

**THE OVERVIEW AND SCRUTINY COMMITTEE**

**27 October 2014**

Attendance:

Councillors:

Pines (Chairman) (P)

Byrnes (P)  
Cook (P)  
Evans  
Gemmell (P)  
Learney (P)

Power (P)  
Sanders (P)  
Stallard (P)  
Wright (P)

Deputy Members

Councillor Hiscock (Standing Deputy for Councillor Evans)

Others in attendance who addressed the meeting:

Councillors Humby (Leader of the Council), Godfrey (Portfolio Holder for Finance and Organisational Development), Tait (Portfolio Holder for Housing Services), Weston (Portfolio Holder for Built Environment), Hutchison and Gottlieb.

Others in attendance who did not address the meeting:

Councillors Miller (Portfolio Holder for Business Services), Southgate (Portfolio Holder for Communities and Transport), Bodtger and J Berry.

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1. **MEMBERSHIP OF SUB-COMMITTEES**

The Chief Operating Officer pointed out that as Portfolio Holders were unable to be appointed to scrutiny bodies, so could only attend ISG meetings to respond to questions if invited to do so.

RESOLVED:

(a) That Councillor Southgate replace Councillor Warwick as an invited ward member at the Flooding Informal Scrutiny Group.

(b) That no changes be made to the appointed deputies on the WCC/EHDC Environment Services Joint Scrutiny Committee.

## 2. **DISCLOSURE OF INTERESTS**

Councillor Stallard declared a disclosable pecuniary interest in respect of agenda items due to her role as a Hampshire County Councillor. However, as there was no material conflict of interest, she 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 Stallard also declared a personal interest with regard to Report OS112 River Park Leisure Centre: Public Representation, as she was the relevant Portfolio Holder during part of the period likely to be discussed. Councillor Stallard advised that she had decided that she would therefore withdraw from the room during consideration of the item. Members of the Committee indicated that they did not need her to remain to answer any questions. Councillors Learney and Hiscock also declared personal interests with regard to Report OS112 River Park Leisure Centre: Public Representation, as the Leader of the Council and a member of the Cabinet respectively during part of the period likely to be discussed. Both Councillors advised that they would withdraw from the room during the Committee's consideration of the item following the deputations and the officer presentation, unless the Committee asked them to remain to respond to any questions. The Committee indicated that they had no questions of the two Members, who then left the room.

Councillor Wright declared a personal, but not prejudicial interest, due to his links with Age Concern, in relation to the Extra Care Scheme proposed for Chesil Street - Report OS110 Appendix 1 refers. He remained in the room, participated in the discussion, and voted upon the recommendations in the Report.

## 3. **CHAIRMAN'S ANNOUNCEMENTS**

The Chairman announced that the Flooding Informal Scrutiny Group had recently held its second meeting in Bishops Waltham and this had been well attended by representatives from villages and rural communities.

## 4. **MINUTES**

RESOLVED:

That the minutes of the previous meeting of the Committee held on 15 September 2014, be approved and adopted.

## 5. **PUBLIC PARTICIPATION**

Mr Wilson and Councillors Hutchison and Gottlieb addressed the Committee with regard to Report OS112 River Park Leisure Centre: Public Representation and the points that they raised are summarised at the relevant point of the agenda.

6. **RECOMMENDATIONS OF THE FUEL POVERTY REDUCTION INFORMAL SCRUTINY GROUP**

(Report OS108 refers)

As Chairman of the Informal Scrutiny Group (ISG), Councillor Power, drew Members' attention to the various initiatives already in existence with regard to fuel poverty reduction measures. These included both high and low cost interventions.

The Chairman advised that the Portfolio Holder for Environment, Health and Wellbeing had passed on her thanks to the Group for its work and had indicated that she was fundamentally supportive of its recommendations.

The Committee agreed that as membership of the ISG had not been included in its Report (which was normally the case), they should be recorded in the minutes – Councillors Power (Chair), J Berry, Bodtger, Cutler, Hutchison, Pearson and Weir. The Committee recorded its thanks to these Members.

**RESOLVED:**

That the following be recommended to Portfolio Holder for the Environment, Health & Wellbeing for approval (through the Portfolio Holder Decision Notice scheme):

1. That funds be deployed to support the delivery of Hampshire County Council's 'Hitting the Cold Spots' and WinACC's 'Home Energy Advice Resource' - complementary schemes that signpost, support and offer emergency assistance to residents living in fuel poverty. This includes the deployment of £55,204 in 2014-15 and £59,148 in 2015-16 for both schemes.

