

-CONFIDENTIAL -BEER PILOT

NO CONTRACT – These Heads of Terms are Subject to Contract

The purpose of this document is to inform further two way dialogue and agreement of heads of terms for respective parties to then instruct Solicitors.

Background

EDDC Cabinet debated this matter on 2nd October 2019 and determined:

- a) The transfer of assets as identified within this report to Beer Parish Council for nil consideration.
- b) Responsibility for agreeing detailed terms and conditions for the freehold / long leasehold transfers to be delegated to the Council's Deputy Chief Executive.

Proposal

Transfer of the following assets freehold / or under very long lease to Beer Parish Council:

- Beer Head Car Park (southern strip and central areas only)
- Starre Bank
- Memorial Play Area (subject to a Wayleave to South West Water of the pumping station below)
- Jubilee Gardens PC's
- Jubilee Gardens Access ' Hardstanding view point – includes income received currently of £700 per annum from RNLI
- Jubilee Gardens but for the avoidance of doubt the Cliff is excluded
- Charlies Yard
- Beach Court Car Park

The proposal is for the freehold or long leasehold transfer of those assets. The Parish Council would have flexibility to sell / sublet / assign provided that any financial returns are reinvested in the Beer community and that the uses remain broadly for public enjoyment and benefit and that the key services remain in some form. That said, as an example, Beer Parish Council would be permitted to convert the public convenience building into a café/ ice cream kiosk provided that a public convenience provision were retained either within the building or close to – it could be smaller and the income generation from the remainder of the building could be used to support ongoing costs. Likewise Charlies Yard could be built on provided that the use benefitted the community.

For avoidance of doubt, areas to be retained by EDDC include:

- Beach – due to complexities around day-to-day management and because of regularisation of agreements being needed but this does generate a commercial income

- Cliff – Parish Council are not prepared to accept this liability. This is a concern to EDDC, has been worked through at length and has now been accepted by Officers as part of this wider asset transfer
- Majority of Beer Head Car Park
- Bottom section of Beach Access Road
- Central Car Park

Business Case

Development of a Business Case has been driven by Beer Parish Council using data provided initially by EDDC around costs and incomes attached to those assets in Beer, updated where possible. The rationale and figures have been checked by respective Service Leads at EDDC and also reviewed with Strategic Lead - Finance. The rationale is broadly as follows:

- All Beer assets (those being transferred and those not being transferred) currently cost EDDC £106,805 but generate £232,879 therefore providing a surplus income of £126,075 per annum.
- Of those assets to be transferred there is a nett cost to EDDC of circa £55,000 per annum.
- Post transfer, nett costs to Parish Council would be circa £57,500 per annum.
- Parish Council would require an annual payment from EDDC from car parking revenue of circa £57,500 per annum to offset that increase in cost to them, this tapering to zero after 7 years.

The Business Case summary is described below:

- The proposal is to transfer the Beach Court Car Park to the Parish Council. EDDC will continue to manage this car park for which the Parish Council will pay EDDC's costs, hence including the net income figures within. The Parish Council would be responsible for signs, lines, surfacing, boundary repairs etc. This will generate the Parish Council £12,000 in year 1.
- The Parish Council have assumed they will capitalise on rental income opportunities from lettings of shelters and PC's. This is to be phased in. EDDC to pay Parish Council a dowry of £45,500 in year 1 (this along with the £12,000 income from Beach Court car park equating to the £57,500 referenced above in 5.1), tapering down in equal tranches to £0 in year 8. This is a cost to EDDC but is balanced by the fact that those assets being transferred currently cost EDDC £55,000 per annum. In essence, together with Beach Court Car Park we are providing the Parish Council with £57,500 in year 1, reducing each year.
- The Parish Council will pay StreetScene £30,000 in year 1 and in exchange StreetScene will provide those same works to those assets to be transferred as pre-transfer. This payment and the associated obligations on StreetScene to do the works will taper to zero after 5 years. This fundamentally addresses the big stumbling block to the previous business case where EDDC were having to carry their fixed costs as a loss. This works as long as the StreetScene fixed costs can in fact reduce over this same period i.e. through not filling vacant posts, restructuring of rotas etc. assisted through other asset transfers also happening across the wider locality. If these savings can't be made, EDDC will need to absorb those costs

through a Transformation or other budget but balanced against the significant wider savings to EDDC which increase year on year.

