

OVERVIEW SELECT COMMITTEE

25 July 2017 at 6.00 p.m.

Present: - Councillors Dingemans (Chairman), English (Vice-Chairman), Mrs Bence, Blampied, Edwards, Elkins, Hitchins, Hughes, Mrs Oakley, Oliver-Redgate, Mrs Rapnik, Dr Walsh, Warren and Wheal.

Councillors Bence, Mrs Brown, Chapman, Charles, Haymes, Wotherspoon and Wensley were also present for all or part of the meeting.

[Note: The following Councillors were absent from the meeting during consideration of the matters referred to in the Minutes indicated:- Councillors English and Oliver-Redgate – Minutes 123 to 125].

113. WELCOME

The Chairman welcomed Members and Officers to the meeting and members of the public.

114. APOLOGIES FOR ABSENCE

Apologies for absence had been received from Councillor Miss Rhodes and the Cabinet Member for Community Wellbeing, Councillor Clayden.

115. DECLARATIONS OF INTEREST

The Monitoring Officer has advised Members of interim arrangements to follow when making declarations of interest. They have been advised that for the reasons explained below, they should make their declarations on the same basis as the former Code of Conduct using the descriptions of Personal and Prejudicial Interests.

Reasons

- The Council has adopted the Government’s example for a new local code of conduct, but new policies and procedures relating to the new local code are yet to be considered and adopted.
- Members have not yet been trained on the provisions on the new local code of conduct.
- The definition of Pecuniary Interests is narrower than the definition of Prejudicial Interests, so by declaring a matter as a Prejudicial Interest,

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that will cover the requirement to declare a Pecuniary Interest in the same matter.

Where a Member declares a “Prejudicial Interest”, this will, in the interests of clarity for the public, be recorded in the minutes as a Prejudicial and Pecuniary Interest.

Councillor Dr Walsh declared a personal interest in Agenda Item 11, Feedback from the meeting of WSCC’s Health & Social Care Committee held on 7 July 2017 as he was Chairman of that committee.

Councillor Edwards declared a personal interest in Agenda Item 11, Feedback from the meeting of WSCC’s Health & Social Care Committee held on 7 July 2017 as he was a member of that committee.

As a member of West Sussex County Council, Councillor Elkins declared a personal interest in any matters on the agenda that might relate to the County Council.

The Director of Place declared a personal interest in Agenda Item 5, Business Case for Operating a Local Property Company, as he was a Director of Trisanto. He stated that if he was called to speak he would do so in his role as Director of Place.

116. MINUTES

The Minutes of the meeting held on 30 May 2017 were approved by the Committee as a correct record and signed by the Chairman.

(During the course of debate on the following item, Councillor Dr Walsh declared a personal interest as a member of the County Council.)

117. BUSINESS CASE FOR OPERATING A LOCAL PROPERTY COMPANY

Prior to consideration of this item, the Chairman advised that, due to a clerical error, the background section for establishing a local property company had been omitted from the report on the table. This was circulated at the meeting and he called a short adjournment to enable Members to read and digest its contents.

The Housing Strategy & Delivery Manager (HS&DM) presented a comprehensive report which set out the business case for the establishment of a wholly owned local authority property company, to be known as Trisanto

(the ancient name for the River Arun). He advised that the purpose for this was to create an additional revenue stream for the Council, which would enable it to become financially more self-reliant in future years and therefore less dependent on receiving the continually reducing government grants. He directed Members to the appendices to the report, namely the Business Case and the Risk Register.

Trisanto would be an independent arms-length company with the Council as its only and principle shareholder. It would have its own business plan, staff and directors and operate as a fully commercial vehicle competing against other large, medium and small developers in the Arun District, the wider West Sussex area and beyond. There would be a Shareholder Agreement between the two parties and Members heard that this was currently being finalised by the Council’s legal advisers, Towers & Hamlins. In addition, the company Articles of Association, a Service Level Agreement setting out how Trisanto could purchase council services should it wish to do so, and a Head of Terms document covering the loan documentation between the Council and Trisanto were in the process of being completed.

The HS&DM informed the meeting that, whilst the concept of establishing an independent property company might be new business for Arun, it was becoming fairly commonplace in local government in England as there were now around 120 such companies in existence. He stated that this venture was not reinventing the wheel and neither was it a high risk experimental departure from traditional council activity – property development and investment was increasingly becoming the new business norm for forward thinking local authorities as councils had to look for new income streams to help them finance key statutory public services.

