

## **CABINET – SPECIAL MEETING**

**10 July 2014**

### Attendance:

Councillor Humby -	<i>Leader (Chairman) (P)</i>
Councillor Weston -	<i>Deputy Leader and Portfolio Holder for Built Environment (P)</i>
Councillor Godfrey -	<i>Portfolio Holder for Finance &amp; Organisational Development (P)</i>
Councillor Miller -	<i>Portfolio Holder for Business Services (P)</i>
Councillor Southgate -	<i>Portfolio Holder for Communities &amp; Transport</i>
Councillor Tait -	<i>Portfolio Holder for Housing Service(P)</i>
Councillor Warwick -	<i>Portfolio Holder for Environment, Health &amp; Wellbeing (P)</i>

### Others in attendance who addressed the meeting:

Councillors Gottlieb, Learney, Tod and Wright

### Others in attendance who did not address the meeting:

Councillors Achwal, J Berry, Byrnes, Clear, Dibden, Evans, Gemmell, Hiscock, Izard, Jeffs, Johnston, Laming, Nelmes, Osborne, Read, Ruffell, Sanders, Scott, Thompson and Weir

Mr D Chafe - TACT

## 1. **CHAIRMAN'S ANNOUNCEMENT**

The Chairman welcomed to the meeting approximately 150 members of the public, local interest groups business representatives and representatives of Henderson. He explained the procedure that would be followed. Public participation would be allowed at the start of the meeting, followed by the Officer presentation of the Report and questions from Members, then representations from non-Cabinet Members under Council Procedure Rule 35. Following consideration of the contents of the information contained within the exempt appendices to CAB2603, Cabinet would return to open session for consideration of the recommendations as set out in Report.

In addition to the Council Officers present, the following professional advisors engaged by the Council also attended: Ms L Avis (BLP LLP Solicitors); Mr P Wilks (NLP retail); Mr R Osborne and Ms L Howard (Deloitte Real Estate); and Mr M Hepenstal (Deloitte Audit & Advisory Services).

## 2. **DISCLOSURE OF INTERESTS**

Councillor Humby declared a disclosable pecuniary interest in respect of agenda items due to his role as a County Councillor. Councillor Godfrey declared a disclosable pecuniary interest in respect of agenda items due to his role as a County Council employee. However, as there was no material conflict of interest, they remained in the room, spoke and voted under the dispensation granted on behalf of the Standards Committee to participate and vote in all matters which might have a County Council involvement.

## 3. **PUBLIC PARTICIPATION**

Twelve members of the public and/or representatives of local interest groups or businesses addressed the meeting and their comments are summarised below. Responses to comments made are summarised under the minute in relation to CAB2603 below.

Mr C Turner (Winchester BID) indicated that some BID members had differing views on the proposals but the general view was that it was time to implement the scheme and improve an area of the Town which was becoming derelict. He spoke in support of the proposals and highlighted that it would enable Winchester to attract more larger-scale retailers and improve the viability of the town overall, which would also benefit existing businesses.

Mrs K Barratt raised concerns about the amended proposals in relation to affordable housing and believed that this could lead to no affordable housing being provided at all. She was also opposed to the removal of the bus station from the scheme as she considered this would have a substantial negative impact on bus users, particularly those with mobility issues.

Mr S Masker (an architect and local resident) spoke in opposition to the scheme as he did not consider its design was suitable for its setting within Winchester. In particular, proposals for buildings of up to six or seven storeys or more were out of keeping. He considered that local architects, with an understanding of Winchester, should have been engaged. He was also concerned that the original wider benefits of the scheme, such as affordable housing and the bus station, had been removed. He believed that it was essential the Council took the scheme back to the drawing board in order to address concerns raised by members of the public at the meeting and as part of the recent "Winchester Deserves Better" campaign.

Mr H Petter (Director of Adam Architecture but making representations as a local resident) was concerned that the design of the scheme, and in particular the proposed height of some buildings and proposals for the individual blocks, would have a very negative impact on the current character of Winchester and its skyline. He did not consider that it was appropriate for such a scheme to be designed by one architect, as the character of a development would be enhanced by using different architects for different parts. He considered that the proposed materials were not good enough and believed it was essential the Council relooked at the scheme.

Mr S Scantlebury stated that he had operated a small business in Winchester for the past 10 years and emphasised the concern expressed by customers about the current proposals. In particular, he believed the removal of the bus station was a mistake and would have a negative impact on bus users, particular the elderly or those with pushchairs.

