

Time Commenced – 16:00  
Time Finished – 18:20

## **Executive Scrutiny Board**

**19 September 2018**

Present: Councillor Graves (Chair)  
Councillors Eldret, Hudson, Jackson, Marshall, Potter,  
Rawson, Shanker, Stanton, Willoughby and Wood.

In Attendance: Richard Antcliff, Christine Durrant, Emily Feenan, Don McLure,  
Glen O'Connell, Kara MacFadyen, David Walsh, and Alex  
Hough (Democratic Services).

Other councillors in attendance: Councillor Peatfield

### **34/18 Apologies for Absence**

There were no apologies for absence.

### **35/18 Late Items**

There were no late items.

### **36/18 Declarations of Interest**

There were no declarations of interest.

### **73/18 Council Cabinet Agenda**

The Board considered a report from the Chief Executive on the Council Cabinet Agenda. Members considered the Council Cabinet Agenda in its entirety for the meeting scheduled for Thursday 20 September 2018 and made a number of comments and recommendations to Council Cabinet.

### **Item 6 – Exclusion of Press and Public**

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, their sub-contractors and funders. To consider the report in public would result in revealing the council's negotiating position ahead of any talks and could 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 decision of the Monitoring Officer as the proper 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 factual 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 it 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 outweighed the public interest in disclosing the information.**

## **Item 7 – Long Term Waste Management Contract**

The Board considered an exempt report of the Strategic Director of Communities and Place and the Strategic Director of Corporate Resources in relation to the Long Term Waste Management Contract.

The Executive Scrutiny Board made recommendations to Council Cabinet whilst in private session.

MINUTES END