

COUNCIL

19 JANUARY 2023

USE OF URGENCY PROVISIONS

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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 1/10th 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 11 November 2022, the Leader considered an urgent report entitled [Gateway 3 Contract Award Report: Splashes Sports Centre Works](#). This report requested agreement to award the procurement of the New Splashes Sports Centre Works Contract.
- 3.2. The report explained that in July 2021, Cabinet had agreed to instruct officers to develop detailed proposals for a new Splashes sports centre in Rainham to provide modern, family-friendly sports and physical activity facilities in the east of Medway, complementing other Council sports facilities. As a result, a professional design team, Space&Place, had been appointed through open tender to design the new centre.
- 3.3. Planning permission for the new centre had been granted and an Invitation To Tender for the construction phase of the project was issued.
- 3.4. Capital funding for the project had been approved by Full Council in three phases (June 2020, July 2022 and November 2022) as the project had evolved and changing market demands were realised.
- 3.5. The Chairman of the Regeneration, Culture and Environment 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 15 November 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 the companies that had submitted bids, had agreed to hold their prices until 11 November 2022. Not meeting this deadline would risk the costs of the contract increasing further. The Chairman of the Regeneration, Culture and Environment Overview and Scrutiny Committee also agreed that the decisions proposed were reasonable in all the circumstances and to them being treated as a matter of urgency and agreed to waive call-in.

3.6. The Leader made the following decisions:

3.7. 131/2022 – Noting the recommendation made at Cabinet on 18 October 2022 and the decision made by full Council on 10 November 2022, to add a further £5.8million to the Splashes Redevelopment Scheme in the Capital Programme, to enable development of the new Splashes Sports Centre, the Leader agreed, using urgency powers, to award the contract to Wilmott Dixon Construction, as they had been evaluated as the most economically advantageous against the Council’s award criteria, as per the evaluation spreadsheet contained within 2.1 of the Exempt Appendix.

3.8. 132/2022 – The Leader agreed that decision 130/2022 was considered urgent and therefore should not be subject to call-in.

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.

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Appendices

None

Background papers

None