

**Bridlington AAP Examination - ERYC's Reply to Bridlington Harbour  
Commissioner's (BHC) Response of 13<sup>th</sup> January 2012**

**Introduction**

1. The Examination Hearing on the 5<sup>th</sup>- 8<sup>th</sup> December 2011 set a timetable for responding to the late evidence and comments of BHC to the Jacobs Report. The Council submitted representations on the 21<sup>st</sup> December to which the BHC responded on the 13<sup>th</sup> January 2012 (the BHC Response); this is the Council's Reply.
2. The BHC Response clearly indicates that there are continuing differences of view and interpretation between BHC and the Council. It does not appear helpful to the Inspector to respond on a paragraph-by-paragraph basis to BHC and it is proposed to focus on the key issues.
3. The Inspector already has the benefit of the documentation and evidence considered during the Public Examination together with the draft Jacob's Report(s) and the responses from the Council dated 21<sup>st</sup> December 2011 and this reply should be read in conjunction with those submissions.
4. The BHC Response runs over old ground going back to the 2004 and 2007 (LD01) Roger Tym & Partners Regeneration Strategy, the studies that fed into the Regeneration Strategy and the 2001 Marina Scheme. The Council simply wish to underline some fundamental points before addressing specific issues in the BHC Response. The Council considers that LD01 remains an accurate and appropriate part of the AAP evidence base, and considers that the BHC criticisms of it are misplaced and unfounded.

**Fundamental Points**

5. It is important to remember that the BHC have consistently supported the principle of a Marina scheme - "*providing it does not have an adverse impact on the operation of the Harbour and Harbour Estate.*"<sup>1</sup> The criticisms that they have made have to be read against that fundamental point and the fact that they may simply be wrong with regard to their assessment of adverse impact. That is not a matter which the planning system can or does leave to the BHC to determine in their own interests but has to assess it objectively in the public interest. If, therefore, the Council is correct that the BHC have failed to take a reasonable and realistic approach to the proposals to redevelop the Marina and Harbour Top, the fact that they maintain a contrary stance is unfortunate but it should not prevent the implementation of the AAP proposals if these are in the wider public interest.
6. The public sector partners (ERYC and Yorkshire Forward) have consistently supported the principle of a Marina scheme – providing it formed part of the regeneration strategy and wider proposals for Bridlington. The first joint meeting of the 'partners' (ERYC/YF/BHC) was in December 2005. Its primary purpose was to draw a line under the previous scheme, which had been rejected on appeal, and to find an accord to take a revised marina scheme forward as part of regeneration proposals for Bridlington. It was clearly stated and minuted that a stand-alone marina development was not acceptable or fundable and that any

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<sup>1</sup> BHC Representations to AAP Publication Draft – December 2010

scheme had to link to and show overall regeneration benefits. Whilst Yorkshire Forward's primary role was as the regional development agency and potential joint funder, it agreed to facilitate and assist the clear and open discussion of the Harbour/Marina scheme between the Council and the Commissioners – a role that Yorkshire Forward referred to as 'honest-broker' given the 'baggage' from the 2001 Inquiry.

7. The structured approach to the development of the Harbour/Marina scheme and partnership working since December 2005 (including over 30 formal joint meetings) has sought to define and agree what a suitable Marina scheme for Bridlington might be and to address key issues. This includes the question of potential impact on BHC interests in the Harbour. Considerable progress was made as set out in the Key Milestones Document (ED16), which is not in dispute.
8. The Preferred Outline Layout for the 320 berth Harbour/Marina scheme dated February 2010 reflects the structured approach taken including the agreed PLB Harbour Supply & Demand Study (SD03). The Layout was acceptable to all three partners and agreed at the Steering Group on the 18<sup>th</sup> February 2010 as the basis for developing the scheme further. This Layout and joint agreement was also the subject of a Press Release issued by the partners on the 10<sup>th</sup> March 2010.
9. Consistent with the wider regeneration context, the agreed Preferred Outline Layout showed the footprint for the proposed commercial development of the Harbour Top land (as per the Burlington Parade scheme and its contribution to the delivery of the AAP's wider regeneration proposals) and the relocation of displaced harbour facilities (e.g. harbour offices, boat repair, etc). The Layout also included adequate berthing and on-shore facilities for existing and future commercial and fishing operational requirements, as informed by the then ongoing Commercial Operations Requirements Report being prepared by BHC's consultant (Mr Trevitt).
10. The Publication AAP (Plan 3.3) and Proposals Map show the same Preferred Outline Layout for the Harbour/Marina scheme as that agreed with the BHC. It also contained an undertaking "*to ensure that the works to the Harbour and to create the Marina will not compromise the ability of the Harbour Commissioners, operationally or financially, to satisfy their obligations to the Trust Port.*" Specific assurances to avoid or mitigate potential adverse impacts have also been given including an undertaking to the prior provision of alternative operational facilities and parking before any displacement; financial guarantees in respect of any loss or reduction in income and also joint working to finalise the scheme design and construction programme. It is this carefully developed and agreed scheme, together with the functional and physical integration with Burlington Parade and the town centre core, that provides the primary justification for the Marina scheme now under Examination. Any enlargement of the Harbour Top should be viewed in the context of the wider regeneration since it is an important asset to the town but also in the context that the works proposed for the regeneration should be carried out in a manner which integrates them with the interests of the BHC and Harbour. The Council considers that they can be so integrated without adverse effect of the Harbour – indeed, in a manner which should benefit the BHC's interests in the longer term.

