

**SPECIAL CABINET**

**MINUTES OF THE MEETING HELD ON THURSDAY 21 JULY 2011**

**AT 5.30 PM**

**IN THE COUNCIL CHAMBER, WILLITON**

**Present:**

Councillor T Taylor ..... Leader  
Councillor K V Kravis ..... Councillor K H Turner  
Councillor D J Westcott

**Members in Attendance:**

Councillor P H Murphy

**Officers in Attendance:**

Chief Executive (A Dyer)  
Meeting Administrator (H Dobson)

**CAB24      Apologies for Absence**

Apologies for absence were received from Councillors C Morgan, S J Pugsley and D J Sanders.

**CAB25      Declarations of Interest**

Members present at the meeting declared the following personal interests in their capacity as a Member of a County, Parish or Town Council:

<b>Name</b>	<b>Minute No</b>	<b>Member of</b>	<b>Action Taken</b>
Councillor D Westcott	All	Watchet	Spoke and voted
Councillor P Murphy	All	Watchet	Spoke

In addition, Councillor K Turner declared a prejudicial interest relating to Agenda Item 4, Amendments to Lease of Smithyard, Washford, Watchet: he was a member of the Planning Committee and left the chamber for that item.

**CAB26      Public Participation**

No member of the public had requested to speak.

CAB27

**Amendments to Lease of Smithyard, Washford, Watchet**

(Report No. WSC 97/11 circulated with the Agenda).

The purpose of this report was to seek urgent member approval for the removal of the 'forfeiture clause' contained within the lease concerning the Council owned land known as Smithyard Lorry Terminal, Watchet. The urgency had been created following commercial discussions between the current tenants of the site and EDF with the result that if an agreement between the two parties was to be reached it must be achieved by 31 July 2011.

The Chief Executive advised that the Council had had a lease with tenants for the site known as Smithyard, Watchet since 1995, and that it was EDF Energy's intention as part of the project to build a new nuclear power station at Hinkley Point to construct a 'park and ride' on that site, subject to the granting of planning consent which would be considered along with the main planning application by the IPC.

The forfeiture clause protected the Council, in that, should the tenant breach the lease the Council could automatically regain the lease; the clause would also apply to sub-leases. In effect, therefore, EDF Energy could lose tenancy of the site with the Head Lease being returned to the Council, a situation that EDF Energy would wish to avoid. They were, therefore, seeking to remove the clause and thereby protect themselves from potentially being evicted through no fault of their own.

As the removal of the clause would be of value to EDF Energy, the tenant and the Council, the District Valuer was requested to put a valuation on its removal, as detailed in Appendix B to the report. Members were advised that should they wish to discuss Appendix B in detail, that consideration should be given to excluding the press and public to avoid disclosing commercially sensitive confidential information.

In response, members of the Cabinet were in agreement that they had read Appendix B, and fully understood the content. Consequently, the members of Cabinet did not wish to discuss Appendix B in detail and therefore there was no need to consider the exclusion of the press and public.

The Chief Executive advised that following meetings held earlier that week with EDF Energy, the tenant and legal representatives from all parties, a compromise had been reached and as a result changes to the recommendations of the report were proposed as follows:

Replace Recommendation 2.1 and 2.2 with:

- 2.1 It is recommended that Cabinet agree to the following in respect of the forfeiture clause contained in the Head Lease in return for a capital payment of £46,000, namely:
  - 2.1.1 That for so long as NNB Generation Co. Ltd (or any group Company) is the tenant under the sub-lease of part, the

Council will not exercise its rights of forfeiture contained in Clause 12 of the Head Lease and that the said forfeiture provisions shall be suspended and be of no effect in respect of the whole site during that period; and

- 2.1.2. That the Head Lease be amended to require the Council to give a minimum of 28 days prior written notice to the Head Tenant and/or any sub-tenant of the whole or part and/or any of all mortgagees of its intention to forfeit the Head Lease and sufficient time for any of the parties to remedy the breach giving rise to the forfeiture claim.

## 2.2 As original Recommendation 2.3

During discussions members agreed that the Council and community would benefit from the proposals in the report. It had been difficult to find a valuable long running business use for the site, which had a long-term lease attached to it. The proposals would provide a capital receipt on an asset for the Council and a roundabout at Washford Cross. Whilst EDF Energy was on site the site would have a use and could provide a legacy for the future. Once EDF Energy had left the site the forfeiture clause would be reinstated.

**RESOLVED (1)** that, the following in respect of the forfeiture clause contained in the Head Lease in return for a capital payment of £46,000, be approved, namely:

- I. That for so long as NNB Generation Co. Ltd (or any group Company) is the tenant under the sub-lease of part, the Council will not exercise its rights of forfeiture contained in Clause 12 of the Head Lease and that the said forfeiture provisions shall be suspended and be of no effect in respect of the whole site during that period; and
- II. That the Head Lease be amended to require the Council to give a minimum of 28 days prior written notice to the Head Tenant and/or any sub-tenant of the whole or part and/or any of all mortgagees of its intention to forfeit the Head Lease and sufficient time for any of the parties to remedy the breach giving rise to the forfeiture claim.

**RESOLVED (2)** that, the principle that, the next rent review should take account of the change in use and physical improvements to the site, be approved.

The meeting closed at 5.53 pm.