- The Parish Council have assumed following their own investigation that for those works they take on, they can deliver at 55% of EDDC's costs, taking on these works gradually.
- The Parish Council have also assumed 15% of Parish Council works will be undertaken by volunteers therefore without cost.
- The Parish Council have allowed for a contingency / sinking fund of 10% of maintenance costs.
- The Parish Council has assumed that new capital works, related to the transferred assets and renovation of existing buildings and structures, will be funded through a mix of grants, loans and capital receipts from the disposal of minor parcels of land on the periphery of the main asset site and predominantly where incursions are already evident. Any disposal will have no impact on the primary use or public access.
- The Parish Council make a very modest loss in years 1 and 2, incomes accumulating to circa £5,500 by year 5 but then by year 6 rely on generating commercial income over and above that currently forecast, most likely through Charlies Yard or some new premises on Jubilee Gardens and supported by income from events. If the Parish Council fail to achieve this, there will be a loss to them of circa £29,000 over 10 years. Opportunities do exist to generate additional cash flows of circa £10,000 plus per annum as referenced in 4.1 of this report and possibly as high as £25,000 per annum after time.
- EDDC lose £2,500 in year 1 but thereafter generate a positive cash flow equating to circa £300,000 over 10 years but have of course relinquished the income at Beach Court car park and any other income generating opportunities from those assets transferred.

In summary, the Parish Council are taking on a not insignificant risk here but in exchange for giving them local control of the assets, their use, maintenance and management and decision making around changes in use and income generating opportunities. The Parish Council will need to generate real savings and / or additional income to ensure a balanced budget by year 10 or sooner. EDDC will make savings of circa £300,000 over 10 years but to do so are transferring assets of circa £315,000 market value as of 2019.

Key matters for consideration

In considering this proposal, the Council have / will satisfy itself of the following:-

- The Parish Council will evidence and ensure they have the appropriate skills, knowledge and expertise to sustain the service provision in the long term
- The Parish Council will be required under any agreement to have in place clearly defined structures, roles and responsibilities to deliver the services
- The Parish Council will be required under any agreement to have in place clear decision making processes with an approved constitution, governance and management controls
- The Parish Council will be required to meet with all insurance, equality standards, child protection, health and safety and licensing requirements
- The proposal has the support of the local community
- The proposal must evidence that implementation of the devolving of service provision and the assets associated with them promote or improve the economic, social or

environmental well-being of the area or residents in order to satisfy best consideration requirements under the Local Government Act 1972

- The Council is satisfied that there is no Subsidy Control being given in relation to the transfer of public functions between one public body and another(See 6.3 below)
- Potential positive or adverse implications for staff have been considered

Where and if outstanding, these matters will be addressed prior to entering into any Agreement for transfer of assets to the Parish Council.

Pre-Requisites for Transfer

- Assets to be transferred must be in a serviceable condition with no serious outstanding defects. **Known Health & Safety issues will be dealt with by EDDC prior to handover and at the cost of the Council.** This might be by undertaking works prior to transfer or attaching a financial sum for the Parish Council to implement but it has been made clear this will not be a large sum and will not allow for works identified as needed in the short term future, something which previously was being requested. There is therefore a further less quantifiable saving to EDDC. In essence if some building component is broken, it will be repaired, but anything that is dated or in poor condition but functioning adequately will not.
- A service level agreement will be entered into between StreetScene and the Parish Council setting out the scope of works to be undertaken and funded, detailing how this service will then be tapered down over 5 years.

Draft Heads of Term in relation to proposed Community Asset Transfers Subject to Contract

General Conditions applicable to all Transfers and the granting of the Long Leasehold interest – (where applicable i.e. some clauses will not apply to the long lease interest)

Definitions

Transferor/ Landlord: East Devon District Council (EDDC)

Transferee /Leaseholder: Beer Parish Council (BPC)

Head Lease Disposal The disposal of part or whole of a Head Lease interest.

Leasehold disposal The disposal of part or whole by way of a lease, sub-lease, sub sub lease for a period exceeding 6 months, whether or not the lease is granted inside or outside the Landlord & Tenant Act 1954.

Short Term Agreements Event permits, all forms of Licence, Concessions, Market Trader /Stall agreements and any other short term letting for 6 months or less in any 12 month period.

Subletting of Part or Whole – Landlord's share of rent Where the lease permits a Leasehold Disposal or Head Lease disposal at any time during this period or where a lease is granted without the consent of EDDC or where occupation is taken without a lease being formally completed, BPC shall pay the Landlord a share of the rent payable to BPC under such agreement/occupation, with the amount to be agreed by the parties at the time of the

transaction or when EDDC become aware of the transaction , with the rent share payable from the date of occupation. However, if the parties cannot agree the appropriate share of the rent the Landlords decision on the relevant % shall be final but at no time shall the Landlord's / Transferor's share of the rent exceed 25% of the rent payable excluding VAT . This is to be effective for a period of 20 yrs. from the date of Freehold Transfer or grant of the Head Lease interest in any property transferred to BPC by EDDC.

