

Executive Scrutiny Board

Recommendations from the meeting held on 19 September 2018

Council Cabinet Agenda – 20 September 2018

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| Item 6 | Exclusion of Press and Public |
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A resolution to consider the exclusion of the Press and Public was considered.

Some members expressed concern that the report was to be considered in private and that no public version of the report had been made available. It was suggested that some information contained in the report was already in the public domain by other means. The Board requested legal advice in this regard from the Monitoring Officer.

The Monitoring Officer confirmed that it was proposed that Council Cabinet hear the report in private session, as it would likely involve the disclosure of exempt information, as defined under Paragraph 3 of Part 1, Schedule 12A of the Local Government Act 1972.

The Board were advised to consider that under paragraph seven of the Derby City Council Members' Code of Conduct councillors must have regard to advice provided by the council's Monitoring Officer.

It was stated that the report to be considered contained the type of commercially sensitive information envisaged when Paragraph 3 of Schedule 12A was first drafted, containing details of the business affairs of two local authorities, the contractor and their sub-contractors. To consider the report in public would result in revealing the council's negotiating position ahead of any talks and would be contrary to obligations under the inter-authority agreement and the main project agreement.

Any decision of the Executive Scrutiny Board not to exclude the public and the press would not affect the distribution of the report, as that remained the provision of the Monitoring Officer under the Local Government Act 1972.

If the Board were not to exclude the press and public, members were advised to consider their individual responsibilities and accountability with regards to making statements which involve the use of information provided to them in confidence, either detailed in the report or provided in confidential briefings to councillors. Any public dissemination of information defined as confidential in the inter-authority or main project agreements could give rise to legal action against the city council, county council or against individual councillors. This would not apply to material already lawfully in the public domain. Members were also advised to have regard for paragraph four of the Members' Code of Conduct, regarding the dissemination of confidential information.

It was noted that the Executive Scrutiny Board held a privileged position in being able to consider and make recommendations on Cabinet reports ahead of the Council Cabinet Meeting. A decision of the Executive Scrutiny Board to consider a report in open session,

when it had been identified as being exempt business for the purposes of Council Cabinet, would present serious questions as to whether the Board should have the power to pre-empt Cabinet's decision on exclusion.

A resolution to exclude the press and public was put to the vote and carried.

The Board resolved that under Section 100(A) of the Local Government Act 1972, the press and public be excluded from the meeting during discussion of the following items on the grounds that they involve the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Act and that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.