

# North Somerset Council

## REPORT TO THE COUNCIL

**DATE OF MEETING: 14 JULY 2020**

**SUBJECT OF REPORT: BIRNBECK PIER - APPROVAL TO MAKE  
COMPULSORY PURCHASE ORDER (CPO)**

**TOWN OR PARISH: WESTON-SUPER-MARE**

**MEMBER PRESENTING: LEADER OF THE COUNCIL**

**KEY DECISION: NO**

### RECOMMENDATIONS

- a) That, subject to an appropriate and legally binding agreement first being concluded with the Royal National Lifeboat Institution (RNLI) for the Council's costs and compensation liabilities to be paid by RNLI, the Council approves and authorises the Director of Development and Environment to make a Compulsory Purchase Order (CPO) under Section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to acquire the land and structures detailed in the Birnbeck Pier acquisition of land plan, and to seek confirmation of the CPO by the Secretary of State (or to confirm the CPO as an unopposed Order if appropriate).
- b) To authorise the Director of Development and Environment to undertake all relevant and necessary steps to secure confirmation and delivery of the Order, including but not limited to:
- i. Making subsequent amendments to the Order, the Statement of Reasons, the draft Order Map (within the existing boundary indicated on the Birnbeck Pier acquisition of land plan) and other documentation considered necessary to secure confirmation of the Order;
  - ii. Publication and advertisement of the Order, service of all appropriate notices (including site notices and other processes required to notify unidentified owners of interests in the land) in relation to the making of the Order and submission of the Order and all relevant accompanying documents to the Secretary for State for confirmation;
  - iii. Entering into any agreements or undertakings to secure the withdrawal of objections to the confirmation of the Order;
- c) Following confirmation of the CPO to publicise and serve all appropriate notices in relation to the confirmation of the Order
- d) To authorise the Director of Development and Environment, in consultation with the Leader of the Council and Head of Legal & Democratic Services to:

- i. make one or more general vesting declarations or serve notices to treat and notices of entry (as appropriate) in respect of all or any part of the land shown in the Birnbeck Pier acquisition of land plan following confirmation of the CPO;
  - ii. take all necessary steps to secure all relevant interests shown in the Birnbeck Pier acquisition of land plan, including negotiation of agreements, undertakings, transfers and any new rights required, with interested parties and to remove all occupants from the relevant land subsequent to the Council taking possession of the relevant land, if required; and
  - iii. acquire by agreement of interests in and over the relevant Land under Section 52 of the 1990 Act before and after confirmation of the Order and in respect of any new rights required for the protection, repair development or use of Birnbeck Pier.
- e) To authorise the Director of Development and Environment to appoint relevant external professional advisors and consultants to assist in facilitating confirmation of the Order and addressing any wider claims/ disputes related to the process;
- f) To authorise the Head of Legal & Democratic Services to take all required steps in relation to any legal proceedings relating to the Order, including:
- i. defending the decision to proceed with the Order in any Magistrates Court hearing seeking a stay of the CPO process,
  - ii. defending or settling claims referred to the Upper Tribunal (Lands Chamber) and/or applications made to the Courts and any appeals;
- g) To authorise the Director of Development and Environment, in consultation with the Leader of the Council and Head of Legal & Democratic Services to vest or otherwise acquire all or any part of the land shown in the Birnbeck Pier acquisition of land plan for the subsequent transfer of title of to RNLI or, at the direction of RNLI to a subsidiary company controlled by RNLI; and to grant over land owned by the Council to RNLI any temporary or permanent rights reasonably required by RNLI to facilitate the repair and redevelopment of Birnbeck Pier.
- h) That the Council approves and authorises the Director of Development and Environment, whether as part of the CPO process; by use of powers of appropriation and/or under Section 51 of the Planning (Listed Buildings and Conservation Areas) Act 1990; or by agreement, to acquire, secure or extinguish all legal, equitable and other interests in and rights to use or occupy the land and structures as shown in the Birnbeck Pier acquisition of land plan or any land held by the Council that may have new rights created in favour of RNLI to facilitate the repair and redevelopment of Birnbeck Pier.

## **1. SUMMARY OF REPORT**

**1.1** Negotiations with the current owner have been ongoing since 2014, including serving a statutory Repairs Notice, with no substantive proposals or action to safeguard or restore Birnbeck Pier (" the Pier") reached.

**1.2** Executive Decision 2019/20 EXE/70 - Birnbeck Pier and Associated Land, Proposed Way Forward, dated 5 February 2020 gave formal authority for officers to proceed with all relevant actions to prepare a Compulsory Purchase Order (CPO).

**1.3** Funding has been secured from Historic England to promote the compulsory acquisition of the Pier.

**1.4** The opportunity exists to secure the long term sustainable future of the Pier and return Royal National Lifeboat Institution (RNLI) lifesaving facilities to Birnbeck Pier and restore public access to the site.

## **2. POLICY**

### **2.1 National Planning Policy Framework: Section 16 – Conserving and enhancing the historic environment**

Paragraph 184 states that heritage assets are "an irreplaceable resource and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations".

Para 192 (a) states that in determining applications, local authorities should have regard to "the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation..."

