Southend-on-Sea Borough Council

Agenda Item No.

Report of Deputy Chief Executive and
Executive Director (Finance and Resources)
To

Cabinet

On

2 November 2021

Report prepared by:
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Seaway Leisure Financing Strategy

Relevant Scrutiny Committee: Policy and Resources Scrutiny Committee

Cabinet Members:
Councillor Ian Gilbert – Leader of the Council and Cabinet Member for Regeneration
Councillor Paul Collins – Cabinet Member for Corporate Services and Performance Delivery

Part 1 (Public Agenda Item)

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1. Purpose of Report

To propose a financial and commercial structure which will enable the delivery of the Seaway Leisure development whilst also providing greater ownership and an improved, long-term sustainable commercial return to support the future financial sustainability of the Council. The development will contribute to the Southend 2050 Ambition, provide the year-round, all weather leisure facilities and support Southend's economic recovery through inward investment and job creation and enable Southend to compete with nearby towns and cities in terms of this offer.

This report therefore seeks to achieve the following objectives:

1. **To explain in clear terms the proposed financial and commercial structure of the transaction, in particular the introduction of an Annuity Lease and the principles of the consequential amendments to the existing legal structure.**
2. **To set out the financial benefits and risks of the proposed approach, including the use of some reserves to reduce financial risk and improve the commercial return and long-term income stream financial sustainability for the Council.**
3. **To enable an approach to the funding market with an entirely fundable proposition which enables the development to clear the viability hurdles necessary for it to proceed, with benefits for all parties.**

NOTE: Members are advised that this report contains numerous links to reference material and key documents and is therefore best read electronically via the Council's website or Mod.gov. This has been done to enable the report to flow and to provide easy access to the relevant information whilst keeping the document pack manageable and reducing the need for excessive printing.

2. Recommendations

That Cabinet are asked to;

2.1 Note the significant economic benefits that the proposed Seaway Leisure development will bring as outlined in the approved 25 February 2020 Cabinet report and to note that the project is a clear Council commitment and a Southend 2050 Roadmap project.

2.2 Note that the Council has commissioned CBRE to undertake a review of the development, specifically in relation to the elements at a) to c) below:

a) Undertake financial due diligence on Turnstone Estates Ltd (and its company structure, including Turnstone Southend Ltd, the subsidiary special purpose vehicle for Seaway Leisure) and to advise on their suitability as a partner for the Council,
b) Review the proposed Seaway development and its appropriateness including reviewing the anticipated economic benefits; and
c) Look at the most suitable and deliverable funding models for the development and consider the risks and benefits associated with them

2.3 Agree that officers proceed with the final negotiations of terms with Turnstone Southend Limited (TSL), and Turnstone Estates Ltd (as parent company guarantor as appropriate) to enable the proposition to be presented to the funding market on the basis set out in sections 7.12 to 7.15 of this report and at the same time proceed to secure the necessary legal and financial advice on those terms to robustly protect the Council's position.

2.4 Note officers will update terms with Homes England in relation to the grant funding associated with the Rossi Factory, 1-3 and 29 Herbert Grove having regard to the proposed revisions.

2.5 Approve the use of up to a maximum of £10m (Ten Million Pounds) of the Council's capital reserves as equity in the proposed development to enable the different and significantly improved commercial terms as illustrated in the Financial Implications section below, and thereby significantly reduce the Council's financial risk and an improved annual income stream.

2.6 Note officers will look to identify grant funding opportunities which enable the Council's proposed equity investment to be reduced and/or replaced with grant funding.

2.7 Delegate authority to the Executive Director (Finance and Resources) in consultation with the Leader of the Council and the Cabinet Member for Corporate Services and Performance Delivery to authorise:

a. the approach to the market for funding at the relevant time

b. to finalise and agree (with independent advice as required) any final terms following responses to the proposition from the funding market

c. to authorise any relevant actions including the execution of all necessary documentation including that arising from recommendations 2.3 to 2.6 above.

2.8 To note that the Executive Director (Finance and Resources) will report the exercise of the above specific delegations to a relevant Cabinet.

3. Background

3.1 The Cabinet has received several reports on the proposed Seaway Leisure development, the most recent being the report to. The 25 February 2020 report sets out in detail the history and the case for the proposed development and therefore that case is not restated here although members are encouraged to re-read that report for background and context.

3.2 At that meeting, Cabinet resolved (minute 866 refers):

(***1) That option 2 set out in the submitted report be approved, namely the Council maintains its support for the Development and does not serve notice to terminate the Agreement at least until such time as the final decision has been made on the planning application 18/02302/BC4M.***

Such support would be maintained on the basis of:

- ***The economic case including the significant job opportunities that the development will bring;***
- ***The contribution to the Council's published Ambition and Outcomes;***
- ***The level of commitment made by the Council and Turnstone;***
- ***The desire to maintain the currently committed tenants;***
- ***The progress which has been made to date;***
- ***The reduced risk of the Homes England funding claw back.***

(2) That while the planning appeal is running, negotiations be progressed with Turnstone about the possibility of a lease-wrapper/income strip lease model to accelerate delivery and provide additional rent for the Council through a different model and any other matters which would accelerate delivery.

