

CABINET

21 May 2015

Attendance:

Councillor Godfrey -	<i>Leader (Chairman) (P)</i>
Councillor Weston -	<i>Deputy Leader and Portfolio Holder for Service Delivery (P)</i>
Councillor Read -	<i>Portfolio Holder for Built Environment (P)</i>
Councillor Byrnes -	<i>Portfolio Holder for Local Economy (P)</i>
Councillor Horrill -	<i>Portfolio Holder for Housing Services (P)</i>
Councillor Miller -	<i>Portfolio Holder for Estates (P)</i>
Councillor Pearson -	<i>Portfolio Holder for Environment, Health & Wellbeing (P)</i>

Others in attendance who addressed the meeting:

Councillors Burns, Simon Cook, Dibden, Evans, Gottlieb, Hiscock, Laming, Thompson and Weir

Others in attendance who did not address the meeting:

Councillors J Berry, Humby, Hutchison, Jeffs, Johnston, McLean, Scott, Twelftree, Warwick and Wright
Mrs J Steventon Baker and Mr D Chafe (TACT)

1. **DISCLOSURE OF INTERESTS**

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, he 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.

Councillor Gottlieb declared a personal (but not prejudicial) interest as a member of the "Winchester Deserves Better" group. He remained in the room and spoke regarding the item on Silver Hill (apart from some parts of exempt discussion, as minuted below).

Councillor Pearson asked that (although it was not a personal or prejudicial interest) for transparency it be recorded in the minutes that he was the ward councillor for the area affected by CAB2694 – Authorisation to proceed with new Council scheme – Springvale, Swanmore.

2. **FUTURE MEETING DATES AND TIMES**

RESOLVED:

1. That the timetable of meetings for 2015/16 be agreed as set out on the agenda (and as agreed in PHD599).

2. That Cabinet meetings normally commence at 10.00am unless the Chief Operating Officer, in consultation with the Leader, determines an alternative start time.

3. **MINUTES**

RESOLVED:

That the minutes of the previous meeting held on 15 April 2015 be approved and adopted.

4. **PUBLIC PARTICIPATION**

Imogen Dawson (Station Area Neighbourhood Group) spoke regarding Report CAB2693 and Patrick Davies spoke regarding Report CAB2695 and their comments are summarised under the relevant minutes below.

5. **LEADER TO APPOINT PORTFOLIOS FOR THE 2015/16 MUNICIPAL YEAR**

(Oral Report)

The Chairman stated that, immediately prior to the Cabinet meeting, he had signed a Portfolio Holder Decision Notice (PHD625 refers) confirming the appointment of the Deputy Leader and members of Cabinet. It also confirmed the Scheme of Delegation to Cabinet and officers.

Cabinet noted that the Leader was responsible for the content and allocation of Portfolio Holders appointments.

Cabinet noted the Portfolio appointments announced by the Leader as set out in the table attached as an appendix to the minutes. More detailed arrangements settling the final scope of the portfolios and providing for delegation to the Portfolio Holders would be the subject of a Leader's Portfolio Holder Decision Notice.

The Chairman stated that Councillor Humby would also have a role supporting the work of Councillor Byrnes (Portfolio Holder for Local Economy) in liaising with local businesses.

RESOLVED:

That the arrangements for the allocation of Portfolios be for 2015/16 (as attached as Appendix A to the minutes) be noted.

6. **LEADER AND PORTFOLIO HOLDER ANNOUNCEMENTS**

The Leader thanked the previous Leader, Councillor Pearson, together with the two other former members of Cabinet (Councillors Jeffs and Stallard) for their work over the previous few months.

The Leader congratulated the Chief Executive and Council Officers for their work in enabling the Council to be awarded the Health and Wellbeing Investors in People (IIP) assessment.

The Leader also reported that the LGA Local Partnership Organisation Review had now been received. The Review Team had examined the Council's processes and methodology regarding the Council's programme management and set out areas of good practice together with some areas for improvement.

Councillor Weston congratulated the team of nine Council apprentices who had recently taken part in the Bradbeer Challenge.

7. **ANNUAL APPOINTMENTS TO CABINET COMMITTEES AND INFORMAL POLICY GROUPS 2015/16**

(Report CAB2689 refers)

Cabinet noted that a list of nominees for appointments to be made had been circulated to those present.