### **2.2 North Somerset Council Corporate Plan (2020/2024)**

#### **Aims and Priorities** (page 10)

- **A thriving and sustainable place** (pages 11 – 16)
- **A council which empowers and care about people** (pages 18 – 23)
- **An open and enabling organisation** (pages 24 – 29)

#### **A thriving and sustainable place**

- A great place for people to live, work and visit (pages 12/13)
- An attractive and vibrant place for business investment and sustainable growth (page 17)

#### **A council which empowers and cares about people**

- Partnerships which enhance skills, learning and employment opportunities (page 23)

#### **An open and enabling organisation**

- Engage with and empower our communities (page 25)
- Collaborate with partners to deliver the best outcomes (page 29)

### **2.3 North Somerset Council Core Strategy (2017)**

#### **Policy CS5- Landscape and the historic environment**

The council will conserve the historic environment of North Somerset, having regard to the significance of heritage assets such as conservation areas, listed buildings, buildings of local significance, scheduled monuments, other archaeological sites, registered and other historic parks and gardens.

Particular attention will be given to aspects of the historic environment which contribute to the distinctive character of North Somerset, such as the Victorian townscapes and seafronts in Weston and Clevedon.

**Area policy CS29 relating to Birnbeck Pier:** Priority will be given to regeneration of key redevelopment sites such as the Tropicana and Birnbeck Island. Development proposals in this area should-

- Have consideration for the sequential approach to development based on the National Planning Policy Framework and not prejudice the vitality and viability of the retail core, but instead should complement activities in the town centre
- Strengthen pedestrian and visual links and connections between the seafront and the retail core
- Be of the highest quality design which will enhance the visual appearance of the seafront and promenade.

## 2.4 Development management Polices: Sites and Policies Plan Part 1

Heritage assets are a finite and irreplaceable resource. They are a highly valued and essential part of North Somerset's cultural and local distinctiveness, and often promote community cohesion and identity through a legacy of having created a unique sense of place. When in active viable uses they help to promote economic vitality including tourism. North Somerset's heritage policies are designed as a strategic framework to guide the protection and enhancement of its heritage assets whether or not formally designated. Subject to the availability of resources the council will seek to formulate a comprehensive heritage management strategy engaging with local communities to promote the value of their heritage, and where necessary develop further measures to manage, protect and enhance it for the benefit of future generations.

The two key policies applicable to Birnbeck Pier are:-

- **(DM3) Conservation Areas** – policy aim is to conserve and wherever possible enhance North Somerset's conservation areas
- **(DM4) Listed Buildings** – policy aim is to safeguard the special architectural and historic interest of North Somerset listed buildings, their features inside and out, as well as their settings.

## 2.5 Weston-super-Mare Town Centre Regeneration: Supplementary Planning Document (SPD) (Feb 2017)

The area within which the SPD will apply is the town centre regeneration area as set out in the Site Allocations Plan Consultation Draft (March 2016) –



Whilst the guidance set out in the SPD applies within the designated area, regeneration and restoration is not limited to this. The renaissance of the Tropicana and potential restoration of **Birnbeck Pier** will contribute to the overall regeneration aims. Links with the area beyond the town centre by promoting access to the wider landscape are required as well as measures aimed at encouraging residents living in the suburbs and further away to use the town centre.

**Key Existing Characteristics** - Numerous listed buildings including the Royal Crescent, Royal Hotel and Claremont Crescent. Grade II\* listed **Birnbeck Pier** and Holy Trinity

Church provide individual points of architectural interest in the wider bay context. Buildings are predominantly three to four storey painted render or stone Victorian and Edwardian villas and terraces some with generous setbacks from the road, interspersed by areas of private open space and car parking.

## **2.6 Seafront Character Area of the Great Weston Conservation Area Appraisal and Management Plan (2019)**

The derelict state of Birnbeck Pier is cited as a significant detractor to the quality of the Conservation Area.

'Review rescue and reuse plans for Birnbeck Pier' is listed as a short/medium term action in the Conservation Area Management Guidelines and Action Plan.

## **2.7 NSC Weston Placemaking Strategy (2020 - in development)**

Currently in development with interim findings due for publication in the summer. Significant consultation work with local residents, visitors to the area, schools, local businesses and community organisations and groups has already taken place. Key to the strategy will be the identification of what gives people their 'sense of place' of the town i.e. what makes it special to them, provides a sense of wellbeing and acts as a lever to draw in additional investment and local business and community development. The pier has played a critical role in the history of the development of the town, and its poor condition was raised numerous times in the 'Weston Wishes' and other consultation undertaken as part of the strategy development. This will be reflected in the final strategy.

## **3. DETAILS**

### **3.1 Background**

Birnbeck Pier is a Grade II\* listed structure. Its condition is deteriorating and consequently it is a top priority on Historic England's Heritage at Risk national register (Category A: Very Bad). It is considered to be a nationally important structure that is 'at imminent risk of being lost because of neglect, decay or inappropriate development'.

