includes the provision of a new, much larger, better located modern hotel.

(g) It is therefore intended to settle this matter, conditional on the grant of planning permission, as set out above with Turnstone and Homes England. Recommendation 2.6 above refers.

5.12 Current Economic Context

5.12.1 The relevant economic context is set out in the Council's adopted Economic Growth Strategy⁴, Destination Southend (Tourism Strategy)⁵ and Ambition Southend (Skills Strategy)⁶. The relevant sections and links are set out in greater detail at **Appendix 2** and briefly summarised below:

(a) **The Economic Growth Strategy** - The Seaway development represents a significant level of inward investment, a key facet of the strategy, as well as delivering against a number of the strategy's priorities, in paragraph 7.1.

(b) **Destination Southend** - Under the theme of "Destination Development" a leisure led development at Seaways is identified, saying "*Seaway multiplex cinema development will add a year-round leisure offer in the central seafront adding footfall opportunities pre and post film screenings for the tourism businesses on the seafront. This additional feature will provide an enviable year round attraction supporting longer dwell times for visitors and residents in this location throughout the year.*"

(c) **Ambition Southend** - recognises the opportunity presented by major regeneration projects to upskill local residents through the creation of jobs and new roles in the Borough.

The economic impact assessment shows that the development at Seaways could contribute to the delivery of several of the objectives of the strategy,

⁴ Economic Growth Strategy:

https://www.southend.gov.uk/download/downloads/id/2519/economic_development_and_tourism_strategy_refresh_2010.pdf

⁵ Destination Southend (Tourism Strategy)

https://www.southend.gov.uk/downloads/download/746/destination_southend

⁶ Ambition Southend (Skills Strategy)

https://www.southend.gov.uk/info/200208/business_support_and_advice/798/ambition_southend

namely: raised productivity, strong jobs growth, meeting the workforce needs of employers and supporting an inclusive and diverse workforce.

(d) **Economic Impact and Benefits** - There are much wider considerations for the Council than the rent and business rates income that the scheme will generate or the final number of parking spaces. This scheme is, in the Planning Inspector's words, "*an important catalyst*". Its delivery is pivotal to the reinvigoration of the town centre and the economic prosperity of the area. The benefits will reach deep in to the High Street, the wider town centre, the seafront businesses and the lives of residents providing a modern, varied leisure offering, significant job creation both through construction and in operation and great benefits through linked-trips and increased economic activity.

5.12.2 To assist in articulating these benefits an Economic Benefits Assessment has been prepared by Lambert Smith Hampton (LSH). The economic assessment has been calculated using industry accepted methods, aligned to the HM Treasury Green Book and HCA guidance on valuing benefits. Operational on-site employment levels have been assessed using HCA Employment Densities. To assess multiplier effects, the 2014 HCA Additionality Guide has been used. The Council has confirmation from LSH that it can use and rely on this report.

The full LSH Report is included at **Appendix 3** with some of the key metrics from the summary set out below:

During Construction:

- Construction and fit out capital expenditure of £47m supporting the equivalent of **94 Full Time Equivalent (FTE)** direct and indirect jobs during the 18 month construction phase.
- Using the average Gross Value Added (GVA) per worker, approximately **£4.4m GVA in the local economy** over the construction period.

Future Operational Phase:

- Based on the proposed floor space, between **270 and 323 FTE net additional jobs** created delivering an additional annual **GVA of between £12.6m and £15.1m** to the local economy.
- Estimated increase in expenditure across accommodation, leisure, food and beverage, cinema and family entertainment resulting in **turnover of between £15.4m and £16.8m annually**.

Linked trip and tourist expenditure:

- Linked trip potential to the town centre estimated at **£1.5 to £1.7m**
- Additional tourism spend estimated at **£0.77m to £0.84m**

5.12.3 The benefits associated with delivery of the proposed Development are significant and will make a valuable contribution to the local viability and vitality of the town centre. At a strategic level the proposed Development will support net additional employment and growth in the Borough and more widely in the regional economy.