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<sup>2</sup> Paragraph 3.43 of the AAP Publication Document.

11. BHC's references in their Response to earlier Marina proposals (e.g. Scott Wilson, RTP Reports from 2004, et al) seem to confuse the issue and miss the important point that the previous studies and reports are part of the process of developing a scheme but not what emerged from the process to which all parties agreed in February 2010.
12. The preferred Marina Layout is not in dispute but the BHC continue to raise issues concerning the potential impacts of the scheme on the operation of the Harbour and Harbour Estate. Their concerns were addressed by the Council as part of the work that informed the AAP and have been addressed further since both by the Council and by Jacobs in their report so far as is necessary at this stage. This will be considered further below but both the Council and Jacobs consider that these concerns can be met and that there is no proper basis for the BHC concerns.
13. The Council's response to BHC's claim that it has disregarded alternative or fall-back scheme(s) is detailed below, although it has already been referred to in the context of the Examination. As stated by the BHC, the fall-back or alternative within-harbour scheme was rejected by the public sector partners (the Council and Yorkshire Forward when it was still involved) at an early stage because it did not meet the wider objectives of regeneration and the public interest which that represents. The within-harbour scheme failed to meet the need to achieve a step change in the local investment climate and therefore to satisfy the criteria for the public sector's support. The Harbour must maximise its role as an integral part of the wider regeneration of the town centre and make its contribution to it.
14. A key element of making that contribution is through the inclusion of the Harbour Top in the town centre aspect of the scheme as well as the Harbour as part of the Marina. In that way, the Harbour makes a necessary and important contribution to the local economy as well as to harbour improvements for harbour users. Both are essential to delivering a Marina that is also fully integrated into the wider town centre regeneration proposals. Yorkshire Forward could not, because of its obligation to observe the public funding rules of its sponsoring department, support a marina that did not respond to the reasons for the town's decline, the nature of the town centre's assets and potential or did not contribute to a major improvement to Bridlington's quality of "place". Yorkshire Forward was not, therefore, prepared to consider funding an in-Harbour marina alternative, nor an alternative that did not also integrate the regeneration of the Harbour with the regeneration of the town centre.

#### **BHC Alternative Marina scheme(s)**

15. Contrary to the BHC comments, an in-Harbour alternative was not a sufficiently realistic or advanced scheme on which to pursue or secure European Funding in 2006. That situation has not changed in respect of funding.
16. It is also relevant to note that the BHC have not come forward with a viable alternative scheme for the Marina since the refusal of the appeal in 2001 and have only done so in the context of the AAP process and examination. This does not suggest that, in the absence of a wider regeneration scheme, the BHC has been enthusiastic to pursue their own scheme or that one has been commercially attractive even in the economically buoyant years prior to 2008.

17. The general context for not pursuing the alternative scheme is outlined in paragraph 13 above. The more detailed rationale was that the public sector partners were firmly of the opinion that the alternative scheme(s) advanced by BHC are sub-optimal and/or unsound for the following reasons:
- (a) The number of marina berths would be closer to 200 than 250 with limited flexibility and no realistic scope for growth or achieving the target 320 berths.
  - (b) The water area and berthing for fishing and commercial vessels is substantially below that required and identified by BHC in the embryonic Commercial Operations Requirements Study and finally agreed by the partners in January 2011<sup>3</sup>. The scope and flexibility for future growth and business expansion is limited, at best. The water area designated in the BHC Alternative Schemes is around 1.00 hectare which is considerably less than the area presently available for use by the fishing fleet (2.50 hectares) or the area which has been projected by BHC for future commercial use (2.50 to 3.00 hectares). As a consequence, there would be a very significant shortfall with regard to the BHC's current stated requirements for the berthing layout of the fishing fleet.
  - (c) The existing land based buildings and facilities, in particular the fishing facilities and access, are largely unchanged, except for some limited improvements to part of the fish quay. The alternative scheme compares very unfavourably with the modern facilities and improved access which would be provided under the preferred scheme. Such new facilities will greatly improve existing fishing facilities and provide the scope and flexibility to expand and develop shellfish and added-value activities to a scale, extent and 'market profile' not currently possible.
  - (d) The amount of quayside operational land available in the alternative schemes is acknowledged by BHC themselves to be inadequate. If, as alleged by the BHC, the amount of quayside land is insufficient to permit the Harbour Top development, how can it satisfy the operational requirements of the alternative marina scheme and c200-250 berths and competing fishing and commercial requirements.?
  - (e) The construction works for the alternative schemes are still very substantial, requiring extensive and complex marine civil engineering works to create new piers, quay walls, reclaimed areas and a lock gate within the existing harbour; removal of the Chicken Run Jetty and extension of the North Pier. The phasing of these works without considerable adverse operational and financial impact is difficult to avoid or mitigate given the limited water and land based areas. The programming and execution of these works would have significant impacts on BHC's commercial operations and their responsibilities as a Trust Port during the construction period.
  - (f) The alternative scheme suggested by BHC falls well short of providing a Marina of quality which has been a key objective from the outset. There is little or no prospect for achieving the full range of modern facilities demanded by Marina users or achieving 5 Gold Anchor status and this is likely to have a significant affect on potential demand and take-up in a competitive Marina market.

