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PLEASURAMA SITE DEVELOPMENT REVIEW TASK & FINISH GROUP

31 JANUARY 2014

A meeting of the Pleasurama Site Development Review Task & Finish Group will be held at **3.00 pm on Friday, 31 January 2014** in the Austen Room, Council Offices, Cecil Street, Margate, Kent.

Membership:

Councillor Hornus (Chairman); Councillors: Binks, Campbell, Driver, Harrison, Marson, Nicholson and Worrow

AGENDA

Item
No

Subject

1. **APOLOGIES FOR ABSENCE**

2. **DECLARATION OF INTERESTS**

To receive any declarations of interest. Members are advised to consider the advice contained within the Declaration of Interest form attached at the back of this agenda. If a Member declares an interest, they should complete that form and hand it to the officer clerking the meeting and then take the prescribed course of action.

3. **MINUTES OF PREVIOUS MEETING** (Pages 1 - 4)

To approve the Minutes of the Pleasurama Site Development Review TFG meeting held on 31 October 2013, copy attached.

4. **EXCLUSION OF PUBLIC AND PRESS**

Report to follow

5. **REVIEW OF THE CURRENT PLEASURAMA SITE DEVELOPMENT AGREEMENT - EXTERNAL LEGAL ADVICE**

Report to follow

6. **REVIEW OF THE CURRENT PLEASURAMA SITE DEVELOPMENT AGREEMENT - FINDINGS AND RECOMMENDATIONS TO OSP**

Declaration of Interests Form

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PLEASURAMA SITE DEVELOPMENT REVIEW TASK & FINISH GROUP

Minutes of the meeting held on 31 October 2013 at 7.00 pm in the Council Chamber,
Council Offices, Cecil Street, Margate, Kent.

Present: Councillor Neil Hornus (Chairman); Councillors Binks, Campbell, Driver, Harrison, Marson and Nicholson

In Attendance: Councillors Johnston and D Green

12. APOLOGIES FOR ABSENCE

There were no apologies for absence.

13. DECLARATION OF INTERESTS

There were no declarations received at the meeting.

14. MINUTES OF PREVIOUS MEETING

Councillor Campbell proposed, Councillor Marson seconded and Members agreed the minutes.

15. PLEASURAMA SITE DEVELOPMENT - ADDITIONAL INFORMATION

The Chairman introduced the item and asked Members to engage the CEx in following up on the written questions submitted by Members to the CEx to respond. Following up on his first Question, Councillor Driver asked whether officers had verified if the Natwest Bank offer letter which still had only two weeks before it expired was still valid by the time Council had agreed on the matter. In response, Sue McGonigal, CEx said that the offer letter was still valid. The developers were still trying to align all that was required to make a final decision.

In a follow-up question, Councillor Driver wanted to know which solicitors were used by the Council, the instructions given by the solicitors and the cost of the legal advice. The CEx said that Prettys Solicitors were used. The Council did not hold information regarding the cost of the legal advice as this was paid for by the developer. Councillor Driver said that Prettys Solicitors were also acting on behalf of the developer; they could therefore have given misleading information to Council. Mr Harvey Patterson, Corporate & Regulatory Services Manager said that a solicitor would breach his or her professional code of conduct if they made a statement or representation they knew to be untrue. Accordingly, Prettys would have been under a duty to act honestly. CEx said that the Council would have checked the evidence regarding the ability of the funder to provide the funding for the project.

Councillor Nicholson said that the letter from SFP Venture UK Ltd looked suspicious and should have been checked for validity. He said that the written responses given to his question was inadequate. In response the CEx said that the letter in question was not used as evidence. Instead the information used was the one provided by the solicitors which indicated that the funding was available. Eversheds Solicitors appointed by the Council confirmed this information with the developer's solicitors. Councillor Driver said that Cabinet and Council reports that were used in making decisions regarding this issue did not advise Members to disregard the letter in question as Members could have been influenced by all the documents in the report. CEx said that the letter was still valid and relevant in giving a complete picture of the situation.

Mr Patterson also advised that Council officers would not have been given access to the funding agreement which was why the Council's external solicitor was not given access either. However, the Council was entitled to rely on the honesty of the representations made by Prettys. Councillor Nicholson said that independent solicitors should have been used for the inspection of the documents that included financial documents. Members also acknowledged that members did not question the adequacy of the due diligence in 2009.

