

Forward Plan reference number: Not applicable

Report title: Management of Excess Deaths due to COVID-19	
Report to: Councillor David Finch, Leader of the Council	
Report author: Suzanna Shaw, Director, Customer Services	
Date: 6 April 2020	For: Decision
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County Divisions affected: All Essex	

1. Purpose of Report

- 1.1 To seek approval to put in place measures relating to the management of additional body storage facilities as a result of COVID-19. These include:
- 1.2 Enacting an existing contract between Essex County Council (ECC) and Kenyon International Emergency Services Ltd to provide a service to manage excess deaths.
- 1.3 Putting in place appropriate logistics by leasing additional vehicles to transport the deceased and sourcing the necessary appropriate requirements.

2. Recommendation

- 2.1 Agree to contract with Kenyon International Emergency Services to commission and deploy staff to set up a temporary mortuary facility at the site of the Chelmer Valley Park and Ride serving covering Essex, Thurrock and Southend-on-Sea for the management of excess deaths as a result of COVID-19.
- 2.2 Agree that the Executive Director for Corporate and Customer Services, in consultation with the S151 Officer, determine the terms of the agreement with Kenyon International Emergency Services.
- 2.3 Agree to delegate management of the contract to the Executive Director for Corporate and Customer Services.
- 2.4 Agree that the Executive Director for Corporate and Customer Services may enter into any further contracts for the delivery of the service including transport contracts and contracts for supplies and services (including a contract with Arena for the procurement of two temporary storage units)
- 2.5 Pending Government determination of any additional emergency funding, that up to £10m be drawn down from the General Balance to cover the anticipated net cost to the Council.

- 2.6 Note that the effect of this decision is that the park and ride site will remain closed until no longer required for this use and any damage to the site has been remediated.
- 2.7 It is expected that the site may be required for a period of up to six months from April 2020 and the costs will all be incurred during that timeframe, although it may be necessary to extend this period should COVID-19 continue to infect people within Essex for longer than expected.

3. Summary of Issue

Context

- 3.1 The global outbreak of coronavirus (COVID-19) is affecting the UK. The number of cases has grown significantly since early March. Urgent preparation, to ensure an effective response to COVID-19, is taking place across the council and with partners.
- 3.2 Central Government has asked local authorities to prepare for the excess deaths that will occur as a result of the pandemic. Measures and resources need urgently to be put in place to provide capacity for managing excess deaths with respect and dignity and in accordance with appropriate public health requirements.
- 3.3 Plans for managing excess deaths are and will continue to be informed by latest forecasts and guidance from the Government's COVID-19 Response Team and the existing capacity within the county's death management services (mortuaries, funeral directors, crematoria, burial grounds, Registration Services and bereavement services).
- 3.4 ECC already has an agreement in place with Kenyon International Emergency Services to provide emergency services in the event of mass disaster recovery incidents. ECC proposes to enact that agreement and commission Kenyon International Emergency Services to set up and manage contingency facilities. Kenyon are working with other local authorities and have recommended that one facility is provided to serve the Essex area.
- 3.5 The preferred location is Chelmer Valley Park and Ride site. It was recommended by Kenyon as the best site for the storage. The pan-Essex group will need to make arrangements to transport bodies to and from the chosen site. It is recommended that decisions about the scale of the provision required for Essex and Thurrock and Southend, who have agreed to fund a proportionate part of the costs are delegated to the Executive Director for Corporate and Customer Services
- 3.6 Kenyon will manage the centralised facility including things such as entry and exit to site, site security, sourcing of all materials for site, as well as arranging the building of the temporary mortuary. The structure and arrangement of staff

makes allowance for the difficult nature of the role, for example a staff rest area and other facilities, as well as shift patterns to enable the site to operate for 24 hours.

- 3.7 The park and ride site has been closed for 3-6 months due to low usage as a result of the 'lockdown'. The impact of this decision is that the park and ride site will remain closed, potentially for many months. When the 'lockdown' ends it is anticipated that traffic levels will increase but the site may remain unavailable for parking if the site is still needed for the additional body storage capacity. This may have the impact of increasing congestion in Chelmsford and at the Broomfield Hospital site both of which are served by buses from the site. The Council will also have to continue to pay the bus operators unless they agree otherwise.

4 Reason for Using Urgency Powers

- 4.1 The council is expecting extremely challenging conditions as Covid-19 takes effect. The coroners service and therefore excess death management needs to be able to take all necessary action to fulfil its duties during this period and reassure providers of funeral services, bereaved families, and partners in the NHS of its capacity to do so. Without action, there is a great risk of insufficient mortuary capacity given the scale of the coronavirus crisis facing us. Furthermore, we will lack the expertise necessary to manage the escalation of death due to the coronavirus pandemic
- 4.2 The funding element for this, how much ECC will receive and when we will receive it has not been confirmed with government. Given the urgency of the need to support mortuaries, the NHS, and bereaved families, as well as respecting the deceased the Council cannot wait for an announcement for funding from central government. In the interim the costs will be covered by the Council's General Balance with an agreement of understanding with partners.