The Cabinet would be considering the matter at a special meeting on 31 July 2017 and Members’ views from tonight’s meeting would be reported there for inclusion in the debate. A special meeting of the Audit & Governance Committee had also been convened for 7 August 2017 and its comments and the recommendations from Cabinet would then be considered at the Full Council meeting on 13 September 2017.

In conclusion, the HS&DM advised that he had been working closely with the Finance, Audit, Legal and Housing teams since September 2016 to being this project forward.

The Committee then participated in a full debate which illustrated that there was a divergence of views on the matter. Support for the project was expressed as it was seen as an opportunity to increase the Council’s income, in addition to providing much needed housing for sale and at a market rent.

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However, serious concerns were also raised and views were expressed that Members had not had a briefing on the subject matter and had therefore not had an opportunity to fully understand and digest the advantages and risks associated with the project. It was felt that this was a huge decision for the Council to make and all Members should be given the time to come to an informed decision. Although this Committee, the Audit & Governance Committee and Cabinet would be considering the report, that did not represent the majority of the Council and it was suggested that a seminar be arranged prior to the Full Council meeting on 13 September 2017 to enable Members to be fully briefed on all the issues pertaining to this matter.

A number of questions were asked and responded to at the meeting by the Housing Strategy & Delivery Manager as follows:-

- There was a concern that affordable housing would not be provided at affordable rents. A response was given that the Council would have dual drivers for development, i.e. Trisanto market housing and affordable housing for sale; and the HRA business plan to proceed with a development programme for new affordable housing for those on the Housing Waiting List. Members were informed that the Business Case set out the rationale for that approach, along with the objectives for Trisanto. In addition, there were other avenues available to the Council to provide affordable housing by working with its registered partners.
- With regard to the risk register, 25 risks had been identified and none had been quantified as insignificant. The HS&DM stated that the risk register had been produced as a comprehensive document to cover all potential risks and would be continually updated as Trisanto developed its business operations.
- Points were raised with regard to the setting up of Trisanto and its mode of operation. It was reiterated that it would be an arms-length company and that that clear distinction must be recognised. The Council would appoint the Directors who would then be responsible for the staffing and all aspects of the business, e.g. setting up of contracts with developers/contractors/sales agents; appointment of auditors; budget setting; production of business plan; and all operational matters.
- It was mentioned that, as proposed, Trisanto would be a fully commercial organisation and could provide the potential for a much needed additional income stream for the Council.
- There was a concern raised that there was only to be one Member appointed to the Trisanto Board. It was explained that as Trisanto was to operate as a commercial vehicle, there was a need for the

Board to be comprised of mainly independent directors with appropriate experience of the development industry.

- Concern was expressed about the lack of available land for residential development in the Arun District. It was explained that Trisanto would intend to engage the services of experienced land buyers with a good knowledge of the local market, and that the Company Articles would be unrestricted, thus enabling it to operate outside of the Arun area if suitable opportunities were identified.
- Concern was raised about the lack of financial detail in the Business Case. It was explained that Trisanto would produce its own Business Plan which would be considered and approved by Cabinet.
- Concern was raised about the governance arrangements to enable the Council to oversee the operational business of Trisanto. It was explained that a Shareholder Agreement was being produced which would detail the precise governance arrangements and that all loans requests from Trisanto would be subject to a detailed appraisal before being presented to Cabinet for approval. Trisanto would only be able to operate within the agreed boundaries set out in its Business Plan; if it wanted to undertake any activity outside of the Business Plan then it would need to seek the express permission of the Council to do so.
- A question was asked with regard to the audit arrangements of Trisanto. It was explained that the Company would appoint its own auditors, separate from those used by the Council, although the appointment would require the approval of the Council to protect its investor position in accordance with the Shareholder Agreement.

Finally, a Member view was put forward that the property market at the present time was extremely risky as it was felt that there would be a serious housing correction – prices were far too high and less and less people would be able to buy their own homes. These were huge ingredients for failure and so the concern was voiced that the Council would not have the resources to rectify that failure.

Having been formally proposed and seconded, the Committee voted on the request for a seminar for all Members on this matter. It was declared LOST.

The Committee then turned to the recommendations in the report and

RECOMMEND TO CABINET – That

- (1) the business case at Appendix 1 to the report be approved;

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(2) the risk register at Appendix 2 be noted; and

RESOLVED

That the following recommendations to be considered by Cabinet be noted:-

(3) the statement from the Council’s Group Head of Corporate Support included in the Executive Summary be noted;

(4) the actions set out at paragraphs 2.1 and 2.2 are completed to enable Trisanto to commence its trading activity;

(5) Full Council to approve a supplementary estimate of up to £1M, equating to a Band D Council Tax of £16.82, for working capital to enable the Company to start transacting;

(6) the working capital to take the form of loans from the Council to the Company, with each loan being subject to the approval of the S.151 officer, the Chief Executive and the Deputy Leader of the Council, and the terms of each loan (including the rate of interest) to be determined by the S.151 officer;

(7) authorisation be given to execute all required legal documentation and take such steps/actions to give effect to the business case including the Shareholder Agreement and Loan Arrangements.