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<sup>3</sup> Referenced in the Jacobs Study – ED29

- (g) BHC are not offering or intending to fund the alternative scheme or assume any risks and their proposals are entirely dependent on public sector funding (ERYC and/or grants). Whilst a smaller scheme will cost less, any public sector funding (particularly that involving EU monies and/or requiring Treasury Green Book justification) is dependent on rigorous eligibility criteria, demonstration of wider beneficial impacts and specific outputs (notably jobs). In this respect, the role of the Marina and its linkage and integration into the wider regeneration scheme (with all the benefits that accrue) is critical. The prospect of the creation of no more than c. 50 Marina related jobs will not support the levels of grant needed for the a marina scheme. It is only through the integration with the wider town centre regeneration scheme that the step-change benefits, impact and jobs (c1900 in total) can be demonstrated to best meet funding criteria.
- (h) Future expansion of the alternative scheme(s) by construction of a new outer South Pier (as per the preferred scheme) is technically feasible but the further cost and disruption would be substantial. Additionally, it would be difficult if not impossible to justify funding (particularly for investment by the public sector) for a subsequent Marina expansion and some of the prior expenditure/works (i.e. new Piers within the Harbour) would be abortive and wasteful.
- (i) The BHC claim that the alternative scheme “is at least as far advanced as the preferred option” has not been demonstrated and is not credible when the full spectrum of issues is taken into account (e.g. technical; hydraulic; costings; phasing; operational and financial impact; business plan; environmental and sustainability; funding justification and resources; regeneration and public benefits; etc). The Council is not aware of, and has not been supplied with, any detailed assessment by the BHC in respect of their alternative scheme(s). It was inappropriate for the public sector partners to undertake such detailed assessment of the alternative scheme(s) given the failure to satisfy basic criteria and also the joint agreement reached in respect of the Preferred Outline Layout.
- (j) Apart from ongoing expenditure on dredging, the annual expenditure costs with the alternative scheme may not be significantly dissimilar to the preferred scheme (i.e. maintenance of locks, security, staffing, etc). However, the prospective income is likely to be much less with limited scope and flexibility for growth or alternative opportunities to increase revenue.

### **The Jacobs Report**

- 18. Whilst the delays in commissioning the brief are regrettable, the process was not as one-sided as portrayed in the BHC Response. Contrary to BHC’s suggestion, the brief could not have been issued in 2009 before agreement had been reached on the Preferred Layout and the Commercial Operations Requirements (February 2010 and January 2011 respectively). As late as December 2010, the BHC and their lawyers were further amending the brief that had previously been agreed in joint meetings; the comments about delay are inappropriate. Moreover, the fact that there was delay does not invalidate the terms or content of the interim Jacobs Report that has now been presented.
- 19. Clearly the pending demise of Yorkshire Forward and its withdrawal from the partnership affected the basis of procurement of the Study and caused some delay. However the use of Jacobs (who were already on the Council’s

Framework Panel) was explained to the BHC and full details provided at least 6 months prior to actual commissioning. It saved many months going through the procurement process. Jacobs' expertise and credentials are excellent, and BHC had vetted them - Jacobs had in fact been the BHC's preferred consultant for the Demand Study but lost out to PLB as part of the competitive tendering process in that instance. For BHC to question their appointment and acceptability to BHC at this stage is no more than opportunistic to their objection given the above. Their expertise is plain from their report, whether BHC is willing to accept it or not.

20. As stated in the Council response of 21<sup>st</sup> December 2011, the brief was agreed with BHC in full consultation with their technical and legal advisors. The brief was clear and precise in its requirements and, whilst contractually the Council had to be the client, the management and reporting mechanism was to be jointly the Council and BHC. Furthermore, the Study (Business Plan & Technical Study) commissioned from Jacobs included word-for-word the detailed brief agreed with BHC including the context, detailed and specific study tasks, outcomes, etc and only the procurement arrangements were varied for the reasons explained<sup>4</sup>. The Brief was finally issued in February 2011 and Jacobs responded in April, but their financial proposal was not initially bid compliant/acceptable. A further bid compliant proposals was sent on 31<sup>st</sup> May 2011 and the inception meeting was held on 8<sup>th</sup> July once Jacobs had assimilated the requirements of the Brief and the supporting background documentation.

## Phasing

21. The BHC Response questions why Jacobs have devoted "*considerable energy to the phasing of the Burlington Parade Scheme [i.e. the Harbour Top] even though this is not within their brief<sup>5</sup>.*" The Commissioners know full well that the Preferred Outline Layout for the Harbour/Marina scheme (which formed the basis of the Brief to Jacobs) includes the Harbour Top (referred to as part of the Phase 1 works in the Jacobs Reports). The agreed Layout resulted from a lengthy and iterative process by the partners (and their advisors) and clearly indicates (a) commercial development of the Harbour Top as part of the Burlington Parade scheme and (b) the reorganisation of operational land and development of displaced Harbour Top facilities which in turn form part of the overall marina scheme proposals. The current proposals for the Harbour Top are basically no different to those in the agreed Preferred Outline Layout and can be implemented as the first stage of the marina and can subsequently 'morph' into the overall marina scheme. The primary issue is not about the Harbour Top works but about the phasing and the potential impact on harbour operations.
22. However, the BHC's stance on phasing is unclear and ambiguous. As stated in the response of 21<sup>st</sup> December 2011, the Council placed considerable weight on the October 2008 unanimous decision of the Commissioners for "*provision of replacement facilities before any operational harbour land is released for the Town Centre scheme – a scheme and phasing to be agreed for both interim and permanent replacement facilities.*" The Council accordingly formulated phasing proposals in respect of the Harbour Top as a first phase and these,

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<sup>4</sup> This was also set out and clarified by email from the Council to BHC dated 15<sup>th</sup> July 2011.

