

From: Roger Gough – Leader of the Council

To: County Council – 12 September 2024

Subject: **Annual Report on Urgent Decisions taken by the Executive – 2023-24**

Classification: Unrestricted

Summary: The Constitution requires that the Leader of the Council reports urgent Executive Decisions to County Council on an annual basis.

Recommendation: The Council is asked to note the report.

INTRODUCTION

1. The Constitution makes provision, under sections 12.32 and 12.33, for the use of urgency procedures as part of Executive decision-making, complying with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
2. In accordance with section 12.37 of the Constitution, this paper serves as the required annual report to Council providing details of when urgency procedures have been used. The purpose of this report is to supply a collated list of urgent decisions and draw Members' attention to those instances when urgency has been necessary. The period covered by the report is 7 July 2023 to 4 September 2024.
3. Detailed consideration of these decisions and the related areas of Council business is the responsibility of the Cabinet Committees and the Scrutiny Committee. The relevant Cabinet Committee will have considered these urgent decisions following their implementation, including receiving reports on the urgency and reasons why pre-decision consideration was not possible when applicable. The Scrutiny Committee is the appropriate forum for any detailed consideration or Scrutiny of any urgent or out of cycle decisions. Should further consideration of any of these issues be desired, Members are asked to liaise with Democratic Services and the relevant Committee Chairs to explore adding them to their work programmes.
4. Since 7 July 2023, 11 decisions were taken via the urgency procedures detailed in the Constitution and the Executive Arrangements Legislation during the timeframe covered by this Annual Report to Council. 5 of these decisions were semi-urgent and 6 were progressed via the full statutory urgency process allowing for

immediate implementation. Table 1 below shows the number of decisions that have been taken via the urgency procedure from June 2020 to 5 September 2024.

5. Table 1: Number of urgent and semi-urgent decisions taken since 2020

	June 2020- July 2021	15 July 2021- 1 July 2022	14 July 2022- 6 July 2023	7 July 2023- 4 September 2024
Urgent	4	6	3	6
Semi-urgent	4	8	7	5
Covid urgent	13	N/A	N/A	N/A
Covid Semi-urgent	2	N/A	N/A	N/A
Total	23	14	10	11

6. It should be noted that the timeframe for this Urgent Decision report covers 14 months rather than 12 as the case for the previous years, so the slight increase from 2022/23 should be considered in that context.
7. This report sets out the key information of each of those decisions taken between July 2023 to early September 2024; the decision-maker; the date of decision; a brief summary of the decision; the type of urgency process used and the reason for urgency.
8. The responsibility for determining whether urgency procedures are appropriate sits with the Decision-maker (Cabinet or Cabinet Member), providing that that relevant Senior Officer (commonly the Corporate Director for the relevant Directorate) confirms that the decision cannot be reasonably deferred, taking account of any relevant professional advice. The urgency legislation and constitutional arrangements also require that the use of urgency procedure be agreed by the Chair of the Scrutiny Committee – such agreement relates only to the urgency requirement, not the merits or otherwise of any decision. Taking account of the Officer and Non-Executive views noted above, the Decision-maker must be satisfied themselves that the use of urgency is correct at the point they make the decision.

The key reasons for the use of urgency procedure

9. In previous years, a common reason for the use of urgency procedure has been the limited timeframes in which KCC was required to respond to directives imposed by central Government or to enter into agreements. This has continued to apply but not as often, as work has been undertaken by KCC departments and the Executive to prepare decisions in advance when the potential requirements for these types of situations are first identified. Where early preparation is not possible, the urgency is a result of how the externally determined deadlines do not take account of the lengthy public notice periods required for normal Executive Decision-making.

