

CITY AND COUNTY OF SWANSEA

NOTICE OF MEETING

You are invited to attend a Meeting of the

SCRUTINY PROGRAMME COMMITTEE

At: Committee Room 2, Civic Centre, Swansea.

On: Wednesday, 23 April 2014

Time: 4.00 pm

AGENDA

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d. Tony Beddow	
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8 Counsel's Opinion on Court Judgement Issued March 2009. (To be made available at the Meeting)	



Patrick Arran
Head of Legal, Democratic Services & Procurement
Tuesday 15 April 2014

Contact: Democratic Services - Tel: (01792) 637292

SCRUTINY PROGRAMME COMMITTEE (16)

Labour Councillors: 11

A M Cook	R Francis-Davies
D W Cole	J E C Harris
J P Curtice	A J Jones
N J Davies	R V Smith (Vice Chair)
V M Evans	M Thomas
P Downing	

Liberal Democrat Councillors: 3

A M Day (Chair)	P M Meara
J W Jones	

Independent Councillor: 1

E W Fitzgerald	
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Conservative Councillor: 1

A C S Colburn	
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Co-opted Members:

David Anderson-Thomas	Vacancy
Sarah Joiner	Vacancy

Officers:

Dean Taylor	Director of Corporate Services
Lee Wenham	Head of Marketing, Communications & Scrutiny
Dave Mckenna	Overview & Scrutiny Manager
Brij Madahar	Overview & Scrutiny Coordinator
Democratic Services	
Nigel Havard	Legal
Archives	

Email:

Executive Board	
Cabinet Members	
Leaders of Opposition Groups	
Carl Billingsley	

Total Copies: 30

Agenda Item 2

Disclosures of Interest

To receive Disclosures of Interest from Councillors and Officers

Councillors

Councillors Interests are made in accordance with the provisions of the Code of Conduct adopted by the City and County of Swansea. You must disclose orally to the meeting the existence and nature of that interest.

NOTE: You are requested to identify the Agenda Item / Minute No. / Planning Application No. and Subject Matter to which that interest relates and to enter all declared interests on the sheet provided for that purpose at the meeting.

1. If you have a **Personal Interest** as set out in **Paragraph 10** of the Code, you **MAY STAY, SPEAK AND VOTE** unless it is also a Prejudicial Interest.
2. If you have a Personal Interest which is also a **Prejudicial Interest** as set out in **Paragraph 12** of the Code, then subject to point 3 below, you **MUST WITHDRAW** from the meeting (unless you have obtained a dispensation from the Authority's Standards Committee)
3. Where you have a Prejudicial Interest you may attend the meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, **provided** that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise. In such a case, you **must withdraw from the meeting immediately after the period for making representations, answering questions, or giving evidence relating to the business has ended**, and in any event before further consideration of the business begins, whether or not the public are allowed to remain in attendance for such consideration (**Paragraph 14** of the Code).
4. Where you have agreement from the Monitoring Officer that the information relating to your Personal Interest is **sensitive information**, as set out in **Paragraph 16** of the Code of Conduct, your obligation to disclose such information is replaced with an obligation to disclose the existence of a personal interest and to confirm that the Monitoring Officer has agreed that the nature of such personal interest is sensitive information.
5. If you are relying on a **grant of a dispensation** by the Standards Committee, you must, before the matter is under consideration:
 - i) Disclose orally both the interest concerned and the existence of the dispensation; and
 - ii) Before or immediately after the close of the meeting give written notification to the Authority containing:

- a) Details of the prejudicial interest;
- b) Details of the business to which the prejudicial interest relates;
- c) Details of, and the date on which, the dispensation was granted; and
- d) Your signature

Officers

Financial Interests

1. If an Officer has a financial interest in any matter which arises for decision at any meeting to which the Officer is reporting or at which the Officer is in attendance involving any member of the Council and /or any third party the Officer shall declare an interest in that matter and take no part in the consideration or determination of the matter and shall withdraw from the meeting while that matter is considered. Any such declaration made in a meeting of a constitutional body shall be recorded in the minutes of that meeting. No Officer shall make a report to a meeting for a decision to be made on any matter in which s/he has a financial interest.
2. A "financial interest" is defined as any interest affecting the financial position of the Officer, either to his/her benefit or to his/her detriment. It also includes an interest on the same basis for any member of the Officers family or a close friend and any company firm or business from which an Officer or a member of his/her family receives any remuneration. There is no financial interest for an Officer where a decision on a report affects all of the Officers of the Council or all of the officers in a Department or Service.