(8) Cabinet will be responsible for the Council’s function as shareholder, and that the substantive Directors of the company be appointed at Arun’s Annual Council Meeting and the position of Councillor Directors be considered at the Council’s Annual Meeting each subsequent year;

(9) the Chief Executive be authorised, in consultation with the Leader of the Council, to approve the appointment of the first directors to Trisanto Development Corporation;

(10) the appointment of the Director of Place, already confirmed as Director of Trisanto Development Corporation on its incorporation in February 2017, be approved;

(11) the Council’s constitution be amended at Part 3, Responsibility for Functions, paragraph 2.10 (page 48/49) to add:

- To review and scrutinise the operation of any Council owned companies by working with the arms-length companies

(12) The Council’s constitution be amended at Part 3, Responsibilities for Functions, either paragraph 4.1 Audit and Governance Committee (page 63/64) or paragraph 4.4 Overview Select Committee (page 67/68) to add:

- To review and scrutinise the operation of any Council owned companies and Cabinet’s role in overseeing this activity through monitoring reports submitted on at least an annual basis or as reported by the S.151 officer.

(13) the Standards Committee be requested to review the Council’s Code of Conduct to cover the role of Directors of companies set up by the Council.

(Councillor Dr Walsh wished his vote against the recommendations to be recorded.)

118. DATA PROTECTION POLICIES

The Trainee Solicitor advised the Committee that the General Data Protection Regulations (GDPR) would be coming into force on 25 May 2018 and the Council needed to review its data protection policies. Following a review, Members were now being requested to consider two policies relating to Clear Desk/Clear Screen and Records Retention and Disposal.

In the course of discussion, it was suggested that the use of the words “reasonable” and “best endeavour” were perhaps not strong enough and should be replaced. However, the Trainee Solicitor responded by saying there must be some room for flexibility in case of extreme circumstances e.g. fire.

Following consideration the Committee

RECOMMEND TO FULL COUNCIL – That

(1) the Clear Desk and Clear Screen Policy, as set out at Appendix 1 to the report, be approved;

(2) the Records Retention and Disposal Policy, as set out at Appendix 2 to the report, be approved; and

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(3) the Group Head of Council Advice & Monitoring Officer be delegated authority to make any necessary consequential changes to the Clear Desk and Clear Screen Policy and Records Retention and Disposal Policy as a result of new legislation or alternative practices.

119. CORPORATE PLAN 2013-2018 – PERFORMANCE OUTTURN YEAR
END REPORT FOR THE PERIOD 1 APRIL 2016 TO 31 MARCH 2017

In presenting this report, the Executive Assistant to the Chief Executive reminded the Committee that the existing Council Priorities had one more year to be reported on, i.e. from 1 April 2017 to 31 March 2018. In this last remaining year, the Directors would be working with their officers to improve the performance of indicators which might not have achieved their targets during the last year.

The Executive Assistant to the Chief Executive advised that this report had been noted by Cabinet and no remedial action had been recommended for under performing targets as the commentary for each indicator explained the reason why.

Member comment was made with respect to the lower recycling rates and the Director of Services advised that steps were being taken under the new Waste Contract to improve education and information to the public to drive recycling up and some success had already been experienced. The Council was working closely with the County Council to explore other options.

Further Member comment was made with regard to Planning Appeals and the question asked as to why no evidence had been presented by officers to defend a particular appeal when planning permission had been refused by the Development Control Committee. The Director of Place gave an assurance that officers would present evidence at appeals.

The Cabinet Member for Planning then appraised Members of the 3 Corporate Plan Indicators for the Planning Service and their current status.

The Committee

RESOLVED

That the Council’s overall performance against the targets set out in the Corporate Plan 1 April 2016 to 31 March 2017, as set out at Appendix A to the report, be noted.

120. SERVICE DELIVERY PLAN 2013-2018 – PERFORMANCE OUTTURN YEAR END REPORT FOR THE PERIOD 1 APRIL 2016 TO 31 MARCH 2017

The Executive Assistant to the Chief Executive presented the year end performance outturn for the Service Delivery Plan performance indicators for the period 1 April 2016 to 31 March 2017 and was pleased to advise that 61% of the 2016/17 targets had been met. The report had been noted by Cabinet and no remedial action had been recommended for under performing targets as the commentary for each indicator explained the reason why and detailed the appropriate action to be taken by officers during 2017/18, where required. Cabinet had approved the deletion of 3 SDP indicators, the amendment to 1 indicator and the addition of 2 new indicators.