Despite the extensive efforts of the Council since 2014, it has not been possible to secure any feasible, acceptable proposals for repair of the structure and, from observation, no significant maintenance is being carried out. The serving of a statutory repairs notice in September 2019, had led to some further dialogue with the owner of the Pier. The current owner has apparently appointed a new team of external consultants, who made contact with the Council on 1 June 2020. More recently they have suggested that they will work up proposals to address 4 of the 25 items listed in the Repairs Notice Schedule. Officers, after consultation with Historic England, have advised that proposals for all 25 items are required to safeguard the Pier structure. Meanwhile, the Pier continues to deteriorate at an accelerating pace.

RNLI owns the freehold of the lifeboat station and slipway but is no longer able to access its facility due to the condition of the Pier.

RNLI was forced to cease to use its Birnbeck station in 2013, after operating from the Pier for over 130 years, as it was no longer safe to access the Lifeboat Station over the deteriorating Pier. The principal "bridge" part of the Pier complex was last in use with a walkway laid for lifeboat crews to access the RNLI's station on Birnbeck Island, where the main facilities of the Pier complex were located when the Pier was open to the public.

RNLI's crew have since been operating from temporary accommodation at Marine Lake, although this is less than ideal as access to the sea is limited by the tides at this location.

The Weston lifeboat station is one of the busiest in the South West, and the RNLI have considered numerous options for a permanent site. This has led RNLI to again focus on its facility at Birnbeck Pier and the opportunities afforded by reopening the Pier. A study by RNLI has shown the Birnbeck Pier facility to be the best location for its permanent base for this busy part of the Bristol Channel. All alternatives considered are less than ideal, having restricted access to the sea and the considerable costs and loss of protected habitat associated with construction of new slipways. RNLI considers Birnbeck to be the best site for the local crew's operations.

The RNLI are open to a voluntary acquisition of the unencumbered freehold interest in the pier and island at market value, in order that they can create a lifesaving facility, return public access and create a sustainable future for the site. The RNLI confirm that a voluntary acquisition of the unencumbered freehold interest is not currently available to them.

Whilst engagement with the relevant parties will be pursued in good faith, in conjunction with the CPO process, it is not seen as likely that a transfer to RNLI will take place within a timescale which would allow RNLI to carry out works to repair and preserve the Pier and to re-open the lifeboat station.

### **3.2 The way forward**

It is believed that the long term sustainable future of the Pier can be secured through joint working between the Council, RNLI and Historic England. The proposal is that the Council secure the Pier (see Appendix 1: Proposed land to be acquired by CPO plan below), for the proper preservation and repair of the Grade II\* listed Pier, by transferring the title to RNLI to undertake the works to the Pier and reinstate a lifeboat station.

Partnership working and project planning has been taking place between the Council, the RNLI and Historic England to develop these proposals to both secure the repair of the Pier and provide for a sustainable future for the Pier.

Local Authorities have the power to undertake Compulsory Purchases of land for a number of defined purposes, and in this case the Council will use its powers to secure the proper preservation of a listed heritage asset where the owner has not taken steps to repair the structure following service of a repairs notice. Core funding for the purchase and major repair and restoration works has been confirmed by the RNLI Board of Trustees, subject to the following; (a) a staged project process and (b) further detailed inspections of the pier substructure to validate the work already done. Additional funding will be sought by the RNLI from for example, the National Lottery Heritage Fund, Historic England, other foundation trusts and its own highly respected fundraising campaigns.

The Council has committed to supporting this fundraising though in kind support of specialist officer time and expertise.

### **3.3 Current position**

Following Executive Decision 2019/20 EXE/70 dated 5 February 2020 - **Birnbeck Pier and Associated Land, Proposed Way Forward Following Issuing of Repairs Notice**, formal authority was granted to officers to proceed with all necessary actions in respect of the preparation of a Compulsory Purchase Order for Birnbeck Pier.

This work has been led by officers in the Development and Environment directorate, in consultation with the Leader and Deputy Leader of the Council, the Chief Executive, the

Executive Member for Business, Economy and Employment and elected Members for WSM Hillside and WSM Central Wards.

The following actions have now been taken -

### **3.3.1. Funding for the CPO process**

Funding has been secured from Historic England for the Council to undertake the Compulsory Purchase Order promotion process. Officers have been advised that Historic England view the repair and restoration of the Pier as a top priority and should additional funding become necessary, a further application may be submitted to Historic England.

### **3.3.2 Preparation of the draft CPO and Statement of Reasons**

Officers have drafted the Statement of Reasons document and appendices. This sets out the Council's case for CPO to the Secretary of State and is made up of –

- a detailed history of the site
- details of all known actions taken by the current owner to date
- details of all actions taken by North Somerset Council including;
  - Securing an independent valuation which concluded that, in the opinion of the independent valuers, the property in its existing condition has only nominal value
  - land referencing to identify all parties with a legal interest in, or right to occupy, the land proposed to be acquired
- a statement by RNLI in respect of their proposals for the site, and how these will be funded and maintained in the future
- a full set of appendices including plans, photographs and detailed timelines

### **3.3.3 Planning requirements**

RNLI have prepared and submitted a request for pre application advice to the Council. An experienced senior planning officer has been appointed, together with the Council's conservation and heritage officer, to work with the applicants and provide all necessary advice.

The draft Statement of Reasons document has been scrutinised by an external specialist legal team; the cost of which has been covered by Historic England funding.