5.12.4 Through the inclusion of a substantial quantum of parking within the Development (at least 542 spaces), the land at Seaway is enabled to achieve its full potential providing year-round, all weather opportunities for residents and visitors alike to both park and enjoy a wider range of facilities. There will be days when seafront car park demand exceeds capacity. Therefore whilst it is important to maintain capacity in the central seafront area to support residents, workers, visitors and local businesses, it is also important to balance this with an alternative and wider offering so that the full economic and development opportunity presented by this land can be optimised and its full potential achieved.

6. Therefore should the Council continue with Turnstone, or should it consider termination of the Agreement?

6.1 There have been representations from certain individuals that the Council should terminate the Agreement, given the date of 10 December 2018 has now passed and so this is a potential option.

Arguments have been put forward that the current terms do not represent best consideration and the Council would do better to either market the site again or retain Seaway Car Park for public parking (given the car parking income is higher than it was back in 2014).

It is accepted that certain businesses/individuals may have their own legitimate concerns about changes to car parking facilities serving the seafront and competition from the new uses proposed on the Seaway Car Park and associated land. However, the Council's duty is to consider what is best for the Borough as a whole. It must assess the benefits of the new facilities proposed along with any downsides. At the same time the Council must ensure that any agreement/lease represents best consideration and that good parking facilities are provided for all those using the seafront.

6.2 It is submitted that the case for continuing with Turnstone and not seeking to terminate the Agreement at the present time is very strong for the following reasons:

- (a) While it has taken some time for Turnstone to get to this stage, there are reasons for this;
- The Council took longer than originally anticipated to satisfy the Coach Park Relocation Condition and Cory Depot Condition and the HCA Condition required revision aligned to the revised scheme.
 - Difficult economic conditions - the decline of the A3 restaurant market and Cineworld's withdrawal from the scheme
- (b) The Development remains consistent with the Council's aspirations in its various plans and policies as set out in this report and in **Appendices 1 and 2.**
- (c) The nature of the Development has improved as it has been worked up. In particular the number of car parking spaces has increased (and separately

new parking facilities for sea front visitors have come on stream at the former gas works site).

- (d) The Development will bring considerable benefits to the town in terms of providing new facilities for visitors and residents and in the creation of jobs. The wider economic benefits and will act as a catalyst for the reinvigoration of the town centre and the economic prosperity of the area as referred to in section 5.12.1 (d) above.
- (e) The terms of the deal still represent best consideration for the purposes of the Council's obligations under S.123 Local Government Act 1972. Details of the S.123 valuations are set out in section 9.2 below and the summary valuation reports at **Appendices 4 and 5**. (For the avoidance of doubt, these valuation reports are predicated on the changes proposed to the Agreement as set out in section 5.8). It should be noted that there have been extremely tough economic conditions in the past 4 years and that restaurant trade, especially, has suffered and so the deal still represents best consideration.
- (f) While Council car parking income from the Seaway Car Park has increased in recent years, the return for the Council in terms of rent and Business rates in respect of the Development will be much greater. Furthermore, parking income is far less certain than rental income in the long term and Local Authorities generally are under great pressure to support town centres by reviewing parking charges presenting further uncertainty around parking income. Full details of the Financial Implications are set out in section 9.2 below.

6.3 If the Council sought to terminate the Agreement then there a number of adverse consequences:

- (a) The significant economic benefits set out in this report would not be captured.
- (b) It would seriously discourage others from investing in this site or on any other Council site in the Borough.
- (c) The site would be blighted and the prospect of securing an alternative developer willing to take the significant risks required on this site would be very poor – Turnstone has invested c.£1m to get to this stage.
- (d) Reputational damage to Southend among the investment and development industry. It would portray Southend as somewhere which is not supportive of regeneration and growth.
- (e) Significant abortive costs, including obligations to repay up to £2.3m to Homes England in respect of the Rossi site, 29 Herbert Grove and 1-3 Herbert Grove.
- (f) Likely repercussions on the ability to secure funding for other developments if delivery cannot be evidenced.