Report of the Chair

Special Scrutiny Programme Committee - 23 April 2014

CO-OPTION

Purpose	This report provides advice to the committee to inform its consideration of co-option of others to its review of the gypsy and traveller site search process.
Content	Information from relevant guidance is presented to ensure understanding about the power to co-opt and benefits.
Councillors are being asked to	Consider the information to inform any decision on co-option
Lead Councillor(s)	Councillor Robert Smith, Vice-Chair of Scrutiny Programme Committee.
Lead Officer & Report Author	Brij Madahar, Scrutiny Coordinator Tel: 01792 637257 E-mail: brij.madahar@swansea.gov.uk

1. Guidance on Co-option

- 1.1 Scrutiny has the power to co-opt non-voting members for either a topic or a term up to the next Annual Meeting of Council. There is no formal mechanism for co-option and relevant legislation / guidance focuses on co-option as a way of involving those who are not councillors in the scrutiny process. However that does not preclude the co-option of other councillors as non voting members. But there is no automatic right for members to be co-opted onto a scrutiny committee / body or their request to be placed on an agenda.
- 1.2 Co-option in the main is about scrutiny reaching out for expert knowledge or skills from others to support elected members in their deliberations and adding value to their work.
- 1.3 Any scrutiny body interested in co-option should consider:
 - the range of expertise, skills and knowledge needed to effectively deliver its work
 - the range of expertise, skills and knowledge the existing members are already able to bring
 - where there are gaps in the required expertise, skills and/or knowledge that a co-opted member could fill
 - whether the need for the expertise, skills and knowledge is time-limited

- 1.4 According to Statutory Guidance from the Local Government (Wales) Measure 2011 'in all instances where co-option is being considered, care should be taken to ensure that co-option is in fact the best way for some individuals or groups of interest to be involved in the work of scrutiny committees' (p. 36). Co-option is not the only means for scrutiny to engage others. Other arrangements include the calling of expert and other witnesses, and consultation through a range of means designed to reach members of the public, and receiving evidence or hearing from interested parties.
- 1.5 Ultimately it is for the scrutiny body to come to a view about co-option but the advice would be that this is done with a clear rationale about what the committee is looking for in a co-optee and consideration given as to whether other people ought to be asked / included who may meet any criteria set out.
- 1.6 When considering co-option it would be good practice to:
- determine the number of co-optees to be sought
 - identify the range of experience, skills, knowledge and expertise sought and seek nominations from organisations and individuals who demonstrate they have these
 - guard against seeking nominations from organisations or individuals with a single issue perspective or personal agenda
 - identify organisations which represent interest groups that fill identified gaps
 - be inclusive and fair
- 1.7 Although there have been examples of co-option by some of the Scrutiny Panels it must be noted these are informal bodies and have more flexibility and freedom to conduct their business as opposed to the Scrutiny Programme Committee which is a formal body of the council and subject to relevant legislation.
- 1.8 Co-opted members would not count towards a quorum of a meeting nor be eligible to serve as Chairman or Vice Chairman. Co-optees would also be required to declare any interest / conflict of interest / predetermination.

2. Co-option and the Work of this Committee

- 2.1 Following referral by council in October 2013 it was decided by the Scrutiny Programme Committee that it would deal directly with the review of the process in relation to the gypsy and traveller site search through a number of special meetings of the committee.
- 2.2 As a result of issues raised about the composition of the committee and representation in respect of this specific scrutiny work it was agreed by the committee at the last meeting to consider whether or not co-option of others is necessary.

