

Meeting of:	Cabinet
Date of Meeting:	Thursday, 23 June 2022
Relevant Scrutiny Committee:	All Scrutiny Committees
Report Title:	Use of the Chief Executive's Emergency Powers
Purpose of Report:	To notify Cabinet of the exercising of Emergency Powers by the Chief Executive since the last report on 11th April, 2022.
Report Owner:	Executive Leader and Cabinet Member for Performance and Resources
Responsible Officer:	Rob Thomas, Chief Executive
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 Chief Executive's Delegated Powers set out on page 317 of the Council's Constitution.
<p>Executive Summary:</p> <p>To advise Cabinet of the exercising of Emergency Powers by the Chief Executive since the last report of 11th April, 2022.</p> <p>The Council's Constitution at page 315 (delegated powers) states:</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(s), 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 Chief Executive'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 Chief Executive's Emergency Powers since the last report of 11th April, 2022.

(a) Highway Maintenance Contracts – Increase in Value of the Carriageway Resurfacing Contract Award to Tarmac Trading Ltd.

Emergency Powers were approved on 30th November, 2021 noting that the contract award value for Tarmac Trading was increased to £1.452m. At Cabinet on 28th February, 2022, Cabinet Minute C839, it was approved to increase the Neighbourhood Services Highway Improvements scheme budget by £500k to be funded from additional general capital grant that the Council has been awarded.

As a result of this, the month of March in 2022 was spent resurfacing various locations across the Vale of Glamorgan resulting in an increase in the above contract for the year to 31st March, 2022 to circa £1.952M. The total spend under the above Highway Resurfacing repairs contract is estimated to be circa £1.952M to the end 31st March 2022.

The use of Emergency Powers was sought to approve the £500k increase in contract value for Highway Resurfacing repairs to Tarmac Trading LTD until 31st March, 2022, the contract value will then be circa £1.952M.

(Scrutiny – Environment and Regeneration)

(b) Adult Learning Maintenance and Equipment Funding.

The Council has received an award of funding in relation to Local Authority Post-16 Education Provision 2021/22 - Adult Learning Maintenance and Equipment Funding. The total award of funding is for £197,126.

The grant award does not state that it is a capital grant however elements of the grant are capital expenditure. Of the £197,126 awarded, £41,643 is capital which is being used to upgrade infrastructure to ensure adequate connectivity for teaching and learning at Palmerston Community Learning Centre, Vale Learning Centre and Cowbridge Old Hall, and for associated hardware costs.

The use of Emergency Powers was sought to include this scheme in the 2022/23 Capital Programme with a budget of £41,643, to be funded by a grant from Welsh Government.
(Scrutiny – Learning and Culture)

(c) Consultation on the Auditor General for Wales’s Work Programme for 2022/23 and Beyond.

Each year the Auditor General seeks the views of public bodies on potential areas of focus in order to shape his annual audit work programme. The consultation considers a variety of topics that may be taken forward through the Auditor General's national value for money examinations and studies and/or through local audit work across multiple NHS, central government and local government bodies. The potential areas of focus have been informed by the current and emerging issues facing public services and focus around three overarching themes: the ongoing pandemic, a changing world and transforming service delivery.

The Council’s response reflects our key priorities as aligned to the three overarching themes and suggested timings for work have been proposed with a view to ensuring maximum learning for council services as we recover from the COVID-19 pandemic.

The use of Emergency Powers was sought to approve the Council’s response to the consultation in order to meet the response deadline of 8th April, 2022.

(Scrutiny – Corporate Performance and Resources)

(d) Tender Value Correction to Street Lighting Energy Reduction Strategy – Award of Contract for Installation of LED Lanterns and Columns.

An Emergency Power request was submitted and approved in October 2020 to obtain appropriate authorisation to award the installation of the LED lantern and column Contract to Centregreat Limited and for the Monitoring Officer / Head of Legal and Democratic Services to enter into contract with Centregreat Limited for the same.