5. Procurement Law Implications

- 5.1 The management of excess deaths will require the Council to enter into a number of contracts with a value likely to be above the threshold in the Public Contracts Regulations 2015. Regulation 32 allows the direct award using the negotiated procedure in an emergency if all the following apply:
- There is an emergency situation – The current situation applies because the Council needs to make urgent provision to handle excess deaths.
 - The events that have led to the need for extreme urgency were unforeseeable and not caused by the local authority.
 - It is impossible to comply with the usual Procurement Contract Regulations 2015 timescales
- 5.2 Advice is that the procurement should be limited to what is absolutely necessary in terms of requirement and the contract length be no longer than one year;

shorter if possible. It is important to obtain Value for Money as far as possible, but few people can supply a temporary mortuary and they are much in demand around the world.

6. Financial Implications

- 6.1 Detailed negotiations are underway. The amount payable to Kenyon and associated suppliers for the set up and running of the facility will be shared by Essex County Council, Southend Council and Thurrock Council.
- 6.2 There are also additional costs that will be incurred by each partner, including transportation of the deceased from mortuaries to the site and then onto funeral directors, site security and site remediation.
- 6.3 This Cabinet Member Action seeks approval to a ceiling of £10m for Essex County Council to be funded from the General Balance in the first instance, pending additional emergency funding being made available by the Government. It is not yet clear whether these costs will be reimbursed by Central Government.
- 6.4 In addition, for every month the Chelmer Valley Park and Ride site is not operational there is a £53,000 loss of income, so if the site was not available beyond the current period that it has been closed for this additional pressure will accrue per month.

7 Legal Implications

- 7.1 The procurement law implications are set out in the procurement law implications section above.
- 7.2 Excess deaths arise when more deaths occur than normal. This can lead to a situation where the normal system of hospitals, mortuaries, coronial services and funeral, burial and cremation services cannot cope.
- 7.3 Although some storage of bodies requires a licence under the Human Tissue Act 2004, the facility will simply be used for storage pending burial or cremation. In these circumstances no licence will be required.
- 7.4 The Coronavirus Act 2020 introduces powers for the Secretary of State to designate a local authority if it appears that there is insufficient capacity. If the Council is designated it will have the power to give directions in order to produce capacity. This could lead to a difficult issue where the Council needs to consider requiring the burial of a body against the wishes of relatives. The Council does not wish to use these powers and the creation of the temporary facility will help to minimise the risk that we have to consider using them.
- 7.5 If there is a material change of use of a site then planning permission is required if the use lasts more than 28 days. It is therefore very likely that the use of this site for the facility is a breach of planning law. This means it is necessary to

consider whether or not planning permission is required. Should it be determined that planning permission is required and not obtained then the use could be the subject of enforcement action by the planning authority. However, enforcement action is only appropriate if there is a breach of planning law **and** it is considered by the authority that it is expedient to take action. This is a temporary, short-term development necessitated by a national emergency. It would be strongly arguable that it is not expedient to take enforcement action in these circumstances even if planning permission is not obtained. That said, it would be unsustainable and inappropriate should an unlawful use continue longer than necessary. We have consulted ECC planners and the City Council who have indicated that they are likely to take a pragmatic approach.

- 7.6 The Council owns the freehold of the site and there is a covenant against any use other than as park and ride or a public transport hub. We have consulted the company we covenanted with and they have agreed that they will not seek to enforce this breach of covenant.

8 Equality and Diversity Implications

- 8.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful.
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 8.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 8.3 The recommendations in this report are designed to ensure that the Council provides excess death capacity. It will be important to do this in a respectful way.
- 8.4 The purpose of these arrangements is to be well prepared. The Council does not anticipate the need to seek to exercise any statutory powers to require the cremation of the body of any person where there are religious objections. However, given the fast changing and somewhat unpredictable nature of the situation, we cannot entirely rule out having to use these powers.

- 8.5 Should officers wish to use these powers, a further report will be brought to the Leader in order to consider this. That report will need to be the subject of a full equality impact assessment. In view of the urgency of **this** decision a full equality impact assessment has not been undertaken but we do not believe that there will be a significant adverse impact on any people with a protected characteristic – it is intended to avoid the need for this to happen.

9. List of Appendices

None

10. List of Background Papers

None

I approve the recommendations set out above for the reasons set out in the report.	Date
Councillor David Finch, Leader of the Council	07 April 2020

In consultation with:

Role	Date
Cabinet Member Customer, Communities, Culture and Corporate	07 April 2020
Councillor Susan Barker	
Executive Director of Customer and Corporate	07 April 2020
Margaret Lee	
Executive Director for Finance and Technology (S151 Officer)	06 April 2020
Stephanie Mitchener (on behalf of Nicole Wood)	
Director, Legal and Assurance (Monitoring Officer)	06 April 2020
Paul Turner	

Exemption from call in and being included on the forward plan

I agree that this key decision is urgent and cannot reasonably be deferred and therefore that it may be taken without it being on the forward plan.

I also agree that it is in the best interests of the Council for this decision to be implemented urgently and therefore this decision is not subject to call in (paragraph 20.15(xix) of the constitution applies).

Councillor Mike Mackrory – Chairman of the Corporate Policy and Scrutiny Committee

Dated: 07 April 2020