<sup>5</sup> Paragraph 78 of BHC Response.

together with the reasons why, were clarified and formally set out to the BHC on 9<sup>th</sup> May 2011 (ED02 appendix 1).

23. Consideration of Phasing was part of the Jacobs Study and was a specific task in the Commissioning Brief. In full, it required Jacobs to *“provide an outline programme for the delivery of the scheme, including phasing and key milestones, and also provide advice on how best to operate the project both during its phasing and on completion including contingency planning and mitigation of operating risks.”*
24. Accordingly, the Council does not agree with BHC that the Jacobs phasing proposals are unbalanced in focussing on the Harbour Top. The approach and rationale for the phasing proposals is detailed in the draft Report; it addresses the phasing task in a sound, professional and technically accurate manner. Jacobs have followed through the construction activity in a logical order to minimise (construction) establishment costs and disruption of Harbour operations. The reality that the Harbour Top is a prospective first phase (and also a contentious issue) is recognised and due weight is given to developing these proposals, the operational and financial implications and also suggesting mitigation measures (e.g. the two additional fill options).
25. It is not clear whether the phasing proposals are acceptable to BHC. Apart from a new point about failing to *“take into account the level differences across the site and the significant adverse affect that their proposals will have on the vessel maintenance facility,”* the BHC have not commented on Jacobs Harbour Top phasing proposals (Phase 1). Equally, the BHC have not responded to the Council’s phasing proposals and reorganisation of the Harbour Top land and facilities (9<sup>th</sup> May 2011 letter).
26. BHC’s failure to engage on this issue is significant and appears opportunistic when they must have been considering this issue for some time. Indeed, the inference is that the the Harbour Top development is (or can be made) deliverable without adverse operational or financial impact. The failure to engage may also be nothing more than a bargaining position to seek a binding commitment for a Marina scheme. The wider public interest of obtaining a solution for the town as a whole should not be derailed by BHC’s reluctance since, if a solution is available (or can be produced) to make the phasing of the AAP scheme work then compulsory powers do exist so that the wider public interests can be protected. That is a matter which could then be determined by the Secretary of State if necessary and not be allowed to become a negotiating point in the hands of the BHC which harms the delivery of a scheme in the public interest. While the BHC undoubtedly has a duty to act in the wider public interest, it lacks both the wider experience and perspective of the local authority and Secretary of State in such matters.

### **Quayside Areas (Levels, Plans, Car Parking)**

27. On the detailed issue of ‘levels’ at the Harbour Top, no changes in levels are proposed in critical areas (e.g. boat hoist handling areas); the levels are the same as exist now and/or the same as in the agreed Preferred Outline Layout and the BHC alternative(s). The vessel maintenance facility is provisionally in the same position as the Preferred Outline Layout and one of the BHC alternative schemes; its precise location and the resulting rearrangement of pedestrian access is flexible. Neither points provide a substantive response on phasing and/or whether their concerns about adequacy of quayside land and

adverse operational and financial impact (particularly in respect of the Harbour Top) have been satisfied or not.

28. The alternative within-harbour schemes both showed approximately the same extent of dock fill as the preferred scheme, so that is a non-sequitur, and in any event there is scope to relocate rather than lose berths. The Harbour Top land reorganisation and financial implications (potentially positive) illustrated in both the Council's and Jacob's proposals clearly show that that the scheme is deliverable without adverse effect and that the Commissioner's concerns are largely groundless. The options for creating additional infill as part of a first phase simply add to the persuasive case about adequacy of quayside land. The BHC have not commented upon or disputed these proposals, whilst maintaining elsewhere in their Response that failing to respond to Jacobs Reports would be inconsistent with their statutory duty to operate and maintain the harbour.
29. Equally, the BHC have ignored repeated assurances (reiterated in the Council's reponse of 21<sup>st</sup> December 2011) that operational requirements would be given priority on the new infill area beyond the South Pier. There is clearly sufficient land for both operational purposes (including car parking) and the quanta of residential/commercial development as outlined in the AAP. The urban designers' (West8) illustrative scheme plans have no status at this stage and are simply 'illustrative' rather than what will be constructed. Given all the above, it seriously dilutes the weight that should be given to many of the concerns expressed by the Commissioners or, de facto, their rationale for exclusion of the Harbour Top. Its inclusion is not detrimental to the Commissioners, the users of the Harbour or the public interest in terms of the wider regeneration implications.
30. Following on from the above, there is the opportunity to deliver early benefits to the Harbour and its users as a first stage of the marina scheme in a way that does not produce adverse impact and can readily 'morph' into the wider Marina scheme; nor would it prejudice the development of the lesser alternative scheme (or variant ) if circumstances proved absolutely necessary. Importantly, it was not until after the issue<sup>6</sup> of the AAP Publication Document that the BHC changed its alternative within-harbour scheme to exclude the commercial development on the Harbour Top. Significantly, prior to that, the Commissioners own alternative scheme<sup>7</sup> showed the same commercial development footprint as the Burlington Parade scheme (the BHC alternative scheme referenced in footnote 7) The Commissioners claim to take a consistent and logical approach but this is not borne out, as explained above.