- (g) There would be little or no prospect of a scheme on Seaway being delivered at least in the short and medium term.
- (h) The risk of legal claim by Turnstone on grounds of the Council not acting in good faith, cannot be ignored. Turnstone has made a significant investment including investing large amounts of time and money in bringing this project together – and the Council has been supportive in their doing so.

7. Other Options.

To seek to terminate the Agreement, but there would be adverse consequences as referred to in section 6.3 above.

8 Reasons for Recommendations.

- 8.1 To enable realisation of the Council’s long-held ambitions and aspirations for the regeneration of the Seaway Car Park and associated land to deliver the significant, place-changing regeneration and economic benefits set out in this report and to demonstrate that Southend is proud to act in the interests of local residents.
- 8.2 The delivery of the Development will enable the Council to make significant progress in achieving its 2050 Ambition and many of the recently adopted Outcomes across a range of themes.

9. Corporate Implications

9.1 Contribution to Council’s Ambition and 2050 Outcomes

Southend 2050 Ambition – the relevant sections are emboldened below:

Our ambition The year is 2050.

How does our borough, Southend-on-Sea, look and feel?

Inevitably the place has changed a lot since the early years of the century, but we’ve always kept sight of what makes Southend-on Sea special. **Prosperous** and connected, but with a quality of life to match, Southend-on-Sea has led the way in how to **grow a sustainable, inclusive city** that has made the most of the life enhancing benefits of **new technologies**.

It all starts here - where we are known for our creativity, our cheek, our just-get-on-with-it independence and our welcoming sense of community. And so, whilst the growth of London and its transport network has made the capital feel closer than ever, we cherish our estuary identity - **a seafront that still entertains** and a coastline, from Shoebury garrison to the fishing village of Old Leigh, which always inspires. We believe it’s our contrasts that give us our strength and ensures that Southend has a vibrant character of its own.

- **Pride and Joy: People are proud of where they live – the historic buildings and well-designed new developments, the seafront and the open spaces. The city centre has generated jobs, homes and leisure**

opportunities, whilst the borough's focal centres all offer something different and distinctive. With its reputation for creativity and culture, as well as the draw of the seaside, Southend-on Sea is a place that **residents and visitors can enjoy in all seasons.** Above all we continue to cherish our coastline as a place to come together, be well and enjoy life.

- **Safe and Well:** Public services, voluntary groups, strong community networks and **smart technology** combine to help people live long and healthy lives. Carefully planned homes and **new developments have been designed to support mixed communities and personal independence, whilst access to the great outdoors keeps Southenders physically and mentally well.** Effective, joined up enforcement ensures that people feel safe when they're out and high quality care is there for people when they need it.
- **Active and Involved:** Southend-on-Sea has grown, but our sense of togetherness has grown with it. That means there's a culture of serving the community, getting involved and making a difference, whether you're a native or a newcomer, young or old. This is a place where people know and support their neighbours, and where we all share responsibility for where we live. **Southend in 2050 is a place that we're all building together – and that's what makes it work for everyone.**
- **Opportunity and Prosperity:** Southend-on-Sea and its residents benefit from being close to London, but with so many **options to build a career** or grow a business locally, we're much more than a commuting town. Affordability and accessibility have made Southend-on-Sea popular with start-ups, giving us the edge in **developing our tech and creative sectors, whilst helping to keep large, established employers investing in the borough.** People here feel valued, nurtured and invested in. This means that they have a love of learning, a sense of curiosity and are ready for school, employment and the bright and varied life opportunities ahead of them.
- **Connected and Smart:** Southend-on-Sea is a **leading digital city and an accessible place.** It is easy to get to and get around, with **easy parking for residents, visitors and businesses.** Everyone can get out to enjoy the borough's **thriving city centre, its neighbourhoods and its open spaces.** Older people can be independent for longer. It is also easy to get further afield with quick journey times into the capital and elsewhere. Our airport has continued to thrive, opening up new business and leisure opportunities overseas – but it has done so in balance with the local environment. Southend-on-Sea - it all starts here.

