

	REPORT TO CABINET TO BE HELD ON 16 FEBRUARY 2016	
	Key Decision Forward Plan Ref No	
Corporate Priority: Strong and Diverse Economy Aim 2: Building a Prosperous Community Aim 3: Creating a Quality Environment	Cabinet Portfolio Holder	Cllr D. Bastiman Cllr M. Cockerill

REPORT OF THE DIRECTOR (NE) – 16/47

WARDS AFFECTED: WHITBY ALL

SUBJECT: DISPOSAL OF LAND AT ENDEAVOUR WHARF

RECOMMENDATION (S):

Cabinet is recommended to:

- i. Note the outcome of public consultation.
- ii. Approve the design and function of proposed development.
- iii. Delegate authority to the Director (NE) in consultation with the Portfolio holder for Harbours, Assets, Coast and Flood Protection to enter into a lease associated berthing licence and operational agreement with Dalby Offshore Services Ltd (DOSS) for the disposal and use of a portion of Endeavour Wharf, Whitby on the terms outlined in this report and contained within Appendix C.
- iv. Delegate authority to the Director (NE)) in consultation with the Portfolio holder for Harbours, Assets, Coast and Flood Protection to enter into a construction licence with DOSS to undertake site investigation works and implement the development in accordance with the approved design at ii.

REASON FOR RECOMMENDATION (S):

To facilitate the development of the proposed “Yorkshire Offshore Renewable

Energy Operations and Management Centre” and the associated economic growth and job creation activity in Whitby Harbour.

HIGHLIGHTED RISKS:

As shown in Appendix A.

1. INTRODUCTION

- 1.1 In June 2014, Cabinet approved the marketing and disposal by way of lease of a proportion of Endeavour Wharf for port related commercial activity by informal tender (Ref: 14/219).
- 1.2 In September 2014, Cabinet received a report (Ref: 14/303) detailing the outcome of the tender and approving the appointment of (DOSS) as the preferred tenderer for the Endeavour Wharf lease and authorised officers to enter into detailed negotiations with DOSS and to develop design for the proposals.
- 1.3 Subsequently in March 2015 Cabinet received a further report (Ref: 15/84) seeking approval of the Heads of Terms (HoTs) of the lease and undertaking to receive a further report detailing the outcomes of public consultation, the final design proposals and the granting of final authorisation to enter into the lease.
- 1.4 This report therefore asks Cabinet to note the outcome of consultation, approve the final design for the proposed development and to delegate authority to the Director (NE) to enter into the lease with DOSS and associated licence to permit the construction of the DOSS facilities on Endeavour Wharf.

2. CORPORATE OBJECTIVES AND THE COMMUNITY PLAN

- 2.1 This report contributes to the Council’s key priority of a ‘Strong and Diverse Economy’ and meets the corporate aims of:

Aim 2: Prosperous Community
Aim 3: Inclusive and Vibrant
Aim 4: Quality Environments.

3. BACKGROUND AND ISSUES

- 3.1 Following approaches from the offshore industry expressing a desire to utilise the Port of Whitby for the purposes of offshore service operations, the WHB (16 June 2014) and the Borough Council’s Cabinet (17 June 2014), approved the tendering of a lease for a proportion of Endeavour Wharf measuring approximately 2,220sqm in area.

- 3.2 On 5 August 2014 tenders were received and assessed by the approved tender evaluation panel and at subsequent meetings of the Whitby Harbour Board and Cabinet, DOSS were identified as the preferred tenderer for the lease in September 2014. Officers were subsequently authorised to enter into further negotiations and consultation with DOSS in order to develop the proposals.
- 3.3 Working together, DOSS and the Council undertook a series of stakeholder consultation events and meetings and drafted HoTs which enabled DOSS to procure architects and proceed with design development and feasibility and further public consultation. The Lease HoTs and the undertaking of wider public consultation were approved by Cabinet in March 2015 as the basis for progressing the scheme, finalising lease terms and developing the proposals.