### Technical Issues

31. The Response on various technical matters is noted. The Jacobs Report covers all these points in considerable detail including overall cost and risk contingencies and mitigation measures. Essentially all the technical issues and concerns raised by the BHC and their consultants have been considered, discussed and referenced in the Jacobs Report together with issues where further developmental work will be required. The cost assumptions are robust at this stage and equally there is a robust contingency sum and risk register. This consideration, together with Jacobs experience, reinforces the view that the technical details raised by BHC at this stage can be accommodated as the

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<sup>6</sup> BHC Representations to the AAP Publication Document dated December 2010

<sup>7</sup> BHC Representations to the 2<sup>nd</sup> Preferred options draft dated October 2009.

development process continues and/or are not insurmountable so as to affect the soundness or delivery of the scheme. The Examination has the benefit of Jacobs as an independent expert which makes it clear that the concerns of BHC can be managed and there is therefore no reason for rejecting the proposals as unsound. The BHC's technical adviser, Mr Mark (WH) Trevitt, is a structural engineer with specific experience of Bridlington Harbour but the levels of expertise and experience on technical issues (and/or development and business planning matters) is not comparable to that of the multi-disciplinary Jacobs or the Council's team. BHC's comments have to be viewed in that context which means, in the Council's submission, that the AAP proposals can be brought forward accommodating the concerns of BHC if they are viewed objectively. The fact that BHC takes issue with those matters does not mean that there is no evidence to support the contrary view and the public interest cannot be dependent on the views of one party with a specific interest. If that were the case, then major planning proposals and CPOs would almost never be appropriate since most are opposed by at least one party.

32. In reply to the BHC Response on Access and Public open Space, the Council is a responsible and publicly accountable body and is not trying to trick or disadvantage the Commissioners. It will ensure that the access arrangements for the scheme will meet requirements (statutory and operational) and that BHC obtain appropriate alternative access rights. BHC's failure to acknowledge that the Harbour Top and operational areas are affected by access roads, turning areas, elevated walkways, etc and that the proposals could easily provide an improvement in the effective use and management of the quayside areas is surprising and is indicative that BHC do not take an objective approach to the AAP proposals.
33. As mentioned above and in the Council's earlier submissions, many illustrative plans have been tabled at different times of the (ongoing) developmental and AAP process. Their status as illustrative plans, showing what could be achieved, and not definitive proposals has always been clear. This applies to the Harbour Top and new infill area beyond South Pier. The BHC and their advisers have been involved throughout, including meetings with the urban designers (West8), public exhibitions and wider forums such as the Masterplanning Workshop organised by Yorkshire Forward (December 2009) to formulate development ideas for the proposed infill area. There has been considerable discussion and various ideas considered over access including pressure from the Commissioners to include an access route to Bridge Street, something they now say is problematic. As with any scheme at this stage, proposals and plans will continue to be tabled and developed until a satisfactory access scheme and detailed plans are in place that meets all statutory, development and operational requirements. It is not usually required at the development plan stage to produce a planning application or detailed plans of equivalent status. Equally, the role and scope for operational and public parking has been jointly considered at many meetings including dual use at the Harbour Top development (as proposed); surface and undercroft parking on the infill area beyond South Pier and varying the width of the new South Pier to facilitate additional boat storage and/or operational parking (i.e. additional income source). These are all matters which will be the subject of detailed plans to be developed in conjunction with the BHC as part of the development process once the planning framework (AAP) is in place. Comments on the plans tabled to date have to be read in this context. The BHC and their advisers are aware of this yet continue to dissect and criticise the plans to a disproportionate level at this stage which is inappropriate for a development plan.

## Berthing Assessments

34. In terms of berthing assessments, Jacobs have explained in some detail the rationale and research behind their berthing assumptions and give the comparables and basis for the berthing and income figures. Further comments are given in Jacobs response (appended to the Council's response of 21<sup>st</sup> December 2011) to BHC's Representations submitted on 2<sup>nd</sup> December 2011. Projecting berthing figures or the probable proportional split between vessel types and sizes is not an exact science. As stated by Jacobs, the demand and resulting mix and size of berths can only be fully determined at a later stage when detailed plans are being drawn up. For the purposes of analysis at this stage, the financial model is based on reasonable and robust assessments. Contrary to the BHC Response, the Jacobs Report (and their reply of 21<sup>st</sup> December ) does incorporate and reference the British Maritime Federation marine trends. Jacobs approach is explained in some detail and they bring considerable expertise to the task. Two other points to stress are, firstly, that the proposed scheme has the flexibility to respond to different berthing permutations or vessel sizes. Secondly, in terms of overall berthing capacity and phasing, there is also flexibility about the timing and provision of the proposed inner basin (accessed via an opening in the south pier) which is intended to accommodate c70 berths taking the capacity to the full c320 as circumstances dictate.