- 2.3 The committee should note that a request has been made by Councillor Bob Clay to be co-opted onto committee for this work in order to make suggestions for the ongoing review and witnesses. Therefore this request should be considered as part of the committee's discussion.
- 2.4 The committee should consider the information within this report to inform any decision on co-option, that is:
- a) whether co-option is necessary and the rationale behind it;
 - b) who would be the most appropriate person(s) to act as co-optee; and
 - c) the duration of co-option.

Date: 11 April 2014

Legal Officer: Debbie Smith
Finance Officer: Carl Billingsley

Background Papers:

Council Constitution

Statutory Guidance from the Local Government Measure 2011 (Welsh Government June 2012)

Agenda Item 5

Report of the Chair

Special Scrutiny Programme Committee - 23 April 2014

GYPSY & TRAVELLER SITE SEARCH PROCESS – EVIDENCE SESSION

Purpose	The fourth evidence session will focus on evidence from members of the public and other councillors who have contacted the committee.
Content	Arrangements have been made for the following persons to give evidence to this committee meeting: <ul style="list-style-type: none">• Keith Jones• Councillor Uta Clay• Councillor Penny Matthews• Tony Beddow
Councillors are being asked to	Consider the information presented as part of the committee's review of the process, and ask questions.
Lead Councillor(s)	Councillor Robert Smith, Vice-Chair of Scrutiny Programme Committee.
Lead Officer & Report Author	Brij Madahar, Scrutiny Coordinator Tel: 01792 637257 E-mail: brij.madahar@swansea.gov.uk

1. Introduction

- 1.1 A series of special meetings of the Scrutiny Programme Committee are being arranged to review the process adopted to date in the search for a second gypsy and traveller site so that the committee can consider whether the process, leading up to the report to Council on 21 October 2013, was robust. The committee will be looking at the quality of that process, and may identify any learning points about the process, and recommend any changes for the future as appropriate.
- 1.2 The committee is gathering evidence for this work. Initial meetings have enabled the committee to hear from officers involved in the process who have provided an overview of the process and legal framework and information on the criteria and method of site selection, the consultation process / outcomes, and the role of officers.
- 1.3 The committee was also keen to ensure that members of the public and other councillors not involved in the committee were provided with opportunity to engage with this work.

2. Call for Evidence

- 2.1 The committee issued correspondence that would enable interested persons to:
- suggest questions about the process that was followed to help the committee ask the right questions at its meetings
 - submit information / views in writing about the process that was followed that they wish to bring to the committee's attention
 - if preferred, appear before the committee to give oral evidence about the process.
- 2.2 The committee raised awareness of this invitation through specific correspondence sent to all councillors, a press release which appeared on the council's website and local newspaper, and correspondence sent to members of the local gypsy and traveller community.
- 2.3 Those wishing to respond to this invitation were directed to contact the scrutiny team at the Civic Centre by email or print.

3. Response

- 3.1 The following persons have requested to appear before the committee to their evidence / views about the process:
- Tony Beddow
 - Keith Jones
 - Hilary and Tom Jenkins
 - Phillip Robins
 - Lawrence Bailey
 - Councillor Uta Clay
 - Councillor Jennifer Raynor
 - Councillor Penny Matthews
- 3.2 Correspondence was also received from Councillor Bob Clay making suggestions about the sort of people who might be able to help the committee in its understanding of the whole issue, who the committee may wish to call as future witnesses. He wanted to explain to the committee what each of these people might be able to tell the committee. *(Note – Councillor Clay has also expressed a wish to be co-opted onto the committee – which is being dealt with elsewhere on the agenda for this meeting).*
- 3.3 In order to manage the business of the committee and taking into account the availability of those wishing to give evidence, the evidence indicated above will be dealt with over committee meetings as follows:

Wed 23 April:

- Tony Beddow
- Keith Jones
- Councillor Uta Clay
- Councillor Penny Matthews

Further meeting(s) – date & time to be confirmed:

- Hilary and Tom Jenkins
- Phillip Robins
- Lawrence Bailey
- Councillor Jennifer Raynor
- Councillor Bob Clay (*subject to the committee's decision on co-option*)

- 3.4 The purpose of the session is for the committee to listen to the evidence that is presented and ask questions in order to clarify anything that is said. It may also guide the future work of the committee. The committee will have the opportunity to reflect on all evidence gathered in due course in order to draw conclusions.