Public Consultation and Design Development

- 3.4. The establishment of commercial port facilities of the kind proposed by DOS, i.e the provision of facilities for and associated with the loading and alighting of personnel, equipment and cargo to and from vessels was assessed as being permitted development by the Local Planning Authority and therefore planning consent was not required for the development. However DOSS and the Council agreed that given the impact that such facilities would have upon the visual amenity of the historic town of Whitby, that meaningful consultation should be undertaken to ensure the resulting development was complimentary to the town and received the support of stakeholders and the wider community.
- 3.5 To this end DOSS established a Focus Group in 2014 comprising of representatives from throughout Whitby and including representatives from:
- Whitby Boating Association
 - Whitby Yacht Club
 - Whitby Cruising Association
 - Chartered Skippers Association
 - Fisherman's Rowing Club
 - Party Boat Representative
 - NE Inshore Fisheries & Conservation Authority
 - RNLI
 - Fishing industry representative
 - Fish processor representative
 - Parkol Marine Engineering Ltd
 - Coates Marine
 - Whitby and District Fishing Industry Training School
 - Whitby & district Tourism Association
 - Whitby Civic Society
 - Whitby Community Cultural Arts
 - Whitby Town Council
 - Whitby Harbour Board
 - Whitby Ward Councillors
 - Historic England

- Scarborough Borough Council Local Planning Authority, Conservation and Regeneration teams.
- 3.6 Through the Focus Group DOSS then held a design competition inviting three architectural practices to present proposals for the development of an offshore service centre located at Whitby Endeavour Wharf. The outcomes of the competition were then presented to the Focus Group as well as an informal meeting of Scarborough Borough Council Planning Committee. As a result and on the basis of their outline design submission Group Ginger were selected as preferred architects for the scheme.
- 3.7 DOSS commissioned Group Ginger to take the initial designs out to wider public consultation. The public consultation was publicised on the Whitby Wind website and in the Whitby Gazette. Subsequently in September 2015 a two week exhibition of the plans was held in Whitby Tourist Information Centre, alongside this public design presentations and workshops were held. In addition, DOSS offered to attend and present the proposals to any group / organisation or interested individual. Four such consultations were undertaken with East Side Residents Association, Whitby Civic Society, Historic England and one private resident of Whitby.
- 3.8 In total 17 consultation responses were received. The majority of respondents supported the development of offshore activity in Whitby. However, whilst most respondents thought the proposed building was innovative and contemporary, they also had reservations about the building's height (at over 4 stories), the longevity of external timber cladding and the building's resilience to flooding. A small minority objected entirely to any development at all on Endeavour Wharf.
- 3.9 Following receipt of this feedback DOSS and Group Ginger undertook further design development incorporating the comments received. The roof height of the building was lowered by almost 1m, additional flood alleviation measures were incorporated, including flood gates and flood walls at low level. Examples of the material finishes to cladding and roof were also explored and developed.
- 3.10 The resulting design, which can be found at Appendix B was then taken once more to an informal meeting of Scarborough Borough Council's Planning Committee and a further meeting of the stakeholder Focus Group on the 21 January 2016. Some debate was had about the roof material and whether this should be slate or pantile, and some discussion was also had regarding "gull proofing" the building. However, in both instances the majority of Members and stakeholders were in favour of the scheme and expressed their resounding support for the process of consultation, care and due diligence which DOSS and Group Ginger had undertaken in order to ensure that the scheme was befitting of Whitby. It is this design that DOSS now intend to construct upon Endeavour Wharf.

Lease Agreement and Berthing Licence

- 3.11 Heads of Terms for the Lease for Endeavour Wharf, associated berthing licence and the financial, operational and economic impacts therein were outlined in detail to Cabinet in March 2015 (Ref: 15/84). Since that time the Council and DOSS have developed full lease terms, berthing licence and a Port Operations Agreement for Endeavour Wharf based on the original HOTS of which have remained largely unchanged. These documents can be found in full at Appendix C.
- 3.12 Of significance however is the inclusion of safeguards for both the Council and DOS which addresses the steps to be taken should the Wharf ever become beyond economical repair for the Council. In brief the Council has received independent reports, verified by the Council's own structural engineers, which state that the Wharf is fit for purpose for the next 21 years and indefinitely if measures are taken to maintain and repair the ageing Wharf in the intervening period.
- 3.13 Within the Lease the Council have therefore undertaken to maintain the Wharf for a period of 21 years. The Council have also undertaken to use reasonable endeavours to maintain the Wharf after this period. If however the Wharf becomes beyond economical repair then the Council agrees firstly to offer DOSS the opportunity to undertake the repair works itself. If, in turn DOSS are not in a position to undertake the works then the Council will permit DOSS to apply for a change of use and / or to obtain a Harbour Revision Order to the lease area in order that they may use the site for alternative activity not related to the transfer of goods, equipment and personnel etc. to vessels docked at the Wharf.