Mrs J Martin spoke in a personal capacity, although she had some background knowledge as a member of the City of Winchester Trust and as a former City Councillor. She stated that it was not correct to assert the Trust were all supportive of the proposals. She expressed concern about the removal of the affordable housing provision, the bus station and office provision and believed these were significant changes to the approved scheme. She questioned the accuracy of the information contained with the NLP Report (Appendix 2 of CAB2603) as it referred to a number of retailers which had now gone out of business. She also considered that the Council's use of an informal reference group was undemocratic, as discussions were not open to the public.

Mr P Davies reiterated comments he made at The Overview and Scrutiny Committee on 7 July 2014 (as summarised in the minute extract report, CL96 considered below). His concerns primarily related to the removal of the guaranteed affordable housing provision and the Council's use of a reference group which was not open to the public. He considered that the changes were fundamentally different to the original scheme which was relied upon by the Council in its application for the compulsory purchase order. The present proposal was not acceptable and ran the risk that no affordable housing would be provided. He did not believe that the developer would walk away if required to make provision for 35% affordable housing, and even if it did, another developer could be obtained. A mixed development was needed in the City Centre.

Mr R Pitt spoke on behalf of himself and Mr C Gillham (Winchester Friends of the Earth) who was unable to attend the meeting. Mr Gillham had raised concerns that the Silver Hill proposals would further prevent the Council from meeting its obligations in relation to air quality, particularly with regard to the parking provision proposed. He referred to a current challenge to the EU about the UK Government's response on air quality issues and suggested this could also impact on local authorities. Winchester Friends of the Earth was, therefore, asking that the parking provision be reconsidered. Mr Pitt spoke in support of the concerns already expressed in relation to the proposed height and scale of the development. He believed that consultation carried out to date had been inadequate, and in particular, documents provided by Henderson had not clearly indicated the proposed size of buildings proposed.

Mrs J Young, a dealer in the Antiques Market, expressed concern about the lack of small business units proposed within the development which she considered were essential in order to maintain the mix of smaller, independent and interesting retailers which were an attraction to tourists.

Mr A Sindell believed that the numbers of public attending the meeting indicated the wide degree of concern of local residents over the proposals. He urged the Council to review and fundamentally reconsider the scheme.

Mr T Fell believed that the Council should seek to establish Winchester as a place offering independent and different retailers, and not just the standard high street names. He did not believe the current proposals enabled this and a fundamental reassessment should therefore be undertaken. He referred to the success of the Winchester markets and referred to covered market halls that existed in other towns.

Mrs S Robinson (resident of Itchen Abbas) emphasised that it was essential for car parking provision to be retained in the town centre, for example for those wishing to easily access the doctors' surgery and other local services. She also wished to see the mix of smaller independent shops retained. Provision should be made for products produced by students at the local universities to be marketed.

4. **SILVER HILL REGENERATION (LESS EXEMPT APPENDICES)**

(Report CAB2603 refers)

**MINUTE EXTRACT FROM THE OVERVIEW AND SCRUTINY COMMITTEE HELD 7 JULY 2014 (LESS EXEMPT APPENDICES)**

(Report CL96 refers)

Cabinet noted that Report CL96 (distributed separately with the supplementary Council agenda for 16 July 2014) had not been made available for publication within the statutory deadline. The Chairman agreed to accept the item onto the agenda as a matter requiring urgent consideration, to enable the points that The Overview and Scrutiny Committee had asked to be brought to Cabinet's attention before it made decisions upon Silver Hill Regeneration at this meeting and prior to Council's consideration on 16 July 2014.

The Chief Executive responded to comments made during public participation and by The Overview and Scrutiny Committee and in summary made the following points:

- He confirmed comments from a member of the City of Winchester Trust had been made in a personal capacity and did not necessarily reflect the views of the Trust as a whole;
- The reference group referred to was an informal sounding board and not part of the formal decision-making process. The minutes had been made available to all Councillors and could be made available to others on request. Proposals for Member approval were brought forward for due consideration as a part of the formal decision-making process.
- He did not accept any criticism of the Council's ability to manage such projects, as the Council had a strong management team with a great deal of relevant experience. In addition, it had sought advice from a wide range of professionals, including on the design aspects.

- He also did not agree with any assertion that the public had been misled by the Council as there had been a great deal of consultation with local residents and businesses to date.
- He emphasised that the final decision on the Development Agreement aspects were a matter for Cabinet, and if any material issues were raised following consideration by Council, then Cabinet may need to meet again to consider those points. If approved, it would then be for Planning Committee to determine the subsequent planning application.
- He did not accept that it was inappropriate for either Cabinet Members or himself, to have demonstrated leadership by expressing their current views on the proposals. Consideration would still be given to issues that arose in the meeting. Planning Committee Members could also ask questions but would need to consider any issues which arose through the planning process and keep an open mind before making a decision on the application at the Planning Committee meeting.