3.3 This report relates principally to 3.2 (2) above. Officers have been extensively progressing this recommendation from Cabinet despite the pressures and impact of the Covid-19 pandemic on the Council, the leisure market and the economy as a whole, and the recommendations in this report result from the detailed work undertaken with external advisers and Turnstone.

3.4 As housing delivery accelerates through consented developments such as Better Queensway, Roots Hall, Fossetts Farm and other smaller developments, it will be crucial that employment space is also created through developments such as Seaway and Airport Business Park Southend to ensure that jobs are created to support both the growing population and the economic recovery and growth of Southend as it becomes a city.

3.5 The development of a significant leisure-led, modern family entertainment complex is something that residents and visitors alike should rightly expect in Southend, without the need to travel out to other parts of Essex to find, talking spend away from Southend and adding avoidable traffic to our busy networks.

4. The Current Position – Planning

4.1 The Planning Application (18/02302/BC4M) has been through the formal planning process including the relevant statutory consultation. The Council's Development Control Committee considered the Application on 15 January 2020 where a decision was deferred.

4.2 Following that meeting, TSL made an appeal against the Council's non-determination. The Council's Development Control Committee reconvened on 27 May 2020 and resolved "***That the Planning Inspectorate be informed that, had an appeal for non-determination not been submitted and the Committee had the power to determine the application, the Committee would have granted planning permission subject to [the conditions]***" [Minute 10 of Development Control Committee on 27 May 2020 refers and sets out the full schedule of conditions].

4.3 The Planning Inspectorate upheld the appeal and issued its decision granting planning permission for the proposed development subject to various conditions on 9 October 2020. The appeal documents are available on the planning portal.

4.4 Subsequently, two applications to vary conditions relating to external seating, renewable energy and the timing of the BREEAM certificate under references 20/02156/AMDT and 21/00705/NON have also been granted permission with decisions issued on 11 October 2021 and 28 July 2021 respectively.

5. Developer, Scheme and Financial Review

5.1 Following the granting of planning permission in October 2020, and while TSL has been working to refine the conditions to make the planning permission satisfactory to them to enable delivery, the Council has commissioned new advisors, CBRE, in relation to the proposed development and to support the further work and negotiations relating to the second part of minute 866 referenced above:

"That while the planning appeal is running, negotiations be progressed with Turnstone about the possibility of a lease-wrapper/income strip lease model to accelerate delivery and provide additional rent for the Council

through a different model and any other matters which would accelerate delivery."

5.2 In particular, CBRE[1] has been commissioned to undertake a review covering the three principal elements set out below:

a) financial due diligence on Turnstone Estates, the company structure and directors and to advise on their suitability as a partner for the Council; and

b) to review the proposed Seaway development, whether it is still the right fit for Southend and whether the projected economic benefits[2] are reasonable; and

c) to advise on the viability of the current funding structure and to consider alternatives to this, advising the Council on the options and recommending the most suitable and deliverable funding models for the development in the context of the associated risks and benefits.

5.3 CBRE have issued to the Council a summary of their findings addressing the three sections above. The summary advice is attached at **Appendices 1-3**:

5.4 In high-level terms, CBRE has concluded and advised the Council that:

5.4.1 In relation to 5.2 a) above: Turnstone Estates Limited appears to be a suitable company for the Council to engage with on the Seaways project (see **Appendix 1** for further detail).

5.4.2 In relation to 5.2 b) above that: Based on the research and analysis undertaken into the proposed Seaways scheme, CBRE is of the opinion that the scheme remains broadly appropriate and has the prospect of delivering the benefits expected. It is suggested that a number of modifications could be made and risks mitigated prior to construction which should be considered, subject to balancing the planning risk (see **Appendix 2** for further detail).

5.4.3 In relation to 5.2 c) above that: Based on the analysis undertaken into the funding options for the Seaways scheme, CBRE is of the opinion that the only viable funding option is by Council intervention akin to many other similar schemes in the country, with grant funding a desirable additional source of funds (see **Appendix 3** for further detail).

[1] Leisure | Experience Economy | CBRE

[2] full Economic Benefits Assessment submitted as part of the planning application (18/02302/BC4M).