10. As the detailed list of decisions sets out below outlines, a number of semi-urgent decisions related to Cabinet Budget Monitoring and Management – this refers to in year transfers between budget lines and similar budget variations as part of ongoing required financial management. These decisions were taken via the semi-urgent process because the Council was responding at pace to the financial challenge and the plans to address these at a budget management level were not finalised until fewer than four weeks prior to the relevant Cabinet meetings.
11. Some decisions involved the full urgency process because the requirement for the full Executive Member decision process (as per s12 of the Constitution) was identified late in the project or circumstances (including total financial impact) changed significantly very close to implementation deadlines. Examples of this include the sale at auction of a KCC property where the final sale value exceeded expected levels, moving the decision process from established Property Management delegations up to a Key Decision. Deferral was not viable in this case because of property sale completion and auction protocol requirements.
12. In another case, the Council was responding to a real-world urgent situation in relation to RAAC in school properties and had to take relevant steps, which involved Key Decision level authority, to put emergency responses in place to protect the wellbeing of relevant Kent residents.
13. Generally, deferral of implementation should be the starting point of consideration of how to manage decision timing challenges but where this is not viable or has significant negative consequences, the Executive may opt to use urgency to ensure progression.
14. The Executive, when required, uses two types of urgent decision permitted under the relevant legislation and detailed in the Constitution. These are;
 - the General Exception route, which is referred to in KCC documentation as ‘semi-urgent’ because they involve compliance with all normal decision-making processes, but the notice of the proposed decision will have been published on the list of Forthcoming Executive Decisions (FED) for more than 5 but fewer than 28 days; and
 - Cases of Special Urgency, referred to as Statutory Urgency Process or ‘full urgency’ in KCC. These decisions are subject to a process of requiring agreement by the decision-maker, the relevant senior officer and the Chair of the Scrutiny Committee that urgency is necessary, followed by consultation with relevant non-Executive Members where possible. Such decisions may be implemented immediately, without advance notice on the FED and they are not subject to call-in.
15. To clarify the terminology further, ‘urgency’ relates to the adherence to the lengthy timeframes set out in the relevant Executive Arrangements regulations. From a practical perspective, implementation of a decision with fewer than six weeks’ notice requires some form of urgency process and a decision requiring implementation with fewer than two weeks’ notice requires a fully urgent decision. While efforts are always made to provide long-term notice of all substantive Executive activity through effective planning and governance arrangements, it is

vital that the Council has the capacity and agility to respond to changing circumstances and fast-paced situations when necessary.

16. The list provided below for Members' information has been organised into urgent decisions (Full Statutory Urgency) followed by semi-urgent decisions.
17. The decisions to which this report refers have been implemented.

Urgent Executive Decisions - 7 July 2023 to 4 September 2024:

1. [23/00067 - Reinforced Autoclave Aerated Concrete \(RAAC\) in Schools](#)

Decision by the Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services on 13 July 2023

Urgency process:

Statutory urgency – immediate implementation.

Summary:

In June 2023, through the course of relevant inspections and the consideration of new guidance by the DfE regarding the presence of Reinforced Autoclave Aerated Concrete (RAAC) in schools, a number of schools were flagged by Surveyors as constituting 'Red critical' status. The four schools impacted were closed with immediate effect, meaning, 1,130 pupils were unable to access face to face education. Emergency plans by KCC were initiated to minimise the period that the children were out of face to face education. KCC has responsibilities both as a Responsible Body in respect of maintaining the buildings of community, foundation and voluntary controlled schools and as the education authority responsible for ensuring every child resident in Kent can access a school place. Whilst legal provision is made for school sessions not being delivered in exceptional circumstances, such as an immediate health and safety risk requiring the school to close, it is expected the education function will be reinstated expeditiously. Failure to do so would open the school concerned and the maintaining authority to claims for failure to educate.

Reason for Urgency:

KCC was required to close a number of schools with immediate effect in order to carry out emergency works in accordance with guidance from the Institute of Structural Engineers and direction from the Department for Education (DfE). An urgent decision was required to both confirm the authority and requirement for strengthening works to be undertaken on the affected buildings; and authorise the draw down of up to £2.53m to fund the relevant works.

2. [23/00110 - UASC Accommodation](#)

Decision by the Cabinet Member for Integrated Children's Services on 21 December 2023

Urgency process

Statutory urgency – immediate implementation.

Summary:

Following a High Court judgment on 27 July 2023 and subsequent court orders, a Key decision was required to enable the Council to put in place the necessary arrangements to increase Ofsted regulated accommodation provision, to enter into necessary contractual agreements and operational arrangements to deliver the required services in line with the court orders, and to meet its statutory duties, including its Section 20 duties, in relation to all UAS children arriving in Kent. The decision confirmed the policy requirement and gave authority to direct the relevant KCC resources to support the policy objective to ensure sufficient accommodation and support was in place to meet legal requirements.

Reason for Urgency:

Due to the constantly changing situation with regards to various Court proceedings, the negotiations over funding, and the requirement to move at pace to secure additional UAS accommodation/ provision, it was not possible to take the decision via the Council's normal governance route. Had the decision been delayed, it would have impeded KCC's ability to comply with the legal requirements and put it at risk of breaching its duties.

3. **[23/00111 - Lower Thames Crossing – Side Agreement](#)**

Decision by the Cabinet Member for Highways and Transport on 19 December 2023.