It is anticipated that should the Council approve this report, the formal process of making a CPO could commence forthwith following the proposed legal agreement with RNLI being concluded.

### **3.4 The compelling case in the public interest for compulsory acquisition**

For the Council to make, and subsequently for the Secretary of State to confirm the compulsory purchase of land, both the Council and the Secretary of State must be satisfied that there is a compelling case in the public interest for land being taken from the current owner and transferred by law to the Council. This requirement is set out in the Government's Circular that applies to compulsory purchase, entitled "Guidance on compulsory purchase process and the Crichel Down Rules", most recently updated in July 2019.

A case for compulsory purchase is based on a number of factors including:

- (i) the legal power giving the Council the ability to acquire the land compulsorily;
- (ii) the existence of a compelling case in the public interest in general terms;

- (iii) what is the scheme underlying the proposed compulsory purchase;
- (iv) any planning and other impediments;
- (v) whether sources of funding are available and the timing of that funding; and
- (vi) Human Rights and Equalities Act considerations (see the comments in Legal Section below).

In addition, the national and local planning policies that are outlined in Section 2 above are relevant to the compelling case.

#### **3.4.1 The relevant powers**

The Council is empowered to make a Compulsory Purchase Order under Section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990 if it considers it should do so for the proper preservation of the relevant listed building. It has been the Council's concern for some time that the Birnbeck Pier structure is decaying rapidly, and time is increasingly of the essence for the Pier structure to be repaired. Intervention is now justified with the emerging proposals of the RNLI. The RNLI's expertise in raising funds for its key emergency response role and the need for RNLI to re-establish its operational base at the Pier all now allow the Council to be confident that, if CPO powers are obtained, there is a reasonable prospect that a scheme for repair of the Pier can move forward.

As required under the 1990 Act, a listed buildings repair notice was served on the owner in September 2019, but no substantive proposals have been put to the Council for any works of repair to be carried out and no repair activity has been undertaken. No applications for the required consents have been made. As RNLI's own proposals for the Pier emerged, time has been given to the Owner and RNLI to agree terms but suitable terms acceptable to both parties have not been settled. It is also increasingly clear that interests in the land other than the freehold owner make it more difficult for suitable commercial terms to be settled. It appears to that, if the Pier remains in its current ownership, little, if anything is likely to happen for the repair of the listed structure.

Under Section 47 of the 1990 Act, even once the Compulsory Purchase Order is made, a stay of the process can be sought by an owner by application to the Magistrates Court. This stay would halt the Compulsory Purchase Order proceedings whilst it is demonstrated by the owner that steps are being undertaken to secure the proper preservation of the listed structure. The Magistrates Court can stay the CPO from proceeding if satisfied that reasonable steps have been taken for properly preserving the building.

The Council is satisfied that the repairs notice has been validly served and is effective. The officers believe that, without intervention by the Council, repairs to the Pier are unlikely to occur within a reasonable timescale.

#### **3.4.2 The compelling justifications for compulsory purchase**

Officers believe that the exercise of compulsory powers is justified to give a more realistic prospect of repairs being carried out to the Pier. This is a substantial justification for compulsory acquisition capable of outweighing the constitutional right of private land ownership. The Owner has failed to react substantively to the Repairs Notice which has now been in place for some time. The RNLI confirm there is currently no reasonable prospect of a voluntary acquisition of the unencumbered freehold interest. The condition of the Pier itself and the lack of attempt at any repair by the owner subsequent to the service of the repair notice in itself demonstrates compelling reasons why the compulsory purchase should proceed. In addition, there now appears a realistic prospect that a transfer of the



Pier to RNLI may well bring forward within a reasonable timescale the opportunity to carry out major works to the Pier (subsequent to all relevant consents being obtained by RNLI) to both reopen the RNLI's lifeboat station and reopen the Pier complex for public use. Use of compulsory powers to allow for the repair of the Pier is therefore fair, proportionate and appropriate, after alternatives to a CPO have been given time to allow for the repair of the Pier to be undertaken by the Owner.

### **3.4.3 RNLI's proposals**

RNLI wishes to reopen its lifeboat station at Birnbeck Pier. Extensive research by RNLI has established that the Pier location is the optimum location available to RNLI for re-establishing the Weston RNLI Station.

RNLI have prepared and submitted a detailed report, setting out their proposals and timelines. This will be incorporated into the Council's final Statement of Reasons submission for CPO to the Secretary of State.

As the Pier structure is not safe for the crew to use to access the lifeboat station, and the cost of repair is such that RNLI would not undertake such works without knowing it has the unfettered freehold ownership of the Pier, RNLI requires to have the freehold of the Pier before it invests charitable funds, secured by public donation, in such works.

RNLI confirms that there is currently no reasonable prospect that agreement for an unfettered freehold transfer of the landholding will be forthcoming.

The successful exercise of the compulsory purchase powers therefore would allow the Council to secure the site and transfer it to RNLI to invest in the repair of the Pier in accordance with its emerging concept for sympathetic redevelopment of the Pier.

There is a significant public interest in the compulsory acquisition therefore on the basis firstly, that funds should be available for investing in the repair of the Pier structure and secondly, that the crucial lifesaving role of the lifeboat station at Birnbeck Pier can resume.