## Funding and Timescales

35. Phasing has been considered above and in the Council's response of 21<sup>st</sup> December 2011 and earlier submissions. There is little to respond to as the BHC have failed to explain the substance of their concern. The BHC have still not directly responded to the draft Jacobs Report despite having had the phasing proposals and draft Report for more than two months. Again, the inference is that this failure is opportunistic given BHC's objections. The only additional matter that requires correction is the suggestion that the "*Marina is ten years away*" as gleaned from newspaper articles and inferences or snippets in Jacobs Report<sup>8</sup>. The authoritative position on phasing and funding of the Marina is as set out in the AAP and in the Council's submissions to the Examination. The Council has consistently reiterated its commitment to the Marina scheme. Council and other sources of public and grant funding will be required but there are already significant committed Council resources. At its meeting on 21<sup>st</sup> September 2010 (LD14) the Council's Cabinet agreed that any income generated within the AAP area is returned for reinvestment and also that the annual contribution to the capital fund be continued. The Council has a successful track record in funding for projects including business space, transport, the Spa, public space and town centre improvements, funding totalling some £55m coming from the Regional Development Agency, Europe, government departments and the East Riding capital programme. The Council will progress this scheme at the earliest opportunity. Funding for the first phase is already available.
36. The proposed commercial development on the Harbour Top is not proposed to fund other elements of the Burlington Parade scheme. Its principal value is in raising rents and yields, together with providing developer and occupier confidence, to levels that will enable the delivery of Burlington Parade. There is unlikely to be a net surplus to provide funding for Burlington Parade once the

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<sup>8</sup> Paragraph 69 of BHC's Response refers

cost of providing replacement operational facilities and other elements of Phase 1 are taken into account. It is the Harbour Top's transformational effect on the town centre investment climate (and therefore on achievable development values), which is important. Its development will have a significant effect on the deliverability and value of Burlington Parade and thus provide an important contribution to the regeneration of the town centre core and seafront. The evidence presented to the Examination has already shown the lack of attraction of the town centre to developers and investors, even in the economic boom years before 2008, and the Harbour Top is an integral part of the strategy to change developer and investor perceptions of Bridlington.

### **The Business Plan**

37. The BHC's criticisms of the Outline Business Plan and viability are not accepted. As with any Business Plan, much hinges on the underlying assumptions. The rationale, assumptions, comparables and resulting figures are set out in considerable detail in Jacobs (Leigh Fishers) Report. However, the same does not apply to the BHC analysis. Jacobs have already submitted summary arguments rebutting the Commissioners' analysis and figures (December 2011 response). In addition, the following response is made:

- (a) A full and direct analysis comparing Jacobs' and Trevitts' figures and spreadsheets is not easy, particularly as there is no exact correlation between some calculations (e.g. berthing charges and occupancy assumptions for the mid-range scenario; no ramp up figures, etc). To assist matters, a simple comparison is attached at Appendix A and these figures will be referred to below.
- (b) The BHC Response maintains that the BHC analysis and spreadsheet is based on the Jacobs Mid-Range Scenario but their adjustments (which they claim to be more '*realistic*' and '*cautiously optimistic*') are understated. For example (i) projected marina occupancy is reduced to 80-85% from 90-95% (ii) berthing charges are the same in the BHC Best Case scenario but are reduced to 2006 levels in the Worst Case scenario (iii) projected fish landing dues (long-term) are £205,000 pa compared with £230,000 (Jacobs) and £210,000 (existing dues). It is not correct to characterise the assumptions or figures used as "cautiously optimistic". Additionally, as mentioned by Jacobs, there are illogicalities in some of the assumptions and consequently the cumulative effect of BHC's assumptions is to reduce the operating surplus to an unreasonable degree.
- (c) Jacobs explain their use of a marina berthing rate of £183 p/metre excluding VAT and the fact that it is at the bottom end of the comparator marinas (£180-£200 p/metre). The BHC Best Case assessment assumes £183 and the Worst Case assumes £170 (2006 levels) – all at Year 15. This is at odds with Mr Trevitt's own figures and comments which show there has been a "real" increase in berthing charges in the region over the past 10 years and the average berthing price in the NE region is £193p/metre (£10 p/m above the figure of £183 used in Jacobs business model. Given the location of Bridlington Marina and intended quality of facilities (5 Gold Anchor), the BHC low assessment is unrealistic and artificially depresses the outcome. Furthermore, the adoption of such low berthing rates (£10-£23 p/metre below comparator marinas and the North-East average) would undoubtedly push up

demand and berthing occupancy levels at Bridlington with a commensurate increase in income. Consequently the assumed 80% occupancy figure in the BHC assessment is considered to be unrealistically low.

- (d) Other berthing and income figures used in the BHC business model are also difficult to reconcile including the projected fishing dues. The projected income from fishing dues is less in Year 15 than that being received in 2010; this is unduly cautious and inconsistent with BHC's own comments on the strength and importance of the fishing sector and also with the income/growth prospects provided by the new and expanded facilities.
- (e) Notwithstanding all the above, however, the BHC's out-turn figures (including their Worst Case scenario) all show an operating surplus and a financially viable Harbour/Marina scheme:

Annual Income & Expenditure Analysis

Existing Harbour figures	+ <del>£115,000</del> £100,000
Jacobs (Year 15 – Mid-Range)	+£324,556
BHC (Year 15 – Best Case - )	+£217,000
BHC (Year 15 – Worst Case)	+£81,000