The Corporate Director drew attention to various design improvements and modifications proposed to the 2009 consented scheme. He emphasised that the Report contained proposed variations to a consented planning scheme issued in 2009, following consideration at two separate Planning Committees and a great deal of debate and discussion, including at public meetings, prior to that date. These variations had arisen from the opportunity arising from changes to the Bus Station arrangements as well as aspirations to improve design aspects of the scheme. In addition, it provided the majority of the additional town centre retail floorspace as envisaged by Local Plan Part 1 and this was essential if Winchester was to continue to resist out-of-town retail development.

The Head of Estates explained that Deloitte had produced a report which demonstrated that the scheme would provide best consideration for the Council under S233 Town and Country Planning Act 1990 and would enhance the overall value of the Council's estate. He also emphasised the poor condition of many of the existing buildings on the development site and in particular, the condition of Friarsgate car park would require its closure shortly.

The viability of the scheme as currently assessed meant that it was unable to contribute towards affordable housing. However, a formula could be included in the financial arrangements (as well as a Section 106 agreement entered into in respect of the new planning applications to be submitted) so that if residential market conditions in Winchester continued to improve, a significant contribution was likely to be forthcoming towards providing affordable housing off-site. The formula would take account of the Council's standard viability test of permitting a residential developer return of 20% before the affordable housing contribution became payable. One Member asked for an indication to be given as to the potential range which the affordable contribution might fall within. The Head of Estates stated that an upper limit of £6.7m would be applicable if it was agreed that 35% affordable was the appropriate provision for this development. However, as with all issues relating to market conditions, if the economy did not perform as expected, the potential that no contribution would be forthcoming remained.

The Head of Estates advised that the process whereby Henderson had sought to select a contractor by negotiation rather than tender was a common practice where a proposed residential partner had a contractor subsidiary, and should reduce overall costs.

The Head of Legal and Democratic Services advised that the developer was seeking the Council's approval under the Development Agreement to a number of variations to the development, to reflect the changes to the Bus Station arrangements and to ensure viability. The changes also reflected discussions of the informal reference group. In addition, approval to minor changes to the Development Agreement itself were also sought (e.g. negotiation with a single contractor). Section 4 of the Report explained where in considering changes the Council had 'absolute discretion' or where its discretion was subject to caveats. However, in exercising discretion the Council needed to have regard to the commercial viability of the scheme and not act capriciously. He made reference to a letter received from Dentons Legal Practice, sent at the request of Councillor Gottlieb. Its contents had been discussed with the Council's own external legal advisors (BLP) and they were satisfied that its contents did not change the advice given in the Report CAB2603.

The Chief Finance Officer advised that the assessment of the Development Account had been undertaken by Deloitte and its findings were contained within Exempt Appendix 5 of the Report. She confirmed that significant work had been carried out to date on the Development Account, with a proportion of costs already confirmed, and work on this would be continuing.

The Head of Major Projects advised that detailed work was ongoing regarding the transport assessment of the revised proposals which would be tested by the County Council and made available through the planning process. In summary, it was anticipated the changes would not make a dramatic difference to the traffic movements across the day, when compared to the consented scheme, although the removal of office space would reduce journeys at peak times.

The provision of car parking would be in line with both the Council's own Parking Strategy and new Government planning policy guidance. The Strategy requires that broadly the same number of car parking spaces should be retained across the City and at the same time, the Council would seek to increase Park and Ride use thus making use of the available capacity.

The Head of Major Projects made reference to a letter from Stagecoach to Henderson where they believed that the proposed bus stop arrangements would enable all required services to be timetabled. Work was ongoing with the aim of grouping services in the best way possible to minimise the distance users were required to travel between bus stop locations.

Cabinet considered Section 3 of Report CAB2603 in detail and relevant officers and advisors responded to questions, with a summary of responses

set out below. Cabinet also had careful regard to the comments that The Overview and Scrutiny Committee had made (ReportCL96 refers), and in particular the eleven questions raised for their consideration.

### Block Layout and Design

The Corporate Director advised that the block layout and essential components were broadly the same as the original proposals. Under the new proposals, Block A had some elevations of seven storeys and this was essential to enable elements of retail, residential and three layers of car parking. The Head of Estates advised that the highest part of the existing buildings in the site was 16.77 metres (part of the Friarsgate car park). The highest element of the consented scheme was Block B with a height of 24.5 metres, and Block A at 21.25 metres. Under the new proposals, the highest point of Block A would be 23.1 metres and Block B would be reduced to 18.5 metres. To provide some context, the Cathedral Tower was over 43 metres.

