

Meeting of:	Cabinet
Date of Meeting:	Monday, 19 October 2020
Relevant Scrutiny Committee:	All Scrutiny Committees
Report Title:	Use of the Managing Director's Emergency Powers
Purpose of Report:	To notify Cabinet of the exercising of Emergency Powers by the Managing Director since the last report on 24 th February 2020 and the cessation of fortnightly Managing Director's Emergency Powers due to the Coronavirus Pandemic on 12 th August, 2020.
Report Owner:	Executive Leader and Cabinet Member for Performance and Resources
Responsible Officer:	Rob Thomas, Managing Director
Elected Member and Officer Consultation:	None required as the Constitution requires that any Emergency Powers approved be reported to Cabinet for information
Policy Framework:	This is a matter for Executive decision by Cabinet. All actions fall within Paragraph 1 of the Managing Director's Delegated Powers set out on page 271 of the Council's Constitution.
<p>Executive Summary:</p> <p>To advise Cabinet of the exercising of Emergency Powers by the Managing Director since the last report of 24th February, 2020 and the cessation of fortnightly Managing Director's Emergency Powers due to the Coronavirus Pandemic on 12th August, 2020.</p> <p>The Council's Constitution at page 271 (delegated powers) states:</p> <p>"MANAGING DIRECTOR OR, IN HIS ABSENCE, THE NOMINATED DEPUTY</p> <p>1. Power to act, after consulting the appropriate Cabinet Member and, in the case only of matters involving the Council in financial commitments, the Leader, Section 151 Officer and the appropriate Chief Officer, in respect of any matter which, in his opinion:</p> <p>(a) requires immediate action; and</p> <p>(b) does not justify holding a special meeting of the body which would ordinarily consider the matter or is of such urgency or emergency as not to allow time for such a meeting; use of such delegated powers to be subsequently reported back to the Cabinet or Council as appropriate."</p>	

Recommendation

1. That the use of the Managing Director's Emergency Powers be noted.

Reason for Recommendation

1. To inform Cabinet.

1. Background

- 1.1 The Emergency Powers Procedure was approved by Minute No. 95, 2012/13.

2. Key Issues for Consideration

2.1 To note the following use of the Managing Director's Emergency Powers since the last report of 24th February, 2020 and the cessation of fortnightly Managing Director's Emergency Powers due to the Coronavirus Pandemic on 12th August, 2020.

(a) Submission of Green Infrastructure Grant Application

Welsh Government opened a short window of application in which the Council could submit a bid for £320k Green Infrastructure funding which was to be matched by £80k of the Barry Regeneration budget.

It was requested that £80k of the 2020/21 Barry Regeneration Partnership Project Fund be allocated to the Green Infrastructure Project for match funding subject to the grant being approved by Welsh Government.

The project was presented to the Barry Regeneration Board who were supportive.

(Scrutiny – Environment and Regeneration)

(b) Award of Consultancy Contract Relating to WelTAG Stage 2 and 3 Appraisal of Barry Dock Transport Interchange

The use of Emergency Powers was sought to award the consultancy contract relating to WelTAG Stage 2 and 3 appraisals of Barry Dock Transport Interchange given the need to spend the £85k Transport Grant, awarded in April 2019, by the end of March 2020.

(Scrutiny – Environment and Regeneration)

(c) Barry Making Waves Grant

The Council had been awarded a capital grant of £59k from the National Lottery Heritage Fund for the Great Place Scheme: Barry – Making Waves.

Barry Making Waves included three work streams:

- Partnerships and governance – to establish a Place Board

- Embedding Heritage and Culture in long term plans and activities for Baay – the publication of two strategic documents: The Barry Story book and the Barry Design Toolkit
- Building Social Capital – to establish a Community Volunteer Bank; deliver a Digital place making project; and a Marketing and Outreach Programme.

It was the Digital Place Making project which was the capital part of the funding.

It was requested to include this new £59k scheme into the Capital Programme, split £28k in 2019/20 and £31k in 2020/21 to be funded by a grant from the Heritage Lottery Fund. The grant must be spent by 31st March, 2021.