2. That the forthcoming Energy Strategy for Council-owned properties prioritises fuel-poor households (SAP rating E, F or G and low household income) for energy efficient enhancements. The strategy must provide a cost benefit analysis on fuel efficient technologies, which can be used as guidance for private homeowners/tenants and landlords across the District.

3. That Housing Services continue to proactively introduce and pilot fuel efficient technologies, and subsequently acquire the necessary expertise to identify which technology is best suited to the property type and household make-up.

4. That in support of the Private Sector Housing stock condition survey £4,000 be allocated to the survey costs required to generate strategic fuel poverty data for the District, and the remaining funds (c.

£1,600) be reserved for targeting and directing those households identified as fuel poor to the services of Hitting the Cold Spots and the Home Energy Advice Resource.

5. That the Housing Services' leaflet 'Keep your home free from Condensation, Damp and Mould' be reviewed by the TACT readers panel to ensure the effectiveness of ventilation alongside heating is highlighted, and then used to raise further awareness amongst Council tenants.

6. That the Council actively seeks to participate in appropriate and significant networks to learn and share best practice in this area.

7. **PERFORMANCE MONITORING UPDATE – PORTFOLIO PLANS MID YEAR 2014/15**

(Report OS110 refers)

The Committee noted that the Report contained mid year performance information for the Housing Services, Built Environment and Finance & Organisational Development Portfolio Plans.

In response to questions, Councillor Tait explained that further to the reduction of the Hampshire County Council Supporting People Budget, there would need to be some redistribution and rebalancing within the Housing Revenue Account (HRA). Some costs would also be passed onto tenants, however these were comparatively small. The need for redundancies would, regrettably, remain. With regard to Universal Credit, he drew Members' attention to the proactive work undertaken in preparation for the changes. However, to date, its impact had not seen any rise in rent arrears.

Councillor Weston confirmed that as the site was located within a conservation area, the Council's Historic Environment Team were being consulted on the proposals for new Extra Care facilities in Chesil Street on the Council owned car park. Councillor Tait confirmed that the proposed height of the Scheme was to be reduced with a consequential reduction in the number of units from 58 to 52.

Councillor Weston indicated that the current workload of the Historic Environment Team, including the Council's major projects, had affected progress on the St Maurice's Covert Scheme and other City Centre initiatives. It was also agreed that Members (especially those representing rural communities) be advised which planning officers were the Rural Planning Advisers for the North and South of the District.

Councillor Godfrey confirmed that he was looking to further develop the Council's existing Workforce Strategy to ensure that the organisation continued to make the best use of its staff. He also reported on the considerable savings achieved

from the Council's joint IMT contract arrangements, which included sharing infrastructure and so reducing the impact from any significant IT failure.

During debate, Councillor Godfrey drew attention to the various opportunities for Members to discuss in detail the Council's Capital Programme. This also included the consideration of associated expenditure on projects, both before project approval and after implementation at Outturn.

Councillor Humby was in agreement that some major projects were likely to benefit from additional in-depth discussion. He supported a proposal for more opportunity for cross-party analysis of proposals coming forward and for the monitoring of progress. He suggested that a new Cabinet (Major Projects) Sub-Committee could provide this. Invited representatives from backbench Members would be non-voting, but would have an opportunity for input, as was the case for other Cabinet Sub-Committees.

RESOLVED:

1. That the performance information contained in the Report be noted.
2. That the Leader give further consideration to establishing a Cabinet (Major Projects) Sub-Committee.

8. **ANNUAL REVIEW OF INFORMAL SCRUTINY GROUP RECOMMENDATIONS**  
(Report OS109 refers)

The Head of Policy advised that the rolling list of Informal Scrutiny Group (ISG) topics would commence from December.

During discussion of the Report's Appendix, the Chief Executive suggested that a good measure of ISG's success in general was the indication that the majority of their Recommendations were generally implemented.

RESOLVED:

1. That progress against the implementation of the recommendations of the Informal Scrutiny Groups listed in Paragraph 1.2 of the Report be noted.
2. That a rolling list of potential Informal Scrutiny Group topics be coordinated by the Head of Policy, replacing the current system of appointing batches each year.

