

Draft Approved by Standards and Audit Committee (17/9/20)

Woking Borough Council

Confidentiality Protocol

Adopted [15 October 2020]

DRAFT

## **1. Introduction**

- 1.1 The Council is an open and transparent organisation. This enables residents to see what the Council is doing and, more importantly, why actions are taken by it. In this way, residents are able to hold the Council to account for its actions.
- 1.2 There will be rare occasions where the Council is involved in a transaction that needs to be kept confidential, in order to protect the interests of the Council and/or the party the Council is dealing with. The Council will only enter into confidentiality obligations when there are sound and clear-cut reasons to do so.
- 1.3 Confidentiality obligations fall into three main categories, (i) non-disclosure agreements (NDAs), (ii) confidentiality clauses in contracts and (iii) Part II items of business considered by Council, Executive and Committees. This Protocol deals with each category in turn, and sets out the issues and procedures that apply to these confidentiality obligations.
- 1.4 For the avoidance of doubt, this Protocol does not apply to situations where the Council is required to maintain the confidentiality of personal information e.g. information relating to (i) recipients of Council services and (ii) Council employees. This information will be processed in accordance with the relevant statutory provisions, including the Data Protection Act 2018 and the General Data Protection Regulation.

## **2. Non-Disclosure Agreements (NDAs)**

- 2.1 It is normal practice for the Council to enter into a NDA when it is exploring a commercial proposal with a third-party. NDAs allow third-parties to make proposals to the Council, and for Officers to establish whether those proposals warrant formal consideration by the Council (normally by report to the Executive and/or Council). NDAs are an important, but standard, part of local authority business practice.
- 2.2 A NDA will only be entered into if one of the three Statutory Officers of the Council has, following (where practical) consultation with the Leader of the Council (or in his/her absence, the Deputy Leader of the Council), authorised completion of the same. In the event that all three Statutory Officers are absent (or are otherwise unable to act), authority to enter into a NDA may be given by a Deputy Statutory Officer.
- 2.3 The extent of confidentiality provided for in a NDA (including the period during which the information will be confidential) shall be the minimum amount reasonably required to enable the underlying proposal to be considered by the Council.
- 2.4 Full details of completed NDAs (together with a copy of the NDA) shall be included in:-
  - (a) a Register of NDAs maintained by the Monitoring Officer, and
  - (b) the Project Workbook, prepared under the Council's Project Management Framework, for the underlying proposal.

The Register of NDAs and Project Workbook shall be available for inspection by Members of the Council.

- 2.5 The need for a NDA to remain in effect shall be reviewed, on an annual basis, by the Monitoring Officer. The outcome of the review shall be recorded in the Register of NDAs.
- 2.6 An annual report shall be submitted to the Executive setting out details of NDAs still in effect.

### **3. Confidentiality Clauses in Contracts**

- 3.1 On occasions, the Council will enter into business contracts/development agreements that contain confidentiality clauses. This is to ensure that commercially sensitive information remains private until it ceases to be sensitive. Such clauses routinely provide for publication of the information to be agreed between the parties.
- 3.2 The extent of confidentiality provided for in a business contract/development agreement (including the period during which the information will be confidential) shall be the minimum amount reasonably required to enable the underlying transaction to proceed.
- 3.3 Business contracts/development agreements are normally completed following a report to the Executive and/or Council. The Officer report will detail the extent of confidentiality provided for in the proposed business contract/development agreement (including the period during which the information will be confidential) so that it can be considered and, if appropriate, approved by Members. Any extension to the period during which the information will be confidential will require the approval of the Executive.
- 3.4 Full details of confidentiality clauses in completed business contracts/development agreements (together with a copy of the confidentiality clause) shall be included in:-
  - (a) a Register of Contractual Confidentiality Clauses maintained by the Monitoring Officer, and
  - (b) the Project Workbook, prepared under the Council's Project Management Framework, for the underlying transaction.

The Register of Contractual Confidentiality Clauses shall be available for inspection by Members of the Council.
- 3.5 The need for a contractual confidentiality clause to remain in effect shall be reviewed, on an annual basis, by the Monitoring Officer. The outcome of the review shall be recorded in the Register of Contractual Confidentiality Clauses.
- 3.6 An annual report shall be submitted to the Executive setting out details of contractual confidentiality clauses still in effect.

#### **4. Part II Items of Business Considered by Council, Executive and Committees.**

- 4.1 The ability of the Council, Executive or a Committee to consider an item of business on a Part II basis (i.e. without the press and public present) is strictly limited by statute.
- 4.2 The Council has adopted, as part of its Constitution, "Access to Information Rules". These set out the circumstances in which the Council must, and may, deal with business on a Part II basis. These Rules are consistent with the statutory provisions and should be complied with on all occasions.
- 4.3 Full details of Part II items of business shall be included in a Register of Part II Items maintained by the Monitoring Officer. The Register of Part II Items shall be available for inspection by Members of the Council.
- 4.4 The need for an item of business to remain subject to a Part II designation shall be reviewed, on an annual basis, by the Monitoring Officer. The outcome of the review shall be recorded in the Register of Part II Items.
- 4.5 An annual report shall be submitted to the Executive setting out details of items of business subject to a Part II designation.

#### **5. Review of Protocol**

- 5.1 This Protocol shall be subject to an annual review (as part of the Executive's consideration of the annual report referred to in paragraphs 2.6, 3.6 and 4.5 above).

This Protocol was adopted by the Council on [15 October 2020]