(Scrutiny – Environment and Regeneration)

(d) Contracts Relating to the Delivery of Services for School Meals

The existing contracts satisfying the Council’s requirements for grocery, meat, frozen food, fruit and vegetables for Learning and Skills, Social Services and School were set to expire. A tendering exercise in line with the Council’s Procurement Framework was completed, with two of the four contracts having been awarded.

As at 1st January, 2020 all contracts’ elements relating to the delivery of services for schools meals would novate to the Council’s Local Authority Trading Company, The Big Fresh Catering Company.

(Scrutiny – Learning and Culture)

(e) Submission of Visit Wales Funding Applications

Welsh Government had opened a short window of application in which the Council could submit a bid for Visit Wales funding. The deadline for submission was 28th February, 2020.

The Emergency Powers allowed the Council to bid for

- £244k of capital funding for a Cosmeston Lakes Gateway project and new play area at Porthkerry Country Park. These funding applications were to be matched by £56k of the Capital Regeneration budget;
- £60k of Capital funding which was to be matched by £10k of existing Public Rights of Way budgets.

It was requested that £56k of the 2020/21 Capital Regeneration Fund be allocated to the Cosmeston Gateway and Porthkerry Play Area Projects match funding subject to the grant being approved by Welsh Government.

(Scrutiny – Environment and Regeneration)

(f) Llansannor Toilets

It was requested to include a new scheme into the 2019/20 Capital Programme of £37,240.58 for works to the toilets at Llansannor C/W Primary School.

This was to be funded £20,106.03 from the School which had been awarded a grant from the Diocese. It was requested to vire the remaining £17,134.55 from the Peterston Roof Scheme in the 2019/20 Capital Programme to this new scheme. The Peterston Roof Scheme was underbudget and therefore budget was available.

(Scrutiny – Learning and Culture)

(g) Civic Offices Fire Stopping Works

Whilst undertaking remediation of the Civic Offices fire barriers, non-compliant areas were discovered that were outside the original scope of works. It was essential that these works were carried out for the safety of the Civic Offices' users. A review of forthcoming schemes within the Capital Programme was made and it was agreed that non-essential elements of work should be removed from the Docks Office external works scheme to cover the necessary works at the Civic Offices.

Emergency Powers were required in order to vire £18k from the Dock Office's external works scheme to the Civic Offices' Fire Stopping Works Scheme in the 2020/21 Capital Programme.

(Scrutiny – Corporate Performance and Resources)

(h) Replacement of the Council's Enterprise Resource Planning System (ERP)

The Council was currently using a system provided by Oracle which was implemented over 10 years ago, which provides functionality for Human Resources and Payroll, General ledger and financial support, Customer contact and Procurement.

Oracle had notified the Council that they would cease to support the current version of the system in December 2021, therefore the Council needed to determine how this functionality will be made available after that date.

Emergency Powers were required in order to:

- Make a direct award to Oracle under Regulation 32 (2) (b) (ii) as "competition is absent for technical reasons" and (iii) " protection of exclusive rights, including intellectual property rights" applies to this procurement due to the lack of effective competition in the marketplace for oracle products ;
- That delegated authority is awarded to the Head of Finance to publish this award in the European Journal as required ;
- That delegated authority is awarded to the Monitoring Officer / Head of Legal and Democratic Services to agree and sign the contracts with Oracle ;
- That delegated authority is awarded to the Head of Finance to tender for an implementation partner to work with the Council on the implementation process ;
- That delegated authority is awarded to the Monitoring Officer / Head of Legal and Democratic Services to agree and sign the contracts with the successful implementation partner;

- That work is undertaken to determine and establish the resources required internally to ensure the successful implementation of the new system.

(Scrutiny – Corporate Performance and Resources)

(i) Coronavirus – Temporary Closure of Public Paths at Atlantic College

The Council had received a request on behalf of Atlantic College to temporarily close public paths that cross its site as a result of the imminent return of residential students, a large proportion of whom are international students that will be subject to quarantine restrictions.