- (f) The BHC measure of viability and a sustainable operation appears to be that “*as a minimum, the enlarged harbour should generate twice the capital income to that generated by the current harbour*”<sup>9</sup>. The rationale seems to be that a sizeable net operating surplus is required each year to build up reserve capital funds to “*undertake more major works*” and tackle major renewal expenditure. Having regard to the scheme proposals and potential renewal liabilities, BHC suggest the need for an annual sum of twice the current operating surplus (i.e. 2 x ~~£115,000~~£100,000 = c ~~£230,000~~£200,000) needs to be generated to ensure and sustain a long term viable Harbour/Marina operation and to meet statutory duties. All three of the Jacobs start-up scenarios (including ‘pessimistic’) therefore surpasses the Commissioners viability ‘threshold’ at year 15 and their own “cautiously optimistic” Best Case just about hits the target. The BHC assessment combines Jacobs’ cautious current cost estimates as a basis for their operating cost estimate (their assessment of the current costs is c.£36,000 less than the Jacobs figure), combined with a pessimistic view of future income.
- (g) In addition to normal operating expenditure (including repairs, etc), the Jacobs Business Plan and figures already include provision for Lifecycle Costs, (the replacement of assets and major renewals) over a 35 year period. Minimum Lifecycle Costs of £20,000 per annum are included in the Jacobs assessment and projected major expenditure on renewal items has also been identified and included (e.g. in Years 19-21 totalling £835,000 and in Years 33-35 totalling £1,220,000). The projected operating surpluses in the Jacobs report are reached after taking such Lifecycle Cost allowances into account. The BHC assessment also include an allowance of £20,000 per annum for lifecycle works at Year 15 and still shows a net operating surplus.

<sup>9</sup> Paragraph 106 of the BHC Representations of 3<sup>rd</sup> December 2011

- (h) Additionally, the proposed scheme renews or replaces all the major structures, buildings and facilities, addressing significant backlog maintenance issues, effectively deferring major expenditure and liabilities for many years. Therefore, in both the BHC scenarios, there is adequate scope to build up reserves for longer term major works as and when required<sup>10</sup>.
- (i) BHC's criteria for assessing a viable and sustainable operation are unusual and inappropriate in the circumstances. Their 'financial model' and appraisal is at variance with the development and business appraisals commonly used in the property, development and planning sectors.. The BHC will get a new and substantially more valuable asset at no financial cost or risk so a financial return on investment/risk and/or a return on assets is not an issue in this instance. BHC's approach and 'rule of thumb' assessment of renewal reserves and Lifecycle Costs is not as rigorous as that adopted by Jacobs and is of questionable use as a recognised measure or accurate guide on the issue of 'sustainability'.
- (j) Additionally, as mentioned above, even the BHC worst case scenario yields a projected operating surplus in the worst economic conditions for some time. Even on that pessimistic (and the Council considers unrealistic) basis there is scope and opportunity to refine and improve the scheme and the resulting income and expenditure figures through design, management techniques, marketing and many other ways. For example, both parties acknowledge the importance of car parking and car parking income. The scheme provides scope for additional parking and /or greater dual use of operational areas to boost overall marina income if berthing take-up and income is not on target and thus have the ability to more than compensate for any berthing variability.
- (k) In summary on this issue, the Council and Jacobs have responded to the BHC assessments, such as they are. The BHC's approach and projected figures do not present an appropriate or reasoned assessment of viability or of the ability of the new Harbour/Marina scheme to operate from its own resources on a long term sustainable basis. The BHC analysis and conclusion should be treated with considerable caution and are not a fair or representative assessment.

Accordingly the BHC objections to the AAP on the grounds that the Marina scheme is not viable and sustainable is not soundly based and should be rejected.

38. The development of the marina scheme and AAP proposals were not dependent on a Marina business plan. As already stated, the proposals derived from a lengthy and detailed iterative process with the benefit of considerable expertise and advice. The Business Plan forms part of the developmental process to substantiate the question of the Marina's viability but it does not, and was not intended to, provide the financial justification for the proposed Marina. The financial justification is driven by the the wider regeneration scheme and the step-change benefits for the town it will deliver.

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<sup>10</sup> Subject to maximum 'reserve' limits which the Commissioners indicate apply to Trust Ports.

39. The availability to the BHC of a new marina facility debt-free and with financial assurances during the development period and initial operating years oddly appears to be a difficult concept for the BHC to respond to or properly appreciate. A business plan produced earlier rather than later would have been helpful but Jacobs have now undertaken the analysis and fulfilled the terms of their Brief and the draft Business Plan is now available. As the BHC recognise<sup>11</sup> the Jacobs Report cannot now be ignored. Indeed, it cannot reasonably be argued that it is not available to guide developmental work and future decision-making. The Council and Jacobs consider the analysis to be robust and that it does demonstrate in sufficient detail at this stage that the marina scheme is financially viable and sustainable. Furthermore, there is flexibility to further develop the proposals and improve the projected costs and return.

### **Inclusion of the Harbour Top**

40. The Council considers the Harbour Top to be essential to the AAP's regeneration strategy and therefore to attracting the scale and quality of viable investment its deliverability depends upon. The Council proposes to expand on the evidence already submitted to the examination so as to allay the Inspector's concerns as to the effects on the Harbour operations and the Commissioners interests, the sequential approach to flood risk and the exception test, and a design approach that will be capable of preserving and enhancing the character of the conservation area.