Urgency process:

Statutory urgency – immediate implementation

Summary:

The Development Consent Order (DCO) Application for the Lower Thames Crossing was submitted by National Highways to the Planning Inspectorate under Section 37(2) of the Planning Act (PA) 2008 on 31st October 2022 and accepted for Examination under Section 55 of the PA 2008 on 28th November 2022. The project constituted a Nationally Significant Infrastructure Project (NSIP) under Sections 14 and 22 of the Planning Act 2008 and would provide a second strategic road network dual carriageway crossing of the Thames estuary east of Greater London. As a host authority Kent County Council (KCC) has a statutory duty to participate in the Development Consent Order (DCO) process. Whilst National Highways is the scheme promoter and will deliver the project, KCC is required to enter into multiple contracts with the promoter to enable the works to progress and in order to secure

the requested requirements, KCC needed to enter into a Side Agreement with National Highways.

Reason for Urgency:

This decision needed to be made within the timescales of the Development Consent Order process which concluded on 20th December 2023. An initial draft Side Agreement was provided to KCC on 14 November and updated on 28th November 2023. The timetable did not allow sufficient time to take the decision via the Council's normal governance route due to the requirement by the Examining Authority for all signed legal agreement to be submitted by the 20th December.

4. **[23/00115 – Discharge to Assess](#)**

Decision by the Leader of the Council on 18 December 2023

Urgency process:

Statutory urgency – immediate implementation.

Summary:

The discharge to assess service contract which was due to terminate on 31 December 2023 was commissioned by Kent County Council (KCC) and forms part of Discharge Pathway 1 Service, for people discharged from hospital who need support to recover at home. Whilst it had been agreed, in principle, between KCC and the Integrated Care Board that a new service model was required, more time was needed to undertake the appropriate governance and subsequent implementation. A decision to directly award the Discharge to Assess Service Contract to the incumbent provider (Hilton Nursing Partners) for up to nine months from 1 January 2024 to 30 September 2024 was required to ensure that the Council could maintain service provision at pace and allow sufficient time for the mobilisation of a new model.

Reason for Urgency:

Had the contract of terminated on 31 December 2023, this would have had a detrimental impact on those receiving the service and would have led to higher costs incurred as the gap in provision would have needed to be met through care home support. The gap in service provision would have also impacted on delayed hospital discharges. It was therefore necessary to put in place a short-term extension to allow time for the formalisation and mobilisation of the revised service model developed in partnership by KCC and the ICB. The timetable did not allow sufficient time to take the decision via the Council's normal governance route.

5. **[24/00050 – Auction Disposal](#)**

Decision by the Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services on 29 May 2024.

Urgency process

Statutory urgency – immediate implementation.

Summary:

The former Rosemary Centre, 189 High Road, Wilmington DA2 7DP had been approved for sale via delegated management of property portfolio, in accordance with the Asset Disposal Policy. Authority was in place to support the sale via auction of the property as the price was expected to fall within the delegated limits under the Property Management Protocol. The property went to auction on the 1 May 2024 and the price achieved was £1,274,000, which exceeded the limits of the £1m officer delegation. Due to the timescales involved in the property transaction with completion scheduled for 30 May 2024, urgent authority was required to proceed with the sale under auction terms.

Reason for Urgency:

Under competitive tension, as part of an auction sale, the property sold for a figure exceeding the £1m threshold and therefore required an urgent key decision to progress with the auction sale within the transaction timeframe.

6. [24/00078 - Disposal of land at intersection of M20 - M25](#)

Decision by the Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services on 27 August 2024

Urgency process

Statutory urgency – immediate implementation.

Summary:

The property was declared surplus in 2017 and was progressed as a property disposal in-line with the Council's adopted policy via an Option Agreement with Broomhill Development Ltd as a special purchaser due to then having an option on the adjacent land. Subsequent authority was given in 2020 to extend the option with revised commercial terms. The purchaser, Broomhill Developments (South) Limited served its Notice to 'exercise' its Option on 5 May 2024. Following complex negotiations, due diligence and s.123 compliance checks (including legal assurance), the anticipated consideration payable exceeded the Key Decision threshold. An urgent key decision was required to enable the transaction to complete on the 27 August 2024 in line with the contractual timescales associated with the sale under the terms and conditions of an Option Agreement dated 11 June 2020 between the council and the purchaser.

Reason for Urgency:

Under commercial negotiations with significant market improvements in the industrial land sector since the pandemic, the property option was finalised at a figure exceeding the £1m decision threshold and therefore an urgent key decision was needed to enable the transaction to complete on the 27 August 2024.