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

RESOLVED:

1. That the following appointments to Cabinet Committees be made for the 2015/16 Municipal Year and their terms of reference be confirmed as set out in the Report (including amendments where indicated):

- (i) Cabinet (Traffic and Parking) Committee – Portfolio Holder for Environment, Health & Wellbeing (Councillor Pearson) plus Councillors Byrnes and Read (Reserve: Weston)

In the event of any of the standing members not being available for a particular meeting, another member of Cabinet will be selected in alphabetical rotation by the Head of Legal and Democratic Services to substitute for the standing member.

In addition, the following standing list of Councillors are invited to attend and offer views at meetings of the Committee:

- (a) Councillors Achwal and Gosling (Deputies: Green and J Berry)

- (ii) Cabinet (Local Plan) Committee – Portfolio Holder for Built Environment (Councillor Read) plus Councillors Godfrey, Pearson and Weston (Reserve: Miller).

In the event of any of the standing members not being available for a particular meeting, another member of Cabinet will be selected in alphabetical rotation by the Head of Legal and Democratic Services to substitute for the standing member.

In addition, it was agreed that the following standing list of councillors be invited to attend and offer views at meetings of the Committee:

- (a) Chairman of the Planning Development Control Committee (Councillor L Ruffell) plus Councillors J Berry, Evans, Hutchison and Tait (Deputy: Thompson).
- (b) Ward Councillors, where appropriate.
- (c) Representative from the South Downs National Park Authority.

- (iii) Cabinet (Housing) Committee – Portfolio Holder for Housing Services (Councillor Horrill) plus Councillors Byrnes and Miller.

In the event of any of the standing members not being available for a particular meeting, another member of Cabinet will be selected in alphabetical rotation by the Head of Legal and Democratic Services to substitute for the standing member.

In addition, it was agreed that the following standing list of Councillors be invited to attend and offer views at meetings of the Committee:

- (a) Councillors J Berry, Dibden, Iazard, Scott, Tait and Thacker
- (b) Two TACT representatives plus one deputy: Mrs J Steventon Baker and Mr D Chafe (Mr D Light)

- (iv) Cabinet (Major Projects) Committee - Leader (Councillor Godfrey) plus Councillors Byrnes, Miller and Weston.

In the event of any of the standing members not being available for a particular meeting, another member of Cabinet will be selected in alphabetical rotation by the Head of Legal and Democratic Services to substitute for the standing member.

In addition, it was agreed that the following standing list of Councillors be invited to attend and offer views at meetings of the Committee:

- (a) Councillors E Berry, J Berry, Gottlieb, Hutchison, Jeffs, Tait and Thompson (Deputy: Evans)
- (v) East Hampshire and Winchester Joint Environmental Services Committee – Councillors Pearson, Weston and Horrill (Deputy: Vacancy)

2. That the following Informal Policy Groups be appointed with key tasks as outlined in the Report and Membership as follows:

- (i) River Park Leisure Centre Informal Policy Group
Councillors: Godfrey, Pearson and Warwick
Officers: Corporate Director
- (ii) Fairness and Equality Informal Policy Group
Councillors J Berry, Dibden, Stallard, Warwick and Weir.
- (iii) Housing Rents Informal Policy Group
Portfolio Holder for Housing Services (Councillor Horrill) (Chairman), J Berry, Dibden, Izard, McLean, Scott and Tait.

3. That the following Informal Policy Group not be reappointed:

- (i) Electoral Review Informal Policy Group
- (ii) Supporting People Informal Policy Group

4. That the following appointments to other informal consultative groups be made for the 2015/16 Municipal Year:

- (i) Barton Farm Forum
Councillors: Byrnes (Chairman), E Berry, J Berry, Horrill, Hutchison, Lipscomb, Miller, Osborne, Scott, Twelftree and Weir
Deputies: Gosling, Hiscock and Tait
- (ii) West of Waterlooville Forum –
Councillors: Read (Chairman), Cutler, Pearson and Phillips
Deputies: Dibden and one Liberal Democrat Councillor (tba)
- (iii) North Whiteley Development Forum –
Councillors: L Ruffell (Chairman), Achwal, Humby, McLean, Newman-Mckie and Weston
Deputies: Evans and One Conservative Councillor (tba)

5. That the Chief Operating Office be given delegated authority to make any consequential changes to the Responsibility for

Functions (as set out in Part 3 of the Constitution) as a result of changes to the terms of reference.

8. **LGA ANNUAL CONFERENCE 30 JUNE – 2 JULY 2015: APPOINTMENT OF DELEGATES**

The Chief Executive advised that the Conference would be held in Harrogate and the usual practice would be to appoint four delegates: the Leader and Deputy Leader together with the Chief Executive and Group Leader(s) from the main opposition groups. However, as Councillors Godfrey and Thompson were both unable to attend, it was agreed that Councillors Weston and Evans would be appointed to attend in their place.