RNLI has begun pre-application discussions with both the Council and Historic England regarding their proposals to restore the Pier, provide lifesaving facilities and to reopen the repaired Pier to the public. At the seaward end of the Pier there remain some largely ruined buildings from the historic use of the Pier as a public attraction, together with a large concrete raft on which many of the later Pier attractions were constructed. RNLI envisages removing the now crumbling raft and supporting structures, whilst providing all necessary crew and equipment office, training, maintenance/repair and storage facilities, plus environmentally sustainable visitor attractions. These include a visitor centre, walkways, gift shop and supporting facilities at the seaward end of the Pier, to complement the use by the Pier for RNLI. The ambition is to reinvigorate the Pier to allow for public interest whilst having suitable facilities that will both build on the visitor attraction by generating income for RNLI.

### **3.4.4 The scheme underlying compulsory purchase**

The scheme underlying the proposals for the compulsory purchase is for the restoration, repair and maintenance of the Birnbeck Pier, together with the reopening of the Pier to the public and the establishment of the visitor related facilities, as proposed by RNLI on its indicative plan that is the subject of pre-application discussions with the local planning

authority. It is this scheme that is to be disregarded in any assessment of compensation due.

### **3.4.5 Planning impediments**

The Council when considering whether or not to make the Compulsory Purchase Order (and the Secretary of State when considering whether or not to confirm the Order) must consider whether there are planning impediments that may prevent a scheme underlying a compulsory purchase from proceeding.

No planning or listed building consents, or Habitats Regulations processes have yet been undertaken or obtained by RNLI. At this stage only pre-planning application discussions have taken place.

The Pier and its environs are within the Birnbeck Conservation Area. The main pier structure is Grade II\* listed. The entrance gates, turnstiles, Toll House lodge, north jetty and clock tower are all Grade II listed.

In terms of setting, nearby historic buildings include the former Westcliffe College buildings (Grade II listed) and Claremont Crescent, adjacent to the Royal Pier Hotel and Captain's Cabin, is also Grade II listed.

Prince Consort Gardens is public open space and protected as a Local Green Space. The Severn Estuary is a Wildlife Site of International Importance protected by the RAMSAR Convention and is an EU designated Special Protection Area (SPA). It is a Site of Special Scientific Interest (SSSI) under UK legislation. Any proposals by RNLI will need the approval of both the local planning authority (NSC) and the Marine Management Organisation (MMO), and it is likely the consent of The Crown Estate will also be required. There are therefore some significant planning constraints applying to the Pier and its environs. RNLI will require a number of consents under –

- Town and Country Planning Act 1990
- Planning (Listed Building and Conservation Areas) Act 1990
- Wildlife and Countryside Act 1981
- Marine and Coastal Access Act 2009
- The Habitats Regulations

In addition, any planning processes will need to be subject to an Environmental Impact Assessment

RNLI is well experienced progressing development and managing its estate in highly regulated marine environments and is well known to the relevant national authorities such as the Marine Management Organisation and Natural England. RNLI is confident that planning permission and related consents can be secured so as to allow a sustainable, sensitive and viable scheme to proceed, allowing for reopening of the lifeboat station on the Pier.

There is a clear balance between moving forward quickly to ensure that further deterioration of the Pier is limited against the need to demonstrate that planning impediments may be dealt with. At this early stage it is not possible to say that no planning impediments exist but equally it is officers' initial view, without prejudice to any future consideration by the local planning authority, that the proposals being worked up by RNLI are proposals that are likely to comply with the Council's planning policies and form a fitting way of reopening the Pier for public use.

Officers believe there is a good prospect of the required consents being secured within the three year life time of the CPO, if confirmed by the Secretary of State. In any event the compelling need for proper maintenance and repair of the Pier to commence and the belief that this will not occur in a reasonable timescale without the Order being promoted, means that, the need for detailed studies underlying the need for Listed Building consent and planning permission must run in parallel with the process for securing compulsory powers.

The Council and RNLI will work together to enter into agreement covering the parties' liabilities regarding the compulsory purchase. This will include provisions relating to the need for RNLI to use reasonable endeavours to advance the application for planning permission and other necessary consents.

### **3.4.6 Funding**

Initial funding of £127,300 for the compulsory purchase process has been made available to the Council via an external grant from Historic England. This includes the commissioning of surveys and specialist legal advice together with a contribution towards NSC staff costs. The Council is contributing an estimated £11,000 of staff costs as in-kind match funding.

As part of the compelling case an acquiring authority should demonstrate that the funding for the compulsory purchase, including compensation and the funding for the underlying scheme, should be available within the three-year lifetime of the compulsory purchase powers, if the CPO is made and then confirmed by the Secretary of State.

The Council's external expert compensation surveyor has estimated that the likely value of the freehold interest in the Pier, assessed under the principles that apply to compulsory purchase, is likely to be no more than nominal. The Owner will be entitled to recover reasonable costs such as conveyancing and surveyors' fees and may potentially be entitled to a statutory loss payment. In addition, any other costs reasonably caused by and connected to the compulsory acquisition may also form part of the overall compensation claim, subject to the owner taking reasonable steps to mitigate such losses.

