

CABINET – SPECIAL MEETING

10 March 2016

Attendance:

Councillor Godfrey -	<i>Leader (Chairman)</i>
Councillor Weston -	<i>Deputy Leader and Portfolio Holder for Service Delivery (Vice-Chairman in the Chair) (P)</i>
Councillor Read -	<i>Portfolio Holder for Built Environment (P)</i>
Councillor Byrnes -	<i>Portfolio Holder for Local Economy</i>
Councillor Horrill -	<i>Portfolio Holder for Housing Services</i>
Councillor Miller -	<i>Portfolio Holder for Estates</i>
Councillor Pearson -	<i>Portfolio Holder for Environment, Health & Wellbeing (P)</i>
Councillor Burns -	<i>Temporary Cabinet Member without Portfolio (P)</i>

Others in attendance who addressed the meeting:

Councillors Gottlieb, Phillips and Thompson

Others in attendance who did not address the meeting:

Councillors J Berry, Simon Cook, Laming, Izard, Rutter and Scott
Mr D Light (TACT)

1. DISCLOSURE OF INTERESTS

Councillor Burns declared a personal (but not prejudicial) interest in respect of Report CAB2784 as a member of the Winchester Deserves Better campaign group. She remained in the room, spoke and voted thereon.

Councillor Gottlieb also declared a personal (but not prejudicial) interest in respect of Report CAB2784 as a member of the Winchester Deserves Better Campaign group. He remained in the room during the open session only and spoke at the invitation of the Chairman, as summarised below.

2. MEMBERSHIP OF CABINET COMMITTEES ETC

Cabinet noted that at the Council meeting on 25 February 2016, the Leader had announced the proposed appointment of an Informal Policy Group to coordinate the Council's response to the Claer Lloyd-Jones' Independent Review of Silver Hill Report. Cabinet was asked to approve the membership as below:

Councillors: Godfrey, Weston, Simon Cook, Cutler and Thompson
Officers: To be confirmed

In addition, Cabinet was asked to agree that Councillor Byrnes replace Councillor Humby as the Council's representative on the Winchester Business Improvement District (BID) Board.

Cabinet agreed to the following for the reasons outlined above.

RESOLVED:

1. That the appointment of an Independent Review Report of Silver Hill Informal Policy Group be confirmed with membership as set out below:
Councillors: Godfrey, Weston, Simon Cook, Cutler and Thompson
Officers: To be confirmed

2. That Councillor Byrnes replace Councillor Humby as the Council's representative on the Winchester BID Board for the remainder of the 2015/16 Municipal Year.

3. **MINUTES**

RESOLVED:

That the minutes of the previous meetings held on 10 February and 18 February 2016, less exempt minutes, be approved and adopted.

4. **PUBLIC PARTICIPATION**

Councillor Thompson expressed concern and disappointment at recent reports that another firm of architects had withdrawn from the Station Approach design competition, leaving only two firms remaining. The Liberal Democrat group had previously queried whether the proposed competitive dialogue process was appropriate and she questioned whether a design competition between two firms offered enough choice. She asked what steps the Council was taking to ascertain why three firms overall had withdrawn from the process.

The Head of Estates noted concerns but explained that the process had always allowed for the prospect of firms withdrawing. The firms that had withdrawn had all been asked to provide reasons for their decisions. In summary, shortly after applying, the first firm to withdraw had been successful in a bid for another major project and consequently did not have the necessary resources to fund both. The second firm had concerns about their ability to secure the professional indemnity insurance required (despite having the same as other firms in the process). The third firm chose not to develop their bid and, in his opinion, had not been adequately resourced to enable this. He commented that as a successful firm they were able to be selective over which projects they undertook. For any future projects, the Council might have to consider increasing the honorarium it offered (it was estimated that

the firms involved had been required to undertake work to an approximate value of £100,000 in preparations) and also restricting future procurements to no more than three parties.

The Head of Estates emphasised that the competitive dialogue process with the two remaining firms had taken place and he believed the work produced was of a high quality and offered two alternative schemes which were both financially viable.

5. **LEADER AND PORTFOLIO HOLDER ANNOUNCEMENTS**

Cabinet noted that due to the Leader and a number of other Cabinet Members being unavailable for a period of time including this meeting, it had been agreed that Councillor Burns be appointed as a Cabinet Member without portfolio for the period from 29 February to 20 March 2016 (PHD678 refers).

Councillor Weston reported that the Cabinet meeting scheduled for 16 March 2016 had been cancelled.

Councillor Weston announced that as had been reported to the previous Cabinet on 10 February 2016, the Council had been shortlisted in two separate categories for national Housing Awards: Outstanding Local Authority of the year; and Outstanding New Build Programme of the year. As part of the judging process, officers including the Chief Executive and Assistant Director (Chief Housing Officer) had been interviewed and the results would be announced at a ceremony on 26 April 2016. The Chief Executive advised that the work of the Housing Team and the Council as a whole had been recognised, together with the level of cross-party support from Members.