6. Turnstone's Current Position

6.1 TSL remains fully committed to Seaway Leisure, and this is demonstrated as follows:

- TSL has remained committed to the project since its inception and has continued to invest time and money to progress it;
- To date, TSL has committed over £1.5m of its own capital to the project at risk;
- Planning permission has been secured (October 2020) and the conditions varied where necessary as referenced above (July and October 2021);
- TSL has commissioned Toolbox to support with further survey, branding and marketing work, details of which are on the TSL Website and the Seaway website which also includes details of the committed anchor tenants and quotes from Empire Cinemas, Hollywood Bowl and Travelodge, reproduced at **Appendix 4** for ease of reference;
- TSL has continued to refine the design within the parameters of the planning situation referenced above;
- Work has continued to extend the arrangements with the current pre-lets as outlined below.

Pre-let situation:

- Empire Cinemas (contracted & extension agreed)
- Hollywood Bowl (contract extended)
- Travelodge (contract to extend agreed pending completion)
- Terms are agreed with 3 restaurant tenants and with solicitors (confidential until contracted)
- Discussions are advanced with 2 further leisure tenants (confidential until contracted)

6.2 Significantly, TSL expect, and CBRE agree that there is a good prospect these will all be in place and that the combined income from these (c.£1.7m) represents a significant proportion of the total projected rent (over 70%) expected when fully let and this is a higher percentage than many other pre-let schemes of a similar nature providing a good degree of rent cover and confidence.

6.3 Additionally, the three contracted anchor tenants are all on retail price index linked rents (capped and collared) which further mitigates the Council's exposure to the Annuity Lease rent increases which will also be similarly linked.

7. The Financial Challenge and proposition

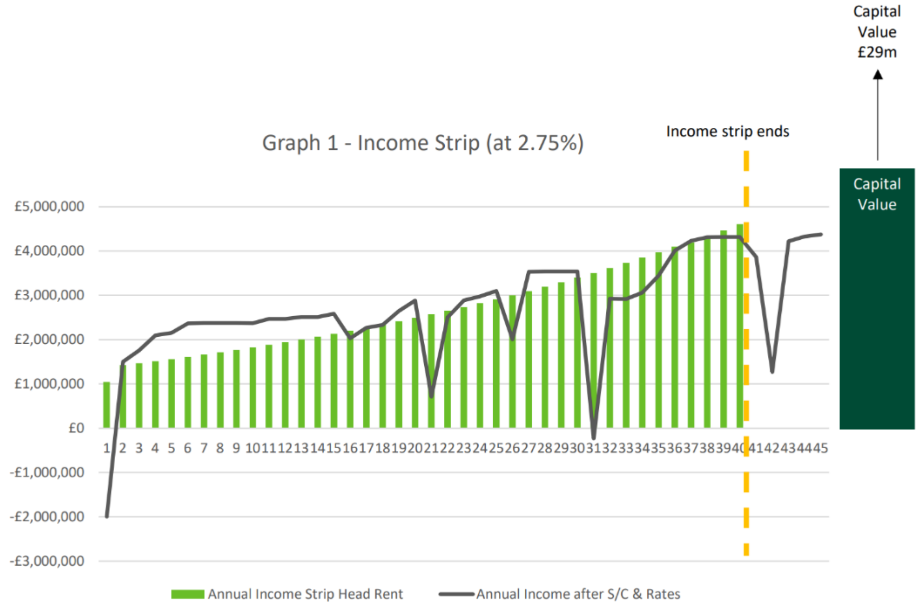
7.1 The main hurdle for the development is that the development funding market has changed significantly, and the traditional debt and equity funding model originally envisaged for Seaway Leisure is no longer a viable option, as it is with other similar schemes.

7.2 Under a traditional development model (with debt and equity funding), the end sale price for the development would be higher than the development costs, therefore creating a profit position for the developer. In the case of Seaway, and many similar developments across the country, the sale price is now below the sum of the build cost and profit margin required to be able to fund the development. Therefore, it is not fundable or deliverable under the traditional funding route. This position has been reviewed and confirmed by CBRE and is also evident in the wider marketplace with many comparable schemes facing similar challenges and relying on public sector intervention to enable them (See **Appendix 5**).

7.3 The development will however provide a rental and parking income stream which, along with the public sector covenant (in this case the Council), can be used as an alternative funding route with long-term annuity funds becoming very active in this market over recent years. In general terms, an investment fund would purchase a long-term index-linked rental income stream from the Council and due to the very low risk to the fund of this income stream, a low yield will be generated meaning that sufficient capital can be raised privately to fund the construction plus a reasonable developer's profit margin (reduced to reflect changed risks but nevertheless essential for it to proceed). Furthermore, the full reversionary value of the asset would pass to the Council at the end of the lease (maximum 40 years, possibly as little as 30 years) and thereafter the Council would be at liberty to enjoy the full income stream without a rent payment to the fund. It could at this time retain the asset, sell it, redevelop it or do otherwise as it sees fit at that time.