Cabinet agreed to the following for the reasons set out above.

RESOLVED:

That up to four delegates be appointed to attend the annual conference as outlined above.

9. **ANNUAL APPOINTMENTS TO EXTERNAL BODIES 2015/16**
(Report CAB2690 refers)

Cabinet noted that a list of nominations from all the political parties had been distributed to Members present at the meeting.

In addition, since the Report was published it was noted that nominations were no longer required for Age Concern Hampshire.

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

RESOLVED:

1. That the following appointments to external bodies be made for the 2015/16 Municipal Year (deputies in brackets):

- (a) Bishops Waltham Sports Committee – Councillor Miller (Ruffell T)
- (b) The Carroll Centre Liaison Committee – Councillors Scott (Tait)
- (c) Friends of Hyde Abbey Gardens – Councillor Burns
- (d) Hampshire & Isle of Wight Association of Local Authorities (HIOWA) – Councillors Godfrey and Weston
- (e) Hampshire County Council Annual Meeting with Parish & District Councils regarding public transport issues – Councillor Pearson
- (f) Hampshire Cultural Trust – Councillor Byrnes
- (g) Hampshire Homechoice Board – Councillor Horrill
- (h) Hampshire Alliance for Rural Affordable Housing (HARAH) – Councillors Horrill (Miller)
- (i) Joint Authorities Gypsies and Travellers Panel – Councillor McLean (Dibden)

- (j) Live Theatre Winchester Trust Limited – Councillor E Berry (Observer)
- (k) Local Government Association – Councillors Godfrey (Weston)
- (l) Meadowside Leisure Centre User Forum – Councillors Pearson & Achwal
- (m) National Parking Adjudication Joint Committee – Councillor Byrnes
- (n) Partnership for Urban South Hampshire (PUSH) Joint Committee – Councillors Godfrey & Weston
- (o) Police and Crime Panel – Councillor Warwick (Southgate)
- (p) Portsmouth Water Customer Forum – Councillor Phillips
- (q) Project Integra Management Board – Councillor Pearson (Weston)
- (r) Relate – Councillor Tait (Sanders)
- (s) River Park Leisure Centre User Forum – Councillors Warwick & Johnston
- (t) South Downs National Park Authority – Councillor Lipscomb (until May 2016)
- (u) South East Employers – Councillors Phillips (Sanders)
- (v) South East Employers – Councillors' Local Democracy & Accountability Network – Councillors Phillips & Sanders
- (w) South East England Councils (SEEC) – Councillors Godfrey & Weston
- (x) Streetreach – Councillor Scowen
- (y) Swanmore Community Facilities Management Committee – Councillor Pearson (Weston)
- (z) Tourism South East – Councillor Humby
- (aa) Trinity Centre Advisory Committee – Councillors Horrill, Mather & Tait
- (bb) Twyford Waterworks – Councillor Sue Cook (Mason – Observer)
- (cc) Welborne Standing Conference – Councillor Stallard
- (dd) Whiteley Community Association – Councillor Stallard (Newman-Mckie)
- (ee) WinACC – Councillor Pearson
- (ff) Winchester Area Community Action (WACA) – Councillor Pearson (Weston)
- (gg) Winchester New Allotment Holders' Society – Councillor Tait
- (hh) Winchester City Centre Partnership Ltd – Councillor Humby
- (ii) Winchester District Board of Campaign to Protect Rural England (CPRE) – Councillor Pearson
- (jj) Winchester District Citizens Advice Bureau Trustee Board – Councillor T Ruffell
- (kk) Winchester Housing Trust – Councillor Johnston (Observer – Tait)
- (ll) Winchester Inclusive Housing Forum – Councillors Tait and Sanders
- (mm) Winchester Indoor Sports Association (Lido Sports Club) – Councillor Burns
- (nn) Winchester Road Safety Council Committee – Councillor McLean
- (oo) Winchester Sports Stadium Management Committee – Councillors Pearson and Warwick

2. That the following ad hoc appointments be made:

- (a) Winchester Charity School Education Foundation – Councillor Mather (until May 2018)

3. That the following appointments be deferred until the next Cabinet meeting:

- (a) Southampton International Airport Consultative Committee
- (b) Winchester Welfare Charities – ad hoc appointment until May 2020

10. **AUTHORISATION TO PROCEED WITH NEW COUNCIL SCHEME –
SPRINGVALE, SWANMORE**
(Report CAB2694 refers)

Cabinet noted that the Report had not been included in the Forward Plan for March and under the Council's Access to Information Procedure Rules (Rule 15.1 General Exception), the Chairman of The Overview and Scrutiny Committee had been informed.

