



# MINUTES

## Council

<b>Date:</b>	Monday, 19 November 2018
<b>Venue:</b>	Town Hall, St Annes
<b>Members Present:</b>	Mayor (Councillor Peter Collins) Deputy Mayor (Councillor Jan Barker)  Councillors Ben Aitken, Christine Akeroyd, Frank Andrews, Peter Anthony, Julie Brickles, Karen Buckley, Maxine Chew, Alan Clayton, Delma Collins, Michael Cornah, Chris Dixon, David Donaldson, Susan Fazackerley MBE, Trevor Fiddler, Tony Ford JP, Shirley Green, Peter Hardy, Neil Harvey, Paul Hayhurst, Paul Hodgson, Angela Jacques, John Kirkham, Roger Lloyd, Edward Nash, Sally Nash, Graeme Neale, Jayne Nixon, Linda Nulty, Liz Oades, Sandra Pitman, Richard Redcliffe, Louis Rigby, Vince Settle, Elaine Silverwood, Roger Small, Heather Speak, Ray Thomas, Thomas Threlfall, Viv Willder.
<b>Officers Present:</b>	Allan Oldfield, Tracy Manning, Paul Walker, Ian Curtis, Simon Stott, Sharon Wadsworth, Tara Walsh, Colin Dockery.
<b>Other Attendees:</b>	No members of the public were present during the course of the meeting.

### Prayers

Prayers were offered by Reverend John Bannister followed by a minute's silence was held to mark the passing of Honorary Alderman Anne Smith OBE.

#### 1. Declarations of Interest

Members were reminded that any disclosable pecuniary interests should be declared as required by the Localism Act 2011 and any personal or prejudicial interests should be declared as required by the Council's Code of Conduct for Members.

Councillor Silverwood declared a personal and prejudicial interest in Item 6 – Lowther Trust and left the room for the duration of the item.

#### 2. Confirmation of Minutes

The Mayor proposed from the Chair that the Minutes of the Meeting held on 22 October 2018, be confirmed as a correct record in line with rule 14 of the Council Procedure Rules, subject to the following changes:

that the following words be added at the end of the final sentence in the Mayor's Announcements: *"and members may speak once on an amendment after it has been seconded with the proposer of the original motion having the right to speak last"*; and

that the heading *"12 – Lowther Trust"* be moved to after the words *"... the motion was LOST."*

The Deputy Mayor seconded the proposal.

Councillor Small proposed the following amendment, seconded by Councillor Harvey;

Minutes – Council – 19 November 2018

*“The draft minutes of the Council meeting of the 22<sup>nd</sup> October 2018 are a true and accurate record of the meeting and should be confirmed without alteration.”*

A brief debate took place, following which the amendment was CARRIED.

It was then RESOLVED to confirm that the draft minutes of the meeting of the Council held on 22 October as a true and accurate record of the meeting.

The Mayor indicated that he would decline to sign the minutes on the grounds that he believed them to be inaccurate. The Monitoring Officer advised that a note would be added to the minutes to reflect this.

### 3. Mayor’s Announcements

There were no announcements from the Mayor on this occasion.

### 4. Chief Executive’s Communications

There were no communications from the Chief Executive on this occasion.

## Decision Items

### Motion to Adjourn

Councillor Nulty moved a motion, seconded by Councillor Oades, for the meeting to be adjourned until independent legal advice had been sought regarding item 6.

A vote on the motion was taken, by way of a show of hands. The motion was LOST.

*(The Mayor, Deputy Mayor and Councillors Brickles, Clayton, Chew, Hardy, Hayhurst, Hodgson, Lloyd, Oades, Nulty, Rigby and Speak requested that their names be recorded as voting for the motion)*

*(Having declared an interest in Item 6 Councillor Silverwood left the room.)*

### 5. Exclusion of the Public

The Mayor, Councillor Peter Collins, proposed a resolution to exclude members of the public from the meeting for the consideration of Item 6 in accordance with the provisions of Section 100A (4) of the Local Government Act 1972. This was on the grounds that the business to be discussed was exempt information as defined under paragraphs 3 and 5 of schedule 12A to the Local Government Act 1972 - Information relating to the financial or business affairs of any particular person (including the authority holding that information) and information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Councillor Sue Fazackerley seconded the proposal.

It was RESOLVED to exclude the public.

### 6. Lowther Trust

Councillor Fazackerley introduced a report that provided members with information in relation to legal proceedings served against Lowther Trust. The report set out the options together and implications for the Council as the permanent Trustee for the charity, including the resources the Trust required to defend the legal action brought against it. Councillor Fazackerley proposed the recommendation in the agenda papers with the addition of a new 3g) *“the Trustees, together with the Council, agree to comprehensively review the Governing Document to appropriately reflect the Councils position as the permanent Trustee and, as a minimum, it will include a requirement that Trustees must receive approval from the Council before commencing, settling or taking any litigation action (except where the litigation is directed by the Trusts insurers), or before taking any material step in any statutory process.”*

Councillor Buckley seconded the proposal.

Councillor Oades proposed an amendment which was seconded by Councillor Nulty.

1. *“That the Governing documents are re-drafted and the existing Trustees removed from office, to be replaced by Trustees with the necessary financial, legal and theatrical expertise.*

Minutes – Council – 19 November 2018

- II. *To ensure that, in future, Fylde officers attend meetings of the Trust, minuting and meetings and ensuring that correct governance procedures are followed at all times.*

Following a debate, a recorded vote was requested and supported by five members was taken and the amendment was LOST.

