

OVERVIEW AND SCRUTINY PANEL

Minutes of the meeting held on 25 September 2014 at 7.00 pm in Council Chamber,
Council Offices, Cecil Street, Margate, Kent.

Present: Councillor Jo Gideon (Chairman); Councillors Campbell (Vice-Chairman), Driver, Fenner, Bayford, Hornus, Huxley, Matterface, Moore, Poole, D Saunders, M Tomlinson, Worrow and Wells

In Attendance: Councillors Everitt and M Saunders

420. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Gibson and K Gregory. Councillor Bayford was present as Councillor K Gregory's substitute, and Councillor Wells as Councillor I Gregory's substitute.

421. DECLARATIONS OF INTEREST

There were no declarations of interest.

WELCOME TO COUNCILLOR EVERITT, CABINET MEMBER FOR FINANCIAL SERVICES AND ESTATES

The Chairman welcomed Councillor Everitt to the meeting.

ADJOURNMENT OF MEETING

The meeting was adjourned for a few minutes to enable Members to read the list of questions received from members of the public, and answers thereto in relation to Royal Sands development site (*circulated prior to the meeting*).

THE MEETING THEN RESUMED

422. OVERVIEW & SCRUTINY PANEL CALL-IN OF A CABINET DECISION - ROYAL SANDS DEVELOPMENT

The Chairman thanked the public for submitting questions.

She then invited Panel Members to put questions to Councillor Everitt, the Cabinet Member for Financial Services and Estates.

Panel Members' questions and comments included the following:

1. If SFP Ventures Ltd is in breach of contract, as suggested by service of the default notice, is there not an opportunity for the Council to "get out" of the contract.
2. If SFP Ventures Ltd is in default, does it not follow that the company that takes over SFP Ventures Ltd is also in default?
3. The answer to public question no. 7 refers to due diligence being undertaken in relation to Cardy Construction Ltd. This implies that Cardy Construction could fail; however, that, in turn, appears to contradict the suggestion that the Council has no option but to deal with Cardy Construction Ltd.

4. It is stated that the Council will get overage payments before the end of the contract. At what stage of the contract will that be, and what will the overage be? In view of property at Ramsgate having gone up in value, could the Council not expect to get more in terms of overage than was previously the case?
5. With reference to paragraph 5.2 of the Cabinet report dated 11 September 2014, what exactly is the “significant amount of money” that the site is said to be worth?
6. Paragraph 5.4 of the Cabinet report hints that buying back of the site by the Council is an option. It also refers to securing “the best financial value for the site”. Why is the Council not looking to see if there is an alternative to giving the contract to Cardy Construction Ltd? If the site is worth a significant amount of money, with its value having gone up, then another developer might find taking over the site an attractive proposition. The council could enter into a “back to back” arrangement, whereby another party’s funds are used in the transaction.
7. Paragraph 5.4 also suggests that only “the same scheme or a scheme of similar type and scale” could be developed. Do we know that? Should we not be investigating what, for example, the people of Ramsgate would be interested in having developed at the site?
8. If market testing was considered necessary in the case of Manston Airport, then why not in the case of the Royal Sands site?
9. All Members of the Panel should be privy to the legal and valuation advice, even if that means having another meeting in closed session.

(The Chairman advised that this meeting had been convened in open session to enable the public to hear the Panel discuss general issues.)

10. The answer to public question 2 refers to “the outstanding money owed to the council”. If nothing has been built, how can there be outstanding money?
11. Is the use of “best consideration” *(as in the answer to public question 2)* appropriate as that term is understood to embrace social and economic implications.
12. The cost to the Council of maintaining the cliff wall appears to be disproportionate.
13. What if an SFP Ventures Director becomes a director of the new company referred to?
14. It is stated *(in the answer to public question no. 3)* that it is understood that SFP Ventures “will be taken over and renamed”. Due diligence therefore must be carried out on that “new company”, not Cardy Construction Ltd.
15. It is understood that the rationale for supporting the new deal with Cardy Construction Ltd is to enable the Council to get out of its legal problems, but that the Council is not committed to do business with the new company until due diligence has been successfully carried out. Would not the Council be more exposed than it is currently if the situation arose whereby it was not quite out of the legal side of the current agreement and not quite happy with the due diligence on the new company?

In his responses, Councillor Everitt made the following points:

- a) *Yes, he agrees, the situation regarding the contract is the same no matter who owns the contract;*
- b) *SFP Ventures Ltd does not accept that it is in default, some of the reasons for which are set out in the report to Cabinet;*
- c) *Nothing allows the Council to take the site back without following a process;*
- d) *The process following service of the breach notice is expected to take a long time;*
- e) *Currently, the council is “stuck” with the agreement as it stands;*
- f) *Yes, the site could now be worth more than before, and a proper valuation process is being entered into.*
- g) *Responsibility for maintaining the cliff wall, which supports the promenade, should be distinguished from responsibility for paying for repairs. Although it is considered undesirable for the council to pass on responsibility for maintenance to the developer, imposing obligations on the developer to pay towards the costs of repairs could be considered.*
- h) *The Council is precluded from going to market because of its agreement with SFP Ventures Ltd, the Council’s current development partner. Until that agreement is set aside, the Council cannot explore other options.*
- i) *Due diligence will only come into play if there is a new agreement.*
- j) *The Council would only enter into a new agreement if it is happy with its terms and the results of due diligence. The new agreement has to be satisfactory in its own right.*
- k) *The two processes – that of the new agreement and due diligence test – will have to run in parallel. Cardy Construction Ltd will not acquire SFP Ventures Ltd unless the new agreement is in place.*

Madeline Homer, Acting Chief Executive, also clarified the position as follows:

- *We will not enter into a new agreement unless the other party is a credible party. That agreement, however, is subject to Cardy Construction Ltd taking over SFP Ventures Ltd.*

A Member pointed out that if the Council is going down that route, and not pursuing other routes at the same time, it would seem that the Council is assuming that that route will be successful. There is nothing in the paperwork to suggest that there is a Plan B to run in parallel with Plan A. Would the Council not be in a weak position if due diligence on the new company taking over SFP Ventures Ltd is not satisfactory?

In response, the Acting Chief Executive, stated that the Plan B is to continue with the process with the current agreement.

It was suggested by a Panel Member that, for the sake of clarity, a decision tree should be drawn up, showing all the potential options and what each option would lead to.

Following discussion, it was proposed by Councillor Driver and seconded by Councillor Wells:

“THAT Cabinet delays taking a decision on the Pleasurama negotiations until:

- a) Members of the Overview and Scrutiny Panel have been provided with copies of the relevant Pinsent Mason legal advice and given sufficient time to study this advice;
- b) Members of the Overview and Scrutiny Panel are given the opportunity to meet with the authors of the Pinsent Mason legal advice to ask any questions about the advice;
- c) Members of the Overview and Scrutiny Panel are provided with copies of the officers' report and recommendations regarding the Pleasurama development before this report and recommendations are discussed and actioned by Cabinet;
- d) Overview and Scrutiny Panel holds an extraordinary meeting to consider the Pinsent Mason legal advice and the officer report and recommendations. The Overview and Scrutiny Panel then decides what recommendations it wishes to make to Cabinet.
- e) Overview and Scrutiny Panel has sight of the valuation papers and the opportunity to question the author.

Upon the motion being put to the vote, it was declared CARRIED.

Meeting concluded : 7.58 pm