The paths to be closed are Bridleway 10, St Donats and Restricted Byway 9, St Donats.

The Closure to commence on 4th September 2020 and was anticipated to be necessary until 19th October 2020.

Emergency Powers were required in order to:

- (a) to avoid large numbers of people congregating or being in close proximity to each other, or
- (b) to avoid high risk of the incidence or spread of infection with coronavirus in its area.

(Scrutiny – Environment and Regeneration)

(j) ICF Capital Grant Repayment

In 2018/19 the Council was provided with ICF capital grant funding of £330,229 from the Cardiff and Vale University Health Board. The grant was provided on the understanding that the funding would be used in 2018/19 to fund Disabled Facilities Grants expenditure and the displaced funding would be carried forward into 2019/20 to fund future ICF capital schemes. The funding was set aside in a reserve however no expenditure was incurred during 2019/20 and Cardiff and Vale University Health Board have now requested that the funding is repaid and have raised an invoice. Payment of this invoice has been requested by 8th September 2020.

Under capital regulations any replacement of a capital grant has to be shown as expenditure in the capital programme.

Emergency Powers were required in order to include a budget of £330,229 in the 2020/21 Capital Programme thus enabling the payment to be made within the required deadline.

(Scrutiny – all Scrutiny Committees)

(k) Penarth Library

The Council had been awarded funding of £120,000 in relation to Penarth Library. The Funding relates to the period 1 April 2020 to 31 March 2021 and must be claimed in full by 1 February 2021. The purpose of the funding is to refurbish the ground floor of Penarth Library in order to turn the space into an attractive, modern and accessible

entry point to the library as a whole. £49,530 match funding is required for this scheme and this will be funded from Libraries reserves.

Emergency Powers were required in order to include this new scheme with a budget of £169,530 into the 2020/21 Capital Programme, to be funded by £120,000 Welsh Government grant and £49,530 from Libraries reserves.

(Scrutiny – Learning and Culture)

(l) Supported Living Contract

The Supported Living contract is due to expire on 31st March 2021. Due to additional work that officers have taken on as a result of the Covid pandemic, the Project Board and Group have not been able to meet until recently. A timetable for the procurement process has been developed, which shows that the Pre Qualification Questionnaire would have to be issued on Sell2Wales no later than 25th September 2020 in order to recommission the service before the end of financial year.

Emergency Powers were required in order to request is for a 6-month extension to the current contract until 30th September 2021,

(Scrutiny – Healthy Living and Social Care)

(m) Award of consultancy contract relating to Weltag Stage 3 Appraisal of Cogan Station, Penarth.

The use of emergency powers was sought to award the consultancy contract relating to WelTAG 3 Appraisal of Cogan Station as the preferred scheme emerging from the Stage 2 Penarth Sustainable Corridor report produced by Capita. The consultancy award would be made to Capita as the only consultancy to have submitted a bid for the work when it tendered in late 2019.

Emergency Powers were required in order to:

1. Sign off the generic Agreement with Merthyr County Borough Council relating to the award.
2. Award the Consultancy Services contract to Capita Consulting following notification of the intention to award and the elapse of any necessary standstill period as set out in the Public Contract regulations and the internal procurement.
3. Given that the contract value is above £75,000 to enter into an NEC Professional Services contract with Capita for the work and grant authority for the Head of Legal to sign off that contract document.
4. To give delegated powers to the Head of Neighbourhood Services and Transport to negotiate the terms of a letter of intent to enable Capita to commence provision of the services in advance of the NEC Professional Services Contract being in place and delegated powers to the Head of Legal and Democratic Services to sign the letter of intent upon appropriate instruction.

5. It is requested to increase the 20/21 capital programme by £270k to be funded by a grant from the Welsh Government via the Regional lead transport authority for metro Plus that being Merthyr County Borough Council.