Date: 11 April 2014

Legal Officer: Nigel Havard
Finance Officer: Carl Billingsley

Background Papers: None

Agenda Item 6

Special Meetings of Scrutiny Programme Committee

Gypsy & Traveller Site Provision – Review of Process

1. Purpose:

- To review the process adopted to date and seek assurance on quality
- To identify any learning points as appropriate and recommend any changes for the future

2. Key Question:

Was the process, leading up to the report to Council on 21 October 2013, robust?

3. Timetable of Work:

Meeting		Purpose	Attending
1.	20 Feb	<ul style="list-style-type: none"> • Overview of Gypsy Traveller Site Search - report giving chronology of process and legal framework. 	<ul style="list-style-type: none"> • Jack Straw (Chief Executive) • Reena Owen (Corporate Director) • Emyr Jones (Planning Services) • Patrick Arran (Legal Services)
2.	6 Mar	<ul style="list-style-type: none"> • Criteria for Site Selection / Explanation of Site Sieve Process 	<ul style="list-style-type: none"> • Reena Owen (Corporate Director) • Emyr Jones (Planning Services) • Dave Turner (Estates)
3.	3 Apr	<ul style="list-style-type: none"> • Consultation Process / Outcomes, Senior Officer Panel / Executive Board Reviews - copy of reports to Council / Cabinet, consultation feedback, reference to role of Senior Officer Panel and Executive Board 	<ul style="list-style-type: none"> • Reena Owen (Corporate Director) • Patrick Arran (Legal Services)
		<ul style="list-style-type: none"> • To deal with outstanding queries from officer evidence 	
4.	23 Apr	<ul style="list-style-type: none"> • Evidence from members of the public / other councillors (1) 	<ul style="list-style-type: none"> • Tony Beddow • Keith Jones • Cllr Uta Clay • Cllr Penny Matthews
5.	tbc	<ul style="list-style-type: none"> • Evidence from members of the public / other councillors (2) 	<ul style="list-style-type: none"> • Hilary & Tom Jenkins • Phillip Robins • Lawrence Bailey • Cllr Jennifer Raynor • Cllr Bob Clay (<i>subject to committee decision on co-option</i>)

Further meetings to be arranged. Committee to consider:

- evidence from other sources
- analysis of evidence / conclusions

Agenda Item 7

Report of the Head of Legal, Democratic Services & Procurement

Special Scrutiny Programme Committee – 23 April 2014

EXCLUSION OF THE PUBLIC

Purpose:	To consider whether the Public should be excluded from the following items of business.	
Policy Framework:	None.	
Reason for Decision:	To comply with legislation.	
Consultation:	Legal.	
Recommendation(s):	It is recommended that:	
1)	The public be excluded from the meeting during consideration of the following item(s) of business on the grounds that it / they involve(s) the likely disclosure of exempt information as set out in the Paragraphs listed below of Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007 subject to the Public Interest Test (where appropriate) being applied.	
	Item No.	Relevant Paragraphs in Schedule 12A
	8	16
Report Author:	Democratic Services	
Finance Officer:	Not Applicable	
Legal Officer:	Patrick Arran – Head of Legal, Democratic Services and Procurement (Monitoring Officer)	

1. Introduction

- 1.1 Section 100A (4) of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007, allows a Principal Council to pass a resolution excluding the public from a meeting during an item of business.
- 1.2 Such a resolution is dependant on whether it is likely, in view of the nature of the business to be transacted or the nature of the proceedings that if members of the public were present during that item there would be disclosure to them of exempt information, as defined in section 100I of the Local Government Act 1972.