In considering the matter, comment was made that indicator CHH001, Emergency Accommodation, did not seem to be improving. A response was given by the Director of Services that a report had been presented to Cabinet which showed that the Council needed to purchase properties to use for temporary accommodation which would, in the longer term, save money. That proposal had been approved and an update would be provided at a later date to illustrate cost savings.

The Cabinet Member for Planning provided a brief update in relation to affordable housing which showed that there had only been 40 starts on site during 2016/17 but it was anticipated that this number would be much higher at around 200 during 2017/18. Nationally and regionally, affordable housing delivery was falling in West Sussex with 1,260 completions in 2014/15 but only 500 in 2015/16. A considerable amount of land was being traded once outline permission was granted, which was adding at least 1-2 years to the housing delivery timeline.

The Committee

RESOLVED – That

(1) the Council’s overall performance against the targets set out in the SDP report 1 April 2016 to 31 March 2017, as set out at Appendix A to the report, be noted; and

(2) the deletion of 3 SDP indicators, the amendment to 1 indicator and the addition of 2 new indicators, be noted.

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121. CABINET MEMBER QUESTIONS AND UPDATES

Councillor Warren asked the Cabinet Member for Planning how often the planning notices put up to advertise planning applications were checked to ensure they were still in place. The response was given that, due to insufficient resources, they were not checked.

Dr Walsh asked the Leader of the Council when the decision to withdraw from the Joint Eastern Arun Area Committee had been taken as a Member of the Council had stated that was the case at a recent meeting of Rustington Parish Council. The Leader confirmed that no such decision had as yet been taken as the options had to be looked at and, in addition, the matter would be decided by Full Council.

Councillor Mrs Oakley sought an assurance from the Cabinet Member for Planning that the Scheme of Delegation would be reviewed in terms of Householder Planning Applications, as agreed on 6 June 2016. That assurance was given and it was anticipated that a report would be presented to the Development Control meeting on 20 September 2017.

The Leader of the Council advised the Committee of the Arundel By Pass consultation that was being undertaken for 8 weeks, with three options being put forward. She requested Members to make every effort to attend as it was really important for the District.

The Cabinet Member for Residential Services informed Members that the HRA Business Plan was being presented at the Cabinet meeting on 31 July 2017 following 9 months of hard work by officers. He was of the view that a progressive approach had been taken and he invited the Committee to attend the presentation by the Council’s consultants and himself.

122. FEEDBACK FROM THE MEETING OF THE SUSSEX POLICE AND CRIME PANEL HELD ON 30 JUNE 2017

The Committee received and noted the feedback report circulated prior to the meeting following the meeting of the Sussex Police and Crime Panel held on 30 June 2017.

As the Cabinet Member for Community Wellbeing was unable to be present at the meeting, a request was made that he be asked for take forward Members’ concerns at the lack of statistics on crime that were now available.

(Prior to consideration of the following item, Councillors Dr Walsh and Edwards had declared a personal interest and remained in the meeting.)

123. FEEDBACK FROM THE MEETING OF THE WEST SUSSEX COUNTY COUNCIL’S HEALTH & AUDIT SOCIAL CARE SELECT COMMITTEE (HASC) ON 7 JULY 2017

In receiving and noting the feedback report circulated prior to the meeting, Councillor Dr Walsh advised that the maximum 45 minute travel time for cancer patients receiving radiotherapy treatment was a national target rather than the personal target of Mr John Gooderham.

124. COUNCIL TAX SUPPORT TASK & FINISH WORKING PARTY – CHANGE IN MEMBERSHIP

Following consideration, the Committee

RESOLVED

That Councillor Edwards replace Councillor Clayden as a member of the Council Tax Support Task & Finish Working Party.

125. WORK PROGRAMME 2017/2018

The Group Head of Policy advised Members of the following:-

- A further report on Data Protection Policies covering the Homeworking Policy would be submitted to the meeting on 26 September 2017 so that recommendations could go to Full Council in November.
- The Property & Estates Manager was looking for a steer from Members with regard to the review of the Concessions Strategy and would be attending the meeting on 26 September for that purpose.
- An update on the HRA Business Plan and the Leisure Strategy would be presented at the meeting on 21 November 2017.

(The meeting concluded at 8.05 pm)