Further , where the lease is for a term of 5yrs or more or whether a series of consecutive leases exceed 5yrs (with any gap up to a 2 month between each lease /occupation to be deemed a consecutive lease for the purpose of this clause) .This provision will further only be triggered where the rent payable on whole or part is a minimum of £7000 pa exclusive of VAT . For the avoidance of doubt this clause shall not apply to Short Term Agreements.

Variation to original Transfers/Head Lease interests Should the parties agree to vary/relax the terms of any original agreement whereby for example alienation or user clauses are altered so that a Leasehold of Freehold Disposal is permitted within the 1st five years which is otherwise expressly prohibited, such variation will attract Overage if a Freehold Transfer or a Share of Rent as appropriate

Ancillary authorised uses Installation of cash points, water fountains, vending, advertising boards, solar panels & electric car points are expressly permitted at any time , except under the lease of Beer Head Car park, where such installations are prohibited at all times.

User Restrictions Absolute bar on use of any part of the property at any time for any gambling purposes whatsoever or use for any illegal or immoral uses ,

Obligations on BPC

The Transferor will require a copy of every Freehold Transfer which completes during the first ten years.

All Leasehold Disposals must be recorded in writing by both the BPC and the occupier /tenant and a copy of each agreement must be provided to EDDC within 21 days of it being completed for the first ten years.

Income & Capital receipt redistribution

All capital receipts / rents /income received by BPC from the Transfer of these Assets to be wholly re-invested in the Assets forming part of this CAT Transfer and as detailed in these HOT's. Such receipts are to be wholly reinvested for the duration of the first ten years commencing from the date of transfer/granting of a long lease.

Audited Accounts

BPC to issue a copy of their audited Annual Accounts to EDDC within 1 month of publication every year for the first 10 years

Permitted Freehold disposals- Small Parcels of Land only

It is hereby accepted that small parcels of land may be sold in the 1st five years from the date of freehold transfer by way of Freehold Transfers so long as the proposed disposal does not impact the overall character nor materially impact on the public use of the asset as a whole. The Transferor's prior written consent to a permitted small parcel disposal is required but such consent shall NTBUW.

Furthermore, for permitted freehold disposals of small parcels of land where the individual transaction value is £5,000 or less, overage payments will not be applied. All receipts from disposals to be invested in capital improvements of the group assets included in this transfer as proposed in the business case.

An overage payment of 50% will be payable on the increase in value achieved as at the date of disposal of any small parcel of land which exceeds £5000 over and above the original freehold transfer value, hereby agreed as £1 in each and every case.

Small disposals will otherwise be subject to the same provisions as contained in the Freehold Disposal (definition as detailed below) so that any freehold disposal of part or whole which takes place after the date of the original Transfer, and expires on the 20th anniversary of the date of Transfer, shall attract an Overage payment equating to 50% of the net increase in value of the asset as at the date of completion of the disposal, over and above the value of the interest as at the date the Freehold was originally transferred to BPC which is hereby agreed as £1 in all circumstances. Such Overage payment will reduce by equal annual amounts in terms of the percentage of Overage payable so that 0% is payable in Overage after 20 years from the date of the Transfer.

Furthermore Overage payments will be triggered by the exercise and implementation of Permitted Developments Rights on small parcels of land which enhance the value of part or whole of the property, at any time during the first 20 years from the date of Transfer. Overage will be payable on each and every occasion Permitted Development Rights are implemented and which result in an increase in the value of the Freehold interest but will only be payable on the date of disposal of either part or whole of the Freehold Interest .

Permitted Extinguishment/Relocation of existing uses to alternative locations

The stated public use as defined as at date of transfer /grant of a long leasehold interest shall be continued as set out in the user clause in the long lease /transfer agreement for a period of 10 years from the date of transfer /grant of lease, with the exception of where the asset requires partial enhancement in order to enable commercial activities in support of general asset maintenance of the property in question. However, it is expressly acknowledged that the public use of a particular asset might change over time and in response to a change in public needs. Therefore, if the use of an asset changes from its original purpose during this period, any permanent and /or temporary loss will need to be replaced either within the existing premises and/or relocated onto alternative premises /land. However , it is further acknowledged that replacement of a facility or an existing use might be different in scale or design from what it is replacing, in order to accommodate the change in public demand .For example, a new facility WC which is replacing an existing WC facility does not need to be recreated on a like for like basis , as if the is demand is for only one unisex cubicle , then only one replacement cubicle would suffice.

EDDC to be the ultimate arbiter of whether there has been a change in demand which requires such steps to be taken but with EDDC's approval to a proposed change of use and relocation of an asset in these circumstances being subject to such consent NTBUW.

