

Council

18 July 2024

Use Of Urgency Provisions

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Summary

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

1. Recommendation

1.1. The Council is asked to note the use of urgency provisions as set out in sections 4 and 5 of the report.

2. Budget and policy framework

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

3. Background

3.1. 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.

3.2. 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.

3.3. 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.

3.4. 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 chairperson (or in their absence the vice-chairperson) 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.

- 3.5. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.
- 3.6. 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.
- 3.7. 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.
- 3.8. A summary of the recent use of these provisions is set out in the following section.

4. Leader/Cabinet (executive decisions)

- 4.1. On 30 April 2024, the Cabinet considered a report on the [Gateway 3 Tender Process Review and Contract Award: Building Contractor for the Healthy Living Centre, the Pentagon Shopping Centre](#). 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, the works needed to start on site in June 2024 in order to meet the NHS timescales and the delay impacted the programme for appointing the contractor, which was before the usual Call-In period would expire for decisions taken by the Cabinet on 30 April 2024
- 4.2. The Chairperson of the Regeneration, Environment and Culture 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.
- 4.3. The Cabinet agreed to award the building contract for the Healthy Living Centre to Bauvill Ltd as they had been evaluated as the most economically advantageous tender against the Council's award criteria as per the evaluation spreadsheet contained within 3.1 of the Exempt Appendix.

- 4.4. The Cabinet noted that the formal award to the preferred contractor would not be issued until such time as the NHS had fully committed and signed the legal agreement.
- 4.5. The Cabinet agreed the waiver of a Performance Company Guarantee (PCG) or Performance Bond, as set out at 3.3.1 of the report.
- 4.6. The Cabinet agreed that recommendations 1.1 and 1.3 [decision nos. 81/2024 and 82/2024] were urgent and therefore should not be subject to call in, as set out in 3.1.15 of the report.
- 4.7. On 9 July 2024, the Cabinet considered a report on the Medway Local Plan Regulation 18 Consultation. 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, the consultation on the Local Plan was scheduled to commence on 15 July 2024, it was therefore proposed that call-in be waived to meet the consultation timescales, as part of the Local Plan process.
- 4.8. The Chairperson of the Regeneration, Culture and Environment 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.
- 4.9. The Cabinet approved the publication of the Local Plan Regulation 18 Consultation Document, as set out at Appendix 1, for an eight week period of formal consultation (decision no. 94/2024).
- 4.10. The Cabinet approved the Medway Statement of Community Involvement, as set out at Appendix 2 to the report (decision no. 95/2024).
- 4.11. The Cabinet agreed that decision number 94/2024 [as set out in paragraph 4.9 above] be considered urgent and therefore should not be subject to call-in.

5. Council (non-executive decisions)

- 5.1. The Director of Place made an urgent decision on 21 June 2024 on an HR matter, following consultation with the Leader of the Council and the Leader of the Conservative Group on 20 June 2024 and 21 June 2024 respectively, as attached as an exempt appendix. This related to a proposal to finalise a settlement agreement with a member of staff. Please note that some of the information has been redacted to ensure that the identity of the employee cannot be revealed.
- 5.2. Given that delays in making this type of decision can lead to periods of stress for the individual and continued uncertainty for the team involved it was considered necessary to utilise urgency provisions to bring matters to a swift conclusion to avoid prolonging matters unnecessarily.

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Appendices

None

Background papers

Exempt Appendix