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OVERVIEW AND SCRUTINY PANEL

29 APRIL 2014

A meeting of the Overview and Scrutiny Panel will be held at **7.00 pm on Tuesday, 29 April 2014** in the Council Chamber, Council Offices, Cecil Street, Margate, Kent.

Membership:

Councillor Gideon (Chairman); Councillors: Harrison (Vice-Chairman), Driver, Campbell, Edwards, I Gregory, K Gregory, Huxley, Hornus, Matterface, Moore, Nicholson, D Saunders, Scobie, M Tomlinson, Watkins and Worrow

SUPPLEMENTARY A G E N D A

Item
No

Subject

7. **PLEASURAMA SITE DEVELOPMENT REVIEW TFG REPORT TO OSP** (Pages 1 - 6)

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PLEASURAMA SITE DEVELOPMENT REVIEW TASK & FINISH GROUP FINAL REPORT TO THE OVERVIEW & SCRUTINY PANEL

To: **Overview & Scrutiny Panel – 29 April 2014**

Main Portfolio Area: **Operational Services**

By: **Pleaurama Site Development Review Task & Finish Group**

Classification: **Unrestricted**

Ward: **Thanet Wide**

Summary: This report sets out the recommendations from the review work carried out by the Pleaurama Site Development Review Task & Finish Group (TFG). This is the final report to the Overview & Scrutiny Panel.

For Decision

1.0 Introduction and Background

- 1.1 The Pleaurama Site Development Review TFG was set up at the extraordinary meeting of the Overview & Scrutiny Panel on 25 June 2013. Members had raised some concerns regard the progress of the Pleaurama site development on the Ramsgate seafront.
- 1.2 Members wanted to understand the process for entering into and revising the development agreement with the developer, and what lessons could be learnt from this case by Council.
- 1.3 The terms of reference assigned to the sub-group were as follows:
 - i. To review due diligence undertaken by the Council on the current developer;
 - ii. To consider the options available to the Council with regard to the future of the development agreement with SFP Ventures (UK) Ltd;
 - iii. To assess the commercial and legal implications of these options using external professional advice if necessary;
 - iv. To consider future options for the Pleaurama site in general and make recommendations to Cabinet;
 - v. To produce a final report with recommendations for submission to the Overview and Scrutiny Panel and then to Cabinet.

- 1.4 The sub-group met four times and received evidence from senior Council officers.

2.0 Summary of the Pleaurama Site Development Review TFG Activities

- 2.1 Members requested documentary evidence relating to the development agreement. This included information on the due diligence on the developer as conducted by the Council and remedial work that some Members felt was required to stabilise the cliff wall of the

project site. Below is a list of the documents that were requested and made available for the sub-group to inspect:

- i. Development agreements;
- ii. Site leases;
- iii. Definition of due diligence;
- iv. Due diligence documents associated with the agreements and leases;
- v. Legal advice associated with the agreements and leases;
- vi. Relevant Planning Committee reports.

2.2 During the proceedings of the sub-group activities, Members were mindful of the need to maintain confidentiality at all times in order not to prejudice the Council's position regarding any future litigation.

2.3 Members requested and received confidential report on the legal advice that had been offered to Council regarding the current development agreement.

3.0 TFG Recommendations

3.1 The recommendations of the sub-group were presented to the Overview & Scrutiny Panel at an extraordinary meeting on 11 February 2014. These recommendations were largely adopted by the Panel and forwarded to Cabinet; who in turn adopted the Panel recommendations at a special meeting on 20 February 2014.

3.2 The following recommendations were forwarded to the Overview & Scrutiny panel:

- i. That the current development agreement and leases be terminated;
- ii. That there be no re-negotiation of the current development agreement;
- iii. That the previous advice from Eversheds Solicitors be reviewed to determine why the development agreement did not contain a longstop date entitling the Council to terminate the agreement if the development was not completed by that date;
- iv. That as part of the preparatory steps to terminate the development agreement, a rigorous development programme be established in consultation with a construction expert to include clear milestones for all phases of the construction work necessary to complete the development;
- v. That the construction expert appointed by the Council to advise on the development programme be retained to support the officers in the monitoring of the development programme;
- vi. That the quality and condition of the existing construction work (including the foundation structure) be checked to confirm that it remains fit for purpose and any issues to form part of the development programme in 4 above.