EDDC require at least 3 month's prior written notice of BPC's intention to relocate/extinguishment of any originally defined public use during the first 10 year period but after the initial 10 year period, the above obligations will fall away.

Right of re entry

There would be no circumstances whereby EDDC would be obliged to take back any of the assets. However, if the Parish Council fail to maintain the assets which ensures continuous public access , save for natural disasters / uncontrollable circumstances /detailed Force Majeure circumstances , then for 1st 10 years only , EDDC could, at its sole discretion (but with no obligation) having given not less than 2 months prior written notice of its intention , re-enter the premises and carry out the whatever works are required in order to bring the Asset back into full public use and BPC would be responsible for all costs incurred by EDDC on a full indemnity basis.

Encroachments and Incursions and unauthorised uses

The Transferor cannot warranty full vacant possession of these Assets will be afforded as at the date of transfer /granting of a long leasehold interest .The parties hereby agree that no action legal or otherwise , will be taken by the Transferor prior to any transfer/leasing in respect of any potential or known encroachment or trespass issues , nor will the Transferor take any action to remove unauthorised signage or equipment, nor take any action in respect of any other unauthorised incursion onto the Transferor's land .

However the Transferor hereby agrees to cooperate fully with BPC in order to assist with the regularisation of any unauthorised uses or incursions once the Transfers and the Long Leasehold interest have completed.

Reciprocal Access rights

Reciprocal access rights will be granted to both parties in respect of all Transfers /Long leasehold interest in order to carry out repair and maintenance and or to lay or repair or connect to Services on the others property holding subject to prior written notice .Such rights to be expressly reserved in any Head Lease Disposal, Leasehold Disposal or Short Term Agreements.

Green Leases

BPC hereby undertake to grant 'Light Green' agreements to all Leasehold occupiers of these Assets which formally encourage genuine cooperation between the parties , including the sharing of data and agreeing a joint strategy for the reduction of environmental impacts as a result of the occupiers use and enjoyment of the property .These Agreements will further oblige regular communication between the parties in terms of reviewing environmental performance and in relation to discussing and agreeing options for delivering improved environmental performance .

Costs

Each party will pay its own legal and professional costs incurred in connection with completion of these transactions including any initial Licence to Alter application made by BPC which requires EDDC's consent (with such consent NTBUW).

Thereafter BPC will be expected to pay EDDC's reasonable professional fees and expenses incurred in approving any subsequent alteration or the granting of a Leasehold interest or any other approval which requires Landlord /Transferors approval under the Agreement. Where consent is required the form of Licence to be used is attached under Appendix A.

SLA

SLA with Street Scene to be completed contemporaneously with all of the following Transactions.

Transfer of street furniture

An Inventory will be attached to each agreement confirming the street furniture and other related items which will form part of each disposal.

INTERESTS BEING ACQUIRED BY BPC**Beer Head Car Park**

Interest to be granted 99 year lease

Property Land owned by the Landlord and defined under Title No DN370393

Demised area Demised area outlined in red on the attached plan with the Northern Plot hatched blue, the Southern Plot hatched green and Western Plot shaded yellow

Rent £1 pa

Rent Reviews None

VAT TBC

Break None

Repairs

Full repairing and insuring responsibilities for all of the demised areas including boundaries, fencing and gates, access roads and landscaping.

Right to re-enter

Should BPC breach its repairing covenants the Landlord has the right to re-enter the property and to carry out the works required and to recover the costs on a full indemnity basis from BPC.

Estate Charge

BPC to pay a fair proportion of the costs of maintaining, repairing and renewing the access roads into the Property, all common signage, landscaping, gates, boundaries and fences, tree surveys and general maintenance, refuse and waste removal, and all other costs reasonably incurred in the management of the Property. BPC's share of the service charge to be based on the area of land demised to BPC as a proportion of area of the Property as a whole.

User Restrictions

Bar on the sale or consumption of alcohol on any part of the Car Park occupied by BPC or on any land subsequently let/sold by BPC.

For the avoidance of doubt, disabled electric buggies can be used in each of the three Beer Head Car Park plots of land.

Structural alterations

Expressly prohibited. No permanent or temporary structures to be erected on the land at any time, subject to the provisions of the clause below.

Non Structural

Subject to the Landlord's consent NTBUW and to include the erection of any new signage but with express consent hereby given for the installation of additional benches, seats and waste bins. Play equipment may be installed in the Northern Plot only without Landlords consent but installation is subject to the installation being in compliance with EN 1176, BS EN 1177 & BS 7188 or replacement or amendment thereof and confirmation upon request by EDDC that quarterly inspections of all equipment have been carried out by a qualified RPII inspector. It is noted that the installation of such play equipment may involve the creation of permanent ground fixings which are hereby expressly permitted.

