

## COUNCIL

26 JANUARY 2017

### USE OF URGENCY PROVISIONS

Portfolio Holder: Councillor Alan Jarrett, Leader  
Report from: Neil Davies, Chief Executive  
Author: Perry Holmes, Monitoring Officer

#### Summary

This report provides details of recent usage of urgency provisions contained within the Constitution.

#### 1. Budget and Policy Framework

- 1.1 The Council's Constitution provides for a report to be submitted to Council following the usage of urgency provisions contained within the Constitution.

#### 2. Background

##### **Cabinet – special urgency (section 3 refers)**

- 2.1 Rule 17 (Special Urgency) of the Council's Access to Information Rules permits the Cabinet to make decisions when compliance with Rule 15 (The Forward Plan of Key Decisions) and Rule 16 (General Exception) is not possible.

- 2.2 On such occasions, a report to Council on the Cabinet decisions taken in the circumstances set out in Rule 17 (Special Urgency) will be submitted, in accordance with paragraph 18.3 of the Access to Information Rules.

##### **Cabinet – call-in and urgency (section 4 refers)**

- 2.3 A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interests. The record of the decision and notice by which it is made public shall state whether in the opinion of the decision making person or body, the decision is an urgent one, and therefore not subject to call-in. The chair (or in their absence the vice-chair) of the relevant Overview and Scrutiny Committee must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency.
- 2.4 Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency

### **Chief Executive/Directors – urgency powers (section 5 refers)**

- 2.5 Where a proposed decision is a Council side function, the Chief Executive and directors shall have the power to act on behalf of the Council in cases of urgency only where the urgent matter is of such a nature that it may be against the Council's interest to delay and where it is not practicable to obtain the approval of the Council, in accordance with paragraph 4.1 of chapter 3, part 4 of the Constitution (employee delegation scheme). This is subject to consultation with the Leaders of all the groups which comprise at least 1/10<sup>th</sup> of the membership of the Council (or their nominees) and the provisions for urgent decisions which are contrary to any plan or strategy which has been approved or adopted by the Council or which are contrary to or not wholly in accordance with the budget approved by the Council (set out in Chapter 4, Part 3 of the Constitution).
- 2.6 Following the decision, the decision taker will provide a full report to the next available Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency
- 2.7 A summary of the recent use of these provisions is set out in the following section.

### **3. Medway Crematorium and Cremators**

- 3.1 On 22 November 2016, the Cabinet considered the above exempt report (item 15 refers):  
<https://democracy.medway.gov.uk/ieListDocuments.aspx?CId=115&MId=3372&Ver=4>
- 3.2 This exempt report provided details of a proposal to agree a negotiated settlement with a contractor in respect of the enabling works at the Crematorium.
- 3.3 On this occasion it had not been possible to provide 28 clear days' notice, nor 5 clear days' notice, therefore Sections 5 (procedures prior to private meetings) and 11 (cases of special urgency) of the Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012 and Rule 17 (special urgency) of the Council's Access to Information Rules, as set out in the Constitution, had been complied with. The Chairman of the Regeneration, Culture and Environment Overview and Scrutiny Committee agreed that consideration of this report was urgent and could not be reasonably deferred until the next Cabinet meeting on 20 December 2016 because the contractor may have withdrawn from the proposed agreement which would have had serious financial impact on the Council's plan to procure new equipment at the Crematorium.
- 3.4 The Cabinet accepted this exempt report as urgent because there was concern that if the matter was not agreed immediately, the contractor may have withdrawn from the agreement.
- 3.5 The Cabinet agreed to delegate authority to the Chief Legal Officer, in consultation with the Portfolio Holder for Business Management, to

agree a negotiated settlement, on the terms set out in paragraph 3.3 of the (Cabinet) report (decision no. 143/2016 refers).

#### **4. Final Funding Formula for Mainstream Schools and Academies 2017/2018**

- 4.1 On 17 January 2017, the Cabinet considered the above report (item 6 refers):  
<https://democracy.medway.gov.uk/ieListDocuments.aspx?CId=115&MId=3374&Ver=4>
- 4.2 This report provided details of the proposals for the Final Funding Formula whilst and addendum report provided details of the recommendations from the Schools Forum for Cabinet's consideration.
- 4.3 As outlined in paragraph 2.3 above, call-in can be waived where any delay likely to be caused by the call-in process would seriously prejudice the Council's or the Public's interests. In this case, the deadline for the submission of the final funding formula to the Department for Education was 20 January 2017. The Chairman of the Children and Young People Overview and Scrutiny Committee agreed that the decisions proposed were reasonable in all the circumstances and to them being treated as a matter of urgency and to waive call-in.
- 4.4 The Cabinet agreed to add back the mobility funding factor into the Final Funding Formula for 2017-18 as outlined in section 2.4 of the addendum report (decision no. 165/2017 refers).
- 4.5 The Cabinet agreed to instruct officers to implement the Final Funding Formula for 2017-18 (decision no. 166/2017)
- 4.5 The Cabinet agreed that decision nos. 165 and 166/2017 were considered urgent and therefore should not be subject to call in.

#### **5. Approval of Streetworks Permit Scheme Fees and Charges**

- 5.1 Following the implementation of the Traffic Management Act 2004 (TMA), the Department for Transport (DfT) has allowed Highway Authorities to implement Permit Schemes for the management of works undertaken on the Council's highway in order to reduce disruption caused by such works. Congestion caused by uncoordinated works can have a significant financial impact on businesses, as well as causing delays for residents.
- 5.2 The budget report to Full Council on 26 February 2016 included a reference to a proposal to introduce such a scheme in Medway and this was subsequently taken forward.
- 5.3 Approval of the fees and charges for the scheme was required urgently in order to allow the successful commencement of the Council's new Streetworks Permit Scheme in January 2017. Therefore, the Director of Regeneration, Culture, Environment and Transformation made an urgent decision to approve the fees and charges for the Streetworks Permit Scheme on 23 November 2016, following consultation with the Leader of the Council and Leader of the Labour Group. The schedule of fees and charges is attached at Appendix 1 for information.

## **6. Financial, legal and risk implications**

- 6.1 The requirement to report decisions taken under the various urgency provisions is set out within the Constitution. Details of the financial, legal and risk implications are set out in full within the relevant Cabinet report.

## **7. Recommendation**

- 7.1 That the report be noted.

### **Lead officer contact**

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### **Background papers**

None

### **Appendices**

Appendix 1 – Streetworks Permits Fees and Charges

## Appendix 1

### Streetworks Permit Fees Table:

Main Roads		Minor Roads		
Reinstatement category of street	0, 1 and 2	3 and 4		3 and 4
Street designated as traffic sensitive or not	All streets	Traffic sensitive at some times/locations		Non traffic sensitive at any time or location
Time and location of activity	Any time and location	Any part within traffic sensitive times / locations	Wholly within non traffic sensitive times / locations	Any time and location
Provisional Advance Authorisation	£95	£95	£68	£68
Major Works – over 10 days and all major works requiring a traffic regulation order	£216	£216	£135	£135
Major works – 4 to 10 days	£117	£117	£68	£68
Major works – up to 3 days	£59	£59	£41	£41
Standard Activity	£117	£117	£68	£68
Minor Activity	£59	£59	£41	£41
Immediate Activity	£54	£54	£36	£36

\* A discount will be applied where works are undertaken wholly outside of traffic sensitive times on Traffic Sensitive Streets.

**Note:** In line with the Permit Authorities policies and procedures, the above fees will be reviewed on an annual basis.