Pride and Joy:

Residents told us they want:

- The seafront continues to be our pride and joy
- Our town centres & public places are clean, attractive, thriving and reflect our success
- I feel inspired by the arts, culture and attractions that are available year-round in Southend.
- We are a 'destination' people want to visit, live and study all year round and from far and wide

Seaway will help achieve this by:

- New developments generating jobs and employment opportunities

- Reputation for creativity and culture
- A place that residents and visitors can enjoy in all seasons

Safe and Well:

Residents told us they want:

- Sunshine and fresh air! A light, bright place with great quality of life
- Everyone feels safe at all times of the day

Seaway will help achieve this by:

- Carefully planned...new developments...support mixed communities
- Improving the quality of the public realm and reducing anti-social behaviour through good design and activated spaces.
- Providing a substantial amount of parking to serve the Development and the wider town centre and seafront area.

Active and Involved:

Residents told us they want:

- A sense of family and community, enjoying and supporting each other – a strong sense of settled communities
- Everyone takes responsibility for protecting our environment

Seaway will help achieve this by:

- The creation of a year-round new family leisure destination
- Modern development incorporating a range of environmental measures and reducing surface water run-off and therefore the risk of seafront flooding.

Opportunity and Prosperity - Residents told us they want:

- My education opportunities have given me the best start in life
- There are so many options for a rewarding career
- There is a good balance of retail, residential and social space in our town centres
- We are well known as a hub for innovative and creative industries and ventures
- Large business support residents' aspirations
- It's easy to do business here – bureaucracy is minimal and overheads are affordable

Seaway will help achieve this by:

- Providing c.500 jobs and a range of training opportunities
- Generating significant added value to the town centre, seafront and wider economy
- Providing new and improved public realm including a new public square in front of St John's Church
- Providing an additional modern hotel thereby increasing the opportunities for in-bound tourism, longer dwell-time and linked trips and associated spend to the town centre and seafront.

Connected and Smart:

Residents told us they want:

- Easy connectivity with minimal barriers, however I chose to travel
- Parking is cheap and easy for residents and visitors
- Lots of opportunities to be in open space

Seaway will help achieve this by:

- Using technology to integrate with existing vehicle management systems and evolving smart technology.
- Providing good quality, competitively priced public parking.
- Providing new, high quality public realm.

The Council has held and maintained a long-term ambition, to redevelop Seaway Car Park with leisure, restaurants, retail, hotel, parking etc. and this ambition was referred to the Council's Corporate Plan & Annual Report 2017 which was confirmed by Council on 20 July 2017 (see pages 25 and 37).

The above sections of this report demonstrate how the development of Seaway is woven through a whole range of strategic plans adopted by the Council.

Seaway Leisure has been carried forward in to the 2050 Roadmap agreed by Cabinet on 7 November 2018 and Council on 15 December 2018 including a final decision during 2019 which this report enables.

9.2 Financial Implications

a) Current Parking and other income

Car Parking:

Currently Seaway Car Park generates income for the Council primarily through parking income. Generating this income incurs significant costs.

This parking income is the subject of regular Freedom of Information requests and is quoted on a gross basis so this does not paint a true picture of the net position to the Council's accounts.

2017-18 financial year was the highest grossing year of parking income on this site. It includes all the temporary parking set out following the relocation of the coach bays off-site. This is therefore the highest possible starting point to work from:

Gross Income:	£607,192
Less VAT:	-£101,199
Less Costs*	-£155,022
<i>Add back 49% of Rates Paid which are recycled back to the Council</i>	<i>£ 46,003</i>
Car Parking Net Income:	£396,974

*Note: the costs include £94k of business rates and £2.4k BID levy in addition to maintenance, security, operation, cash collection and management costs.