The Corporate Director said that Derek Latham of Lathams Architects had advised the Council on seeking improvements to the consented scheme. The Reference Group had raised 21 issues for consideration. These had led to improvements to the quality of the public realm, rhythm, articulation and massing of the blocks, and quality of the materials when compared to the consented scheme. The water feature and rills had also been improved.

It was noted that a number of properties in the High Street were 4 storeys high. The scheme needed to be of a scale to reflect its own character in a separate quarter of the City. The height of the scheme reflected the functions to be accommodated in the relevant blocks and improvements had been made to the articulation and materials.

With reference to point (viii) raised by The Overview and Scrutiny Committee that the development should carefully integrate with the existing historic town centre, the Corporate Director advised that at the previous Planning Committees it was considered that it was not appropriate for the design to be a pastiche or replica but should add something new to the design of the town. He emphasised that the majority of buildings within the existing site did not merit repair or renovation anyway and a contemporary approach to design had been adopted. The scheme architects had carefully examined the use of materials and variations in height and façade to respect the existing townscape. The scale of the public spaces deliberately did not provide a large new public square, but sought to provide spaces on a similar scale to elsewhere in the town centre.

In response to questions regarding public comments about comparisons with West Quay Southampton or Festival Place Basingstoke, the Corporate Director emphasised the proposals were vastly different in both size and design. It was not an internally facing shopping centre but essentially retail units in a streetscape. The consented scheme permitted 95,000 square feet of retail space and the proposal was for 145,000 square feet (there was

currently approximately 110,000 square feet of retail space on the existing site).

### Car Parking

Cabinet had regard to point (iii) raised by The Overview and Scrutiny Committee and the comments made by the Head of Major Projects in his introduction above. Car parking for Silver Hill should be seen within the context of the Council's car parking strategy which was seeking to maintain broadly the same level of car parking spaces in the town centre as was currently available, whilst seeking to maximise use of Park and Ride. The use of parking standards for retail developments was no longer appropriate on their own and regard must be made to the accessibility of the site and other parking in the area. The Corporate Director emphasised the condition of Friarsgate car park which would require its closure shortly, and the consequent reduction in existing car park spaces available.

The Head of Major Projects confirmed that the Council were working with the County Council as highways and transport authority to address air quality issues, which included reconsideration of the current one-way system. This may include an option for changes to the one-way system near Silver Hill which would seek to reduce the amount of unnecessary vehicle trips around the one-way system. Bus services would be located at bus stops locations to minimise buses having to travel unnecessarily around the system. The design of the scheme would not preclude such changes. In addition, the removal of the office provision from the scheme would reduce vehicle trips, particularly at peak times.

### Residential Units

In response to questions, the Corporate Director highlighted Paragraphs 3.8 and 3.9 of the Report.

### Affordable Housing

Cabinet had regard to point (iv) from The Overview and Scrutiny Committee.

On behalf of Cabinet, Councillor Godfrey shared the concerns that the proposed variations in the Agreement with the Developer would not guarantee new affordable housing provision. Therefore, it was proposed that an additional proposition be moved on behalf of Cabinet at Council to guarantee substantial funds for a minimum amount of affordable housing off-site, underwritten by monies which would be generated by the scheme for the Council. This provision would apply in the event that the formula in the Agreement with the Developer did not secure that number of dwellings because of adverse residential market conditions.

The Head of Estates responded to questions about how this would work in practice and it was agreed that the exact wording for the additional proposition would be refined for consideration at Council on 16 July 2014. It was



expected that the minimum guarantee offered by the Council would enable the provision of 20 affordable homes for social rent, which was what was expected under the approved scheme.

The Corporate Director emphasised that the Council's priority would be to secure the maximum number of social housing units as a result of this development, but it was acknowledged that these might not be best placed within the site itself. It could be more economically developed by the Council on its own land elsewhere. He indicated that shared ownership was not the highest priority for meeting housing need, as high values in this area would limit the number of potential purchasers and the right to staircase out of shared ownership would limit the availability of such units for onward sale to future shared ownership purchasers. The difficulty of obtaining mortgages for such units above retail schemes was also acknowledged. The Homes and Community Agency (HCA) would be approached regarding the possibility of funding, although this was probably unlikely to be forthcoming, given that S106 affordable housing was not their high priority.

The Corporate Director advised that direct discussions had not yet been held with Registered Providers (RPs) regarding affordable housing provision in connection with the scheme, as the timing meant this was not yet appropriate. However, other locations may better suit their needs, for the reasons outlined above.

