

EXCLUSION OF PUBLIC AND PRESS

Meeting	9 March 2022
Report Author	Director of Law and Democracy and Deputy Monitoring Officer
Status	For Decision
Classification:	Unrestricted
Key Decision	No

Executive Summary:

This report is necessary in order to exclude the press and public from the meeting for consideration of item 13. It will weigh the public interest factors for disclosure against the public interest factors for exemption and explain why the exemption factors take priority.

The report will also state which paragraph of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended) the author is using in order to exclude the press and public from the meeting.

Recommendation(s):

That the public and press be excluded from the meeting for agenda item 13, as it contains exempt information as defined in paragraphs 1, 2, 3 & 7 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended).

Corporate Implications

Financial and Value for Money

There are no direct financial implications.

Legal

As per Part 1 of Schedule 12A of the Local Government Act 1972 (as amended).

Corporate

Thanet District Council will endeavour to keep the number of exempt reports it produces to a minimum in order to promote transparency.

Equality Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, gender, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

There are no specific equity and equality considerations that need to be addressed in this report.

Corporate Priorities

This report does not directly relate to any of the corporate priorities:

- *Growth*
- *Environment*
- *Communities*

1.0 Introduction and Background

1.1 Whilst the starting point for all public meetings of the Council is to admit the public and press, they may be excluded from meetings whenever it is likely, in view of the nature of the business to be transacted that confidential or exempt information would be disclosed. Under such circumstances, confidential or exempt information may be excluded from the public agenda. The public and press must be excluded from meetings if confidential information will be considered and disclosed, and such material must be excluded from the public agenda.

Meaning of confidential information

1.2 Confidential information means information given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order.

Exempt information – discretion to exclude public

1.3 Subject to Article 6 of the Human Rights Act 1998 (right to a fair trial) the public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that “exempt” information would be disclosed.

2.0 Exempt Information

- 2.1 The full rules are set out in Part 1 & 2 of Schedule 12A of the Local Government Act 1972 (as Amended).

3.0 Reason Why Agenda Item 13 is considered to be “exempt”

- 3.1 The report author has classified Agenda Item 13 as disclosing exempt information under paragraph 1 – Information relating to an individual, paragraph 2 - Information which is likely to reveal the identity of an individual, paragraph 3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information) and paragraph 7 - Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime, of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended) thereby suggesting that the press and public be excluded from the meeting whilst this item is debated.

4.0 Justification/Public Interest Test

Public interest factors for disclosure

- 4.1 Factors suggested by the Information Commissioner as being relevant to an assessment of public interest apply to this information. Disclosure would:-
1. Further public understanding of the issues involved;
 2. Further public participation in the public debate of issues, in that disclosure would allow a more informed debate;
 3. Promote accountability and transparency by the Council for the decisions it takes;
 4. Promote accountability and transparency in the spending of public money;
 5. Allow individuals and organisations /external agencies to understand decisions made by the Council affecting their lives & activities and assist individuals to challenge those decisions;

Reasons in favour of disclosure of information specific to the issue in question

None.

Public interest factors for exemption

Considerations which may weigh against a decision to disclose information include:

1. Good local government depends on good decision-making and this needs to be based on the best advice available and a full consideration of all the options without fear of premature disclosure;
2. Advice should be broad based and there may be a deterrent effect on external experts or stakeholders who might be reluctant to provide advice because it might be disclosed;
3. The impartiality of the officers might be undermined if advice was routinely made public as there is a risk that officials could come under political pressure not to challenge ideas in the formulation of policy, thus leading to poorer decision making;
4. Members and officers also need to be able to conduct rigorous and candid risk assessments of their policies and programmes including considerations of the pros and cons without there being premature disclosure which might close off better options;
5. There needs to be a free space in which it is possible to 'think the unthinkable' and use imagination, without the fear that policy proposals will be held up to ridicule;
6. Some aspects of Legal advice to Members may need to be taken in private as disclosure of such information would prejudice the position of Council in the event of Court proceedings taking place thereafter;
7. Local Councils are obliged to adhere to legislation that include the Data Protection Act, 1998; where appropriate and failure to do so may result in litigation against Council by an aggrieved party thereby putting at risk the general public interest to protect the public purse.

5.0 Not Excluding the Press and Public

- 5.1 There will be occasions when the meeting may decline to exclude the press and public from the meeting. If that occurs it does not simply mean that those members of the press and public who are present are allowed to stay for the discussion of the item(s). Declining to exclude the press and public would also mean that the press and public are allowed access to the actual report contained within the confidential part of the agenda (what Democratic Services refer to as the "pink pages").
- 5.2 Members may wish to note that if a committee member is of the view that it is possible that the recommendation in this report may not be approved at the meeting, they should let Democratic Services know (as soon as they have read the agenda papers before the meeting); in order that spare copies are made available ready to be distributed, if necessary, at the meeting.
- 5.3 If the referred item is not exempted, Democratic Services would also make arrangements for the report to be retrospectively published on the Council's website.

6.0 Decision Making Process

- 6.1 If the press and public are to be excluded for the agenda item; this Committee must exercise its power to agree the recommendation.

Contact Officer: Nicholas Hughes, Committee Services Manager

Reporting to: Estelle Culligan, Director of Law and Democracy and Acting Monitoring Officer.

Annex List

None

Background Papers

None

Corporate Consultation

Legal: Estelle Culligan, Director of Law and Democracy and Acting Monitoring Officer.