7.4 If the Council and TSL agree to proceed on this basis, there are mutual benefits and a change in the risk profile and it is important for Councillors to appreciate these changes in considering the recommended approach by officers. It is also of great importance that the Council considers the long-term financial sustainability of the Council and the need to both unlock inward investment, jobs and development whilst also securing long term income, generated with good knowledge of, and mitigation of the associated risks.

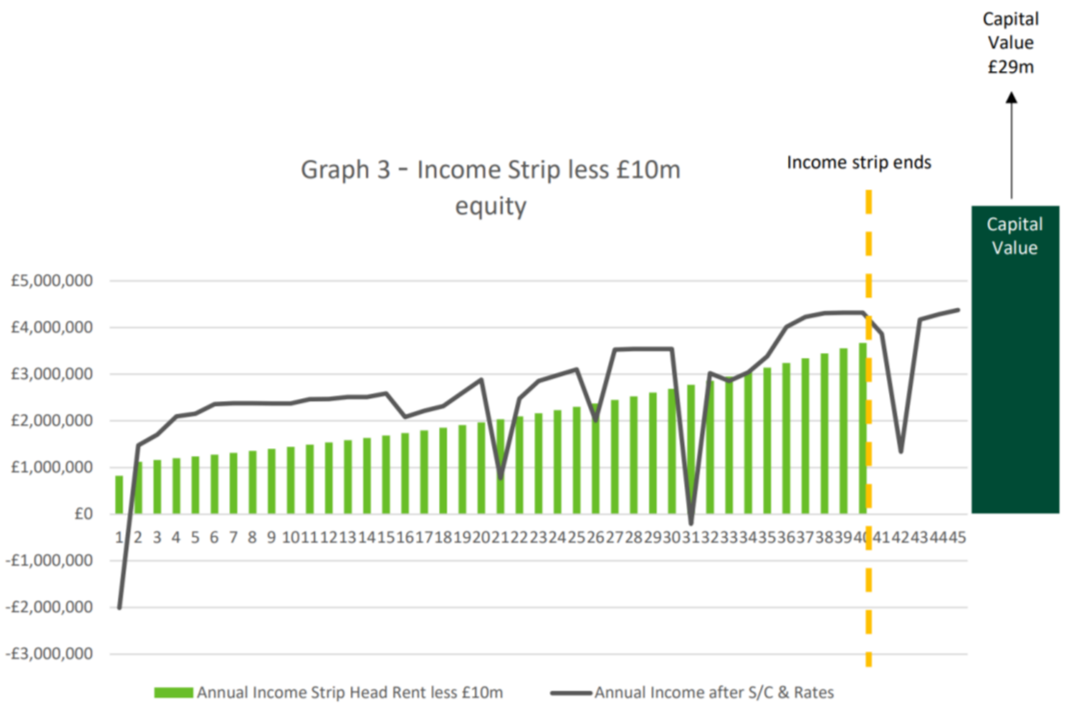
7.5 The graph below models the above proposal over a 40-year term (for illustrative purposes):



7.6 This shows in green the rent that the Council would need to contract to pay to the fund (which will up-front the capital to deliver the development) and in black, a realistic view of the income profile from rents making some conservative assumptions around lease events. For example, in this illustration at year 21 it envisages a rent-free period being provided to Empire as part of a lease renewal situation. This may or may not be required, but is used to demonstrate the risks associated with the commercial income.

7.7 The white area above the green bars and below the black line, mainly before year 20, shows a positive cashflow position for the Council. The position over the following 20 years is much more variable in this illustration, but it is important to note that the yellow dotted line indicates the end of the income strip lease. At this point the full capital value and all future income sits with the Council in perpetuity. The graph above shows a purely indicative value of £29m for the scheme at the end of the Annuity Lease. This is a conservative figure for the future value used to make the point that the reversionary value will pass to the Council.

7.8 The Council has entirely within its gift the opportunity to prudently apply some of its financial reserves (equity), or to seek grant funding up front to reduce the amount of capital required from the fund. The reason the Council may choose to adopt this position (and why it is recommended), is that this reduces greatly the net income risk for the Council and means that the development then moves to a position where it is cash-positive for almost all of the income strip lease term and again the capital value and all future income sits with the Council at the end of the lease term. This is illustrated in the model below:



7.9 It can very clearly be seen that in this example, with the Council investing £10m of equity (from reserves, without any borrowing cost) the return to the Council on that investment is not only strong, but also sustainable throughout the income strip lease term, thereby significantly reducing the cashflow risk during the income strip lease term. The indicative value at the end of the Annuity Lease is the same, in the illustration above, £29m again.

7.10 It is for this reason that the use of some equity and/or grant funding is recommended as the preferred option to both unlock the development, secure the economic benefits and deliver a long-term sustainable income stream to the Council.

7.11 In addition to the net rental and net car parking income, the Council would receive a significant level of business rates revenue. This additional business rates revenue of circa £1m plus per annum is only available to the Council if the development proceeds and members are aware of the need for the Council to identify and maximise new income opportunities.