The annual costs for previous years are comparable but annual income is lower.

Other Income

The Council also receives the income (always intended to be temporary) from:

The Rossi Factory	No income received anymore as they have relocated and the building has been demolished.
1-3 Herbert Grove	£21,000 p.a. Rent £1,056 NDR
29 Herbert Grove c.	£12,600 p.a. (net of Management Fee) £1,125 p.a. (Band C) Council tax
Other Income	£35,781 p.a.

Total Net income £432,755 p.a. (from parking and other income)

b) Proposed Income from the new Development

The proposed scheme will deliver income in different ways to the Council:

- (i) Rent: Starting at £282,000** subject to rent reviews and substantial parts of the scheme including the cinema and hotel have RPI inflation included. This rent is received from the start of the Lease including during the 2-3 year construction period.
- Business Rates: £750,000 (Estimated conservatively – see below)
- Est Net Income: £1,032,000**

Improvement in estimated net income position: £599,245 p.a. on completion and occupation of the scheme.

**In addition to the direct income, this should also be seen in the context of the significant economic benefits to the town centre and wider area as articulated above.

The Business Rates income estimated above will not be received from day-one as this will be paid by occupiers of the scheme following completion so there will be a period of time during construction when only the £282,000 (plus any Rates income from site welfare and compound facilities) will be received.

(c) Non-Domestic Rates (Business Rates)

It is not possible to accurately assess the Non-Domestic Rates until the Valuation Office Agency has completed its assessment and all relevant appeals (if any) have been concluded. However an informed estimate can be made based on a combination of known and estimated scheme rents of a Rateable Value of approximately £2m.

To this the current national multiplier of 49.3p in the pound would be applied (noting that this multiplier is varied annually and always increases) to calculate the rates payable. Therefore on this basis, the estimated Non-Domestic Rates payable across the scheme would be c.£1m p.a.

In addition, Seaway Leisure will be within the Business Improvement District (BID) and the scheme would produce an additional BID levy of 1.5% of Rateable Value producing an additional c. £30k per annum to support the BID area. If at any point the BID levy increases, so would this figure.

At this time it is only possible to be approximate with these figures which will ultimately be determined nationally by the Valuation Office Agency. However given the extensive knowledge of Business Rates values based on what will be constructed on the site there is a good degree of confidence of the Business Rates forecast position.

It should also be noted that there are significant and yet unknown changes afoot around the distribution of collected non-domestic rates, rates growth and rebalancing grants. Currently the Council would retain 49% of the business rates income, that is around £0.5m p.a., with 50% going to government. The remaining 1% would go to Essex Fire Authority. However government has very clearly signalled in a recent consultation paper from the Local Government finance settlement their intention that from 2020/21 they are looking to change the Council retained element to 75%, and to reward Councils that attract growth in their business rates. Under those arrangements, the Council would retain about £0.75m. How much this gain would be offset by reductions in other grant streams is not known although the Business Rates can only increase further under the Government's proposals. The BID would continue to receive c.£30k p.a. in BID Levy. It is important to note that if the Council decides to lease-back the car park, the rates attaching to that element would then be payable by the Council, not a third party and any transaction would need to take this into account in considering the merits of the opportunity.

Capital - The Council is not required to put any capital into the scheme other than the clawback sum of £166,000 which it must pay to Homes England as set out above.

The Business Rates income will not be received from day-one as this will be paid by occupiers of the scheme following completion.

(d) Section 123 – Best Consideration

The Council's obligation under S.123 Local Government Act 1972 (s.123) is to secure best consideration. The means of doing this is not prescribed.