Cabinet noted that the Report would normally be considered at Cabinet (Housing) Committee but had been brought forward to enable an urgent decision to be taken to allow the properties to be completed by 31 March 2016 (to meet a DCLG deadline for additional borrowing capacity awarded to the Council).

At the invitation of the Chairman, Councillor J Berry addressed Cabinet and, in summary, sought assurances that the rent level proposed for the new scheme would be open to review, particularly in the light of the findings of the Housing Rents Informal Policy Group (IPG) which were expected shortly. She expressed concern that the proposed rent level of 78% market rent was significantly higher than the average rent for local authority rented properties in the country.

Councillor Horrill thanked Councillor J Berry for her comments and stated that these could be taken account of during the discussions of the next Housing Rents IPG which was due to make its final report and recommendations to the Cabinet (Housing) Committee on 30 June 2015.

The Head of New Homes Delivery confirmed that the Council could decide to alter the current viability tests which set the rent level. In response to questions, he advised that there was a significant waiting list for homes in the Swanmore area and the houses would be built to Code Level 5 which would result in lower running costs for tenants.

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

RESOLVED:

1. That the Assistant Director (Chief Housing Officer) be authorised to enter into a design and build contract with Mapledean Developments to construct 2 new council houses at Springvale, Swanmore for the sum of £328,800.

2. That in accordance with Financial Procedure Rule 6.4, capital expenditure of up to £353,575 be approved.

11. **MINUTES OF CABINET (LOCAL PLAN) COMMITTEE HELD 30 MARCH 2015**

(Report CAB2693 refers)

Councillor Read highlighted that the minutes incorrectly referred to LLP1 and LLP2, instead of LPP1 and LPP2 throughout (abbreviations for Local Plan Part 1 and 2 respectively). Cabinet requested that the minutes be corrected accordingly.

During public participation, Imogen Dawson (Station Area Neighbourhood Group) addressed Cabinet and her comments are summarised below. She commended the Council for taking the time to engage with local residents during consultation on proposals for the Station area, but had some concerns about how the consultation had been undertaken in practice. In essence, she did not believe the summary of comments produced always adequately reflected the actual comments made. In addition, at the consultation meetings, some Council officers had interrupted residents and she considered that the notes taken had not always been a correct reflection of discussions. She suggested that future meetings, the public themselves take notes or are given the chance to review them before publication. Finally she queried when the next Cabinet (Local Plan) Committee would take place?

Councillor Godfrey thanked Ms Dawson for her contributions to the consultation process and stated that her comments would be passed on to the Local Plan Team. He had requested a summary of feedback from the events which would be made publically available. It was hoped that the first meeting of the Cabinet (Major Projects) Committee could take place in late June/early July to consider further the consultation on the Station Approach area.

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

RESOLVED:

That the minutes of the Cabinet (Local Plan) Committee held 30 March 2015 be received and the corrections outlined above be made (as attached as Appendix B).

12. **SILVER HILL – UPDATE (LESS EXEMPT APPENDICES)**

(Report CAB2695 refers)

Cabinet noted that the Report had not been made available for publication with the statutory deadline. The Chairman agreed to accept the item onto the agenda as a matter requiring urgent consideration to enable its contents to be considered by Cabinet prior to consideration at The Overview and Scrutiny Committee that evening and to enable a decision to be made within the deadlines set out in the Report.

The Chairman indicated that the report of the Independent Review by Claer Lloyd-Jones was not likely to be available until early September, and the actual date had yet to be confirmed. He emphasised that the only decisions for Cabinet to make at the current time were:

- 1) Whether to accept the offer of Silverhill Winchester No.1 Ltd (SHW1) to extend the long stop date from its current date of 1 June 2015;
- 2) To be satisfied as to the level and type of advice to be obtained by the Council to enable it to assess the submissions that had been made by SHW1 in relation to the 2004 Silver Hill Development Agreement as amended in 2009/10 (the 2004 Development Agreement).

The Head of Legal and Democratic Services introduced the two representatives from Berwin Leighton Paisner Solicitors (BLP): Tessa Kimber and Ros Nuttall.

The Head of Legal and Democratic Services stated that since the Report was published, SHW1 had advised that if the Council decision was delayed until 30 September it would require further time to assess information and consequentially had suggested that the Long Stop date be extended to 31 October 2015.