The Council will **not** make the compulsory purchase process order until an agreement is in place with RNLI that RNLI will cover the compulsory purchase process cost including compensation. RNLI's board of Trustees has approved moving forward with the Birnbeck scheme and subject to the relevant agreements being in place the parties are confident, that with the support of Historic England, the Council and RNLI's Board of Trustees the project is likely to proceed.

RNLI is well experienced in taking forward marine development projects and has the necessary internal support complimented by external resource where required to take the project forward. Funding for the repair of the Pier itself and subsequent development of the Pier facilities is reasonably likely to be available from RNLI's own funds complimented by specific fundraising campaigns, National Lottery Heritage Funds support and from Historic England.

Whilst therefore it is not possible to say that all funding for the repair, refurbishment and subsequent maintenance of the Pier is yet secured, officers are of the view that there is a reasonable prospect that RNLI will be able to secure the required funds for the repair of the Pier to proceed. RNLI's emerging proposals for development of the Pier to allow for an element of funding for future repair and a sustainable future for the Pier, through the facilities to be made available to the public on the Pier, also indicate that the proposals being advanced by RNLI are realistically the best prospect for the future of the Pier to be

secured. On that basis officers believe that the compelling case for compulsory acquisition can be made out and that there is a reasonable prospect of the necessary funding for the underlying scheme to be taken forward.

### **3.4.7 Anticipated CPO timeline**

Should Council approve this report the process will be to finalise then advertise and 'serve' the CPO. If the CPO is unopposed it can be confirmed within a matter of months, however if the owner seeks to contest it, the process could take up to a further 18 months to resolve. Timescales for this are dependent upon the nature of the challenge and the hearing at which the objection is considered. Assuming the process is successful, and the CPO is 'confirmed' by the Secretary of State the Council then has a period of up to 3 years to 'vest' and take possession.

## **4. CONSULTATION**

Public consultation has not been carried out and the feasibility and other background work has remained confidential whilst the interested parties have been investigating a way forward to secure the Pier's future. This has enabled RNLI to go through detailed internal project management, consider financial viability and authorisation processes.

At all times during this process, the Leader and Deputy Leader of the Council, the relevant ward members, the Chief Executive and the Director of Development and Environment have been fully informed and briefed, to ensure that the Council was willing in principle to explore the initiative.

It is anticipated that there will be a wide range of opportunities for the general public to get involved in the wider project as it develops, particularly in the planning application process, and including fundraising and volunteering. It is hoped that the Birnbeck Regeneration Trust, thanks to their experience and knowledge of the site and its history, will also be able to support local people who are interested in supporting the project.

## **5. FINANCIAL IMPLICATIONS**

The financial implications for the Council are limited to -

- Officer time – in kind support costs, part funded by Historic England
- Specialist external legal costs, independent valuation report and independent land referencing agents report. These are covered by the secured grant from Historic England
- CPO process costs. These are covered by the secured grant from Historic England

RNLI have undertaken detailed feasibility project planning for the repair and restoration of the Pier and the creation of a new station and crew quarters. These have been developed by RNLI's own specialist staff, architects and external marine engineering consultants. The project has gone through the RNLI's internal project procurement, risk analysis, operational viability and fundraising procedures and approval processes. The costs for delivering the project will be borne by the RNLI from its own resources together with specific fundraising appeals and external grants.

### **5.1 Principles of Agreement with RNLI**

An agreement is currently in preparation between the RNLI and the Council to cover the Council's compensation costs together with a back to back transfer of ownership once the CPO is confirmed and then the Pier is vested in RNLI.

The agreement will include provision for RNLI to advance its planning application and related processes so as to increase the prospects of all required consents being in place in the 3 year lifetime of the confirmed CPO.

The completed draft agreement will be submitted to all appropriate authorisation and scrutiny processes at both the Council and RNLI.

## **6. LEGAL POWERS AND IMPLICATIONS**

The Council can make the Compulsory Purchase Order using the powers in **Section 47 of the Planning (Listed Building & Conservation Area Act) 1990** ("the 1990 Act") which allow a local authority to seek powers to compulsorily acquire a listed building in need of repair if it appears to it that reasonable steps are not being taken for properly preserving the building.

The legal implications of making this order are that the current owner may seek to challenge it. This may take the form of legal exchanges between respective solicitors or escalate to a formal hearing in front of a Government Inspector (a similar scenario to that of a planning appeal hearing).

The Council has prepared a very detailed case, setting out all the previous opportunities that have been offered to the current owner to negotiate and agree the way forward, in a six year period since 2014.

## **7. RISK MANAGEMENT**

Currently the greatest risk is that the Pier and its associated features will further deteriorate, the site will continue to be inaccessible to the public and a blight on the surrounding area. Until recently it was felt that little could be done to prevent this happening due to the absence of a credible plan for the site's future. Such a plan is now in place, which is based on a partnership with the RNLI, a highly reputable organisation of long standing, together with the support of Historic England.

Historic England funding has already been secured to enable specialist legal, valuation, land referencing and other advice to be obtained. Also, to cover the cost of any potential external hearing. Historic England have provided a further letter of support, which confirms their approval of the course of action being undertaken by the Council and also a willingness to consider a further request for additional funding for this work, should this be required.