Public Bodies operate differently to private landowners in that a Local Authority will, for example often only offer a site for restricted purposes rather than openly and without restriction on use or future development. The Council in this case worked directly with Turnstone as an experienced developer of Leisure schemes and the Council engaged independent chartered surveyors, Savills to work alongside it in the negotiation, appraisal and ultimately certification of the transaction. The transaction includes an overage provision on the capital out-turn and long term rent geared to income across the scheme.

Savills plc is a global real estate firm listed on the London Stock Exchange with full and comprehensive governance and ethical standards in place. The RICS also has strict guidelines on the checking and management of conflicts of interest

which is why checks are performed before any appointment is made. Savills have more than 700 offices and 30,000 people worldwide. They offer a range of expertise which covers all the key segments of residential, office, industrial, retail, leisure, healthcare, rural and hotel property, and mixed use development schemes.

Savills were procured through a mini-tender run by the Council to work alongside the Council and its lawyers during the negotiation and settlement of the Agreement. Savills undertook a conflict check prior to appointment and confirmed that *“We have undertaken a conflict of interest check and confirm that we believe there to be no conflicts of interest by accepting the instruction and we will therefore be acting as independent external advisers”*.

Prior to the execution of the Agreement, Savills certified that the transaction delivered best consideration to the Council pursuant to s.123.

Subject to another clean conflict of interest check, Savills have been re-engaged to re-appraise the final scheme and update their advice in the context of s.123. Savills have duly reappraised the scheme and have certified the transaction meets the Council’s best consideration obligations pursuant to s.123. This re-certification takes account of the items identified above. The summary letter certifying the transaction is attached at **Appendix 4**.

Concerns have been raised about the independence of Savills, because one of Turnstone’s Directors is a former Director of Savills (see above with regard to the scale and reach of the company). Notwithstanding the clean conflict checks, the Council gave a commitment to have this certification independently reviewed.

The Council has therefore subsequently appointed District Valuer Services (DVS) to undertake a review of the scheme and the s.123 appraisal work. DVS is the specialist property arm of the Valuation Office Agency⁷.

DVS provides independent, impartial, valuation and professional property advice across the entire public sector, and where public money or public functions are involved. DVS only undertakes work for public bodies and so provide completely independent advice.

Their professional services specifically include the following services relevant to this particular commission:

- Valuations for acquisition, sale or to satisfy s123 Certification purposes
- Independent Development Viability Appraisals
- Apportionment of proceeds between development partners
- Overage, escalator and claw back expertise
- Property market analysis and reports
- Acquisitions and Disposals

DVS has now also completed its work and endorsed Savills’ approach and conclusions, namely that the transaction is in the interests of the Council and that

⁷ See following link for a full list of services: <https://www.gov.uk/government/publications/services-for-local-regional-and-devolved-government>

it enables the Council to secure Best Consideration pursuant to S.123. The executive summary from the DVS report is at **Appendix 5**.

Turnstone's primary condition is to secure planning permission. The application has been submitted and is proceeding through the planning process. Turnstone does have other contractual conditions to satisfy around funding, pre-lets, licensing and insurances to satisfy. However most of these will follow a planning decision and/or are commercial conditions which Turnstone must either satisfy, or opt to waive if they cease to be relevant.

- (e) The Strategic Director (Finance and Resources) (Council's s.151 officer) has reviewed this report and confirms the financial and s.123 position as set out in the report.

9.3 Legal Implications

- (a) The Legal Implications are set out in the main body of this report
- (b) The Strategic Director (Legal and Democratic Services) has reviewed this report.

9.4 People Implications

There are no staffing implications.

The Council and South Essex Homes are working with the occupiers of the 2 properties which will be required as part of the Development (29 Herbert Grove (residential) and 1-3 Herbert Grove (commercial)).

9.5 Property Implications

The property implications are set out in the main body of this report.

9.6 Consultation

Turnstone ran a public consultation in December 2015 with a stand at the Royals which was well attended and accompanied by a number of linked consultation exercises. Since this time, Turnstone has maintained an open portal on their website to capture comments.