Insurance

BPC to insure all of the demised areas for all risks including Public Liability, Employers Liability and Land/equipment /goods (if any)

Head Lease Disposal

No assignment of whole or part of the Head Lease interest (as defined) in the property is permitted for the 1st five years from the date of the lease.

Leasehold Disposals

No subletting of part or whole or any other disposal of part or whole of the property by way of a Leasehold Disposal (as defined) is permitted for the 1st five years from the date of the lease.

Thereafter, BPC are permitted to assign and/or underlet part or whole of the property subject to the Landlords consent NTBUW.

The Landlord to have the right of first refusal in respect of any proposed disposal of whole or part of BPC's Head Lease interest in the Property, mechanism and timeframe and valuation approach to be drafted by EDDC's lawyers .

Access Rights

Vehicular and pedestrian rights of access to be granted by EDDC to BPC to access Northern and Western plots but use by pedestrians and bicycles only is permitted in respect of the Southern Plot.

Permissive rights

All known permissive footpaths and/or any acquired public pedestrian access rights to be reserved

Overage payable in connection with a Head Lease Disposal

Any disposal of part or whole of the Head Lease interest , or the whole or part of any of the three defined individual plots of land forming the property , which takes place after the date of the original grant of Head Lease to BPC by EDDC and expires on the 20th anniversary of the date of that lease, shall attract an Overage payment equating to 50% of the net increase in capital value of the asset as at the date of completion of the leasehold interest being disposed of, over and above the value of the interest as at the date the Head Lease was originally granted by EDDC to BPC which is hereby agreed as £1 in all circumstances. Such Overage payment will reduce by equal annual amounts in terms of the percentage of

Overage payable so that 0% is payable in Overage after 20 years from the date of grant of the lease.

Additional covenants relating to specific plots of land forming part of Beer Head Car Park which are to be applied in addition to the general covenants detailed above relating to the lease of the whole as

Northern Plot

Use

Subject to the Permitted Extinguishment/Relocation of existing uses to alternative locations clause detailed on page 5 above, the Northern Plot shall only be used as a Play area / public recreational space combined with a separate car park for un serviced camper vans only up to 24 ft. in length. Such uses are the only permitted uses of the Northern Plot for the 1st five years, thereafter, other uses will be permitted subject to the Landlord's consent which is NTBUW.

Restrictions on Use

Absolute Bar on the parking of coaches at any time

Exceptions to the Alienation provisions

The Landlord may permit an ice cream van, sandwich /Panini /hot drinks van and/or a pizza van concessions only on the Northern Plot during the 1st five years of the term, subject to securing all necessary licences and statutory consents and the landlord's prior written consent which is NTBUW.

Short Term Agreements

Other than herein provided, no Short Term Agreements are permitted. Such Short Term Agreements will not require the prior consent of the Landlord but a record will be kept of each Agreement which will be provided to EDDC upon request.

Alterations

BPC will be obliged to erect a fence along all boundaries of the northern plot within 12 months from date of lease and to a specification agreed by the Landlord, such consent NTBUW. (Attached plan boundary line to be marked up by BPC/EDDC)

Hours of Use

Unserviced Camper van parking to be permitted year round .24 hrs per day maximum stay 3 nights to be permitted. The charge rate for camper van parking to be agreed between EDDC and Beer Parish council but in the event of a dispute the landlord decision shall be final.

Income

For the avoidance of doubt all income received from the camper van parking and the concessions which occupy the demised land shall be the sole property of BPC, subject to the payment of a car park management fee and service charge, to be agreed with the Landlord.

Furthermore, any concession or other income and /or parking fees payable as a result of the use of the Landlord's land by the Landlord, shall be the sole property of the Landlord.

Car Park Management Agreement

Those parking in Northern Plot are permitted to use the EDDC ticket machine. The parking revenue from camper vans using the Northern Plot, to be paid to Beer Parish Council on an annual basis but with EDDC Parking Service to retain a management fee, which is to be agreed between the parties.

The Northern Plot Car Park is to be managed in accordance with EDDC's Car Park Management terms and conditions as set out by Car Parks, which is to be submitted annually to BPC and will be subject to updating as and when necessary.

Southern Plot- Memorial Walk

Use

Subject to the Permitted Extinguishment/Relocation of existing uses to alternative locations clause detailed on page 5 above, the Southern Plots shall only be used as a Memorial Walk and landscaped area with permanent access afforded to the Public. The British Legion, may however, erect up to four stands/display boards at any given time in order to promote their charity.

