

## **COUNCIL**

**21 JULY 2022**

### **USE OF URGENCY PROVISIONS**

Report from: Bhupinder Gill, Assistant Director Legal and Governance

Author: Wayne Hemingway, Head of Democratic Services

#### **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**

2.1. Rule 17 (special urgency) of the Council's Access to Information rules, as set out in the Constitution, 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.

2.3. Paragraph 3.2 of the Responsibility for Cabinet Functions permits the Leader of the Council to make urgent decisions (which would ordinarily be a matter for Cabinet) subject to compliance with the Council's Access to Information rules, as referenced in paragraph 2.2 above. As such, all reports (unless exempt) and decisions (as well as an entry on the Forward Plan) are published on the Council's website on the day any urgency decision is made.

2.4. Leader and Cabinet – urgency. Paragraph 15.11 (call-in and urgency) of the Overview and Scrutiny rules, as set out in the Council's Constitution, states that 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.

- 2.5. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.
- 2.6. Council – urgent action. Paragraph 4.1 of the Employee Delegation Scheme states that in relation to Council responsibilities, 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), 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.
- 2.7. 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.
- 2.8. A summary of the recent use of these provisions is set out in the following section.

### 3. Leader/Cabinet (executive decisions)

- 3.1. On 26 April 2022, the Leader considered an urgent report entitled [Guarantor and Parent Company Guarantee Requests](#). This report requested the Leader to grant delegated authority to the Chief Operating Officer to authorise requests to grant Guarantor and Parent Company Guarantees, on behalf of the Council, in order to enable exchanges to progress on a number of sales.
- 3.2. The report set out that Medway Development Company (Land and Projects) Ltd. was developing several residential led projects, as part of wider regeneration initiatives being implemented by the Council.
- 3.3. It was noted that property development and transactions sometimes required Guarantor and Parent Company Guarantee requests and that it had been established that the Chief Operating Officer required express approval in order to agree such requests and that the exchange of sales could not progress without this.
- 3.4. The Chairman of the Business Support Overview and Scrutiny Committee agreed that the taking of these decisions was urgent and could not be reasonably deferred until the next Cabinet meeting on 10 May 2022, in accordance with Section 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 Access to Information Rules (Part 2 of Chapter 4 in the Constitution). This was to enable exchanges to progress on a number of sales. The sales undertaken on the Garrison Point scheme being delivered by Medway Development Company (Land and Projects) Ltd. had progressed at pace and this decision was needed to complete exchanges as soon as possible.

- 3.5. Additionally, and in line with rule 15.11 of Chapter 4, Part 5 of the Constitution, 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. The Chairman of the Business Support 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.
- 3.6. The Leader made the following decisions:
- 3.7. 60/2022 – The Leader agreed, using urgency powers, to delegate authority to the Chief Operating Officer, in consultation with the Leader, the Portfolio Holder for Resources and the Monitoring Officer, to authorise requests to grant Guarantor and Parent Company Guarantees on behalf of the Council.
- 3.8. 61/2022 – The Leader agreed that decision 60/2022 was considered urgent and therefore should not be subject to call-in.
- 3.9. On 26 April 2022, the Leader considered an urgent report entitled [Household Support Fund 2022/23](#). This report set out a proposal to use the Household Support Fund (HSF) allocation for Medway Council to support families with children, other vulnerable households and individuals from 1 April 2022 to 30 September 2022.
- 3.10. The report explained that this Programme was funded by the Department for Work and Pensions. The Fund had previously covered the period to the end of March 2022, with the scheme introduced in Medway having been the subject of an urgent report to the Leader in October 2021.
- 3.11. On 23 March 2022, the Chancellor had announced that the Household Support Fund would continue for the first six months of 2022/23 and that the funding was to be doubled to £1billion. The Department for Work and Pensions had released the draft guidance for local authorities on 1 April 2022 and local authorities were required to provide a delivery plan for their allocated fund by 29 April 2022.
- 3.12. The report set out that Medway Council's allocation was £2,262,463.11. This had been added to the 2022/23 revenue budget under the Chief Operating Officer's delegated authority. Local authorities were required to use the funding from 1 April 2022 to 30 September 2022 to meet immediate needs and help those who were struggling to afford energy, food and water bills, and other related essentials. In exceptional circumstances only, the fund could be used for housing costs.

- 3.13. The Chairman of the Business Support Overview and Scrutiny Committee agreed that the taking of these decisions was urgent and could not be reasonably deferred until the next Cabinet meeting on 10 May 2022, in accordance with Section 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 Access to Information Rules (Part 2 of Chapter 4 in the Constitution). This was because it was imperative that the Council took urgent action to support individuals and families in Medway in line with the Government's announcement to implement the Household Support Fund.
- 3.14. Additionally, and in line with rule 15.11 of Chapter 4, Part 5 of the Constitution, 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. The Chairman of the Business Support 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.
- 3.15. The Leader made the following decisions:
- 62/2022 – The Leader, using urgency powers, agreed the proposals set out in section 3 of the report as the Council's approach to delivering the Household Support Fund and agreed to delegate authority to the Chief Operating Officer, in consultation with the Leader and the Portfolio Holder for Business Management, to finalise and implement these proposals.
- 63/2022 – The Leader, using urgency powers, agreed to delegate authority to the Chief Operating Officer in consultation with the Leader and the Portfolio Holder for Business Management, to make minor amendments to the proposals to enable them to continue to support vulnerable households in Medway, including amending any discretionary eligibility criteria where discussions remain ongoing and where further Government advice is provided.
- 64/2022 – The Leader agreed, using urgency powers, to delegate authority to the Chief Operating Officer, in consultation with the Leader and the Portfolio Holder for Business Management, to allow a decision to be made in respect of the ringfenced fund for pensioners once Officers were in receipt of all the relevant information from the Department for Work and Pensions.
- 65/2022 – The Leader agreed that decisions 62/2022, 63/2022 and 64/2022 were considered urgent and therefore should not be subject to call in.
- 3.16. On 10 May 2022, the Cabinet considered a report in relation to a [Legal Claim Against Medway Council](#). This fully exempt report asked the Council to agree a course of action.
- 3.17. In line with rule 15.11 of Chapter 4, Part 5 of the Constitution, 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, it was

proposed that call-in be waived for the reasons set out in paragraph 1.3 of the Exempt report. The Vice-Chairman of the Children and Young People Overview and Scrutiny Committee had 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.

3.18. The Cabinet agreed the recommendations as set out in section 6 of the Exempt report.

#### 4. Financial, legal and risk management implications

4.1. 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 reports.

#### 5. Recommendations

5.1. The Council is asked to note the report with regards to the use of urgency provisions set out in the report.

#### Lead officer contact

Wayne Hemingway, Head of Democratic Services, T: 01634 332509,  
E: [wayne.hemingway@medway.gov.uk](mailto:wayne.hemingway@medway.gov.uk)

#### Appendices

None

#### Background papers

None