9. **MEDIUM TERM FINANCIAL STRATEGY 2015/16 TO 2019/20**  
(Report CAB2606 refers)

Councillor Godfrey introduced the Report and in particular drew attention to the Council's main income and expenditure as set out in Section 3 of the Strategy (Appendix 1) on page 4. He emphasised that there was a need have regard to the budget deficit forecasts looking ahead to 2019/20 and accordingly manage the Council's income, impact on revenue from major capital projects, employee costs and risks etc.

During discussion, the Chief Finance Officer explained that the Treasury Management Strategy was a key part in the process to ensure that there was sufficient working capital going forward for the Council's major projects. Councillor Godfrey reiterated that several projects remained aspirational at this time (Abbey Mill Hydro Electric, Station Approach and River Park Leisure Centre, for example) until such time as specific business cases had been agreed and associated expenditure identified.

Further to a question, the Chief Finance Officer also explained that the process shown for indicative projections for the General Fund as set out in Appendix C was the standard approach for the Council.

With regard to car parking revenue, the Chief Executive acknowledged that a number of changes were proposed in the future which were likely to impact in this area; however these would be looked at in the context of the Car Parking Strategy. This document was looking at modelling anticipated changes and their likely revenue impact. Members recognised that, were spaces to be lost, then the impact would need to be considered, and they may need replacing..

During debate, the Committee highlighted the risk of potential change in Government policy meant that the New Homes Bonus was likely to be unsustainable as a source of income and therefore should not be relied upon in the future, as it could otherwise potentially impact on the Council's budget should it be significantly reduced.

**RESOLVED:**

1. That the draft Medium Term Financial Strategy be noted and that the Portfolio Holder for Finance & Organisational Development have regard to the comments of the Committee with regard to the risk of the New Homes Bonus as an unsustainable source of income in the future to the Council.

2. That the supplementary estimates for 2014/15 over £100,000, being the Land Charges costs at para.6.2 and the Trade Waste refunds at para. 6.3 (m) of the Report, be not called in for review.

3. That the General Fund Revised Estimates (Revenue and Capital) for 2014/15 be noted.

10. **SCRUTINY WORK PROGRAMME AND NOVEMBER 2014 FORWARD PLAN**  
(Report OS111 refers)

RESOLVED:

That the Scrutiny Work Programme and Forward Plan for November 2014 be noted.

11. **RIVER PARK LEISURE CENTRE INFORMAL SCRUTINY GROUP – INTERIM REPORT**  
(Report OS113 refers)

The Committee noted that the Report 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 allow the Committee to consider the progress of the scrutiny review in a timely fashion.

The Chairman of the Informal Scrutiny Group (ISG) Councillor Wright, introduced the Report and highlighted that the ISG were clarifying various aspects of the options under consideration before it was able report its final recommendations.

RESOLVED:

That the Interim Report of the River Park Leisure Centre Informal Scrutiny Group be noted.

12. **RIVER PARK LEISURE CENTRE: PUBLIC REPRESENTATION (LESS EXEMPT APPENDICES)**  
(Report OS112 refers)

The Chairman welcomed to the meeting Mr Wilson, in addition to Councillors Hutchison and Gottlieb who had indicated that they wished to address the Committee with regard to this item.

Following discussion, the Chairman agreed that the matters related to the allegations raised by an elected Member be discussed in detail in exempt session. Therefore, debate and discussion of the Chief Executive's Report on paragraph three on page 11 would take place in the exempt session.

Mr Wilson highlighted that the matters raised in his original representation to the Committee on 20 January 2014 had yet to be resolved to his satisfaction. He stated that relationships with contractors should be one of mutual benefit and he was concerned that in this instance, there was too much emphasis on benefits to the contractor, DC Leisure.

Mr Wilson highlighted that he considered that the Chief Executive had disregarded too much information in his investigatory report. In addition he was concerned that the Information Commissioner had had to remind the Council of its obligations of placing matters in the public domain within the statutory deadline following formal Freedom of Information requests. Mr Wilson also drew Members' attention that there had been no formal tender for the contract for the running of the Leisure Centre since 1992 and that in his view this was against European Union procurement rules. Since that time, Mr Wilson considered that the overall financial benefit to the Council was negligible and contract performance monitoring processes not properly undertaken. The contractor had allowed the leisure centre to physically deteriorate, ultimately to their own financial benefit. Also during this time, questions of the conduct of officers had been raised, as well as the appropriateness of information provided to Councillors. In conclusion, Mr Wilson urged for there to be an external and independent investigation due to potential financial impropriety and maladministration.