2. Exclusion of the Public / Public Interest Test

- 2.1 In order to comply with the above mentioned legislation, Cabinet will be requested to exclude the public from the meeting during consideration of the item(s) of business identified in the recommendation(s) to the report on the grounds that it / they involve(s) the likely disclosure of exempt information as set out in the Exclusion Paragraphs of Schedule 12A of the Local Government

Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007.

- 2.2 Information which falls within paragraphs 12 to 15, 17 and 18 of Schedule 12A of the Local Government Act 1972 as amended is exempt information if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 2.3 The specific Exclusion Paragraphs and the Public Interest Tests to be applied are listed in **Appendix A**.
- 2.4 Where paragraph 16 of the Schedule 12A applies there is no public interest test. Councillors are able to consider whether they wish to waive their legal privilege in the information, however, given that this may place the Council in a position of risk, it is not something that should be done as a matter of routine.

3. Financial Implications

- 3.1 There are no financial implications associated with this report.

4. Legal Implications

- 4.1 The legislative provisions are set out in the report.
- 4.2 Councillors must consider with regard to each item of business set out in paragraph 2 of this report the following matters:
 - 4.2.1 Whether in relation to that item of business the information is capable of being exempt information, because it falls into one of the paragraphs set out in Schedule 12A of the Local Government Act 1972 as amended and reproduced in Appendix A to this report.
 - 4.2.2 If the information does fall within one or more of paragraphs 12 to 15, 17 and 18 of Schedule 12A of the Local Government Act 1972 as amended, the public interest test as set out in paragraph 2.2 of this report.
 - 4.2.3 If the information falls within paragraph 16 of Schedule 12A of the Local Government Act 1972 in considering whether to exclude the public members are not required to apply the public interest test but must consider whether they wish to waive their privilege in relation to that item for any reason.

Background Papers: None.

Appendices: Appendix A – Public Interest Test.

Public Interest Test

No.	Relevant Paragraphs in Schedule 12A
12	Information relating to a particular individual.
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 12 should apply. His view on the public interest test was that to make this information public would disclose personal data relating to an individual in contravention of the principles of the Data Protection Act. Because of this and since there did not appear to be an overwhelming public interest in requiring the disclosure of personal data he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
13	Information which is likely to reveal the identity of an individual.
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 13 should apply. His view on the public interest test was that the individual involved was entitled to privacy and that there was no overriding public interest which required the disclosure of the individual's identity. On that basis he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
14	Information relating to the financial or business affairs of any particular person (including the authority holding that information).
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 14 should apply. His view on the public interest test was that:</p> <p>a) Whilst he was mindful of the need to ensure the transparency and accountability of public authority for decisions taken by them in relation to the spending of public money, the right of a third party to the privacy of their financial / business affairs outweighed the need for that information to be made public; or</p> <p>b) Disclosure of the information would give an unfair advantage to tenderers for commercial contracts.</p> <p>This information is not affected by any other statutory provision which requires the information to be publicly registered.</p> <p>On that basis he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>

No.	Relevant Paragraphs in Schedule 12A
15	<p>Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.</p>
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 15 should apply. His view on the public interest test was that whilst he is mindful of the need to ensure that transparency and accountability of public authority for decisions taken by them he was satisfied that in this case disclosure of the information would prejudice the discussion in relation to labour relations to the disadvantage of the authority and inhabitants of its area. On that basis he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
16	<p>Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p>
	<p>No public interest test.</p>
17	<p>Information which reveals that the authority proposes: (a) To give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) To make an order or direction under any enactment.</p>
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 17 should apply. His view on the public interest test was that the authority's statutory powers could be rendered ineffective or less effective were there to be advanced knowledge of its intention/the proper exercise of the Council's statutory power could be prejudiced by the public discussion or speculation on the matter to the detriment of the authority and the inhabitants of its area. On that basis he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
18	<p>Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime</p>
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 18 should apply. His view on the public interest test was that the authority's statutory powers could be rendered ineffective or less effective were there to be advanced knowledge of its intention/the proper exercise of the Council's statutory power could be prejudiced by public discussion or speculation on the matter to the detriment of the authority and the inhabitants of its area. On that basis he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>