The scheme has received significant media coverage.

Council tenants affected directly by the scheme have been notified of the planning application and have been provided with all relevant points of contact for representations and discussions.

The planning application will be subject to full public consultation and this is available for anyone to view and comment upon on the Council's website at www.southend.gov.uk/planning under reference number ref 18/02302/BC4M (pending validation at the time of printing).

Turnstone continues to consult on the scheme across various media including property press, local press, its website and social media and leaflet drops.

9.7 Equalities and Diversity Implications

This Development does not directly affect the delivery of Council services and all those affected by, or potentially affected by the scheme are aware, and have the opportunity to raise any comments or objections through the planning process.

An Equality Impact Assessment will be prepared before the project moves in to the delivery phase.

9.8 Risk Assessment

The main risk relating to this project is the delivery risk because this depends on changing market conditions. This risk is, for the Council, fully mitigated and Turnstone carries all the design, planning, funding, delivery and letting risk.

There is a reputational risk related to the provision of sufficient parking to support local businesses and this risk is mitigated through the following of a robust planning process which will take into account all the technical and evidence based work done around parking and transport infrastructure and consider the scheme on its own merits in the context of the Council's adopted planning policy.

Equally there is a reputational risk in not continuing with the project. The project is very public, Turnstone has invested c. £1m to get to planning stage and will need to invest a further £1m to get the scheme to site. For the Council to renege on a deal which would see such significant economic and financial benefits and leave a private developer partner so significantly out of pocket would have far-reaching implications on the Council's ability to secure development partners in the future and could significantly hamper the Council's ability to achieve the 2050 Ambition and a number of the Outcomes.

9.9 Value for Money

This is dealt with in the Financial Implications section at 9.2 in terms of the Council's budget position and through the s.123 Section and attached letters from Savills and DVS in relation to Best Consideration at **Appendices 4 & 5**.

9.10 Community Safety Implications

The site currently suffers from a number of anti-social behaviour issues, particularly in the alleyway behind the church and around the public toilets, recently resulting in a fire being set in part of the toilets.

In the short time between the Rossi relocation and demolition, the factory site was broken in to and had to be resecured.

This space is very busy in the late evenings and increased commercial activity along with improved lighting and enhanced public realm should assist with immediate and wider town centre vitality – year round and at all times of day and night.

The scheme will deliver a higher BID levy delivering more money for the BID to invest.

9.11 Environmental Impact

The assessment of Environmental Impact will be fully addressed through the planning process.

10 Background Papers

See Background section on the Council's Website incorporating frequently asked questions and answers:

https://www.southend.gov.uk/info/100003/communities_neighbourhoods_and_the_environment/873/seaway_project

SCAAP – Adopted Plan

https://www.southend.gov.uk/downloads/file/5409/southend_central_area_action_plan_-_2018

SCAAP – Inspector's Report – Mike Fox, December 2017

https://www.southend.gov.uk/download/downloads/id/5238/southend-on-sea_central_area_action_plan_-_inspectors_reports_dec_2017.pdf

The Planning Application is available on the Council's website at:

www.southend.gov.uk/planning (Ref: 18/02302/BC4M)

ICO Decision:

<https://ico.org.uk/media/action-weve-taken/decision-notice/2017/2013810/fer0644116.pdf>

Economic Growth Strategy:

https://www.southend.gov.uk/download/downloads/id/2519/economic_development_and_tourism_strategy_refresh_2010.pdf

Destination Southend (Tourism Strategy)

https://www.southend.gov.uk/downloads/download/746/destination_southend

Ambition Southend (Skills Strategy)

https://www.southend.gov.uk/info/200208/business_support_and_advice/798/ambition_southend

12 Appendices

Appendix 1	Strategic Planning Context
Appendix 2	Economic Context
Appendix 3	Lambert Smith Hampton Report
Appendix 4	Savills s.123 Letter
Appendix 5	District Valuer Services Executive Summary – s.123 review