

12. Other Matters

b) Consideration of an email and attachment from Mrs P Densham dated 27th November 2014

14546 Cllr McCarthy declared an interest as he is acquainted with Miss Densham. The Clerk gave information that this item concerned the expression of a view by Mrs Densham argued with some logic and with some understanding of the legal principles involved that any trust arising from the Inclosure Awards was a statutory rather than a charitable trust and that this view should be drawn to the attention of the Council. The Clerk has already replied to Miss Densham thanking her for the considerable time she would have spent researching and considering the matter and had pointed out that whatever the merits of her argument there are substantial obstacles for the Council being the sheer cost and financial risk that could arise if this path was one to be followed. After some discussion and in the light of the legal advice that the Council has already received it was **AGREED** that the information provided by Miss Densham should be **NOTED** but that no other action is required at the present time notwithstanding the advice of the Clerk that the legal position will be irretrievable once the legal estate of the lands concerned have been transferred to the AfLP trustees.

c) AfLP

Consideration of the report and recommendations from HPC's AfLP Working Group and consideration of the actions required to conclude a proposed final settlement of all issues with the AfLP.

14547 Cllr Perkins provided a summary of the recommendations of the HPC's AfLP Working Group and which taken together would conclude a final settlement of all of the issues that have arisen with the AfLP. The proposed lease transactions having been drawn to the attention of the Council's external auditor the Clerk reminded the Council that this was the moment for the Council to ensure that it had considered all relevant matters, it had ignored matters which should not be taken into account and that its decision was not irrational within the meaning of "Wednesbury Unreasonableness" and also that it was acting in accordance the Nolan Principles. In particular the Council should ensure that it has had or will get full and independent legal advice and has obtained all necessary valuations or has considered if they are necessary. The Clerk's advice was **NOTED**.

14548 The Council has already resolved to appoint Solicitors (Resolution number **4289**) to act on behalf of the Council in connection with the land transfers and leases. The Clerk gave information that the Council's solicitors had agreed to confine the legal costs in respect of the transfer of the legal interest of the lands concerned to the AfLP to the amount of the interim bill which was included in this month's financial report. The solicitors had provided an estimate of their charges as being £2250 plus disbursements in respect of the leases and matters to conclude the transaction which the Clerk recommended as being satisfactory particularly because it was important that the Council should receive full and competent legal advice in respect of these matters.

14549 In order that effect can be given to the proposed settlement the Council **RESOLVED** to reverse the following resolutions and in respect whereof a special motion bearing the names of at least five members pursuant to standing order 10a has been presented at or before the meeting:

"14358 To recognise that one half of the AfLP's legal costs they have already incurred relate to clarifying the position relating to Trust's Lands and to pay that sum (estimated as approximately £1550) in full and final settlement of any claim by the AfLP (8th July 2014).

*14497 As to the matter of the draft Scheme which has been prepared by the Charity Commission the recommendation of the Clerk as stated in the Clerk's report is that in respect of this and other legal issues which have arisen in connection with the AfLP the Council should not be guessing as to matters of great legal complexity and where there is doubt legal advice from a proper authoritative source should be sought. Advice has already been sought from a barrister specialising in trusts and charity law in respect of other aspects of the matter and his advice should be sought again. In this way either Counsel's advice can be used as a positive to help make suitable and appropriate changes to the draft Scheme or to properly understand this and other issues of doubt that may arise and be used as a shield against any criticism that the Council did not attempt to obtain proper legal advice at the time. After discussion the Council **RESOLVED** that the Clerk be authorised to expend up to £2000 in respect of obtaining further advice from Counsel. (11th November 2014).*

14550 Subject to any strong advice to the contrary as may concern any onerous or difficult terms of the leases as the Council may receive from their solicitors and subject to the Council retaining control as to the amount of rent it was entitled to charge to its allotment tenants and as to the level of services

provided to those allotment tenants the Council **RESOLVED** to accept the report and recommendations of the HPC AfLP Working Group to conclude a final settlement of all issues with the AfLP a copy of which is annexed to these minutes (Appendix 3). This will include the Council taking leases of the four allotments sites concerned for a term of 99 years in order that the use of those lands as allotments are assured and protected for the period of the leases. It is proposed that copy of the draft leases should be made available for the public for inspection at the Council Offices.

14551 The thanks of the Council to Cllr Perkins and the members of the Working Group for all their hard work and endeavours were asked to be duly minuted and recorded.