### Bus Station

Cabinet had regard to point (v) from The Overview and Scrutiny Committee and the concerns expressed during public participation regarding the removal of the bus station.

In response to questions, the Head of Legal and Democratic Services confirmed that the Council could not require Stagecoach (or any other bus operator) to use a bus station if they did not want to. In addition, there would be issues as to how a bus station build could be financed in this situation.

The Corporate Director advised that the detailed design and layout would include public toilets (to be operated by the Council), a ticket office, timetable information, shelter and lighting, and would have CCTV coverage. In addition, the Head of Major Projects emphasised that under the existing approved scheme, buses would still have to depart from two locations so there would still be the need for bus users to move between these two locations to catch connecting buses. He reiterated comments made above about Stagecoach working under the new proposals to position bus services stops so as to minimise the need for distances bus users to walk to make such connections. This would involve placing services that commonly required a connection in adjacent bus stops. In some instances bus users might need to walk between the two bus stop locations and therefore the design and signing of the route will be an important consideration. Cafés would be available nearby in the scheme. It was considered that at night, well-lit shelters adjacent to public

roads would be more visible and safer than an enclosed waiting room in an off-street bus station.

### Changes in Retail Provision

Cabinet had regard to Point (vi) and (ix) from The Overview and Scrutiny Committee.

Mr P Wilks (NLP Retail) explained that he had 26 years as a Retail Planning Consultant and had advised other local authorities nationally on town centre strategies, including giving evidence at Public Inquiries.

Mr Wilks advised that the scheme proposed an approximate 14% increase in the amount of floorspace in the town centre, with less than 10% increase in retail units. It was essential that Winchester planned for growth and at the moment, it was not meeting its potential in terms of retail offer. Mr Wilks emphasised the proposal included a total of 20 or so retail units and NLP had seen Henderson's possible tenant list and they were all very feasible and viable retailers. The inclusion of a larger unit for a department store type retailer was shown to be a strong anchor which would attract other retailers, and generate footfall which would benefit the town centre overall, including the smaller independent retailers. The location of the Silver Hill scheme would enable a figure of eight footfall pattern to develop, to link in with the existing retail in the High Street and adjacent areas. This would benefit existing smaller traders. Any movement of larger national traders in the town to the scheme was likely to release smaller older units that were now more suitable for independent retailers. This may also assist traders who provide lower cost products to find suitable alternative premises, but this could not be guaranteed.

In response to questions regarding concerns raised during public participation, Mr Wilks explained that retailers who had ceased trading had been included in the NLP report to illustrate retail trends and had had a minimal impact on Winchester, which had fared well in the recession. The growth in internet shopping had been fully taken into account, in addition to the growing "click and collect" shopping provision which encouraged people to visit local stores. Mr Wilks emphasised that Winchester would continue to offer an experience that was more than simply shopping, as it also relied on its tourist attractions and the hospitality food and drink sector.

Mr Wilks stated that Winchester fell within the catchment area of Southampton which affected the amount of spending retained within the town. NLP's opinion was that if the right facilities were offered in Winchester, more people would choose to shop locally. Mr Wilks considered that without the Silver Hill development, the Council would find it increasingly difficult to resist out-of-town shopping developments. He considered that the other comparator towns in the NLP study also were affected by their own competing centres.

The Head of Estates indicated that some smaller existing traders affected by the development could also consider the option of applying for a market stall.

The improvements in the market over the last few years showed that quality small traders could benefit from the larger footfall that the market generated.

#### Oxfam Building (153 High Street)

The Corporate Director confirmed that the replacement of the building would not adversely impact on neighbouring historic buildings, such as the one currently occupied by Maison Blanc.

#### Shopmobility

The Head of Major Projects confirmed this facility would remain within the Brooks Centre for the current time and that discussion had taken place with Winchester Area Community Action.

#### Market Store

The Head of Estates confirmed that it was proposed that the Market Store would remain in its current location in the Brooks.

In response to questions, the Head of Estates confirmed it was always proposed that the Broadway would be used in the future for street markets and this was still the case. At the time the Development Agreement was drawn up, it envisaged that the market would relocate to the Lower High Street and the Broadway from Middle Brook Street. The recent success in developing the market would mean that as well as the use of the areas proposed in the Development Agreement, the High Street and Middle Brook Street would also continue to be used. This would aid pedestrian footfall and link the existing retail areas to Silver Hill.

The Head of Estates stated that the market continued to be successful and the trend was likely to continue. Art students utilised some stalls to sell their work already and it was hoped to develop a relationship with the University to encourage students to use the market as an outlet for their works.