7.12 **What will be needed to enable this:**

7.12.1 The current Agreement for Lease (varied 2 May 2019) would require further variation, although the head lease will still be required. The main variation would be the reduction in the rent payable under the headlease from £282,000 p.a. to a peppercorn for at least the part of the term equal to the term of the Annuity Lease (30-40 years). This is because the headlease would serve a different purpose, principally to provide the funder with a leasehold interest out of which to grant the Annuity Lease back to the Council. This does not mean that the Council will receive less income simply that the income will be derived through the Annuity Lease as opposed to the Headlease and will in fact be higher (see paragraph 7.15.1 below).

The proposed structure can be illustrated simply as follows:

7.13 Main changes required to the Lease (to be granted by SBC to the Fund/TSL):

Change required	Reason for change
Rent reduced to a peppercorn for at least the duration of the Annuity Lease	Because the Council will receive its income directly from the occupational tenants rather than via the headlease.
The Council to receive an option to break the lease at the expiry of the Annuity Lease	So that the Council can acquire the Funder/TSLs interest for £1 at that point

7.14 **Additional conditions required in the Agreement for Lease between SBC and TSL:**

Additional Condition required	**Reason for condition**
TSL to enter into legal agreements with Occupational Tenants that are expected to produce aggregate annual rental payments (after the expiry of any incentives) of at least 100% of the initial rent that SBC may expect to pay under the Annuity Lease (SBC would be able to waive this condition if appropriate)	This is required to mitigate the Council's income risk by ensuring that sufficient contracted income is in place up front.
TSL to secure a fixed price JCT construction contract	To mitigate the construction cost risk for all parties with cost over-run risk to sit with TSL.
TSL to secure funding for the full development cost (and for the terms and funder to be approved by the Council acting reasonably);	The Council and CBRE will be involved in this process to ensure appropriate market engagement and the identification of a suitable fund on optimal terms. It will ultimately be for TSL to select the fund but the Council will be involved and will need to approve, acting reasonably.
HCA (now Homes England) Condition - re-valuation of the arrangement in the context of the Homes England conditions relating to the funding for 1-3 Herbert Grove, 29 Herbert Grove and the Rossi Factory;	Will need to be reviewed and revalued following the approval of the variation to the structure.
A resetting of the Longstop Dates so that TSL would have 24 months to satisfy all conditions precedent (extended in the event of a planning appeal or judicial review). Either party may rescind the agreement if conditions remain unsatisfied after 24 months and/or following a Planning Appeal or JR Period	If the Council agrees to the recommendations so that the scheme can then progress, the longstop dates will need to be varied in order for funding to be raised against the development because the current longstop dates have now past.

7.15 **The Annuity Lease Principal Terms (To be granted by the Fund to SBC)**

a) The Council will need to enter in to a lease for between 30 and 40 years (term to be agreed, once funding offers on a range of terms have been assessed and analysed);
b) Rent will be payable from completion of the Annuity Lease;
c) Initial rent will be calculated as a percentage of the total capital cost, determined through an open market process for the most appropriate funder.

SBC’s approval will be required if the percentage exceeds that in the pre-marketing estimate;

d) Rent will be reviewed annually to RPI or CPI and capped at [less than 5%] and collared at [up to 1%] - figures to be determined following the response from the market;
e) The Council will be entitled to receive all rents from Occupational Tenants (but will be liable for void periods);
f) The Council will only be able to assign to another local or government agency of equivalent or better financial standing;
g) The Council will be responsible for repairs (although the occupational leases will pass these obligations through to occupational tenants either directly for the units, or via a service charge for the common parts leaving the Council only liable for voids).

7.16 The financial benefit of this revised approach to the funding of the development is that Southend Borough Council (SBC) would receive a much higher income stream than via either the current car park, or the original development structure. The Council will receive all income from the Car Park and the occupational tenants net of void costs and occupational rates linked to the car park and the cost of management will be a service-charge cost again recoverable from the occupational tenants. The income that SBC would receive would be calculated as follows:

Council Net Income = Occupational Rents + Net Car Park Income – (Annuity Rent + Void Costs)

Whilst the exact figures will not be known until the development is constructed and fully let, the models illustrating the financial position are included above with the model for the recommended option being at paragraph 7.8 including the beneficial impact of applying Council capital reserves to improve the annual revenue position.

7.17 **Balance of Risk and Reward**

7.17.1 As a result of the changes above, the parties will take on a different balance of risk and reward. The principal risks are set out below:

7.17.2 TSL will retain the development risk – the responsibility to deliver the development on budget for the Fund and the Council. TSL will be responsible for any cost over-run and this will eat in to their pre-agreed level of development profit.