The Chief Executive reminded Cabinet of the resolution of Council on 1 April 2015 which had a number of elements:

- 1) The Council would continue to comply with its obligations under the 2004 Development Agreement (as this was not affected by the recent Judicial Review decision);
- 2) Subject to the above, no variations should be made to the Development Agreement until after the results of the Independent Review of the Silver Hill decision making was completed and its recommendations, if any, are acted upon.
- 3) Council had insisted on two external opinions of the viability assessments.

The Chief Executive highlighted the practical difficulties of the complying with 1 and 2 outlined above as no timeframe was set for the Independent Review and it was not expected to report before the end of the summer 2015.

The Chief Executive advised that a letter had been received the previous day from Solicitors acting on behalf of Councillor Gottlieb, the content of which would be dealt with in the exempt session of the meeting.

The Head of Legal and Democratic Services advised that the Judicial Review decision regarding the 2014 amendments did not quash the 2004 Development Agreement or the 2009 Planning Permission (the 2009 scheme) and SHW1 had now decided to progress the 2009 scheme. This required three outstanding conditions to be fulfilled before the scheme could become unconditional. In summary, these conditions required the Council to consider:

- 1) Approval of the provider of the affordable housing element of the scheme and the associated terms;
- 2) Approval of the Funder and terms for the funding agreement with that Funder;
- 3) Demonstration that the Financial Viability condition could be met (that the anticipated profit from the development was not less than 10% of anticipated Development Costs).

Further information on the requirements for each condition to be fulfilled was contained in Paragraph 2 of the Report.

The Head of Legal and Democratic Services explained that the Council had 15 working days to examine SHW1's submissions and either make a decision on the information supplied, or make a formal request to SHW1 to provide additional information. Once any such additional information was received, there was a further fixed period of 15 working days for the Council to assess and make a decision. Alternatively, Cabinet could decide to accept SHW1's offer to extend the long stop date.

One Member queried whether extending the long stop date could be regarded as a material variation to the Development Agreement. The Head of Legal and Democratic Services advised that legal advice on this matter would be discussed in the exempt session as it could be subject to further litigation.

In response to questions about the Independent Review, the Chief Executive reminded Members that some members had insisted that neither Officers nor Members should determine either the scope or timeframe, making its completion date hard to predict. However, the purpose of the review was to assist the Council in understanding why the Judicial Review decision had been reached and whether the Council might change any practices and procedures as a consequence. He did not believe the outcome of the Review could remove any of the existing obligations on the Council under the 2004 Development Agreement.

Ms Kimber (BLP) confirmed that the outcome of the Independent Review could not change the Council's contractual obligations under the 2004 Agreement.

In response to questions, the Head of Legal and Democratic Services advised that the risk of adhering to the current timetable involved the necessity to ensure the Council had all the information and advice in place in time to make a decision on the conditions to be fulfilled. If the long stop date was extended this reduced this risk by giving the Council more time, but introduced the risk of a legal challenge.

Cabinet noted that one of the key questions related to the scheme's viability and Members questioned what measures were in place to ensure the assessment was undertaken adequately.

The Head of Estates explained that a large amount of information would need to be considered, including the value of the residential units and commercial elements of the scheme. The 2009 scheme had a smaller area of retail units than the 2014 scheme, and also included a bus station and office accommodation, the values of all of which required assessment. The affordable housing element included 20 units for social rent and 80 shared equity units. The viability assessment would consider whether the pricing and market phasing of the shared equity units was realistic.

The Head of Estates advised that he had contacted a large number of firms regarding undertaking the viability assessment in order to ensure the two appointed were able to offer impartial advice. The Council had already engaged a large, international and very experienced, company to provide an independent assessment of viability. Negotiations were ongoing regarding the appointment of a second company, as requested by the Council. Both firms would be instructed to independently review the scheme viability in its entirety. He was confident that an assessment could be made within the stipulated timeframe, should the long stop date not be moved.

The Head of Estates stated that he had not seen a viability appraisal of the 2009 scheme showing a return of less than 10% and hence being unviable in accordance with the conditions in the Development Agreement. However the Head of Estates emphasised that a scheme could be regarded as being unviable for other reasons, including the lack of an investor willing to fund the development.

The Head of Estates reported that he understood that Stagecoach had now indicated that it would accept responsibility for running the bus station, even though that had not been their preferred position.