#### Procurement of Construction Contractor

Cabinet had regard to point (x) from The Overview and Scrutiny Committee

The Head of Estates advised that it was a common option for construction contractors for major developments of this nature to be procured in the manner suggested in Paragraphs 3.23 to 3.25 of Report CAB2603. The Council would employ a Cost Consultant to ensure all costs were scrutinised carefully.

The Head of Legal and Democratic Services stated that the Council had obtained external advice confirming that the proposals were lawful.

### Sustainability Issues

The Corporate Director advised that Henderson had discussed the sustainability aspects of the project with WinACC who had given very positive feedback on the approach. He also advised that such issues, and the quality of materials, would be covered by appropriate planning conditions.

### Implications of Revisions to the Scheme

In addition to Section 4 of Report CAB2603, Cabinet had regard had regard to point (xi) from The Overview and Scrutiny Committee which requested that “Cabinet should negotiate, where possible, on specific elements of revisions in the Development Agreement, as opposed to accepting or rejecting en bloc and consider whether the Council has maximised its negotiating position at this critical point.”

The Head of Legal and Democratic Services advised that although the Council broadly had absolute discretion whether to agree the changes, it would not be correct to assume it could therefore make whatever demands it wanted: if the Council made demands which made the scheme unviable, the scheme would not go ahead. The exercise of absolute discretion should therefore be seen as ultimately a commercial negotiation with Henderson, who expected to make a reasonable profit. The changes were being sought by Henderson in order to make the scheme viable, with the converse implication that failing to agree the changes, or imposing additional demands, would make it unviable. Should the scheme stall and be unable to go ahead, the Council would also need to take account of the damage that could cause to its reputation in the market place.

Ms L Avis (BLP LLP Solicitors) advised that the Council’s discretion was constrained by a duty not to act perversely. In addition, if a decision was made that was regarded as perverse, the Council might be seen as acting in bad faith, contrary to the “good faith” clause contained within the contract with Henderson. An example of a perverse decision might be demanding a bus station with no company in place prepared to use or lease the facility. Ms Avis stated that the financial deal being offered to the Council would be regarded as a major consideration in deciding whether or not to proceed.

Ms Avis advised that it was open to the Council to decide it did not wish to proceed with the scheme. But, if it wished to agree the scheme with its own new variations or other demands, it should have regard to the risk that this might make the scheme unviable for the developer. If Henderson did not agree to changes proposed, once the longstop date was reached it could walk away from the development. With regard to suggestions during public participation that the Council should “go back to the drawing board”, Ms Avis emphasised the length of time which would be needed (considerably more than the two or three years suggested) and the costs involved in repeating the work undertaken to date in reaching the current position, and in a new procurement process and CPO. She said that the Council had already sought to achieve changes through negotiation which had led to the current proposals from the developer to meet the points made by the Council. She pointed out

that the latest proposals gave the Council a good financial return, which needed to be taken into account in the exercise of any discretion.

The Head of Estates emphasised that if the Council were to ask Henderson to start again, the cost of all the work carried out to date would need to be added to the costs of any new scheme, meaning that the base cost was significantly enhanced. Consequentially, the opportunity for viability of any new scheme was diminished. The Corporate Director highlighted that significant delays would create uncertainty and result in the condition of the existing buildings continuing to deteriorate. The Head of Estates said that Coitbury House alone would require works in the order of £500,000 to put it into a lettable condition pending any redevelopment.

The Head of Legal and Democratic Services explained that if the revised development agreement was approved, the next steps would involve a Section 73 planning application to amend the approved scheme in certain areas, together with a full planning application regarding the change of use of Block B (the former bus station). The indication was that Community Infrastructure Levy (CIL) receipts would be approximately £800,000, which could be paid “in kind” through works.

The advice of the Officer Project Team was that the negotiations had reached a point where it was not practicable to change the individual elements further, without compensating changes being agreed to offset the cost elsewhere.

#### Financial and Valuation Considerations

Cabinet had regard to point (vii) raised by The Overview and Scrutiny Committee.

Mr R Owen (Deloitte) outlined his considerable experience in this area over the past 25 years, including providing advice to a number of other local authorities. The terms of the Council’s negotiations with Henderson had been analysed and Deloitte were satisfied that it would meet the requirement for best consideration under S233 Town and Country Planning Act 1990 if the transaction were to take place today. He also advised that as the test of best consideration applied to the date of transaction any subsequent material changes in the terms would have to be taken into account at that point. He explained why S233 was the appropriate test where the Council was proceeding with a scheme for planning purposes in connection with a compulsory purchase order it had promoted under part IX of that Act. It was a different test to that contained in S123 Local Government Act 1972 when a Council was seeking to dispose of a surplus asset – when it would need to get the best price available in the market, regardless of the use proposed by the purchaser.

