

## Special Cabinet

**Minutes of meeting held in Ditchling Room at Southover House, Southover Road, Lewes, BN7 1AB on 8 March 2019 at 2.30 pm**

### **Present:**

Councillor Andy Smith (Chair)

Councillors Elayne Merry (Deputy-Chair), Bill Giles, Tom Jones, Isabelle Linington, Ron Maskell and Tony Nicholson

### **Officers in attendance:**

Robert Cottrill (Chief Executive), Ian Fitzpatrick (Director of Regeneration and Planning), Becky Cooke (Assistant Director for Human Resources and Transformation), Catherine Knight (Assistant Director of Legal and Democratic Services), Oliver Dixon (Senior Lawyer and Data Protection Officer) and Simon Russell (Committee and Civic Services Manager)

### **Also in attendance:**

Councillors Stephen Catlin (Leader of Independent Group) and Mike Chartier (Chair of Audit and Standards Committee)

### **77 Minutes of the meeting held on 11 February 2019**

The minutes of the meeting held on 11 February 2019 were submitted and approved and the chair was authorised to sign them as a correct record.

### **78 Apologies for absence**

Apologies for absence were reported from Councillor Franklin and visiting member Councillor Gardiner.

### **79 Declarations of interest**

Councillors Smith and Maskell, Chief Executive and Assistant Director for Legal and Democratic Services declared a prejudicial interest in agenda item 6 (Potential withdrawal of a litigation claim against the council in relation to a property development scheme). They withdrew from the room whilst the item was considered. Councillor Merry chaired the meeting for the duration of the item.

**80 Exclusion of the public****Resolved:**

That the public be excluded from the remainder of the meeting as otherwise there was a likelihood of disclosure to them of exempt information as defined in schedule 12A of the Local Government Act 1972. The relevant paragraph of schedule 12A and a description of the exempt information is shown below. (The requisite notice having been given under regulation 5 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.)

**81 Potential withdrawal of a litigation claim against the council in relation to a property development scheme**

The Cabinet report explained that Karis Developments Limited and its subsidiary Karis Southern Housing Projects Limited had made a claim against the Council for £11.6 million. The basis of the claim was that the Council had wrongly terminated the New Homes Project, so depriving Karis of its share of the project profit.

The Council's legal advisors had advised the Council that Karis's claim was without merit and the Council accordingly resisted the claim and rejected all proposals from Karis that the case be settled on terms which involved the Council paying Karis any money.

Following an exchange of witness statements the Council and Karis were in a position to assess the factual evidence of the key individuals involved in the project and its termination, and to consider the strength or otherwise of their respective cases. An assessment of the evidence reinforced the Council's view that it had a very strong case.

Following the exchange of evidence and with a trial scheduled for April 2019, Karis initiated the withdrawal of its claim.

It was prepared to treat the project agreements as having been lawfully terminated, to withdraw the misfeasance allegations it had made against a councillor and officers and not repeat them, and to drop its claim once and for all without being paid any money by the Council.

The Council now had an opportunity to exit the litigation without making any payment to Karis, whilst bearing its own legal costs.

The Council's barristers advised that the advantages of settling the litigation on the above terms outweighed the risk of proceeding to a (very expensive) trial. Whilst it was highly likely that the Council would win its case at trial, this could not be guaranteed, and any award of costs was unlikely to cover more than 70% of what the Council would need to spend. There was a risk too that

Karis would arrange its affairs in a way which would make enforcement and recovery of these monies a long and problematic process.

Councillors Smith and Maskell, Chief Executive and Assistant Director for Legal and Democratic Services declared a prejudicial interest in this item. They withdrew from the room whilst the item was considered. Councillor Merry chaired the meeting for the duration of the item.

**Resolved (Key decision):**

It was resolved to agree to a discontinuance of the litigation on the basis that the Council makes no payment whatsoever to Karis, that Karis withdraws its misfeasance allegations and does not repeat them and that the project agreements are treated as lawfully terminated.

The Cabinet agreed that the Council would bear its own costs of the proceedings, save for those costs already paid to the Council by Karis during the course of proceedings, which the Council would retain.

This decision was made on the basis that neither party would bring any further action against the other including against any individual councillor(s) or officer(s).

The Assistant Director – Legal & Democratic Services was authorised to sign a settlement agreement reflecting the above terms.

In accordance with Scrutiny Procedure Rule 17 (a) as set out in the Council's Constitution, for reasons of urgency the above decisions shall not be subject to the call-in procedure.

**Reasons for decision:**

A discontinuance of the litigation was likely to be the least expensive option for council taxpayers.

*Notes: (1) The report remained exempt. (2) Exempt information reasons 3 – information relating to the financial or business affairs of any particular person (including the authority holding that information) and 5 - Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.*

The meeting ended at 2.39 pm

Councillor Andy Smith (Chair)