**Votes for the proposal (12)** – Councillors Barker, Brickles, Chew, Clayton, P Collins, Hardy, Hayhurst, Hodgson, Lloyd, Nulty, Oades, Speak.

**Votes against the proposal (26)** – Aitken, Akeroyd, Andrews, Anthony, Buckley, D Collins, Cornah, Dixon, Donaldson, Fazackerley, Fiddler, Green, Harvey, Jacques, Kirkham, E Nash, S Nash, Neale, Nixon, Pitman, Redcliffe, Settle, Small, Thomas, Threlfall, Willder.

**Abstentions (2)** – Councillors Ford, Rigby.

Councillor Oades proposed a second amendment to add the words *“and reported to the first available Council meeting after such agreement is reached”* to recommendation 3f of the agenda papers. Councillor Nulty seconded the amendment.

A recorded vote was requested and supported and the amendment was LOST.

**Votes for the proposal (13)** – Councillors Barker, Brickles, Chew, Clayton, P Collins, Ford, Hardy, Hayhurst, Hodgson, Lloyd, Nulty, Oades, Speak.

**Votes against the proposal (26)** – Aitken, Akeroyd, Andrews, Anthony, Buckley, D Collins, Cornah, Dixon, Donaldson, Fazackerley, Fiddler, Green, Harvey, Jacques, Kirkham, E Nash, S Nash, Neale, Nixon, Pitman, Redcliffe, Settle, Small, Thomas, Threlfall, Willder.

**Abstentions (1)** – Councillor Rigby.

Councillor Oades proposed a third amendment to add a fourth recommendation to the substantive motion as follows;

*“All monies paid by the Council in respect of this litigation, or by way of compensation or other settlement payments to the tenant, excepting for the £4,000 which has already been approved by the Chief Executive under the Council’s Emergency Powers, shall be provided to the Lowther Gardens Trust as an interest free loan to be repaid to the Council within five years from the date it was paid.”*

The amendment was seconded by Councillor Nulty.

A recorded vote was requested and supported and the amendment was LOST.

**Votes for the proposal (13)** – Councillors Barker, Brickles, Chew, Clayton, P Collins, Hardy, Hayhurst, Hodgson, Lloyd, Nulty, Oades, Rigby, Speak.

**Votes against the proposal (27)** – Aitken, Akeroyd, Andrews, Anthony, Buckley, D Collins, Cornah, Dixon, Donaldson, Fazackerley, Fiddler, Ford, Green, Harvey, Jacques, Kirkham, E Nash, S Nash, Neale, Nixon, Pitman, Redcliffe, Settle, Small, Thomas, Threlfall, Willder.

**Abstentions (0)**

There were no further amendments and therefore a vote was taken on the substantive motion. A recorded vote was held;

**Votes for the proposal (26)** – Aitken, Akeroyd, Andrews, Anthony, Buckley, D Collins, Cornah, Dixon, Donaldson, Fazackerley, Fiddler, Green, Harvey, Jacques, Kirkham, E Nash, S Nash, Neale, Nixon, Pitman, Redcliffe, Settle, Small, Thomas, Threlfall, Willder.

**Votes against the proposal (13)** – Councillors Barker, Brickles, Chew, Clayton, P Collins, Hardy, Hayhurst, Hodgson, Lloyd, Nulty, Oades, Rigby, Speak.

**Abstentions (1)** – Councillor Ford

The proposal was carried and it was thereby RESOLVED:

Minutes – Council – 19 November 2018

1. To acknowledge and understand that the Council is in a unique position as the permanent Trustee responsible for the continuation of the Lowther Charitable Trust and should act in the Trust's best interest;
2. To acknowledge the cultural and community benefit derived from the facilities and activities delivered by Lowther Trust;
3. To approve an un-funded revenue budget increase in the subsidy payment to Lowther Charitable Trust for 2018/19 to a sum of £175k in order to provide the potential resource required in defending the legal proceedings served upon the charity, on the conditions that:
  - a) officers are instructed to work with the Trustees to manage the case in the most effective way possible in order to minimise the ultimate cost to the public purse, including consideration of further mediation or negotiated settlement;
  - b) the Trust meets the legal costs up to the Case Review Hearing (with the exception of the £4,000 approved by the Chief Executive, in consultation with, and with the concurrence of, the Vice-Chairman of the Tourism and Leisure Committee, together with the Leader of the Council under emergency powers to fund the Case Review Hearing);
  - c) the Council's Head of Governance takes the lead role in the management and facilitation of the legal proceedings;
  - d) if an outcome is achieved that is deemed acceptable to Fylde Council is also accepted by all of the other Trustees;
  - e) in the event that the case is successfully defended by the Trust all recoverable costs are returned to the Council; and
  - f) the ratification of any proposed settlement terms is agreed by the Council's Chief Executive in consultation with the Leader and Deputy Leader of the Council.
  - g) the Trustees, together with the Council, agree to comprehensively review the Governing Document to appropriately reflect the Council's position as the permanent Trustee and, as a minimum, it will include a requirement that Trustees must receive approval from the Council before commencing, settling or taking any litigation action (except where the litigation is directed by the Trust's insurers), or before taking any material step in any statutory process.

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