Restrictions on Use

The use of this land by any motorised or electric vehicles is expressly forbidden with access to be restricted to pedestrians and cyclists only. No other use will be permitted for whole lease term unless the Royal British Legion lease ends (for whatever reason) when the land will revert to public open space.

Alienation

Memorial Walk can only be sublet to the Royal British Legion, subject to the Landlord's prior written consent NTBUW, at a peppercorn rent without review, for a term of 99yrs less 1 day and for the sole purpose of a Memorial Walkway/landscaped area. Furthermore, the British Legion will only be able to use the property for the stated use.

Short Term Agreements

None permitted

Western Plot

Use

Subject to the Permitted Extinguishment /Relocation of existing uses to alternative locations clause detailed on page 5 above, the Western Plot is only to be used as a public play/recreational area for the 1st five years, thereafter, other uses will be permitted, subject to the Landlord's consent NTBUW Events are expressly prohibited

Leasehold Disposal

Landlord's prior written consent is required for any Leasehold Disposal of the whole or part within the 1st five years from the date of grant of the original lease to BPC.

Short Term Agreements

None permitted

Alterations

BPC will be obliged to erect a fence along all boundaries of the Western Plot within 12 months from date of lease and to a specification agreed by EDDC, such consent not to be unreasonably withheld. (Attached plan boundary line to be marked up by BPC/EDDC)

Starre Bank

Interest to be transferred Freehold Title No. DN 393638

Price £1

VAT TBC

Use

Subject to the Permitted Extinguishment/Relocation of existing uses to alternative locations clause detailed above on page 5, Starre Bank shall only be used as Public recreation space for the 1st five year from the date of Transfers, thereafter for such other use as the landlord shall approve such consent NTBUW.

Short Term Agreements

None permitted

Freehold Disposal

No disposal of part or whole of the freehold is permitted within the 1st five years from the date of Transfer.

Leasehold Disposal

The Transferor's prior written consent is required for any Leasehold Disposals of part or whole within the 1st five years from the date of Transfer such consent NTBUW.

Overage provisions

Freehold disposal

Any freehold disposal of part or whole which takes place after the date of the original Transfer, and expires on the 20th anniversary of the date of Transfer, shall attract an Overage payment equating to 50% of the net increase in value of the asset as at the date of completion of the disposal, over and above the value of the interest as at the date the Freehold was originally transferred to BPC which is hereby agreed as £1 in all circumstances. Such Overage payment will reduce by equal annual amounts in terms of the percentage of Overage payable so that 0% is payable in Overage after 20 years from the date of the Transfer.

Overage triggered by the exercise of Permitted Developments Rights.

Overage payments will be triggered by the exercise and implementation of Permitted Developments Rights which enhance the value of part or whole of the property, at any time during the first 20 years from the date of Transfer. Overage will be payable on each and every occasion Permitted Development Rights are implemented and which result in an increase in the value of the Freehold interest but will only be payable on the date of disposal of either part or whole of the Freehold Interest .

Existing Interests the Land is being transferred subject to any existing or acquired rights of access by householders including pedestrian access and gates licences

Other clauses Trees – A tree survey will be undertaken by Transferor before transfer and if necessary, any dangerous or fatally diseased trees will be removed prior to Transfer.

Memorial Play Area

Interest to be transferred Freehold Title number Part of DN 370397

Price £1

Use Subject to the Permitted Extinguishment/Relocation of existing uses to alternative locations clause detailed on page 5 above, the Memorial Play Area may only be used for recreational purposes for the 1st five years, thereafter, such other use as the Transferor may approve such consent NTBUW.

Short Term Agreements Short Term Agreements are permitted. Such Short Term Agreements will not require the prior consent of the Landlord but a record will be kept of each Agreement which will be provided to EDDC upon request.

Freehold Disposals No disposal of part or whole within the 1st five years from the date of Transfer

Leasehold Disposals The Transferor's prior written consent is required for any Leasehold Disposals of part or whole within the 1st five years from date of Transfer, such consent NTBUW.

Overage provisions

Freehold disposal Any freehold disposal of part or whole which takes place after the date of the original Transfer, and expires on the 20th anniversary of the date of Transfer, shall attract an Overage payment equating to 50% of the net increase in value of the asset as at the date of completion of the disposal, over and above the value of the interest as at the date the Freehold was originally transferred to BPC which is hereby agreed as £1 in all circumstances. Such Overage payment will reduce by equal annual amounts in terms of the percentage of Overage payable so that 0% is payable in Overage after 20 years from the date of the Transfer.