6. Update Sell2wales of the contract award.

7. Seek delegated powers to form a Project Board made up of the Leader of the Council, the Cabinet Member for Education and Regeneration, the Cabinet Member for Neighbourhood Services and Transport, The Managing Director, the Head of Planning and Regeneration, The Head of Financial Services and the Head of Neighbourhood Services and Transport (the Project Sponsor) to make decisions regarding the progress of the consultancy work being appointed, agree variation to the contract awarded and, following consultation, to report to Cabinet the Stage 3 Full Business case for the Cogan scheme.

(Scrutiny – Environment and Regeneration)

(n) Cardiff & Vale of Glamorgan Coronavirus Prevention & Response Plan

A regional COVID-19 Prevention and Response Plan had been prepared in response to a joint letter sent by the Welsh Government Chief Medical Officer/Medical Director NHS Wales, Director General Health and Social Services/NHS Wales Chief Executive and Director, Local Government on the 27th July 2020.

The plan contains reference to the six key principles required for an effective test, trace, protect strategy:

1. The primary responsibility is to make the public safe.
2. Build on public health expertise and use a systems approach.
3. Build consensus between decision-makers to secure trust, confidence and consent.
4. Be open with data and insight so everyone can protect themselves and others.
5. Follow well-established communicable disease control and emergency management principles.
6. Consider equality, economic, social and health-related impacts

Emergency Powers were required as the Prevention & Response Plan has been approved by the two councils' senior management teams, the executive team for Cardiff & Vale UHB and the Strategic Leadership Group for Test, Trace & Protect. As the Plan develops in response to further information and legislation, it will be further reported to these groups to consider any material changes and delegated authority is sought for the Managing Director, in consultation with the Strategic Leadership Team, Head of Shared Regulatory Services and the Leader of the Council to agree any revisions.

(Scrutiny – Corporate Performance and Resources)

(o) Ysgol Pen Y Garth Roof Renewal Scheme

Whilst undertaking roofing works at Ysgol Pen Y Garth three of the building's external canopies were removed to allow scaffold access to the school's roof. The existing canopies were in a poor condition and outside the project's original scope of works.

It was essential that these works were carried out for the wellbeing of both teachers and pupils. A review of forthcoming schemes within the Education Programme was made, and there was found to be a budget surplus remaining on the Cogan Nursery Flat Roof Renewal scheme as this scheme is complete.

Emergency Powers were required in order to vire £18,722 to the Ysgol Pen Y Garth Roof Renewal Scheme in the 2020/21 Capital Programme.

(Scrutiny – Learning and Culture)

(p) Access Improvement Grant – Additional Offer

Earlier this financial year the Council accepted a financial offer in respect of the Access Improvement Grant from the Welsh Government. The offer that was accepted was for a total of £40,899.83.

Welsh Government have now provided a further offer of funding varying the original amount by offering a further £32,000 under the same scheme.

Emergency Powers were required in order to increase the 2020/21 Capital Programme Access Improvement Grant scheme by £32k which is to be funded by a grant from Welsh Government

(Scrutiny – Environment and Regeneration)

(q) Civic Offices High Level Brickwork Repairs

As part of a concrete lintel repair project it was discovered that some of the building's powder coated aluminium soffit profiles were missing. It is essential that these works are carried out for the safety of the Civic building's users.

The cost of these works is anticipated to be £105k. £90k remained unallocated in the All Services Asset Renewal budget on the Capital Programme.

Emergency Powers were required in order to vire £90k to a new scheme called Civic Offices high level masonry repair, and to also increase this scheme by £15k to be funded from the Miscellaneous Building Fund reserve in the 2020/21 Capital Programme.

(Scrutiny – Corporate Performance and Resources)

(r) COVID-19 Freelancer Grant Administration

Emergency Powers were required to accept £318,890 and administer it on behalf of Welsh Government in line with the COVID-19 Freelancer Grant Guidelines, to support 127 freelancers in the creative industries. The fund is specifically targeted at those

industries that have been unable to restart due to ongoing restrictions. Grants of £2,500 will be issued to businesses that meet the criteria within the guidelines.