7.17.3 TSL also carries the letting risk and it is proposed that this risk is carried by TSL for up to 3 years or until the development is fully let. During this time, they would also be responsible for putting in place all the asset and property management contracts and arrangements which would then novate across to the Council when they step away. This reduces the Council’s early-years' risk considerably. If TSL is unable to secure the required amount of pre-let occupational income, the Council will not be obliged to take the Annuity Lease (although the Council could waive this if the threshold is close). The pre-let threshold will be that no less than 70% of the occupational rent must be contracted.

7.17.4 The Council will carry the long-term obligation to pay the rent to the fund under the Annuity Lease and this rent will rise annually by indexation. This risk is mitigated by a good market exercise for the funding, by capping the amount of annual increase and through ensuring that a proportion of the occupational rent is linked to comparable inflation mechanisms, as is the case.

7.17.5 Void risk during the Annuity Lease – this risk will sit with the Council as it does across the commercial portfolio. An Asset Management regime will be established to ensure that voids are foreseen where possible and managed quickly and effectively. This risk cannot be completely mitigated as it is dependent on the property and leisure market and economy generally. The development in general is expected to have a positive impact on the local economy, and to address leisure, and food and beverage offers that are currently absent from Southend and which many residents travel out of Southend for (although it may introduce competition which could affect some businesses).

7.17.6 Risk of the Council income (currently from parking) falling significantly on grant of the Headlease, or on expiry of the Annuity Lease is mitigated through a requirement that rent is paid at £282,000 p.a. from drawdown of the headlease until the grant of the Annuity Lease at which point the Council's income will flow under the Annuity Lease and by ensuring that there is a mechanism in the Headlease to ensure hat in the event that for whatever reason the option is not put or called at the end of the Annuity Lease, that the rent under the Headlease reverts to 11% of the net rent for the whole development reviewed to RPI (capped and collared at [1% and 4%-5%] respectively) every five years.

7.17.7 Importantly, there is the risk of not enabling the development to consider and the incredibly significant benefits that have been assessed, and re-appraised by CBRE, that would not be delivered (including 500+ jobs, c.£50m of private investment, significant development activity on the Town Centre, regional leisure facilities and c.£15m of annual linked spend in the Town Centre and seafront areas). Furthermore, as Southend becomes a city, the expectation that high quality leisure facilities of this nature are available centrally increases and this need is reflected in the Southend 2050 Ambition, Outcomes and Roadmap.

7.17.8 See also **Appendix 3**.

7.18 Indicative Delivery Timescale (subject to commercials, funding, legals, Homes England agreement):

Event	*Timing*
Cabinet cycle	Nov – Dec 2021
Instruct Solicitors - legal documents	Nov 2021
Exchange Contracts (conditional)	Feb 2022
Secure Pre-lets	Q3 2021 to Q1 2022
Progress Scheme Design Information	Q3 – 2021 to Q1 - 2022
Contractor Appointed	Q3 2022
Contract unconditional	Q3 2022
Start on Site	Q3 2022
Scheme Opening	Q2 2024

7.19 **Other situations where this model has been applied:**

7.19.1 For the reasons set out above, this model of funding a variety of different developments has been, and is being applied in many local authority areas by public sector bodies, in particular local authorities but also some universities and health bodies.

7.19.2 The most local and relevant example is that at Colchester Northern Gateway where Colchester Borough Council have recently agreed to make a similar change to their arrangements with Turnstone Colchester Ltd in relation to the delivery of the Northern Gateway development. The Northern Gateway development is out of the town centre, but is in other respects comparable in scale and nature, being anchored by Cineworld and Hollywood Bowl. Colchester Council, through its Amphora business, has agreed to enter into an annuity lease to unlock the development. Only limited details are available on this transaction which appears to have been dealt with under Part 2.

7.19.3 Set out in **Appendix 5** is a summary of several other comparable examples illustrating that in almost all cases, the public sector has needed to intervene to secure delivery using either PWLB or annuity lease models. Members will be aware that in Southend we have also used a similar model to enable the developments at Roots Hall and Fossetts Farm.

8. Other Options

8.1 Cabinet of course has other options available to it and it could:

a) Agree to proceed with the income strip model but proceed with the higher risk option of not investing any equity or grant money. This would unlock the delivery of the development but would expose the Council to a higher level of financial risk and a lower level of return for the duration of the income strip lease, as a larger amount of capital will need to be provided by the fund to finance the development. The proposed use of Council equity and/or grant funding is recommended to secure the same benefits with a stronger commercial position and return to the Council.

b) Agree to proceed as recommended with a reduced level of equity/grant invested which would partly mitigate the risks and improve the income stream to a degree.

c) Consider financing the whole development using PWLB for part or all. The Council would have to account for the borrowing at 7% in its accounts which would make it more expensive in the short term, although this would have the benefit of fixed, stable interest and principal payments over the term. In financial terms, this is not as advantageous as the recommended option and it would add heavily to the Council's borrowing. Councils are also discouraged from using PWLB for commercial property transactions unless they are primarily for regeneration or other operational purposes so a case would have to be carefully made.