Councillor Binks acknowledged that in 2009 officers did not recommend the changes proposed to the Development Agreement. She also said that she personally did not think that Councillor Nicholson and Councillor Harrison were suitable to sit on the Task & Finish Group as they had been in the Cabinet that presided over the initial decision on the Pleasurama Site development. In response Councillor Harrison said that he was disappointed by the remarks regarding suitability of some Members on the Task & Finish Group. He said that the actual signing of the development agreement was done when a different Cabinet was in charge and if the original decision was not appropriate, that Cabinet should have corrected the situation.

Some Members expressed their concern that there were no records regarding the decision of the Council to select the developer as the preferred developer, The Chief Executive said that what she meant when she indicated that there were no records was that there were no records in addition to those which had already been disclosed to the Task & Finish Group. Councillor Harrison advised that the one of Cabinet Members then was Councillor Dennis Hart and not Councillor Clive Hart. Councillor Harrison said that there was a need for the Task & Finish Group to also look at the future regarding this issue under review. Councillor Driver said that the Audit Commission reports in 2003 and 2004 had expressed concern regarding the way the development project had been managed by the Council.

Mr Patterson indicated that officers were in a position to produce a set of documents which could be considered by the Sub-Group before referring it to the Overview & Scrutiny Panel. Some Members supported the proposal that that any new documents on the Pleasurama site be considered by the Sub-Group. They said that some important lessons should be learnt from the way the whole project had been managed thus far. Councillor Nicholson said that an officer report on the "Development Agreement and Leases" had been produced which was meant for Cabinet to consider at the November meeting. He said that Leader and Cabinet agreed that this report should not be considered by Cabinet. He said that the OSP Chairman had been approached for the Panel to consider the report and had rejected the suggestion.

Councillor Nicholson asked why the OSP Chairman had been approached with such an offer. In response Mr Patterson advised that the report in question was still in draft form and was a reflection of what had been presented during the on going negotiations with the developer. If the OSP had considered this report; their recommendations would have been forwarded to Cabinet. He said that officers had been asked by the Cabinet to approach the Overview & Scrutiny Panel Chairman with a view to the Panel considering the report when it was ready and making recommendations to the Cabinet.

Councillor Driver proposed that the report be considered by the Overview & Scrutiny Panel. He also proposed that the Sub-Group met as soon as was possible to consider the report and its related documents. Mr Patterson advised that the Sub-Group could make a recommendation that the Overview & Scrutiny Panel met to consider this report as part of a pre-decision scrutiny process.

Other Members said that they were reluctant to consider this report. They said that the current Cabinet had to consider that report first and if necessary the Panel could call-in the decision. Councillor Harrison seconded the proposal by Councillor Driver that the Sub-Group met again to consider the report on the new proposals from the developer

and check if the proposals could get the Council out of its current situation. Councillor Campbell stated that members needed to be provided with the promised external legal advice as that would help Members understand the Council's current legal position and future options. Mr Patterson confirmed that Council was awaiting that advice from Pinsent Masons solicitors. The Council had also instructed Pinsent Masons to advise in relation to the proposed changes to the development agreement.

Councillor Marson said that it was unreasonable for the Council to have relied on bankers and solicitors during the verification of due diligence documents. She also considered that the Cabinet had disregarded the substantial recommendations that were forwarded to them previously by the Overview & Scrutiny Panel.

The Chief Executive also explained that consultation with the relevant portfolio-holder and wider consultation with the cabinet is normal practice before draft reports are finalised and presented to cabinet for decision. In the course of consultation it could be expected that reports would be subject to modification and amendment and in some cases a report might be withdrawn altogether. The draft report in relation to the proposed changes to the development agreement was no different. As it was still in draft form it would not appear on the agenda for the November cabinet meeting and in the meantime would be subject to amendment and revision as necessary. Mr Patterson also advised that because the report was still in draft form it was not in the possession and control of the Cabinet meaning that the Task & Finish Group was not entitled to be provided with a copy of the report at this stage.