Overview & Scrutiny Panel Recommendations

3.3 The Overview & Scrutiny Panel adopted the above recommendations from the TFG and added the following one before submitting these recommendations to Cabinet:

And that in making their decision on 20 February 2014; Cabinet Members pay attention to the following:

- i. As the Development Agreement requires the Developer to complete the development by 28 February 2014, an extraordinary meeting of the Cabinet had been arranged for 20 February 2014 to consider the Council's response to the failure of the Developer to progress the development.

Consequently, in order to ensure that the Overview & Scrutiny Panel retained the opportunity of making recommendations to the Cabinet on this issue, Members were requested to consider and reflect on the recommendations of the TFG in advance of receipt of the formal report of the TFG; that will now be presented to the next ordinary meeting of the Overview & Scrutiny Panel for decision.

4.0 Decision of Cabinet

4.1 Cabinet agreed all the recommendations of the Overview and Scrutiny Panel. The following extract highlights the full text of the Cabinet decision on the matter:

- i. That the recommendations of the Overview & Scrutiny Panel be received and adopted;
- ii. That the Developer's request for an extension of time be refused;
- iii. That the power to implement the recommendations of the Overview & Scrutiny Panel be delegated to the Cabinet Member for Financial Services and such power to be enacted by a published decision notice following consultation with the Chief Executive.

5.0 Outstanding Review Work

5.1 At the extraordinary Panel meeting on 11 February 2014, Members generally agreed that the final report of the sub-group should include the following issues:

- i. The long stop date;
- ii. Reactions of Cabinet to the recommendations from the Panel (Cabinet agreed the recommendations as highlighted section 4.0 of the report);
- iii. Reactions of the developer to the Cabinet decision.

5.2 Members also requested that the Panel should be advised by officers on who the expert advisor on the construction works is if the work were to resume.

5.3 Officer Updates

5.4 In response to the Monitoring Officer's request for an explanation as to why the original development agreement did not have a 'long stop date for the project;' Mr Simon Petley, the Solicitor at Eversheds Solicitors, LLP advised as follows:

- i. We (Eversheds Solicitors, LLP) were not instructed by the Council to include in the development agreement a long stop date whereby the development agreement could be determined by the Council without giving the developer the opportunity to remedy the breach in the event of little or no progress on site. Accordingly we did not specifically include a long stop date in the development agreement.

The development agreement however contains detailed provisions in Schedule 9 setting out the timetable for commencement and practical completion of the various elements of the development works. These provisions were subsequently amended in 2009 on instructions from the Council whereby a timetable was set out for substantial commencement and practical completion of the ground works and structural frame of section A of the development. The date set for practical completion of the whole of the development was 28th February 2014.

- ii. In the event of a material breach of covenant by the developer which cannot be remedied the Council can serve notice on the developer under clause 11.2.1 of the development agreement and subsequently terminate the agreement if the breach is not remedied within forty working days. In my view, failure to complete the development by the agreed date is a material breach which cannot be remedied. The Council have the right to terminate the development agreement and there was therefore no need for a specific long stop date.

iii. Please also note that the development agreement will determine automatically unless the Council determines otherwise if the site leases or any of them is determined (see clause 11.3 of the development agreement).

iv. In summary there were no discussions about a long stop date but this was not needed because a timetable was set for the carrying out of the development works with an ability to terminate if the timetable was not adhered to.

5.5 The developer has contested the decision by Cabinet in letters from their solicitor, arguing that an extension of time should have been granted. This is being refuted by the council. In addition, the developer has not assisted the council in providing up to date construction programme information despite a reasonable request being sent on this issue following the decision of Cabinet.

5.6 A construction expert has been engaged to advise on a reasonable timed programme, but no works have been resumed on site at present.

6.0 Corporate Implications

6.1 Financial

6.1.1 There are no financial implications arising directly from this report.

6.2 Legal

6.2.1 There are no legal issues arising directly from this report.

6.3 Corporate

6.3.1 There are no further corporate implications arising from this report.

6.4 Equity and Equalities

6.4.1 There are no equity and equalities issues arising directly from this report.

7.0 Recommendation

7.1 Members are requested to receive and note the report.

Contact Officer:	Charles Hungwe, Senior Democratic Services Officer, Ext 7186
Reporting to:	Glenn Back, Democratic Services & Scrutiny Manager, Ext 7187

Annex List

None	N/A
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Background Papers

Title	Details of where to access copy
None	N/A

Corporate Consultation Undertaken

Finance	Sarah Martin, Financial Services Manager
Legal	Harvey Patterson, Corporate & Regulatory Services Manager

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