The Council has, in conjunction with external legal and other specialist advisors, produced a fully comprehensive Statement of Reasons document and set of Appendices for submission to the Secretary of State.

The risk to North Somerset Council is low and primarily involves the investment of officer time and the possibility of the current owner challenging the CPO process via a formal hearing.

In order to negate the potential risk that the Council would be liable to pay the costs of the current owner should the CPO application be dismissed, a legally binding indemnity agreement between the Council and the RNLI will be agreed.

At the point that the CPO is confirmed by the Secretary of State, the Council will have up to three years to formally acquire the site. Further authority will be sought at the appropriate

time to confirm the Councils willingness to do this, so should circumstances change with the external partners the Council would not be committed to proceeding with acquiring the site.

## **8. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

The Pier is located in an area subject to several designations under International Treaty (the Ramsar Convention) the Habitats Regulations and the Wildlife and Countryside Act 1981. Any proposals for works to the Pier will have to be considered in the context of the environmental protections afforded by those designations. This will include all appropriate consultations, statutory permissions and licences.

## **9. HUMAN RIGHTS AND EQUALITY IMPLICATIONS**

### **9.1 Human Rights Considerations**

The Human Rights Act 1998 incorporated into UK domestic law the European Convention on Human Rights (the Convention). The HRA 1998 makes it lawful for a public body to act in contravention of the Convention. The Convention includes provisions in the form of Articles, the aim of which is to protect the rights of individuals (including companies). In resolving to make a compulsory purchase order the Council has to consider the rights of those affected, principally property owners under the Convention. The relevant provisions are:

- a) **Article 1 of the First Protocol** – this protects the rights of the owner and the peaceful enjoyment of possession – no-one can be deprived of possession except in the public interest and subject to relevant international and national law.
- b) **Article 6 -Right to a fair and public hearing**
- c) **Article 8** - – this protects the private and family life, home and correspondence. No public authority can interfere with these works except in accordance with the law or necessary in the interest of public security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime or for the protection of health or morals or the rights or freedom of others;
- d) **Article 14** – the enjoyment of the rights of freedoms in the convention shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion – nor social origin, associated national minority, property, birth or other status.

In the case of each of the above Articles (and the Convention in general) the Council must be conscious of the need to strike a balance between the rights of the individual and the interests of the public.

In the light of the significant public benefit that will arise from the protection and repair of the Pier being taken forward it is considered proportionate to make the Order and seek compulsory acquisition powers. It is not considered that any unlawful interference with an individual's rights will occur as any interference will be in accordance with the law and, where property interests are affected directly, the Compulsory Purchase Compensation Code will apply to assess the value of the interests in land expropriated or extinguished.

Further representations will be possible by persons interested in the relevant land before the Order can be confirmed. In addition, objections, if made, will be considered by an inspector appointed to recommend whether or not the Order as made by the Council should be confirmed by the Secretary of State.

The fact that compensation will be available to parties whose interest in land is directly affected through acquisition of land or new rights mean that human rights will not be infringed as the Council and Secretary of State will be following a process prescribed by law and from which a right to compensation arises if land is taken.

## **9.2 Equalities Act considerations**

Before making a decision, Section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:

**i)** Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010

**ii)** Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to -

- remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
- encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

**iii)** Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to

- tackle prejudice
- promote understanding

The proposed compulsory purchase does not engage any of the protected characteristics raised above. The decision to promote the Order has been taken because of the current condition of the Pier and because, with the assistance of RNLI and Historic England, the Council now has an opportunity to secure the future of the pier which will be of benefit to the public and increase public access to the Pier and Birnbeck Island. It is anticipated that detailed EIA will be built into the project for the Pier's restoration by the RNLI and will be considered by the local planning authority as part of its processing of the planning application.

Should the serving of the CPO result in an inquiry or hearing, a full EIA will be carried out in accordance with Council policy in respect of the hearing venue, access and facilities.

When restored and reopened, the Pier will be a place for everyone in the community to visit, support, fundraise and get involved in volunteering and training opportunities.

## **10. CORPORATE IMPLICATIONS**

A project of this scale and complexity has significant implications for the Council as a whole in terms of reputation and is an exemplar of the Council's ability to find and progress a sustainable feasible proposal that will finally resolve the long standing issues of the Pier.

The project will have a positive impact on the developing Placemaking Strategy for Weston-super-Mare. It will act as the catalyst for the regeneration of an area of the town that has significant architectural heritage and has played a key role in the history of the development of Weston. There are positive implications for the public realm including urban green space, renewed public transport links, opportunities for walking and cycling, links to wider tourism and event initiatives, and increased footfall from local residents and visitors.

## **11. OPTIONS CONSIDERED**

### **11.1 Do nothing**

The structure and buildings will continue their rapid deterioration, with a significant risk of collapse in due course.

### **11.2 Continue to negotiate with the current owner**

Officers and Members have engaged in talks with the current owner over several years and will continue to do so. Service of the Repairs Notice has not resulted in any substantive repair work being carried out. Continuing this approach is therefore unlikely to achieve progress within a reasonable timescale, if at all.