The Chairman thanked the CEx for her attendance at the meeting and providing further clarification to follow-up questions from Members. The Chairman summed up debate by indicating that the Sub-Group would receive a report back from the officers on the external legal advice and the next meeting date would be arranged as soon as the Council was in possession of that advice.

Meeting concluded: 8.25 pm

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THANET DISTRICT COUNCIL DECLARATION OF INTEREST FORM

Do I have a Disclosable Pecuniary Interest and if so what action should I take?

Your Disclosable Pecuniary Interests (DPI) are those interests that are, or should be, listed on your Register of Interest Form.

If you are at a meeting and the subject relating to one of your DPIs is to be discussed, in so far as you are aware of the DPI, you **must** declare the existence **and** explain the nature of the DPI during the declarations of interest agenda item, at the commencement of the item under discussion, or when the interest has become apparent

Once you have declared that you have a DPI (unless you have been granted a dispensation by the Standards Committee or the Monitoring Officer, for which you will have applied to the Monitoring Officer prior to the meeting) you **must:-**

1. Not speak or vote on the matter;
2. Withdraw from the meeting room during the consideration of the matter;
3. Not seek to improperly influence the decision on the matter.

Do I have a significant interest and if so what action should I take?

A significant interest is an interest (other than a DPI or an interest in an Authority Function) which:

1. Affects the financial position of yourself and/or an associated person; or Relates to the determination of your application for any approval, consent, licence, permission or registration made by, or on your behalf of, you and/or an associated person;
2. And which, in either case, a member of the public with knowledge of the relevant facts would reasonably regard as being so significant that it is likely to prejudice your judgment of the public interest.

An associated person is defined as:

- A family member or any other person with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or
- Any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or
- Any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000;
- Any body of which you are in a position of general control or management and to which you are appointed or nominated by the Authority; or
- any body in respect of which you are in a position of general control or management and which:
 - exercises functions of a public nature; or
 - is directed to charitable purposes; or
 - has as its principal purpose or one of its principal purposes the influence of public opinion or policy (including any political party or trade union)

An Authority Function is defined as: -

- Housing - where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease; or
- Any allowance, payment or indemnity given to members of the Council;
- Any ceremonial honour given to members of the Council
- Setting the Council Tax or a precept under the Local Government Finance Act 1992

If you are at a meeting and you think that you have a significant interest then you **must** declare the existence **and** nature of the significant interest at the commencement of the

matter, or when the interest has become apparent, or the declarations of interest agenda item.

Once you have declared that you have a significant interest (unless you have been granted a dispensation by the Standards Committee or the Monitoring Officer, for which you will have applied to the Monitoring Officer prior to the meeting) you **must**:-

1. Not speak or vote (unless the public have speaking rights, or you are present to make representations, answer questions or to give evidence relating to the business being discussed in which case you can speak only)
2. Withdraw from the meeting during consideration of the matter or immediately after speaking.
3. Not seek to improperly influence the decision.

Gifts, Benefits and Hospitality

Councillors must declare at meetings any gift, benefit or hospitality with an estimated value (or cumulative value if a series of gifts etc.) of £100 or more. You **must**, at the commencement of the meeting or when the interest becomes apparent, disclose the existence and nature of the gift, benefit or hospitality, the identity of the donor and how the business under consideration relates to that person or body. However you can stay in the meeting unless it constitutes a significant interest, in which case it should be declared as outlined above.

What if I am unsure?

If you are in any doubt, Members are strongly advised to seek advice from the Monitoring Officer or the Democratic Services and Scrutiny Manager well in advance of the meeting.

DECLARATION OF DISCLOSABLE PECUNIARY INTERESTS, SIGNIFICANT INTERESTS AND GIFTS, BENEFITS AND HOSPITALITY

MEETING.....

DATE..... AGENDA ITEM

DISCLOSABLE PECUNIARY INTEREST

SIGNIFICANT INTEREST

GIFTS, BENEFITS AND HOSPITALITY

THE NATURE OF THE INTEREST, GIFT, BENEFITS OR HOSPITALITY:

.....
.....
.....

NAME (PRINT):

SIGNATURE:

Please detach and hand this form to the Democratic Services Officer when you are asked to declare any interests.