Cabinet queried how it could be sure about the reliability of the legal advice provided. The Head of Legal and Democratic Services stated that advice was sought from BLP and also from Leading Counsel on specific issues of significance raised. Ms Kimber confirmed that BLP had considerable relevant experience. The Chief Operating Officer emphasised that whatever advice was received, no guarantee could be given as to how any Court would decide a particular issue should there be a legal challenge. Given the complexities of the issues involved this was a significant risk for the Council to consider in making decisions.

Public Participation

Patrick Davies spoke during public participation and, in summary expressed disbelief that the developers were seeking to argue the 2009 scheme was viable when the opposite had been argued to support the 2014 variations. Although he welcomed the reintroduction of a bus station and affordable housing on site, he expressed concern about the Council continuing its involvement with Henderson and believed that the Council should instead begin the process again with a new developer. He questioned whether the affordable housing element would be deliverable at a cost which would enable it to be genuinely affordable to the proposed occupants.

Contributions from Non-Cabinet Members

At the invitation of the Chairman, Councillors Gottlieb, Burns, Thompson, Weir, Evans and Laming addressed Cabinet and their comments are summarised below.

Councillor Gottlieb stated that he did not oppose development of the Silver Hill site, but believed that the current concept and design were flawed and outdated. He believed this was because the development had never been properly marketed and consequentially the Council had not considered alternatives. The Judge in the Judicial Review had stated that open competition could have allowed other proposals to come forward. The Council's failure to properly procure was not a mistake and followed advice it had sought and the analysis undertaken for the Council by Deloitte had been subject to restraints put on it by the Council. Councillor Gottlieb stated that there was no need for any change to the long stop date and questioned why the Council should not seek to terminate the Development Agreement after 1 June. He also asked that financial information provided to the Council by Henderson as to viability be made available to him and other Councillors. There should also be full public disclosure, as far as possible. In conclusion, he stated that the 2009 scheme was even worse than the amended scheme proposed in 2014.

Councillor Gottlieb responded to questions from the Chairman about his involvement in litigation against the Council and in summary, stated that Henderson had an oral hearing regarding their appeal against the Judicial Review decision set for November 2015. If permission was granted at this hearing, the appeal would be heard some months later. He had instructed Dentons, his solicitors, to send the Council the letter dated 20 May 2015 (referred to above) in order to reflect how seriously he regarded the situation. He declined to comment on whether this letter indicated an intention to undertake a further legal challenge. However, he did say that he reserved his position to do so and would consider the position with his lawyers eg if the Council sought to extend the long stop date.

The Chief Operating Officer highlighted the unusual circumstances where two Councillors (Councillor Gottlieb and newly elected Councillor Burns) had been involved in some way in legal action against the Council. As a consequence

and to protect the position of the Council as a whole, it was proposed that those Councillors be permitted to remain at the start of the exempt session to make representations. But they should leave after doing so and before legal advice was given by the Council's officers or advisors. Councillor Gottlieb accepted that there would be a part of the exempt session when he would be expected to leave.

Councillor Burns emphasised that at the 2009 Compulsory Purchase Order (CPO) Inquiry at which she had taken part, Mr JAF Gillington (on behalf of London & Henley) had stated that the scheme was not viable. He also gave evidence to the High Court as part of the Judicial Review and confirmed that, in his view, both the 2009 scheme and the 2014 scheme were unviable. She was concerned that the Council was not receiving adequate advice on viability from its own advisors. She was also concerned that moving the long stop date could be regarded as a material variation to the Development Agreement and make the Council vulnerable to legal challenge, as she considered it would benefit the developer by giving extra time to achieve viability. She questioned whether the Council would be able to action the CPO on the basis of what she considered was an unlawful development agreement, even though the Agreement itself was still binding on the Council. In conclusion, she believed the Council should terminate the Development Agreement and put the scheme out to tender, which some people had said could be achieved within six months to enable the existing CPO to be implemented by March 2016. The issue of any potential costs claim by Henderson would need to be considered at that point eg in relation to the CPO. However, she did not think it could extend to the 2014 scheme costs as that scheme had been stopped as a consequence of the High Court decision.

In response to questions, Councillor Burns stated that she was not a formal legal advisor to Councillor Gottlieb and questioned whether she needed to withdraw from any part of the exempt session.

Councillor Thompson stated that the Council should seek to restore public confidence by being as open and transparent as possible. All decisions regarding Silver Hill should be made by full Council and the scrutiny process should have proper officer support, with additional opposition members on The Overview and Scrutiny Committee to enable Cabinet decisions to be properly challenged. She had concerns that the developer were now seeking to prove the 2009 scheme was viable when they had argued against this when promoting the 2014 amendments and requested that all Councillors be provided with the viability statement together with the two independent assessments. Finally she proposed that all three conditions should be considered by full Council.