d) The Council could use some of the equity investment differently and perhaps use it to provide temporary additional parking during construction however alternative parking would require planning permission and would use a significant amount of the equity investment therefore lessening the commercial benefit of the use of reserves.

e) If Cabinet does not wish to enable the development and would prefer to wait and see if the traditional funding market recovers, it could opt to do nothing and not change the current structure. TSL and CBRE have advised that this would mean that the scheme is unable to be brought forward, therefore the Southend 2050 Ambition, the jobs, inward investment and linked high street and seafront spend would not be realised and without a plan to finance and deliver the scheme, pre-lets would be challenging to maintain beyond the short term. In addition the income stream that would flow form this development would not be available to support the medium to long term financial sustainability of the Council.

f) The existing agreement includes a longstop date which has elapsed. Cabinet has previously agreed to extend this (supported vote at Council) so that the planning situation could be resolved and this alternative delivery proposition could be worked up as clearly stated in minute 868 referred to above. Nevertheless, the option for the Council to terminate the agreement remains although again, following this course of action would mean that the benefits to be derived from the scheme would be foregone and all the work and financial commitment by TSL articulated in paragraph 6.1 above would be wasted. There are reputational, contractual and commercial risks associated with this option and it is not recommended.

9. **Reasons for Recommendations**

9.1 The recommended approach enables the Council to apply a small proportion of its capital reserves to de-risk this major development and give it the required support to enable delivery of the project with a fully balanced risk and reward approach.

9.2 The benefits of the proposed development have been clearly stated in preceding papers to Cabinet. Cabinet has clearly articulated its wish to see more leisure, culture, and tourism in the Town and to actively support the economic recovery of the Town, particularly the town centre.

9.3 It is important that the Council explores different options, such to create new long-term income streams which also support the economic recovery and provide greater financial security and certainty for the Council in the long term whilst also building the business rates base. The Council will rely increasingly on new income streams arising through schemes such a this in to the future which deliver new, long term income streams and an increase in the non-domestic rates income base budget.

9.4 It is important for the Council to stimulate and enable development of its land and property to catalyse further private investment across the Town.

9.5 It is important that Southend is enabled to compete with other regional centres and that Southend residents have access to first class leisure facilities within the Borough, rather than having to travel out of the Borough taking with them their money which could better be spent in the Borough whilst using road capacity, adding to congestion, and negatively impacting air quality.

10. Corporate Implications and Contribution to the Southend 2050 Ambition and Road Map

10.1 The Southend 2050 contributions are set out fully in the 25 February 2020 Cabinet Paper.

10.2 **Financial Implications**

10.2.1 The financial implications are fully set out throughout this report and the recommended approach fully supports the requirement asked of officers in the 25 February 2020 cabinet report.

10.2.2 The proposed annuity lease funding method enables the development to proceed, provides the Council with a higher degree of control in the long term as it will be the direct landlord for all the occupational tenants and at the end of the Annuity Lease term will own the scheme outright without having invested any up-front capital.

10.2.3 In essence the development will have been delivered by TSL and the fund repayment will have been financed from occupational rents leaving the Council with an income producing capital asset at the end of the Annuity Lease plus the additional financial benefits of a net rent throughout the Annuity Lease Term (subject to the risks set out). In addition, the Council's overall budget will benefit from not only any profit rent, but also the additional significant business rate income of circa £1m plus per annum generated through the development.

10.2.4 Members are asked to note and consider in making their decision that the Council's current MTFP as agreed at Budget Council in February 2021 has a budget gap of £20.7M. Since then this has been reviewed in light of various announcements, review of areas in the MTFP and awaiting the full details of the recently announced Comprehensive Spending Review, which are all expected to increase the current four year budget gap. A revised approach to the funding structure of this scheme offers a fully balanced risk and reward approach and will enable the council to generate a long term sustainable rental income higher than originally envisaged whilst also capturing a significant permanent uplift in business rates income of circa £1m plus per annum. This additional permanent long term income stream will support the delivery of the Council's Medium Term Financial Plan and is one of the innovative Council schemes that are being progressed which will put the Council onto a much firmer footing for its financial sustainability into the medium to long term.

10.2.5 The Council due to its strong financial management over the past decade is in a strong position to contribute upto £10m from its capital reserves to enable a higher longer term annual revenue income stream to be generated and this contribution from reserves is fully supported by the Council's S151 officer.

10.2.6 The Council's S151 officer has also been fully involved in the detailed work and negotiations throughout on this complex finance arrangement and proposed funding restructure, which will be one of many ways to secure the medium to long term financial sustainability of the Council. Again full endorsement of the recommended approach in this report to a new funding structure for this scheme is provided by the Council's S151 officer.