Semi-Urgent Executive Decisions - 7 July 2023 to 5 September 2024

1. [23/00090 - Finance Monitoring Report - budget adjustments](#)

Decision by Cabinet on 5 October 2023

Urgency:

Semi-urgent decision

Summary:

To ensure the long-term financial viability of the Council, a number of actions requiring Cabinet approval needed to be made to bring the forecast overspend down to a balanced position.

Reason for Urgency:

The Council is moving at pace to deliver Kent's future which requires adjustments to revenue and capital budgets, transfers of funds and effectively represent a variation from the approved budget. Due to the pace at which the Council is delivering transformational plans, it was not possible to process a Key Decision in line with the normal governance route as the detail was not known in advance.

2. [23/00109 - Finance monitoring report 2023-24 - budget adjustment](#)

Decision by Cabinet on 30 November 2023

Urgency

Semi-urgent decision

Summary:

To ensure the long-term financial viability of the Council, a number of actions requiring Cabinet approval needed to be made to bring the forecast overspend down to a balanced position.

Reason for Urgency:

The Council is moving at pace to deliver Kent's future which requires adjustments to revenue and capital budgets, transfers of funds and effectively represent a variation from the approved budget. Due to the pace at which the Council is delivering

transformational plans, it was not possible to process a Key Decision in line with the normal governance route as the detail was not known in advance.

3. [24/00009 - Fee Uplifts for Adult Social Care Providers for 2024/2025](#)

Decision by Adult Social care Cabinet Committee on 13 March 2024

Urgency:

Semi-urgent decision

Summary:

In 2023/2024 KCC applied a differential uplift to fees paid to care providers delivering Adult Social Care services, however, in 2024/2025 KCC returned to a standard uplift for framework providers which sought to balance available funding, Consumer Price Index and provider pressures. The allocations were those which were affordable in the Council's agreed budget.

Reason for Urgency:

The fee uplifts need to be finalised by 7 March 2024 to enable them to be applied to the Council's Adult Social Care case management system in time for providers to be able to submit invoices for the revised rates from April 2024. In order to apply the required systems changes, the decision could not reasonably be deferred to the next meeting of the Adult Social Care Cabinet Committee.

4. [24/00021 - Finance Monitoring Report - budget adjustments](#)

Decision by Cabinet on 21 March 2024

Urgency:

Semi-urgent decision

Summary:

To ensure the long-term financial viability of the Council, a number of actions requiring Cabinet approval needed to be made to bring the forecast overspend down to a balanced position.

Reason for Urgency:

The Council is moving at pace to deliver Kent's future which requires adjustments to revenue and capital budgets, transfers of funds and effectively represent a variation from the approved budget. Due to the pace at which the Council is delivering transformational plans, it was not possible to process a Key Decision in line with the normal governance route as the detail was not known in advance.

5. [24/00054 – Finance Monitoring Report – Capital and revenue outturn budget adjustments](#)

Decision by Cabinet on 26 June 2024

Urgency:

Semi-urgent decision

Summary:

To ensure the long-term financial viability of the Council, a number of actions requiring Cabinet approval needed to be made to bring the forecast overspend down to a balanced position.

Reason for Urgency:

The Council is moving at pace to deliver Kent's future which requires adjustments to revenue and capital budgets, transfers of funds and effectively represent a variation from the approved budget. Due to the pace at which the Council is delivering transformational plans, it was not possible to process a Key Decision in line with the normal governance route as the detail was not known in advance.

RECOMMENDATION

The Council is asked to note the report.

Background Documents (listed in date order)

Urgent Executive Decisions – FED entries Records of Decision and published Reports:

[23/00067 - Reinforced Autoclave Aerated Concrete \(RAAC\) in Schools](#)

[23/00110 - UASC Accommodation](#)

[23/00111 - Lower Thames Crossing – Side Agreement](#)

[23/00115 – Discharge to Assess](#)

[24/00050 – Auction Disposal](#)

[24/00078 - Disposal of land at intersection of M20 - M25](#)

Semi-Urgent Executive Decisions – FED entries Records of Decision and published Reports:

[23/00090 - Finance Monitoring Report - budget adjustments](#)

[23/00109 - Finance monitoring report 2023-24 - budget adjustment](#)

[24/00009 - Fee Uplifts for Adult Social Care Providers for 2024/2025](#)

[24/00021 - Finance Monitoring Report - budget adjustments](#)

[24/00054 – Finance Monitoring Report – Capital and revenue outturn budget adjustments](#)

Report Authors and Relevant Director

Ben Watts – General Counsel
03000 416814

benjamin.watts@kent.gov.uk

Georgina Little – Principal Democratic Services Officer
03000414043

Georgina.little@kent.gov.uk