In response, as former Leader, Councillor Pearson emphasised that the Liberal Democrat Group Leader had been invited to attend informal briefing meetings regarding Silver Hill, but had declined to do so.

In response, Councillor Weir stated that the Liberal Democrat Group had declined to participate in informal briefings partly because discussions were

not held in public. With regard to the Report, Councillor Weir welcomed the inclusion of the Risk Management Table at Appendix 1, but queried how some of the risk scores had been reached. She requested more information be provided before Council was required to make any future decision regarding the scheme.

The Corporate Director explained that risk scores were based on a scoring matrix, which did not always readily translate to include the additional political risks of decision-making. The Chief Finance Officer advised that the budget agreed in February 2015 took a prudent approach to the various uncertainties regarding the Silver Hill scheme.

Councillor Evans highlighted the current public perception that the Council had made incorrect decisions in relation to Silver Hill. However, she agreed with earlier statements by the Chief Operating Officer that no legal advice could provide absolute guarantees with regard to any possible High Court decision, and there should be better communication of this to the wider public. She also expressed some disappointment about the length of time before the Independent Review report.

The Chief Executive said that some Members had not wanted either officers or Members to control the terms of reference or programme for the Independent Review. The timing of the Review report would be influenced by the need for Claer Lloyd-Jones to consider the points made to her by those making submissions, and she had yet to confirm the final programme.

Councillor Laming believed that as a result of the Council decision referred to above, any decision to extend the long stop date should be made by full Council. He also concurred with concerns raised by other Councillors regarding the viability of the scheme and the public perception of the Council following recent events. He stated that the number of opposition members on The Overview and Scrutiny Committee should be increased to assist proper scrutiny.

The Chairman highlighted that the composition of The Overview and Scrutiny Committee was calculated according to political balance and the Constitution provided for it to be chaired by an Opposition Member.

Cabinet then moved into closed session to discuss the Exempt Appendices to Report CAB2695 (detail in exempt minute).

Cabinet then returned to open session to make the resolution outlined below.

During debate, some Cabinet Members considered that, in order to comply with the Council resolution to not make any decisions prior to the results of the Independent Review, the long stop date should be extended. However, the majority of Cabinet believed that, on the balance of points raised and the advice given above and during the exempt session, the long stop date should not be extended.

The Leader said that Cabinet should not overrule the Council decision by allowing an extension of time by extending the long stop date. If the timing provisions in the Development Agreement allowed, he would, if possible, consult full Council on the position on the affordable housing and funding conditions as well as the viability condition.

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

RESOLVED:

1. That the submission by Silverhill Winchester No. 1 Limited of their request for the approval of the terms on which the affordable housing condition and funding condition of the Silver Hill Development Agreement be met be noted.
2. That the submission by Silverhill Winchester No. 1 Limited of a financial statement which it says demonstrates that the viability condition of the Silver Hill Development agreement will be met be noted.
3. That the option provided by Silverhill Winchester No. 1 Limited to extend the timetable for the Council's response to their submissions to no later than 31 October 2015 provided that the Council similarly extends the Long Stop Date and agrees not to exercise any rights to terminate be noted.
4. That in the light of this report and the information contained in Exempt Appendix 3, the Long Stop Date be not extended;
5. That it be noted that, in view of the fact the Long Stop Date is not to be extended, it will be necessary to meet the timetable for considering SHW1's submissions as set out in the Development Agreement and that this will precede the report of the Independent Review;
6. That consideration of the Financial Viability condition be undertaken by Full Council in due course so it has the opportunity to make any comments to Cabinet before it decides how to proceed;
7. That the Council's approval of the terms of the Funding and Affordable Housing conditions be given by a decision of Cabinet, noting that in view of the straightforward nature of the information contained in those terms this decision may have to be taken by a special meeting of Cabinet.
8. That such land as is within the Council's ownership within the area shown coloured pink on the plan at Appendix 2 to the report be appropriated for planning purposes within the meaning of Part IX of the Town and Country Planning Act 1990.

9. That the Development Account position at 31 March 2015 be noted, as set out in Exempt Appendix 4 to the report.

13. **FUTURE ITEMS FOR CONSIDERATION**

RESOLVED:

That the list of future items, as set out in the Forward Plan for June 2015, be noted.

14. **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 Update – 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)
##	Victoria House Site – Tendering of Construction for Council Flats) Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. (Para 5 Schedule 12A refers)

15. **SILVER HILL – UPDATE (EXEMPT APPENDICES)**

(Report CAB2695 refers)

Cabinet considered the content of the exempt appendices which set out legal advice to the Council (detail in exempt minute).

