

From: Rebecca Spore, Director of Infrastructure

To: Clair Bell, KCC Cabinet Member for Community and Regulatory Services

Subject: Contingency contract to provide emergency response capabilities in the event of a marine pollution incident

Decision Number: 24/00042

Key decision Yes - Decision involves expenditure or savings of maximum £1m

Classification: UNRESTRICTED

Future Pathway of report: Cabinet Member Decision

Electoral Division: All

Is the decision eligible for call-in? Yes

Summary: As a Category 1 responder under the Civil Contingencies Act 2004, KCC has a duty to plan and prepare for emergencies. KCC also has a role in the Maritime & Coastguard Agency National Contingency Plan to respond to Tier 1 and 2 marine pollution incidents. An important aspect of the planning for such an event is the ability to deploy staff and equipment to manage the clean-up operation. A contract with a provider who can provide access to such resources is therefore required. In the event that the need to call upon this contract occurs, the costs to KCC are likely to be in excess of £1million.

Recommendation(s):

The Cabinet Member for Community and Regulatory Services is asked to consider and endorse or make recommendations on the proposed decision to:

1. Enter into a contract for the provision of a marine pollution response capability, including equipment and expertise, in the event of a marine pollution incident.
 2. Delegate authority to the Director of Infrastructure, in consultation with the Cabinet Member for Community and Regulatory Services to take necessary actions, included but not limited to entering into relevant contracts or other legal agreements to implement the above for the provision of a marine pollution response capability, including equipment and expertise, in the event of a marine pollution incident.
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1. Introduction

- 1.1 KCC has legal duties to plan and prepare for emergencies which may occur in Kent. The potential for an emergency to occur which results in the pollution of Kent's coastline is recognised. In relatively recent years there have been incidents that

have come close to polluting areas of coastline Kent, the most recent being the leak from a wreck on the Goodwin Sands in 2022. The location of the county, adjacent to the busiest shipping lane in the world, puts Kent at high risk of such events occurring.

- 1.2 Marine pollution events include pollution from marine / crude / waxy / vegetable oils, other noxious substances, cargo (e.g. timber, such as the Sinegorsk incident), land-based wastewater or sewage, algal blooms, or dead marine wildlife (i.e. whales, dolphins, porpoises or similar).

2. Requirement for contingency contract

- 2.1 KCC has historically agreed to undertake a Tier 2 marine pollution response in support of boroughs / district / city councils (who undertake Tier 1 responses). This is a local agreement as there is no legal or regulatory duty upon KCC to cover Tier 2 responses. The *Maritime and Coastguard Agency National Contingency Plan* refers only to a local authority role in Tier 1 and 2 shoreline clean-up and doesn't specifically mention county councils or upper tier authorities.
- 2.2 KCC currently holds the existing contract on behalf of coastal borough / district councils (excluding Medway Unitary Authority). The contract allows for KCC to call down elements of it to support any response required to a marine pollution incident. KCC has historically funded the standby costs associated with the contract. However, for future contracts, KCC and the coastal borough / district councils have agreed that all authorities will contribute to the standby cost, and each will have the ability to call on the contract. The cost of activating the contract will also be split between the affected authorities a
- 2.3 KCC has held a contingency contract for the provision of oil pollution response capabilities for many years. The current contract expires on 30th June 2024 having previously been extended.
- 2.4 KCC is a core participant in the Kent & Medway Resilience Forum (KMRF) and chairs the KMRF Marine Pollution Group. The current contract is held by KCC on the understanding that it will be used to assist partners within the KMRF. The KMRF is not a legal entity and cannot, therefore, enter into contracts in its own right.
- 2.5 The KCC & Medway Shoreline Pollution Plan refers to the existence of a contingency contract for the provision of emergency response capabilities as part of the planned response to such an incident and enables a joined up response particularly if an incident was to span a number of districts or was to be of a significant scale that locally available resources would be insufficient.
- 2.6 Since the procurement of the existing contract, lessons have been learned nationally and locally following the incidents mentioned above In Section 1. The new contract will reflect relevant aspects of this learning.
- 2.7 More locally, KCC continues to work with partners to prepare for such an incident. The response to an incident will be phased with local capabilities being utilised first, supported by mutual aid agreements where possible.