### **The position of the BHC**

41. The Council has not failed to take into account and recognise the BHC's views or their safe stewardship of the Harbour over a long period. The Council seeks, in the interests of the whole town and its inhabitants, to promote and deliver a viable Marina scheme that will play a vital role in the wider regeneration strategy and not adversely affect the long term operation and success of the Harbour or the discharge of statutory duties.
42. In addition to taking into account the views of the BHC, the proposals to date have also been developed with significant contributions from the Council's own resources, Yorkshire Forward, and an experienced consultancy team with regional, national and international reputations and expertise in their respective fields including Atkins, Jacobs, Roger Tym & Partners and Drivers Jonas Deloitte. This team brings considerable expertise in development, planning, marine and business planning issues. The result is a sound, robust and deliverable scheme that can and will be developed further once the planning framework set out in the AAP is in place. As with any project at this outline stage, the Marina scheme still has many development stages and iterations to go through before a final scheme can be agreed in terms of all the detailed technical, design, financial and legal arrangements and finally contracted for construction. Their objective expert view has to be acknowledged and set against the BHC's evident unwillingness to consider solutions and proposals which will have a wide public benefit.
43. The lack of agreement is regrettable but, contrary to their Response, the Council do not share the view that the BHC have been 'consistent, logical and responsible' or that they are acting in the wider public interest. The Harbour Top can be released and developed without adverse operational impact on the

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<sup>11</sup> Paragraph 2 of the BHC Response

Harbour, and its users, or on the BHC's own finances and will provide the first phase of the wider marina scheme. Moreover, the BHC is simply not as well-placed, or experienced, as the Council to judge the wider public interest as is apparent from the many powers and functions vested in the Council.

44. While it would be preferable for there to be agreement with the BHC over the Harbour/Marina elements of the AAP, it would be unwise to allow their lack of willingness to agree to stand in the way of the wider public interest if, as seems to be the case, that their concerns can be properly met. The fact that BHC may not agree cannot be a suitable reason for frustrating the public interest and if necessary, and providing the Council can be satisfied that the preservation of the BHC's interests can properly be met, this could be dealt with by the use of compulsory powers. The BHC cannot in the public interest be regarded as the sole judges in their own cause. Such powers are intended to be used to prevent the frustration of achieving development in the public interest by a party's refusal to agree – the ultimate arbiter being the Secretary of State if the proposed order is the subject of objection. As para. 1 of Part I to the CPO Circular 06/2004 states:

*“Ministers believe that compulsory purchase powers are an important tool for local authorities and other public bodies to use as a means of assembling the land needed to help deliver social and economic change. Used properly, they can contribute towards effective and efficient urban and rural regeneration, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life. Bodies possessing compulsory purchase powers – whether at local, regional or national level – are therefore encouraged to consider using them pro-actively wherever appropriate to ensure real gains are brought to residents and the business community without delay.”*

45. However, the BHC appear to prefer to frustrate the AAP than engage in a meaningful dialogue. The wider interests of Bridlington, the regeneration aspirations of the town, the prospective jobs and the well conceived strategy and AAP for reversing Bridlington's fortunes should not suffer as a consequence of this lack of co-operation. There is ample independent expert evidence to support the Council's case that the AAP proposals could be brought forward viably and in a manner which would not prejudice the interests of the BHC sufficient for the purposes of showing the soundness of this aspect of the AAP.

**Appendix A – Summary Harbour/Marina Projections and Figures****(i) Marina Occupancy Assumptions (long-term)**

Jacobs	90-95% of maximum capacity.i.e. 300 berths out of 320
BHC	80-85% of maximum capacity i.e. 270 berths out of 320

**(ii) Marina Occupancy Assumptions (after 5 Years)**

Jacobs (Mid-Range)	235 berths (73%)
BHC	Not Specified/Included.

**(iii) Marina Berthing Charges p/metre per annum (excluding VAT)**

Existing	N/A
Jacobs	£183
BHC (Best Case)	£183
BHC (Worst Case)	£170
Hull <sup>12</sup>	£180
North East Average	£193

**(iv) Harbour Income**

Existing	£693,000
Jacobs (Year 15 – Mid-Range)	£772,000
BHC (Year 15 – Best Case - )	£727,000
BHC (Year 15 – Worst Case)	£727,000

**(v) Marina Income**

Existing	£0
Jacobs (Year 15 – Mid-Range)	£564,416
BHC (Year 15 – Best Case - )	£557,000
BHC (Year 15 – Worst Case)	£410,000

**(vi) Combined Harbour + Marina Income**

Existing Income <sup>13</sup>	£693,000
Jacobs (Year 15 – Mid-Range)	£1,336,416
BHC (Year 15 – Best Case - )	£1,284,000
BHC (Year 15 – Worst Case)	£1,137,000

**(vii) Income from Fish Landing (commercial landing dues)**

Existing	£210,000
Jacobs (Year 15 – Mid-Range)	£230,000
BHC (Year 15 – Best Case - )	£205,000
BHC (Year 15 – Worst Case)	£205,000

<sup>12</sup> Hull being the nearest comparator marina.

<sup>13</sup> Existing figures based on latest available Harbour Accounts - 2010

**(viii) Harbour and Marina Annual Expenditure**

Existing	£593,000
Jacobs (Year 15 – Mid-Range)	£1,011,860
BHC (Year 15 – Best Case - )	£1,067,000
BHC (Year 15 – Worst Case)	£1,056,000

**(ix) Annual Income & Expenditure Analysis**

Existing	+£100,000
Jacobs (Year 15 – Mid-Range)	+£324,556
BHC (Year 15 – Best Case - )	+£217,000
BHC (Year 15 – Worst Case)	+£81,000