In response, the Chief Executive drew attention that, as Head of Paid Service at the Council, it was his job to undertake a thorough investigation whilst remaining objective and impartial. It was for Members to decide whether a further investigation was merited if they felt his investigation was inadequate.

In summary, he pointed out that EU or UK legislation allowed for a contract to be extended. The 2005 extension was made to recompense the contractor for revenue lost during an extended closure period for renovation works which had not been foreseen in earlier contract negotiations, and was, therefore, a reasonable arrangement which benefitted the Council financially. In 2009, Counsel's advice was clear in saying that a further extension to 2023 was permissible and this was articulated to Members when they made the decision to extend the contract. Savings to be realised had also been demonstrated. Members had made the decisions, taking account of value for money implications, on each occasion. With regard to changes to the owning company of DC Leisure (Places for People) in 2012 and discussions around that time: these had not made any commitment for DC Leisure to be given a DBOM contract – to design, build operate and manage a newly built facility. With regard to accusations of misleading information being provided to Councillors, the Chief Executive reiterated that the officer reports had drawn heavily on third party advice. The professionalism and integrity of officers was also undoubted throughout the period. He did not agree information had been presented in a misleading manner.

The Chief Executive referred to the recent Internal Audit Investigation. This had pointed out that improved clarity between the internal management arrangements with regard to the facility (i.e. between the Sports & Recreation and the Estates teams) was recommended, as were refinements to performance management information (such as footfall etc). They also recommended further



steps be taken to record decisions on the allocation of income share which was re-invested in services provided at RPLC. The Internal Audit Report raised a number of questions about contract management, which will be reported separately to the Committee. However, the Chief Executive concluded that none of these affected the conclusions of his investigation. The Chief Executive also drew to the Committee's attention that information relating to income from the contract (as referred to in paragraph 1.4 on page 3 of the Chief Executive's Report) would be presented along with the Internal Auditor's report to the Audit Committee and a future meeting of this Committee.

With regard to Mr Wilson's claims of disproportionate benefit to DC Leisure from the extension of the contract, the Chief Executive disagreed that this was the case and said that the City Council had also benefited in value for money terms from the arrangements.

The Chief Executive refuted Mr Wilson's claims that the Council had paid too much on the operation of the Centre (£13m over the years). This assertion was based upon a claim that DC Leisure had a full repairing lease from the Council. The Chief Executive pointed out that this was not the case and the Council had, under the original contract, retained responsibility for major capital costs for repairs, rates, insurance etc. They also had to meet the cost of retaining staff to manage the contract. None of this was unusual, and explained why the Council continued to incur costs over the period of the contract. The subsequent LCP which provided for a reimbursement of Business Rates was lawful.

With regard to the Information Commissioner's contact with the Council, this was once with regard to some information not supplied within the 20 day period (mainly due to the amount of detailed information required) and also with regard to a further request to review redactions made to information previously supplied. Outstanding request would be dealt with as soon as possible.

At the invitation of the Chairman, Councillor Hutchison raised some general points with regard to this agenda item on the previous item - River Park Leisure Centre Informal Scrutiny Group – Interim Report (Report OS113 refers). He suggested that a pattern had emerged with regard to all the Council's recent major projects, which was of concern. Councillor Hutchison explained that there was a need for maximum transparency and opportunity for public debate in this work through exemplar public engagement which would, in turn, instil public trust. He referred to the RPLC Reference Group which was not a public meeting and reminded Members that the facility had received much public investment over the years from its use. Councillor Hutchison advised that the Council needed to work in partnership to ensure the best decision for the future of the facility; for example discuss options with the University and also Fit for the Future as they were organisations which had specialist expertise in the field.

At the invitation of the Chairman, Councillor Gottlieb commended the public interest in the matter which had drawn this to the attention of Members and had

necessitated the investigation undertaken. He highlighted deviation from normal practice when the contract was extended several times since it was first tendered in 1992. Councillor Gottlieb said that the Council had spent £13m over the years on the operation of the Centre but suggested that the contractor had achieved good income from the facility of about £500,000 per annum. Consequently, a comprehensive independent enquiry was appropriate as officers' involvement throughout the process had been criticised. To do anything other than hold an independent enquiry would send out the wrong message to the public. There was also a need to see all related documentation as requested, including that related to any compensation to DC Leisure that may become due to them if their contract was ended and claims that a DBOM contract had been entered into with DC Leisure. An enquiry would also demonstrate whether third party professional advice was clear and whether this had been appropriately relied upon by officers. Did the outcome reflect a good or bad commercial decision?