In response to questions, the Chief Operating Officer advised that it was a Cabinet decision as to which Councillors it permitted to remain during the exempt discussion. Cabinet had expressed some concern regarding Councillor Gottlieb remaining, due to his previous legal action against the

Council and possible future action. In addition, Councillor Burns had had some involvement in the previous action too, although only in an informal capacity.

After some discussion, with the agreement of Cabinet, Councillors Gottlieb and Burns remained during the exempt session while Councillor Gottlieb made a presentation to Cabinet. Both Councillors agreed that they should leave immediately after this presentation.

For transparency, the points made by Councillor Gottlieb are set out in the open minute. He stated that the actions he had undertaken to date were because he believed them to be in the best interests of the Council. The action he was undertaking was in his role as a Councillor and he confirmed he had no interest as a developer. He suggested that the Council should approach his expert witness for an independent assessment of the viability of the scheme. This suggestion was not adopted by Cabinet. Councillor Gottlieb then questioned how the 2009 scheme could have been said to be unviable in the High Court hearing in January 2015, and how it could become viable now. He questioned comments made by Members to the effect that he had agreed at a previous meeting to produce a timetable of how an alternative development could be achieved, and indicated that it was not his understanding that he had agreed to do this.

Councillors Gottlieb and Burns then left the room and did not remain for Cabinet questions and/or Council Officer or BLP legal advice.

In exempt session Cabinet also supported a decision made by the Chief Executive under emergency powers so that a second consultant could be appointed to provide advice on viability, as requested by full Council.

16. **VICTORIA HOUSE SITE – TENDERING OF CONSTRUCTION FOR COUNCIL FLATS**

(Report CAB2692 refers)

Cabinet considered the above Report which set out proposals regarding the tendering of construction for Council flats on the Victoria House site, Winchester.

Cabinet agreed to the following for the reasons outlined in the Report.

RESOLVED:

1. That the use of the Westworks Framework referred to in the report be approved for the purposes of Contracts Procedure Rule 2.4 (b) (i).
2. That the Assistant Director (Chief Housing Officer) be authorised to procure the build works contract for the Victoria House project using the Westworks Framework, and that a report on the

outcome of the process be brought to a future Cabinet (Housing) Committee.

The meeting commenced at 10.00am and concluded at 3.10pm.

Portfolio	Leader – Finance & Corporate Policy	Service Delivery	Built Environment	Housing Services	Environment, Health and Wellbeing	Local Economy	Estates
Portfolio Holder	Stephen Godfrey	Vicki Weston	Mike Read	Caroline Horrill	Frank Pearson	James Byrnes	Steve Miller
Lead Officer	Andy Hickman/Alexis Garlick	Simon Eden/Stephen Whetnall	Simon Finch	Richard Botham	Eloise Appleby/Simon Finch	Eloise Appleby	Kevin Warren
Responsible Teams/Head of Team	<p>Policy and Projects (Andy Hickman)</p> <p>Financial Services (Alexis Garlick)</p> <p>Revenues & Benefits (Jane Petty/Terri Horner)</p> <p>IMT (Tony Fawcett)</p>	<p>Organisational Development (Alison Gavin)</p> <p>Legal Services & Democratic Services (Howard Bone)</p> <p>Corporate Communications (Martin O'Neill)</p> <p>Business Management (tbc)</p>	<p>Development Management (Julie Pinnock)</p> <p>Strategic Planning (Steve Opacic)</p> <p>Building Control (Chris Griffith-Jones)</p> <p>Historic Environment (Alison Davidson)</p>	<p>Housing Services (Amber Russell, Andrew Kingston, Steve Tong)</p> <p>New Homes Delivery (Andrew Palmer)</p>	<p>Environmental Health & Licensing (Dave Ingram)</p> <p>Environment Contract (Rob Heathcock)</p> <p>Landscape & Open Spaces (Sue Croker)</p> <p>Street Care (Dave Brockway)</p> <p>Health & Wellbeing (Lorraine Ronan)</p> <p>Community Safety & Neighbourhood Services (Sandra Tuddenham)</p> <p>Traffic Transport & Engineering (tbc)</p> <p>Sport & Physical Activity (Mandy Ford)</p>	<p>Economy & Arts (Kate Cloud)</p> <p>Tourism (Ellen Simpson)</p> <p>Parking (Richard Hein)</p> <p>Community Grants (Melissa Fletcher)</p>	<p>Estates (Kevin Warren)</p>