The works for the installation of LED lantern and columns under the above- mentioned contract are now substantially complete, however, the contractor has recently identified an error on the original tender submission to Sell2Wales portal. This error relates to the original excel spreadsheet for the Bill of Quantities in Appendix F of the tender submission resulting in the actual value of the contract being incorrectly reported in the original EP.

The total value of the works payable to Centregreat under the above contract has also increased due to additional unforeseen works required to complete the installation works to the value of some £44k, together with additional project management costs of approx. £24k not previously built into the installation costs. The total value of the installation scheme costs when factoring in the spreadsheet error above and all other additional costs payable to Centregreat Ltd is therefore circa £529k.

The use of Emergency Powers was sought to approve the increased contract value of £529,000.

In relation to the budget, £387k internal monies for this scheme was approved at Cabinet on 19th February, 2018. This budget was then increased by £1.916m Salix interest free loan using emergency powers dated 31/03/2020, resulting in a total budget for the scheme of £2.303m. In 2019/20 actual spend was £13,946 leaving a budget of £2,289,054. This was then reduced to a budget of £1,650,000 at Cabinet on 8th March, 2021 following return of tenders and the competitive nature of the prices received as well as the reducing costs of LED lantern technology. The total scheme budget was therefore £1,663,946 (£13,946 + £1,650,000). The total cost of the scheme was £1,666,613, it is therefore requested to increase the 2021/22 Capital Programme by the difference of £2,667 to be funded from the Salix Loan.

(Scrutiny – Environment and Regeneration)

(e) Penarth Marina Land Slip Works.

There is currently a budget of £47,415 approved in the 2021/22 Capital Programme. The original quotation was based on a site visit undertaken on 24th February, 2022. Subsequent to this quotation being accepted, further falls had increased the volume of material that needed clearing and had damaged more fencing. Until the material was removed the exact extent of the works could not be accurately determined. The volume of material is taken from the disposal tickets for the loads removed from site. The extra fence posts and length of fencing is taken from measurements on site.

The use of Emergency Powers was sought to increase the Penarth Marina Land Slip Works budget on the Capital Programme by £22,080 for these works, to be funded from the revenue Policy budget.

(Scrutiny – Environment and Regeneration)

(f) Welsh Government Funding of Land Acquisition in Support of the Barry Docks Interchange Project.

An opportunity to fund the acquisition of land required to deliver the Barry Docks Station Interchange project has arisen due the likely underspend by local authorities of the Welsh Governments Local Transport Fund (LTF) Grant on various transport projects.

The land has been valued independently by JLL (IN FULL) on behalf of the Council and Rothesay, who currently own the land, have indicated to date that they are a willing seller.

The LTF fund is offering £515,000 in line with valuations and estimate of fees.

The use of Emergency Powers was sought as the existing delegations in place do not provide sufficient authority for officers to purchase the land.

(Scrutiny – Environment and Regeneration)

(g) Proposal to Reconfigure Nursery Provision in Penarth.

The use of Emergency Powers was sought to:-

Proposal 1: To Amalgamate Bute Cottage Nursery School and Evenlode Primary School
By:

- Changing the lowest age range of pupils at Evenlode Primary School from 4 to 3, to include 96 part time nursery places:
- Increasing the capacity of Evenlode Primary School to accommodate the 96-part time nursery places; and
- Discontinuing Bute Cottage Nursery School and transferring all staff and pupils of the nursery phase under the governance of Evenlode Primary School from September 2022.

Proposal 2: To Amalgamate Cogan Nursery School and Cogan Primary School By:

- Changing the lowest age range of pupils at Cogan Primary School from 4 to 3, to include 96 part time nursery places:
- Increasing the capacity of Cogan Primary School to accommodate the 96-part time nursery places; and
- Discontinuing Cogan Nursery School and transferring all staff and pupils of the nursery phase under the governance of Cogan Primary School from September 2022.