The Chief Executive responded to the matters raised by Councillors Hutchison and Gottlieb in their presentations. He acknowledged the need for good public engagement in major projects in general and highlighted the success of that undertaken by the Council for Local Plan Parts 1 and 2. With regard to re-tendering for contracts, he highlighted that a judgement had to be made in some cases with regard to value-for-money, alongside advice on legality. This information was presented to Councillors in making decisions whether to re-tender the contract and Members had made the decisions.

He drew attention to the Capita Symonds report that highlighted other Local Authorities having agreed to contract extensions: all had made their own judgement on whether to break relationships with their contractors and to go to market. The Chief Executive also said that it was usual for a Council to have costs associated with a contract, including those related to running the client side. It was also usual for a contract to be profitable for a third party contractor and also that overall benefits for users were demonstrable. He concluded that he had found no evidence of any lack of integrity or professionalism in the involvement of officers throughout the process.

The Committee asked a number of detailed questions of the content of the Chief Executive's Report and also related to the matters raised during the representations made to the Committee by Mr Wilson and Councillors Hutchison and Gottlieb.

With regard to the exchange of letters with DCL when changes were made in their legal structure, the Chief Executive clarified that the previous Leader of the Council had stated that he would not wish for the Council to be automatically locked into an arrangement whereby DC Leisure be required to manage a newly built facility. Accordingly, the option of discussing and seeking to agree terms, with an option of ending the contract if agreement could not reasonably be reached, had been agreed in 2012 when the Council notified the contractor of their acceptance of the proposed transfer of the share capital of their holding

company . Therefore, the Council would be able to negotiate with the contractor about the residual term of the existing contract should the Council decide to build a new facility.

The Chief Executive also drew the Committee's attention to paragraph 5.6 on page 15 of his Report which detailed how the profitability of the facility and income share with the Council had been calculated. He reiterated that decisions to extend the contract had been based on the overall benefits gained from reduced management fee, capital investment at RPLC and DCL taking on the operation of the Meadowside Leisure Centre, Whiteley. Taking account of these factors, Members had concluded that the proposed extension offered value for money, and this was unlikely to be bettered by going to the market. Legal advice had also been obtained as to whether it was permissible to extend the existing contract and this had concluded that the terms of the new contract were not materially different, thus re-tendering was not required.

In conclusion, the Chief Executive told Members he had concluded that legal advice, which needed to be read alongside the advice on the financial benefits to be achieved, had been taken into account by Cabinet when making its decisions. He re-affirmed that a DBOM contract had not been entered into with DC Leisure in 2012.

At conclusion of debate, the Committee were in agreement that the Chief Executive's Report was sufficiently detailed and that decisions with regard to the contract extensions had been taken correctly, and had the support of Councillors, who had made their decisions taking account of officer and/or third party advice. Members agreed that no individual officer had worked beyond their authority and decisions had been made by Members.

The Committee indicated its support for the findings and conclusions of the Chief Executive's investigation, as outlined in his Report.

The conclusions of the Chief Executive and also the findings of the Internal Auditor should be taken on board and the opportunity taken to further improve processes where this may be required.

#### RESOLVED:

1. That the conclusions of this investigation be noted and the Committee formally record that it is satisfied with the response and findings of the Chief Executive's Report.

2. That a separate report be brought to Audit Committee and The Overview & Scrutiny Committee outlining actions in response to a recent Internal Audit review of the Council's role as client in respect of the management of the contract for the operation of its leisure centres.

3. That further information about income from the contract referred to in paragraph 1.4 of the Report be brought to the Committee for its information in due course.

13. **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>
##	River Park Leisure Centre: Public Representation (exempt appendices)	) 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 in respect of which a claim to legal professional privilege could be maintained in legal proceedings. (Para 5 Schedule 12A refers)

14. **RIVER PARK LEISURE CENTRE: PUBLIC REPRESENTATION ( EXEMPT APPENDICES)**  
(Report OS112 refers)

The Committee considered the exempt Appendices 8, 9 and 10 to the Report which contained exempt information, including names of individual officers, legal advice on contract procurement and also commercially sensitive financial information (detail in exempt minute).

The meeting commenced at 6.30pm and concluded at 10.30pm.