Councillor Weston provided an update on the latest situation with regard to proposals for devolution in the region. In recent days, some councils in the South of Hampshire have been discussing with Her Majesty's Treasury the case for a Combined Authority being set up, to encompass the Solent area and it was believed that an announcement might be made next week on the matter. That proposal stemmed from a meeting hosted by the Treasury on 26 February 2016 to which Winchester was not invited. However, the City Council had subsequently been invited to become part of a Solent "Devolution Deal". Cabinet had always been clear that it will only be part of any arrangement for devolution of powers and responsibilities if it was in the best interests of the whole District and it was not yet convinced this was the case with the current deal proposed. However, the Council had asked to be part of the ongoing discussions as the framework for a deal was expanded upon. Members will, in due course, want a full public consultation on the details of any proposed deal, and it will be for Council to decide how they wish to proceed.

6. **JUDICIAL REVIEW BY SILVER HILL WINCHESTER NO.1 LIMITED (LESS EXEMPT APPENDICES)**
(Report CAB2784 refers)

Cabinet noted that the Report had not been notified for inclusion on the agenda within the statutory deadline. The Chairman agreed to accept the item onto the agenda as a matter requiring urgent consideration to enable a decision to be taken on what action was required in response to the threat of legal proceedings.

In addition, under the Council Constitution Access to Information Procedure Rules (Rule 15 General Exception and Rule 16.1 – Special Urgency), this was a key decision which was not included in the Forward Plan for March 2016. It was necessary to take it as an urgent item and under this procedure the Chairman of The Overview and Scrutiny Committee had agreed to the matter being considered at this meeting.

The Head of Legal and Democratic Services stated that Appendix 1 to the Report contained a letter from Hogan Lovells, the solicitors acting for the developer Silverhill Winchester No.1 Limited (SW1), indicating that it intended to bring judicial review proceedings to challenge the Council's decision to terminate the Development Agreement (DA). In summary, the letter alleged that the Council had acted unreasonably in not allowing SW1 more time to fulfil the conditions under the DA and to hear the appeal against the previous judicial review decision (brought by Councillor Gottlieb). It also asked the Council to serve notice to treat under the Compulsory Purchase Order (CPO) procedures. Leading Counsel advice had been sought and a full note of this was provided to Members in exempt Appendix 3 to the Report. Leading Counsel had prepared a response to the letter which had now been served on SW1's solicitors (contained as Appendix 2 to the Report).

At the invitation of the Chairman, Councillor Gottlieb addressed Cabinet and in summary wished it to be noted that the Hogan Lovells letter (as contained as Appendix 1 to the Report) made a number of statements and inferences about him which he did not accept. He did not go into any details but stated that if SW1 decided to proceed for leave to review, he would be represented as an interested party and these statements would be contested by himself and his legal team.

In response to questions regarding Paragraphs 6.7 to 6.15 of the Hogan Lovells letter at Appendix 1 to the Report, the Head of Legal and Democratic Services advised that whatever the result of the appeal against the original judicial review, the losing party was likely to appeal to the Supreme Court. The judgement might also be deferred. As a result, it was possible that a final decision would not be known until late in 2017 (up to 18 months after the appeal hearing in May 2016). With regard to points made in the letter regarding the European Convention on Human Rights, the Head of Legal and Democratic Services believed that the Council had given this appropriate consideration in balancing the different rights of parties involved (such as

those of the developer and landowners) and had reached a reasonable conclusion.

The Head of Legal and Democratic Services confirmed that all three of the conditions that were required to be met before the DA went unconditional were outstanding. In response to questions regarding the Works Commencement Date (WCD) and the “Whitley principle”, he advised that this principle was derived from a case concerning the implementation of a planning permission, and was therefore a planning concept not directly relevant to decisions to be made by Cabinet. However, one ground the Council had given for terminating the DA was that the WCD had not occurred prior to 1 June 2015.

With regard to the request of SW1 that the Council serve notices to treat, one Member queried whether the Council would be legally entitled to do so under the terms of the DA. The Head of Legal and Democratic Services stated that there was the potential for such a decision to be challenged.

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

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

The Chairman emphasised that the Council had made a carefully considered decision to terminate the DA, based on a series of reviews and Counsel could not see any reason that prevented the right to terminate being exercised or which could amount to the Council having made an irrational decision in public law terms. Clause 21.4 of the DA provided the Council with the right to terminate. In addition, Counsel’s advice was that it was “very dubious” for a public authority to serving notices to treat simply to preserve SW1’s position.