(Scrutiny – Learning and Culture)

(h) Carys Close.

There is currently a £275k budget approved in the Capital Programme for the redesign of Carys Close in Penarth to a Smart enabled, two bed (currently a small three) accessible bungalow with the garage demolished and rebuilt as a self-contained studio flat.

The Council went out to tender in December, the lowest tender was returned at £513k. The property team have been in negotiations with the contractor to reduce the cost of the scheme and have been able to reduce the build cost to £395k. With professional fees and sundry costs, this would take the total funding required for the building works to a maximum of £454k leaving a shortfall of £179k.

The use of Emergency Powers was sought to increase the 2022/23 Capital Programme by £179k to be funded from the Social Services Building Fund Reserve.

(Scrutiny – Healthy Living and Social Care)

(i) Llanmaes Flood Risk Management Scheme.

The Vale of Glamorgan Council has developed a flood risk management scheme to reduce flood risk to the village of Llanmaes, comprised of bunds and swales to slow and divert water in agricultural land above the village and reprofiling works to the highway to convey any water that does enter the village.

During a pre-award meeting on 17th March, the current volatility in the price of construction materials was highlighted which was making it difficult to hold prices, particularly steel, for extended periods of time. A revised price of £2,076,276.88 was submitted shortly thereafter, an increase of 10.13%, which is only valid until 30th April 2022 and may increase again.

The use of Emergency Powers was sought to continue direct negotiations with the preferred contractor until such time that we can enter into a formal contract once Welsh Government grant funding is confirmed.

The Council has an existing £249k allocation from Environment and Housing reserves towards the estimated 15% match funding requirements. The original capital bid of £1,415 from 2020 was based on a smaller scheme proposal with the cost increase due in part to the additional of a significant length of swale in private land as well as the inflationary pressures discussed above. A recent 10-15% increase in the price of cereal crops resulting from the war in Ukraine has also resulted in an increase in compensation costs for affected landowners. Given the increased total out-turn of £3,603k, which includes a 10% optimism bias, a total of £540k capital match funding is required.

The use of Emergency Powers was sought for an additional £291k funding is ringfenced from reserves to cover the increased costs, with the capital programme to be suitably amended once WG grant funding is approved.

The use of Emergency Powers was sought to increase the 2022/23 Capital Programme by £540k match funding to be funded from the Neighbourhood Services and Transport reserve and to increase the Capital Programme by the grant award amount on receipt of the award letter from Welsh Government.

(Scrutiny – Environment and Regeneration)

(j) Updated Deadline set by Welsh Government for the repayment of the TRI Loan Goods Sheds, Innovation Quarter.

In accordance with Cabinet Minute C545(1) following a report to the Cabinet meeting of 7th January, 2019, the Head of Regeneration and Planning during March 2019 secured £500,000 capital funding from the Welsh Government's Targeted Regeneration Investment (TRI) Programme for a loan to DS Properties (Goods Sheds) Limited (the developer) to part fund the IQ Hood Road Goods Shed Redevelopment.

The Welsh Government has agreed to grant a request of the developer to have more time to repay the TRI Loan. The Welsh Government has written to the Council confirming it approves extending the deadline for the Council to repay the Welsh Government the TRI Loan by 31st August, 2024.

The use of Emergency Powers was sought to:

1. Authorise the Head of Regeneration and Planning (in consultation with the Leader, the Cabinet Member for Regeneration and Planning, the Managing Director, the Head of Finance and the Monitoring Officer / Head of Legal and Democratic Services) to agree to extend the repayment date of the TRI Loan made to DS Properties (Goods Shed) Limited, pursuant to Cabinet Minute C545, in line with the extension for repayment granted by Welsh Ministers to the Council.