### **11.3 Serve a CPO on the current owner and NSC taking long term ownership**

The Council does not have the immediate or long term funding to commit to the levels of expenditure required for an ongoing commitment of this nature.

### **11.4 Acquire (by CPO) the current interests in the Pier with an immediate transfer of Ownership from NSC to RNLI**

Acquire (by CPO) the current interests in the Pier with an immediate transfer of ownership from NSC to RNLI via a back to back agreement [preferred option]

Realistically, this represents the only opportunity for the pier to be restored and brought back into a sustainable long term use. The RNLI are a highly reputable organisation with international recognition and their own significant fundraising abilities. Long term public access to the Pier should also be secured.

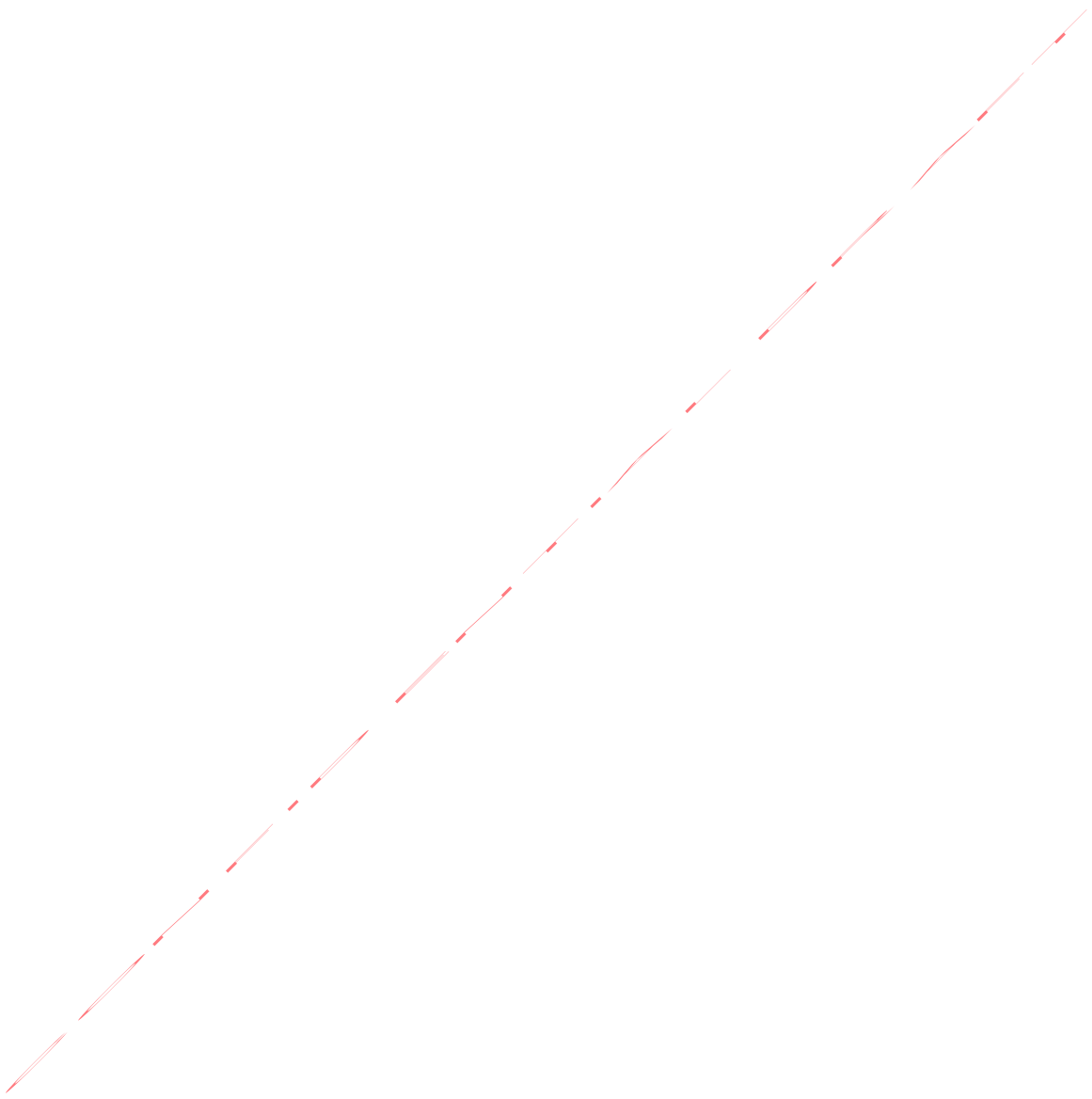
## **AUTHORS**

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## **BACKGROUND PAPERS**

- Repairs Notice issued under Section 48, Planning (Listed Buildings and Conservation Areas) Act 1990 on 9 September 2019
- NSC 2019/20 EXE/70 report dated 5 February 2020 - Birnbeck Pier and Associated Land, Proposed Way Forward Following Issuing of Repairs Notice
- Draft NSC Statement of Reasons (SOR)
- Letter of support from Historic England dated 26 May 2020





# Appendix 1: Proposed land acquisition plan