- 2.8 A contingency contract is required for a situation where the initial phases of response will not be adequate to manage the situation.
- 2.9 A procurement exercise is currently being undertaken to establish the nature of the market, which is quite limited, with a view to identifying a suitable provider who can offer a 'call off' type contingency contract to provide those elements of the required capabilities necessary to manage the situation ranging from the provision of advice and guidance up to the provision of the full suite of cleanup equipment (e.g. booms, storage tanks, boats) and personnel.
- 2.10 The 'call off' nature of the new contract will allow KCC to call off those elements necessary to respond effectively with partners in the Kent & Medway Resilience Forum (KMRF), typically during incidents that affect multiple coastal local authorities (where KCC would act as the lead agency). It will also allow those coastal local authorities who have signed up to the contract to call off elements to support their roles and responsibilities. In these circumstances, it has been agreed that agencies will be responsible for meeting the cost of any elements they call off for their needs.
- 2.11 The current contract consists of an annual retainer fee and then a significantly greater cost should it be necessary to call upon the contract. It is likely that the procurement exercise will identify a similar format for a new contract.

3. Financial Implications

- 3.1 The annual retainer cost for the current contract is less than £5K which is funded by KCC, and for the new contract would be lower cost to KCC as coastal boroughs / district councils would now be contributing financially.
- 3.2 If the contract is called upon, the expenditure will vary greatly depending on the nature and scale of the incident – the clean-up operation from the *MV Sea Empress* oil spill in Wales 1996 cost £60M (double that when the effects on the economy and environment are considered), but smaller incidents will cost significantly less. As a result, it is difficult to predict the quantum of the financial impact.
- 3.3 A marine pollution incident which results in expenditure will represent an unfunded pressure on KCC's finances which is likely to need to be met from reserves.
- 3.4 For significant incidents of the scale of the *MV Sea Empress* incident, KCC would require central government support and would look to activate the Bellwin Scheme to fund the expenditure. However, the activation of this scheme requires Secretary of State agreement and cannot be guaranteed.

4. Legal implications

- 4.1 The Civil Contingencies Act 2004 defines Kent County Council as a Category 1 responder in relation to emergencies.
- 4.2 As a result, KCC has a duty to prepare, plan for, and respond to incidents and emergencies whilst continuing to carry out its own duties and taking action to reduce, control or mitigate the effects of an emergency.

5. Equalities implications

- 5.1 An equalities impact assessment has been carried out for the placing of this contingency contract. To the best of our knowledge, there is no evidence available on the equalities impacts of procuring a contract to provide emergency capabilities to assist with the management and cleanup of marine pollution.
- 5.2 It is likely that this because in procuring such a contract, authorities are desiring a positive outcome by having the capability to quickly deploy resources to clean-up the affected area. Therefore, it is highly unlikely that there would be any negative impacts on any protected characteristics.
- 5.3 The KRF contingency plan requires that an equalities impact assessment is carried out if this contract is called down. This is the stage where sufficient data will be known to inform proper consideration.

6. Other corporate implications

- 6.1 None in relation to the contract.

7. Governance

- 7.1 The Director of Infrastructure will inherit the main delegations via the Officer Scheme of Delegation.
- 7.2 The key decision process has been followed and the Office of General Counsel (OGC) will provide legal advice as required.

8. Conclusions

- 8.1 KCC has legal duties to plan and prepare for emergencies.
- 8.2 If an incident occurs which results in a marine pollution situation, the ability to manage the impact of such an incident is critical to affected environment and to the reputation of KCC and other partners.
- 8.3 A contingency contract to provide emergency response capabilities in the event of a marine pollution incident is an important element of the contingency planning for such an event.

Recommendation(s):

The Cabinet Member for Community and Regulatory Services is asked to consider and endorse or make recommendations on the proposed decision to:

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2. Delegate authority to the Director of Infrastructure, in consultation with the Cabinet Member for Community and Regulatory Services to take necessary actions, included but not limited to entering into relevant contracts or other legal agreements to implement the above for the provision of a marine pollution response capability, including equipment and expertise, in the event of a marine pollution incident.
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9. Background Documents

- 9.1 Appendix A – Proposed Record of Decision
- 9.2 Appendix B - Published Equalities Implication Assessment (EQIA)

10. Contact details

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