Mr Owen stated that, in Deloitte’s view, Henderson had made significant efforts to adjust the scheme to meet the Council’s requirements. The current market conditions would mean that the Council would find it difficult to secure a new partner for such a scheme, especially if it terminated an arrangement

with the existing developer after a long period of seeking to bring a scheme to fruition. He highlighted that nationally, a number of local authorities were finding it difficult to proceed with their developments because of viability issues and that the Council might have to invest its own financial resources in order to bring forward any new scheme.

One Member drew attention to comments made in Councillor Gottlieb's Report to The Overview and Scrutiny Committee (OS104 refers) which appeared to imply there was a significant amount unaccounted for in the Development Account. The Chief Finance Officer advised that the historical accounts had been examined in great detail and consequentially reasonable assurances had been obtained on substantial elements of the costs. The verification work was continuing and nothing had arisen to cause a change in the proposed recommendations in the Report. Further detail was provided in the Exempt Appendices to Report CAB2603 and in the exempt minute below.

### Estates Issues

The Head of Estates referred to the need to appropriate 153 High Street to planning purposes, now that it was included within the scheme.

### Legal Issues

The Head of Legal and Democratic Services confirmed that appropriate advice had been obtained from BLP and Leading Counsel as the scheme had progressed and on all the matters contained in the Report.

### Risk Management Issues

Ms Avis of BLP confirmed that the compulsory purchase order (CPO) remained in force for three years ending in March 2016, after which time its powers ceased. The Council would then have to start the process from the beginning, including providing justification and participating in the Public Inquiry. The Head of Legal and Democratic Services advised that one of the tests for a CPO was a compelling need in the public interest, and this "compelling need" might be challenged in the event of the need for a new CPO application, if an earlier scheme had not been implemented. It was the Council officers' and external advisors' opinion that the variations to the scheme were not fundamental and would not affect implementation of the scheme under the confirmed CPO. BLP said it was still based upon the 2009 planning permission, with adjustments. The Corporate Director confirmed that it had not been known at the time of the CPO Inquiry whether Stagecoach would want to proceed without a traditional bus station. The other changes had all been the subject of negotiations with Henderson in recent months following Stagecoach firming up on its current proposals for bus interchange and the other matters which the Council had raised. Mr Owen highlighted that it was not uncommon for a local authority to be asked to agree to further changes to a scheme after a CPO had been approved, as conditions in the market place changed.

At the conclusion of Cabinet discussion of the Report, at the invitation of the Chairman, Councillors Wright and Gottlieb addressed Cabinet and their comments are summarised below.

Councillor Wright agreed that the Silver Hill area required redevelopment but raised concerns about the parking provision proposed. He also disputed that the extra retail could be supported within the town and believed that the development could damage existing retailers. In conclusion, he emphasised that the development must provide a good deal for local residents and not just the Council.

The Chief Executive responded that the parking provision had been thoroughly discussed above, in addition to the retail provision. However, he suggested that officers could discuss his concerns in detail outside of the meeting.

Councillor Gottlieb considered that because of the significance of the scheme it was essential that the Council ensured the right decisions were made and taxpayers' assets were invested properly. He believed that this could only be achieved if the Council were to undertake a process of due diligence on the whole decision-making process to date. He considered this could be carried out within a three-month time period and was essential to ensure the Council could be confident in the proposed decision.

The Chief Executive advised that Cabinet Members must decide whether they were satisfied with the information they had been provided with to date, or whether they considered further work was required.

During discussion, Cabinet Members emphasised that the considerable amount of work and investigations undertaken by Officers and external advisers to date amounted, in their opinion, to the due diligence being requested by Councillor Gottlieb. Cabinet considered there was no benefit, and potential adverse risks of delay, in additional time and monies being spent on repeating this process.

Cabinet then moved into closed session to discuss the Exempt Appendices to Report CAB2603 and returned to open session to make the resolution outlined below.

Following consideration of the exempt information and the discussion above, Cabinet Members stated that they were content that all potential issues raised had been resolved to their satisfaction.

The Chief Operating Officer advised that although the matter would be considered by full Council on 16 July 2014, decisions on the Development Agreement were an executive matter for Cabinet. Therefore if Council raised any material matters, a further Cabinet meeting would be required to consider them.

Cabinet agreed to the following for the reasons set out above and outlined in the Report.