2. Authorise the Monitoring Officer/Head of Legal and Regulatory Services and Operation Manager Legal Service to prepare, execute and complete all legal documentation required to facilitate the extension of time for repayment of TRI Loan Facility Agreement between the Council and DS Properties (Goods Sheds) Limited referred to in point 1 above.

(Scrutiny – Environment and Regeneration)

(k) Longmeadow Court Shelter Housing Scheme External Refurbishment Project 2021-22 – Termination of JCT Intermediate Contract with MI-Space (UK) Ltd.

Since the award (19th July, 2021 Cabinet Minute C649) of the JCT Intermediate contract with MI-Space (UK) Ltd. to deliver the Longmeadow Court Shelter Housing Scheme External Refurbishment Project, MI-Space (UK) Ltd had continually been delaying starting any works onsite. The parent company MIDAS has since gone into administration.

Subsequently, the appointed Administrators (Teneo) have written to confirm that the MI-Space (UK) Ltd. part of the group has been sold to Bell Decorating Group Ltd. on the 8th February, 2022 and have requested a formal novation of the contract with our agreement.

The use of Emergency Powers was sought to:-

- Terminate the JCT Intermediate Contract 2016 with MI-Space (UK) Ltd. using clause 8.5.
- Authorise the Housing and Building Services Team to retender the Longmeadow Court Shelter Housing Scheme External Refurbishment Project.

(Scrutiny – Homes and Safe Communities)

(l) Capitalise Spend on School Revenue Codes.

The following schemes have been coded to revenue however they are over £10k and are capital works/equipment and therefore need to be added to the capital programme.

- Cowbridge Comprehensive school have replaced a heating coil in the plant room at a cost of £15,464.
- St Cyres Comprehensive School have had a canopy installed at a cost of £21,400,
- St Richard Gwyn have purchased a replacement minibus which is used to transport the students to and from fixtures and college/ military and other courses, schools and venues etc. The cost of the minibus is £16,625.
- St Richard Gwyn have also purchased 2 external canopies for children to shelter, the total cost was £19,970.
- Ysgol Bro Morgannwg - There was a surface drainage issue highlighted during the Ysgol Bro Morgannwg project which impacted Blackberry Drive requiring additional

works due to surface water flooding breaching a property. The total of the drainage works £11,709

- Ysgol Gymraeg Sant Curig have had a canopy installed at a cost of £29,220.
- Dinas Powys Primary School have had works repair and installation works carried out on the windows totalling £10,700.
- St Helen's Primary School have installed an outdoor shelter at a cost of £10,380.
- Ysgol Y Deri have had CCTV installed, the cost of the works totalled £10,216

The use of Emergency Powers was sought to add the above schemes totalling £145,684 to the 2021/22 Capital Programme to be funded by a contribution from the schools revenue budget.

(Scrutiny – Learning and Culture)

(m) Housing Electrical Installations, Servicing, Installation, Maintenance and Repairs Framework 2022-25.

The Housing and Building Services Team is requesting emergency powers to accept the most advantageous tender bid received from Lightning Solutions Ltd. and enter into a framework contract as soon as possible to ensure we do not incur any further price increases due to the turbulent market.

The use of Emergency Powers was sought to:-

- Award the Housing Electrical Installations, Servicing, Installation, Maintenance and Repairs Framework 2022-25 contract to Lightning Solutions Ltd. at an estimated framework 3 years (plus 1) value of £550k.
- Delegate authority to the Director of Environment and Housing to accept the most advantageous tender bid and the Head of Legal Services to execute the JCT Intermediate Contract 2016 to deliver the scheme.

(Scrutiny – Homes and Safe Communities)

(n) To engage the Council's appointed contractor Knights Brown to complete the phase 2 construction of the Waste Transfer Station located at Atlantic Trading Estate, Barry.

Due to the pandemic and the additional cost increases of completing this scheme, the construction was split into two phases as there was insufficient funding available.