11. Legal Implications

11.1 The Council will procure the necessary and appropriate legal advice to enable the structure to be robustly documented and to consider and mitigate any associated risks.

11.2 In exercising the delegated authority set out in the recommendations above, due regard must be had to the outcome of this advice which will need to be kept under review at all stages.

11.3 The variations required to the existing Agreement for Lease with TSL in order to implement the revised structure and interpose the new Council Annuity Lease should not result in the overall transaction moving away from being a land transaction and should not therefore carry any public procurement implications or risks.

11.4 As with the earlier variations made to the Agreement in May 2019, even if the further variations now needed to the Agreement in order to effect the required changes are significant, there is no legal difficulty in effecting these through amendments to the existing Agreement as opposed to it necessitating an entirely new legal agreement.

11.5 Under the revised funding model proposed, the equity investment by the Council is not a payment to TSL for the works which could have subsidy control implications. Rather, this is in the nature of a reverse premium for the grant of the Council's Annuity Lease thereby reducing the amount of capital which needs to be financed through the Annuity Lease, mitigating the cash flow risk to the Council and strengthening the revenue proposition.

NOTE: It would be prudent for Counsel to also advise on the revised structure to double check this proposed arrangement can be delivered without giving rise to unacceptable procurement or other risks and that the proposed new structure remains within the parameters of a land transaction therefore outside procurement legislation – Sharpe Pritchard is advising with Counsel.

12. People Implications

12.1 There are no direct People Implications, although as with any major scheme, there may be some variable resourcing issues to be managed as the transaction progresses and internal resources will be supported with specialist advice as required.

13. Property Implications

13.1 As set out in the report.

14 Consultation

14.1 The Seaway Leisure proposed development has been the subject of ongoing consultation by TSL for several years.

14.2 Aside from the various Cabinet cycles, the Council's website has included a section on the proposed development for a long time and the Council has issued various media statements relating to the development.

14.3 It has received regular media attention and been the subject of public engagement events and dialogue by TSL including the recent work that they commissioned via Toolbox which included a survey and a series of focus groups with stakeholders and an updated website for Seaway Leisure.

14.4 The Southend 2050 Ambition and roadmap, established through resident and business voices have always made clear commitments in relation to Seaway and have been widely published and consulted on.

14.5 The Business Partnership Executive have remained supportive of the proposed development throughout.

15 Equalities and Diversity Implications

15.1 The proposal is intended to create better opportunities for all to access high-quality year-round leisure in the Borough and the jobs and economic benefits associated. This new development will meet all current regulations in terms of accessibility including the introduction of over 100 car charging points (secured by planning condition), a facility currently lacking across the Borough.

16. Risk Assessment

16.1 The proposed new arrangements present a different balance of risk and reward for the parties as set out in this report, particularly in section 7.17.

17. Value for Money

17.1 This report is all about delivering improved value for money for the Council and for Southend and the financial and value considerations are articulated throughout the report alongside consideration of the rebalancing of risk and reward.

18. Community Safety Implications

18.1 Addressed through the planning process and set out in previous papers. The proposed development will include a CCTV scheme and more importantly will include a new public realm and much greater natural surveillance through increased hours and seasons of use arising from the new uses. The development will also include new public toilets enabling the demolition of the existing block (currently partly closed due to fire damage).

19. Environmental Impact

19.1 The proposed development has been designed to meet BREEAM 'Very Good' level and this is now conditioned in planning terms.

19.2 Planning conditions have been used to secure excellent electric vehicle charging provisions. The proposed development includes 550 parking spaces, and the planning condition provides that 'at least 20% of all the car parking spaces shall have an electric charging point provided capable of charging vehicles from the outset and every car parking space shall be future proofed so that electric charging points can be installed when demand requires' which will make this the most significant electric charging facility in the Borough with 110 spaces initially and the potential for 550 spaces to be enabled for EV charging in the longer term.

19.2 Reducing trips out of Southend for leisure activity with the development being within walking distance of either homes or public transport links (rail/bus) for a great many residents, or in any event leading to shorter journeys and less congestion on major routes out of Southend.

20. Background Papers and Links

20.1 The Council's website includes a summary chronology or the project to date with links to all relevant reports and decisions: Seaway Project Introduction – Seaway Project – Southend-on-Sea Borough Council

20.2 25 February 2020 Cabinet Paper.

20.3 Opening the door to development in Southend | LSH and full Economic Benefits Assessment submitted as part of the planning application (18/02302/BC4M).

21. Appendices

Appendix 1 – CBRE Summary assessment of Turnstone Estates Ltd

Appendix 2 – CBRE Summary assessment of Seaway Leisure

Appendix 3 – CBRE Summary assessment of the Funding Risks

Appendix 4 – Statements form Anchor Tenants (from Seaway Website)

Appendix 5 – Other comparable examples across the country