

Council Motion referral – Audit and Governance Committee – June 2022

Point 4 - Non Disclosure Agreements (NDA)/Confidentiality Agreements – sometimes called both

The Monitoring Officer has sought to gather as much information on the use of these agreements. Much was held across various teams in the council depending on the project/project lead/managers. Agreements relating to cabinet reports were held by Democratic Services.

Subject Matter	When	How Many?
Station Approach Architects Panel	July 2017	5 individuals including 2 councillors
Viewing Winchester Sport and Leisure Park Contract	June 2019	3 known
Viewing Environmental Services Contract	November 2019	2 known
CWR Reference Group	September 2021	9 individuals including 3 councillors
CWR – Cabinet Report - outline business case. Appendix containing financial information	July and December 2020	12 councillors

Monitoring Officer opinion

The use of these agreements should always be the exception. Whilst understanding the caution erred by officers in respect of the financial appraisal in the outline business case for CWR, on consulting with both the Project Director lead and Section 151 officer, when the matter was raised with the Monitoring officer in

December 2021, she took the following action to remove the requirement for the NDA as follows;

From: Lisa Kirkman
Sent: 17 December 2021 09:19
To: _Members - All Members-All@winchester.gov.uk
Subject: CWR Cabinet Papers - NDA - Update
Importance: High

Good Morning Members,

While I had, pre-despatch, reviewed and agreed with the exemption applied to appendix E of the CWR Cabinet papers for next week I have now had opportunity to review and discuss the NDA for the same with the S151 Officer and lead Director.

I do not think the NDA is necessary for this report and exempt appendix and my colleagues agree. Members are obliged to comply, as they always are, with the confidentiality that applies to the exempt paper. The available remedies for any breach of confidentiality remain the same and any breach will be acted upon.

As a result the exempt appendix will be loaded to mod.gov today for members to access in the usual way.

Many thanks and best wishes,

Lisa

Lisa Kirkman
Strategic Director and Monitoring Officer

NDA's and use of Indemnities – councillors

It is arguable whether an indemnity is legally enforceable against a councillor – this argument relates to the intention to create legal relations. If agreed by Audit and Governance committee all councillors should be formally released from any indemnity clause with the remainder of the agreement to remain in force.

The exception would relate to the CWR – Cabinet Report outline business case (Appendix containing financial information). As the Monitoring Officer removed the NDA from the **second** Cabinet paper, with the agreement of Audit and Governance committee, the same process should be gone through in relation to release of the NDA on the **first** Cabinet report.

Improvements

In terms of process **any** use of NDA/confidentiality agreements in future should always be signed off by the Executive Leadership Board and the terms of the NDA

approved by the Monitoring Officer. The Monitoring Officer therefore recommends this change to the committee.

The Monitoring officer has sought improvements to the marking of exempt papers in mod.gov and puts to Audit and Governance Committee this sample of an obviously presented pink exempt paper and how this would be viewed in mod.gov. The Monitoring Officer therefore recommends this change to the committee.