## RESOLVED:

1. That in accordance with the provisions of the Silver Hill Development Agreement dated 22 December 2004 approval be given to the variations to the consented scheme for the regeneration of Silver Hill, as set out in a letter from Silverhill Winchester No. 1 Limited dated 12 June 2014 and the accompanying documents entitled "Volume 1 – Planning Drawings" and "Volume 2 – Strategy in respect of the evolution of the detailed design" enclosed therewith ("the Application"), including in particular:-

- a) a reduction in the number of residential units from 287 (plus 20 live/work units) to 184 residential units only (or such lower number as the local planning authority may require);
- b) the removal from the scheme of a bus station (in the form set out in the Development Agreement) and the provision in its stead of an on-street bus interchange and facilities (public toilets and a ticket office) on Friarsgate as detailed in the Application;
- c) the deletion of a requirement for a Shop Mobility Centre and Dial A Ride premises in the development;
- d) The deletion of a provision for a Market Store within the development.
- e) the changes to the external elevations, massing and servicing arrangements as set out in the Application;
- f) provision of one shop unit of up to 60,000 sq ft as detailed in the Application;
- g) a reduction in the number of public car parking spaces from 330 to 279;
- h) the amendment of the provision in respect of affordable housing by the substitution of a financial contribution to be assessed on the basis of the future viability of the scheme up to the equivalent of 40% affordable housing provision;
- i) an increase in retail provision from 95,000 square feet to 148,000 square feet;
- j) the inclusion in the scheme of 153 High Street.

2. That Silverhill Winchester No. 1 Limited be authorised to procure the construction of the whole scheme (residential and retail) by a construction company with a house building subsidiary, rather than as set out in the Development Agreement.



3. That the Head of Legal and Democratic Services be authorised to settle the detailed legal documents to give effect to 1 and 2 above.

4. That the Chief Executive, in consultation with the Leader, be authorised to:-

- a) give the Council's consent to any further minor variations which the Head of Development Management advises are required if the Council as local planning authority is to grant planning consent for the scheme;
- b) appropriate for planning purposes within the meaning of Part IX of the Town and Country Planning Act 1990 the land owned by the Council which it will put into the scheme;
- c) agree the final number of retail units in the scheme.

5. That the principle of including 153 High Street, Winchester in the scheme be approved on terms set out in Exempt Appendix 3 and the Head of Legal and Democratic Services be authorised to settle the detailed legal documents to give effect to the transaction.

6. That a further report be made to Cabinet on options for the increase of the rent payable to the Council to up to 10%, and the purchase of the car park to be provided as part of the scheme.

7. That the further recommendation set out in Exempt Appendix 6 (Legal Advice) be approved.

**RECOMMENDED:**

**THAT THE DECISION OF CABINET BE SUPPORTED.**

5. **EXTRACT FROM MINUTES OF THE WINCHESTER TOWN FORUM HELD 25 JUNE 2014**

(Report CAB2604 refers)

Cabinet noted a correction to the minute extract to replace the name Councillor Tod with Councillor Osborne in the fourth paragraph.

The Corporate Director confirmed that the requests made by the Town Forum had already been implemented.

Cabinet agreed to the following for the reasons set out above and outlined in the Report.

RESOLVED:

That the extract from the minutes of the Winchester Town Forum held 25 June 2014 be noted.

6. **EXEMPT BUSINESS**

RESOLVED:

1. That in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

2. That the public be excluded from the meeting during the consideration of the following items of business because it is likely that, if members of the public were present, there would be disclosure to them of 'exempt information' as defined by Section 100I and Schedule 12A to the Local Government Act 1972.

<u>Minute Number</u>	<u>Item</u>	<u>Description of Exempt Information</u>
##	Silver Hill Regeneration – exempt appendices	) Information relating to the financial or business affairs of any particular person (including the authority holding that information). (Para 3 Schedule 12A refers)
		) Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. (Para 5 Schedule 12A refers)

7. **SILVER HILL REGENERATION (EXEMPT APPENDICES)**

(Report CAB2603 refers)

Cabinet noted that Appendices 3, 5 and 7 had not been made available for publication within the statutory deadline. The Chairman agreed to accept the items onto the agenda as a matter requiring urgent consideration, before it made decisions upon Silver Hill Regeneration at this meeting to enable the contents to be considered and prior to Council's consideration on 16 July 2014.

Cabinet considered the contents of the exempt appendices and made a further recommendation thereon (detail in exempt minute).

The meeting commenced at 6.30pm and was immediately adjourned to be able proceedings to be moved to a larger room to accommodate the numbers present, recommenced at 7.00pm and concluded at 1.15am.