Overage triggered by the exercise of Permitted Developments Rights Overage payments will be triggered by the exercise and implementation of Permitted Developments Rights which enhance the value of part or whole of the property, at any time during the first 20 years from the date of Transfer. Overage will be payable on each and every occasion Permitted Development Rights are implemented and which result in an increase in the value of the Freehold interest but will only be payable on the date of disposal of either part or whole of the Freehold Interest.

Beach Court Car Park

Interest to be transferred Freehold, Title No DN 637423 & Part of DN 370411

Price £1

Use Subject to the Permitted Extinguishment /Relocation of existing uses to alternative locations clause detailed on page 5 above, the use of this property shall be restricted to Public parking and Short Term Agreements only for the 1st five years, thereafter, such other use as the Transferor may approve such consent NTBUW.

Short Term Agreements Short Term Agreements are permitted. Such Short Term Agreements will not require the prior consent of the Landlord but a record will be kept of each Agreement which will be provided to EDDC upon request.

Existing Interests Land transferred subject to any existing or acquired pedestrian or vehicular rights of access.

Freehold Disposals No disposal of part or whole within the 1st five years from the date of Transfer.

Leasehold Disposals Transferor's prior written consent is required for any Leasehold Disposals of part or whole within the 1st five years from date of Transfer, such consent NTBUW.

Alterations

The removal of the existing wooden structures in the car park and subsequent reconfiguration of the car park area itself is hereby expressly permitted subject to any change of boundaries being formally advertised in accordance with statutory requirements.

Overage provisions

Freehold disposal Any freehold disposal of part or whole which takes place after the date of the original Transfer, and expires on the 20th anniversary of the date of Transfer, shall attract an Overage payment equating to 50% of the net increase in value of the asset as at the date of completion of the disposal, over and above the value of the interest as at the date the Freehold was originally transferred to BPC which is hereby agreed as £1 in all circumstances. Such Overage payment will reduce by equal annual amounts in terms of the percentage of Overage payable so that 0% is payable in Overage after 20 years from the date of the Transfer.

Overage triggered by the exercise of Permitted Developments Rights

Overage payments will be triggered by the exercise and implementation of Permitted Developments Rights which enhance the value of part or whole of the property, at any time during the first 20 years from the date of Transfer. Overage will be payable on each and every occasion Permitted Development Rights are implemented and which result in an increase in the value of the Freehold interest but will only be payable on the date of disposal of either part or whole of the Freehold Interest .

Car Park Car Park Management Agreement EDDC will continue to manage this car park for which the Parish Council will pay EDDC's costs. The Parish Council would be responsible for signs, lines, surfacing, boundary repairs etc. Parking prices to be fixed in agreement with EDDC, such consent not to be unreasonably withheld but not to adversely impact on demand for EDDC's car parks.

Income Car Park income to belong to BPC, subject to the payment of a management fee (to EDDC to be agreed between the parties)

Jubilee Gardens and hard standing access / look out areas

Interest to be transferred Freehold Title No Part of DN346418 & Part of DN370397

Price £1

Use Subject to the Permitted Extinguishment /Relocation of existing uses to alternative locations clause detailed on page 5 above , Jubilee Gardens are only to be used for Public recreation and Short Term Agreements for the 1st five years from the date of Transfer , thereafter such other use as the Transferor approves such consent NTBUW.

Short Term Agreements Short Term Agreements are permitted. Such Short Term Agreements will not require the prior consent of the Landlord but a record will be kept of each Agreement which will be provided to EDDC upon request.

Freehold Disposals No freehold disposals of part or whole within the 1st five years from the date of Transfer.

Leasehold disposals Transferor's prior written consent required to any Leasehold Disposal of part or whole within the 1st five years from the date of Transfer such consent NTBUW.

Overage provisions

Freehold disposal Any freehold disposal of part or whole which takes place after the date of the original Transfer, and expires on the 20th anniversary of the date of Transfer, shall attract an Overage payment equating to 50% of the net increase in value of the asset as at the date of completion of the disposal, over and above the value of the interest as at the date the Freehold was originally transferred to BPC which is hereby agreed as £1 in all circumstances. . Such Overage payment will reduce by equal annual amounts in terms of the percentage of Overage payable so that 0% is payable in Overage after 20 years from the date of the Transfer.

Overage triggered by the exercise of Permitted Developments

Overage payments will be triggered by the exercise and implementation of Permitted Developments Rights which enhance the value of part or whole of the property, at any time during the first 20 years from the date of Transfer. Overage will be payable on each and every occasion Permitted Development Rights are implemented and which result in an increase in the value of the Freehold interest but will only be payable on the date of disposal of either part or whole of the Freehold Interest .

Existing Interests Land transferred subject to any existing or acquired rights of access by householders including pedestrian access and gates licences.

Existing Tenancies RNLI shop Jubilee Gardens – new lease terms to be confirmed.