(Scrutiny – Environment and Regeneration)

(s) Digital Exclusion Fund

The Council has been awarded funding of £14,570 in relation to Digital Exclusion. This capital funding has been made available to help local authorities delivering adult learning in the community additional provision to support their learners. This funding will support learners to engage with digital technologies and distance/blended learning by addressing some of the common barriers to those unable to access the relevant technologies and/or have additional accessibility requirements. Funding can be used for the purchase of essential equipment, and/or purchase of software in order to upgrade existing equipment.

Emergency Powers were required to include this new scheme with a budget of £14.570 into the 2020/21 Capital Programme, to be funded by a Welsh Government grant.

(Scrutiny – Learning and Culture)

(t) Replacement Welfare Facilities at the Gypsy Site in Llangan

This project is in relation to the welfare facilities (static wash room) located at the gypsy site in Llangan. It is necessary to replace the existing facility as it has become unsafe as a result of unstable flooring. The option of repairing the facility has been evaluated but this is not financially viable. The cost of the facility will be funded by a revenue contribution from the Miscellaneous Building Fund. Total cost of replacement is £16,252.

Emergency Powers were required to increase the 2020/21 Capital Programme by £16,252 to be funded from the Miscellaneous Building Fund.

(Scrutiny – Homes and Safe Communities)

(u) Palmerston Primary School Window Replacement / St Richard Gwyn High School Water Heaters/Boiler Replacement

Palmerston Primary School windows have passed their life expectancy and are currently failing in areas. Due to the age of the original windows, repairs are no longer a feasible option.

Emergency Powers were required to vire the £12,781 to a new scheme called Palmerston Primary School Window Replacement Scheme in the 2020/21 Capital Programme.

St Richard Gwyn High School water heaters are in poor condition. The school have two main water heaters which supply hot water to the school. One water heater has failed beyond repair and the other recently repaired to remain operational. Due to the condition of the existing water heaters and additional demand on the functioning water

heater it recommended that the water heaters are replaced as a matter of urgency to ensure that the school remain operational with the supply of hot water.

Emergency Powers were required to vire £50,000 to a new scheme called St Richard Gwyn High School Water Heater/Boiler Replacement Scheme in the 2020/21 Capital Programme.

(Scrutiny – Learning and Culture)

3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?

- 3.1** The use of the Managing Director’s Emergency Powers is required on occasions when the urgency means that there is no time for the issue to be considered by the relevant Committee.
- 3.2** The purpose of presenting the report for information is to ensure that all Emergency Powers that have been approved are notified to Cabinet and / or Council as appropriate.
- 3.3** The Well-being of Future Generations (Wales) Act sets out effective transparency as a key part of improving the delivery of public bodies.
- 3.4** The Act requires public bodies to communicate and explain the processes of selecting its well-being objectives and why these objectives have been chosen, how decisions are taken in line with these objectives and what difference these objectives have made.
- 3.5** The importance of presenting the report to Cabinet is to ensure that transparency has taken place and to inform the Cabinet of the Emergency Powers that have been undertaken for the relevant reasons contained within the reports.

4. Resources and Legal Considerations

Financial

- 4.1** The procedure requires that these be taken into account by the Committee / Departments originating the requests for the use of Emergency Powers.

Employment

- 4.2** The procedure requires that these be taken into account by the Committee / Departments originating the requests for the use of Emergency Powers.

Legal (Including Equalities)

- 4.3** The Council’s Constitution states:
 - 1. Power to act, after consulting the appropriate Cabinet Member and, in the case only of matters involving the Council in financial commitments, the Leader,

Section 151 Officer and the appropriate Chief Officer, in respect of any matter which, in his opinion:

(a) Requires immediate action; and

(b) Does not justify holding a special meeting of the body which would ordinarily consider the matter or is of such urgency or emergency as not to allow time for such a meeting; use of such delegated powers to be subsequently reported back to the Cabinet or Council as appropriate

5. Background Papers

Relevant Emergency Powers proformas.