The 22 December 2015 letter from SW1 stated that the 2014 scheme changes were not enough and that they would be looking to make further changes to the 2014 scheme, which were as yet unidentified. It was clear that SW1 did not want to build out the 2009 scheme, even if the planning permission had been preserved. SW1 had said that they wanted to build the 2014 scheme with variations, but had not said what variations would be required and the Council did not know whether these would be acceptable. In addition, advice had been received that it was highly likely the appeal against the Judicial Review decision would be considered by the Supreme Court which could take a further 18 months. The Council had worked consistently with SW1 since 2009 by allowing it more time to fulfil the conditions in the DA and, following the judicial review decision, working with it to implement the 2009 scheme. However, the Council had now reasonably concluded that it should terminate the DA, start again and plan for the future of Winchester.

Cabinet agreed to the following for the reasons set out above, in the exempt minute and as outlined in the Report.

RESOLVED:

1. That the decision taken on 10 February 2016 to serve notice of termination of the Silver Hill Development Agreement dated 22 December 2004, on the grounds that 1) the Unconditional Date and 2) the Works Commencement Date (both as defined in the Development Agreement) had not occurred by 1 June 2015, be confirmed.

2. That the decision taken on 10 February 2016, that no further action be taken to implement the CPO in the event that the Development Agreement is terminated, be also confirmed.

3. That the Head of Legal and Democratic Services be authorised to defend any judicial review proceedings that may be brought against the Council by Silverhill Winchester No. 1 Limited in respect of the decision to terminate the Development Agreement.

7. **REQUEST FOR GUILDHALL STAFF RESTRUCTURE INCLUDING ADDITIONAL POSTS (LESS EXEMPT APPENDIX)**

(Report PER284 refers)

The Head of Estates introduced the Report and outlined the reasons for the proposed changes to staff structure. This included a desire to broaden the range of entertainment offered and increase focus on wedding services. He emphasised that the Guildhall was an old building with a consequentially high level of maintenance costs.

At the invitation of the Chairman, Councillor Phillips (Chairman of Personnel Committee) stated that at its meeting on 7 March 2016 the Committee had supported the proposals contained within the Report. He highlighted that customer satisfaction of the services provided by the Guildhall was improving and he commended the efforts of staff. However, changes to staffing structures were required to facilitate on-going demands.

The Chief Executive stated that the Report was also supported by the Portfolio Holder for Estates.

The Head of Estates responded to a number of detailed questions regarding the proposed staffing. He confirmed that he would wish to introduce an element of performance related pay. The Chief Executive advised that the matter of Council-wide employee pay and benefits was due to be considered and this could include whether it would be appropriate to offer awards for team performance, as opposed to individuals.

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

RESOLVED:

That the increased Employee budget requirement of £55,888 in 2016/17 be noted. A growth bid of £44,000 has been made in the budget setting report (CAB2763 Revised) which went to Council for approval on the 25 February 2016, with the additional £11,888 to be met from increased net event income detailed in the report. The increase of £55,888 reflects all known costs per employee as per Exempt Appendix 2 to the Report.

8. **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>
##	Exempt minutes of the previous meetings held 10 February and 18 February 2016) Information relating to the financial or business affairs of any particular person (including the authority holding that information). (Para 3 Schedule 12A refers)
##	Exempt minutes of the previous meetings held 10 February and 18 February 2016) Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. (Para 5 Schedule 12A refers)
##	Judicial Review by Silver Hill Winchester No.1 Limited (exempt appendices))
##	Request for Guildhall Staff Restructure including Additional Posts (exempt appendix)) Information relating to any individual. (Para 1 Schedule 12A refers)) Information which is likely to reveal the identity of an

) individual. (Para 2 Schedule
) 12A refers)
)
) Information relating to any
) consultations or negotiations, or
) contemplated consultations or
) negotiations, in connection with
) any labour relations matter
) arising between the authority or
) a Minister of the Crown and
) employees of, or office holders
) under, the authority. (Para 4
) Schedule 12A refers)

9. **EXEMPT MINUTES**

RESOLVED:

That the exempt minutes of the previous meetings held on 10 February and 18 February 2016, be approved and adopted

10. **REQUEST FOR GUILDHALL STAFF RESTRUCTURE INCLUDING ADDITIONAL POSTS (EXEMPT APPENDIX)**

(Report PER284 refers)

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

RESOLVED:

That the information in the exempt appendix be noted.

11. **JUDICIAL REVIEW BY SILVER HILL WINCHESTER NO.1 LIMITED (EXEMPT APPENDIX)**

(Report CAB2784 refers)

Cabinet noted that the Report had not been notified for inclusion on the agenda within the statutory deadline. The Chairman agreed to accept the item onto the agenda as a matter requiring urgent consideration to enable a decision to be taken on what action was required in response to the threat of legal proceedings.

In addition, under the Council Constitution Access to Information Procedure Rules (Rule 15 General Exception and Rule 16.1 – Special Urgency), this was a key decision which was not included in the Forward Plan for March 2016. It was necessary to take it as an urgent item and under this procedure the Chairman of The Overview and Scrutiny Committee had agreed to the matter being considered at this meeting.

Cabinet considered the contents of the exempt appendix which contained legal advice from Leading Counsel (detail in exempt minute).

The meeting commenced at 10.00am and concluded at 11.10am