4. CONSULTATION

- 4.1 As outlined within section 3 of this report, extensive consultation on the proposals, the design of the resulting buildings, operational impacts of vessel movements etc. have been undertaken as part of the development of this project.
- 4.2 The Stakeholder Focus Group established during the design consultation phase of this development have proved invaluable in their feedback and support, and importantly with distributing information within their respective organisations and the wider community. DOSS therefore intend to maintain engagement with the Focus Group during the implementation works and in order to maintain direct links the flow of information with the wider community.

5. ASSESSMENT

- 5.1 The proposal to establish the Yorkshire Offshore Renewable Energy Operations and Maintenance Centre in Whitby presents the town, the wider Borough and even the entire Yorkshire Coast with a significant opportunity to establish its place within a new and growing industry sector of offshore

services, bringing with it significant capital investment, job creation and economic growth opportunities which have been detailed in previous reports to Cabinet.

- 5.2 DOSS propose the development of a brand new building, associated berthing and facilities upon Endeavour Wharf which have been designed with the consultation and support of stakeholders and the community and which appear to fit well within the historic port town of Whitby yet still provide a bold and contemporary approach and appearance.
- 5.3 The lease agreement for the the development site has been drafted in a spirit of partnership however it does include safeguards necessary to protect the Council's position over the long term whilst maintaining the commercial fundability and attractiveness of the site to the developer, DOSS.
- 5.4 On this basis, Cabinet is recommended to approve the recommendations of the report, i.e. to note the outcome of public consultation, approve the design and function of proposed development (Appendix B) and delegate authority to the Director (NE) to enter into a lease and associated berthing licence with DOSS on the terms contained at Appendix C.
- 5.5 Subject to the above, officers will prepare the lease and berthing licence documents for exchange and completion with DOSS and concurrently formalise a construction licence permitting DOSS to undertake site investigation and undertake the development works. This licence is a critical document in controlling the project as it will strictly limit the development which can take place to the design and specification as presented to Cabinet and will not allow for any material deviation from this proposal unless consent is sought from the Council. The licence will also control the construction activity i.e. hours of work, working practices and construction methods, insurances and liabilities, environmental safeguards etc.
- 5.6 DOSS intend to commence site investigation works, procurement of contractors and commencement of the scheme in the spring of 2016 with a view to completing the development and being fully operational by spring of 2017.

6. IMPLICATIONS

(a) Policy

- 6.1 There are no policy implications as a result of this report.

(b) Financial

- 6.2 The financial implications arising from entering into the lease and associated agreements are contained within the confidential Appendix C and within the body of the confidential report Ref:15/84 of March 2015.

(c) Risk

- 6.4 A full risk register can be found at Appendix A. The highlighted risk is failure to approve the recommendations of the report resulting in the loss of economic growth opportunities for Whitby and the Borough.

(d) Legal

- 6.5 The terms of the lease, associated berthing licence and operational agreement with DOSS relating to the disposal of and use of part of Endeavour Wharf are contained within the confidential Appendix C. On granting the lease, the Council will permit the development of the Wharf by virtue of a construction licence and development will be strictly limited to the design proposals contained at Appendix B.
- 6.6 At the request of DOSS it is proposed that the lease is between the Council as Landlord and Dalby Port Services Limited (DPS) as tenant. DPS is an associated company of DOSS and DOSS will act as lease Guarantor to fully guarantee the performance of DPS. Should DPS become insolvent at any time during the lease period, DOSS will be required to step into the lease and associated berthing licence. This guarantee will also relate to the performance of the terms of the construction licence.
- 6.7 The lease agreement with DPS is full repairing and insuring requiring DPS to keep the new facilities on Endeavour Wharf in good repair. DPS's use of the facilities is limited to use in connection with renewable energy and other commercial offshore activity relating to the shipping and unshipping of goods or passengers falling within permitted development. The lease and berthing licence are interconnected i.e. one cannot exist without the other and if one is terminated then the other will also terminate.