Equipment EDDC owned S106 funded gym equipment to be transferred to BPC at nil cost

Repair & Maintenance Repair maintenance and renewal of the fencing at the top of the cliff and along the remaining boundaries will be the responsibility of BPC plus repair and maintenance of the railings from look- out area overlooking beach will also rest with BPC.

Access BPC to ensure that access to the cliff face is not restricted in any way, nor at any time, so that it can be accessed by EDDC for maintenance, repair and emergencies.

Jubilee Gardens Public Conveniences

Interest to be transferred Freehold, Title No Part of DN 346418

Price £1

Use Subject to the Permitted Extinguishment/Relocation of existing uses to alternative locations clause detailed on page 5 above, the property can only be used as Public conveniences for the 1st five years or such other commercial use subject to the Landlord's consent NTBUW. It is accepted that whilst a WC facility needs to remain, that facility can be remodelled to encompass just part of the building with the remainder being used for commercial purposes.

Short Term Agreements None permitted

Freehold Disposals No disposal of part or whole within the 1st five years from the date of Transfer.

Leasehold Disposals Transferor's prior consent is required for any Leasehold Disposals of part or whole within the 1st five years from date of transfer.

Overage provisions

Freehold disposal Any freehold disposal of part or whole which takes place after the date of the original Transfer, and expires on the 20th anniversary of the date of Transfer, shall attract an Overage payment equating to 50% of the net increase in value of the asset as at the date of completion of the disposal, over and above the value of the interest as at the date the Freehold was originally transferred to BPC which is hereby agreed as £1 in all circumstances. Such Overage payment will reduce by equal annual amounts in terms of the percentage of Overage payable so that 0% is payable in Overage after 20 years from the date of the Transfer.

Overage triggered by the exercise of Permitted Developments Rights

Overage payments will be triggered by the exercise and implementation of Permitted Developments Rights which enhance the value of part or whole of the property, at any time during the first 20 years from the date of Transfer. Overage will be payable on each and every occasion Permitted Development Rights are implemented and which result in an increase in the value of the Freehold interest but will only be payable on the date of disposal of either part or whole of the Freehold Interest .

Charlies Yard

Interest to be transferred Freehold , Title number part of DN 370397

Price £1

Use Subject to the Permitted Extinguishment/Relocation of existing uses to alternative locations clause detailed on page 5 above, Charlie's Yard is only to be used for Public recreation purposes and for Short Term Agreements including hire for wedding photos and pop up food and drink stalls or within the 1st five years, such other use as the Transferor consents, such consent NTBUW.

Short Term Agreements Short Term Agreements are permitted and will not require the prior consent of the Landlord but a record will be kept of each Agreement which will be provided to EDDC upon request.

Freehold Disposals No disposals of part or whole within 1st five years from the date of transfer.

Leasehold Disposals Transferor's consent for any Leasehold Disposals of part or whole for the 1st five years from the date of Transfer.

Overage provisions

Freehold disposals Any freehold disposal of part or whole which takes place after the date of the original Transfer, and expires on the 20th anniversary of the date of Transfer, shall attract an Overage payment equating to 50% of the net increase in value of the asset as at the date of completion of the disposal, over and above the value of the interest as at the date the Freehold was originally transferred to BPC which is hereby agreed as £1 in all circumstances. Such Overage payment will reduce by equal annual amounts in terms of the percentage of Overage payable so that 0% is payable in Overage after 20 years from the date of the Transfer.

Overage triggered by the exercise of Permitted Developments Rights

Furthermore Overage payments will be triggered by the exercise and implementation of Permitted Developments Rights which enhance the value of part or whole of the property, at any time during the first 20 years from the date of Transfer. Overage will be payable on each and every occasion Permitted Development Rights are implemented and which result in an increase in the value of the Freehold interest but will only be payable on the date of disposal of either part or whole of the Freehold Interest .

Repairs & Maintenance BPC to ensure that access to the cliff face is not restricted in any way so it can be accessed at any time for maintenance, repair and emergencies by EDDC as ownership of the Cliff is to be retained by EDDC and/or Others.

Alterations Any proposals to allow pedestrian, vehicular and /or mobile stalls access into Charlie Yard will be subject to EDDC's & Highways prior written approval

Approval of the Parties

1) If you agree to proceed on the terms set out in this document, please sign below:

_____ Date _____

Name in block capitals _____

SIGNED ON BEHALF OF BEER PARISH COUNCIL

2) If you agree to proceed on the terms set out in this document, please sign below:

_____ Date _____

Name in block capitals _____

SIGNED ON BEHALF OF EAST DEVON DISTRICT COUNCIL

DRAFT