(e) Planning

- 6.8 The proposals for the development of this part of Endeavour Wharf have been determined as permitted development.

(f) Environmental and sustainable development

- 6.9 The construction works will be undertaken under licence from the Council. Safeguards will be put in place to ensure the environmental impact of undertaking these works be minimised and mitigated including controls on the removal and disposal of construction waste, contamination of the environment, impact of construction traffic, noise and vibration etc.
- 6.10 The building itself has been designed and specified in such a way as to minimise its carbon footprint in construction and maximise its energy efficiency in operation. For example DOSS are seeking to utilise regionally

sourced products and contractors for construction of the facility and to incorporate thermal efficient materials and renewable energy generation technologies within the building itself. DOSS wish this to be an exemplar development for the renewable energy sector.

(g) Other

6.11 I have considered whether the following implications arise from this report and am satisfied that there are no identified adverse implications that will arise from a decision to proceed with these proposals in respect of:

Equalities and Diversity
Staffing
Crime and Disorder
Health and Safety

7. OUTLINE ACTION PLAN

Cabinet receives report	16 February 2016
Prepare investigations and construction Licences	February 2016
Enter into Lease	March 2016
DOSS Detailed development and procurement of contractors	March 2016
DOSS commence works (estimate)	May 2016
Completion of Yorkshire Offshore Renewable Energy Operations and Maintenance Centre	June 2017

Nicholas Edwards

Nick Edwards
Director

Author: Alex Richards
Telephone No: 01723 232323
E-mail address: alex.richards@scarborough.gov.uk

Background Papers:
Report Ref: 15/84

Appendix A

Risk Matrix

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
1	03/03/15	Cabinet does not approve entering into lease with DOS or request significant revision.	<p>Delays to progressing the scheme</p> <p>Loss of commercial investment opportunity.</p> <p>Loss of potential economic growth and job opportunities for the port and the borough</p>	<p>The principle of utilising Endeavour Wharf and progressing proposals with DOSS has been widely debated and previously supported</p> <p>HoTs previously approved in report 15/84</p>	B4	A3	N Edwards	This report
2	03/03/15	Designs not acceptable to Cabinet and require significant revision.	<p>Delays to progressing the scheme.</p> <p>Delays in undertaking further public consultation on detailed design resulting in loss of traction and goodwill of stakeholders.</p> <p>Ultimately may result failure to agree development and scheme does not progress resulting in loss of investment.</p>	<p>Extensive consultation on design undertaken and has received wide ranging support from all stakeholders. Planning and Conservation authority and Heritage England also provided positive feedback on the proposals.</p>	C4	B3	Project Team	Further negotiation may be necessary
3	05/06/2014	Legal challenge to the Endeavour Wharf Development	<p>Legal resource required and costs incurred</p> <p>Delay in implementation of the development</p> <p>Adverse publicity</p> <p>Loss of confidence by prospective purchasers/developers</p>	<p>Advice taken from legal counsel on the eligibility of proposals to meet permitted development.</p> <p>Open market tender t process followed.</p>	B1	A1	L Dixon	Continue to progress development in line with best practice.

Glossary of Terms

Risk	An event which may prevent the Council achieving its objectives
Consequences	The outcome if the risk materialised
Mitigation	The processes and procedures that are in place to reduce the risk
Current Risk Score	The likelihood and impact score with the current mitigation measures in place
Corporate Objectives	An assessment of the Corporate Objectives that are affected by the risk identified.
Target Risk Score	The likelihood and impact score that the Council is aiming to achieve
Service Unit Manager	The Service Unit or Officer responsible for managing the risk
Action Plan	The proposed actions to be implemented in order to reduce the risk to the target score

Risk Scoring

Impact	5	[Hatched]				
	4	[]	[]	[Hatched]		
	3	[Hatched]	[]	[]	[Hatched]	
	2	[Hatched]	[Hatched]	[]	[]	[Hatched]
	1	[Hatched]	[Hatched]	[Hatched]	[]	[]
		A	B	C	D	E
	Likelihood					

Likelihood:

- A = Very Low
- B = Not Likely
- C = Likely
- D = Very Likely
- E = Almost Certain

Impact

- 1 = Low
- 2 = Minor
- 3 = Medium
- 4 = Major
- 5 = Disaster