Phase 2 will see the construction of the green waste and residual waste barns for bulking. Completion of phase 2 would significantly decrease our vehicle movements and result in a reduction in our carbon footprint as we would no longer have to individually send each collection vehicle to Cardiff to discharge the waste rather than using one bulk container located at the Waste Transfer Station in Barry. This phase was previously delayed as a department did not have enough funding to complete the construction.

We estimate that the final phase 2 will cost approximately £1.8m, plus our construction and design teams project management costs and there has been a contingency built into these costs for any market price changes as the construction material markets are

still volatile. Overall, there is £2.2m attributed to this scheme, and the remaining £400,000 is for the construction and purchase of a second baling facility. If necessarily there will be minor changes to the construction design to ensure this is now delivered and completed within this revised budget.

The use of Emergency Powers was sought to directly award Knights Brown the additional work as originally planned now that we have received the Welsh Government official grant award letter. This is time restricted as construction materials continue to increase and at least using the contractor who was appointed for the whole of the scheme will ensure that we lock the prices in at the earliest opportunity.

Additionally, it is requested that the budget for the Waste Transfer Station in the 2022/23 Capital Programme be increased by £2.6m funded by the grant from Welsh Government.

(Scrutiny – Environment and Regeneration)

(o) Capitalise Capital Spend Coded to Revenue.

The following schemes have been coded to revenue however they are over £10k and are capital works/equipment and therefore need to be added to the capital programme.

- Purchase of Registrars Standalone Ceremonies Website £12,000
- Flooring in the Civic Offices Corporate Suite £12,247.85

The use of Emergency Powers was sought to add the below schemes totalling £24,247.85 to the 2021/22 Capital Programme to be funded by a contribution from existing 2021/22 revenue budget.

(Scrutiny – Corporate Performance and Resources)

(p) In year loan to Ewenny Community Council.

The use of Emergency Powers was sought to pay Ewenny Community Council an unsecured loan during 2022/23 to assist in it paying fees for surrendering a lease of Ewenny Village Hall.

The Loan will be for approximately £7,668 less any overpaid rent that needs to be deducted, so the sum advanced will be dependent on the exact date of transaction but will not exceed £7,668.

It is proposed that the loan is fully repaid to Vale of Glamorgan Council within the financial year with repayment dates of 1st June 2022, 15th September 2022 and 15th January 2023.

(Scrutiny – Learning and Culture)

(q) Western Vale Primaries – St Nicholas School Project Clarification

On 18th November, 2019, Cabinet approved the appointment of ISG Construction to undertake the proposed new build works at three primary schools in the Western Vale: St David's CIW Primary School, St Nicholas CIW Primary School and Llancarfan Primary School which executed the professional services contract for the pre-construction design and procurement services, as well as initial site surveys.

On 31st July, 2020 Emergency Powers were agreed to appoint ISG Construction for the new build works at St David's CIW Primary School, St Nicholas CIW Primary School and Llancarfan Primary School and delegate authority for the Monitoring Officer/Head of Legal and Democratic Services to execute the following; NEC4 Option A (Lump Sum with Activity Schedule) Contracts with ISG Construction, Trust Deeds with the Contractor, and the relevant Deeds of Adherence

On 4th February, 2022 an emergency powers request was approved to increase the contract values for St David's CIW Primary School and Llancarfan Primary School to account for increased costs in the schemes. To address the shortfall in available budget for the school projects it was agreed surplus funding available within the Whitmore High School and Ysgol Bro Morgannwg budgets be released to cover the increased costs for St David's CIW Primary School and Llancarfan Primary School. This resulted in the following summary table of the new contract values for the Western Vale Primaries:

However, the contract values listed for St Nicholas CIW Primary School are incorrect and relate to the original contract value. The PSC contract sum for St Nicholas CIW Primary School was put on hold due to the original scheme being refused at planning stage and a revised scheme being produced. The 3 school schemes were originally tendered as a batched procurement. This allowed ISG Construction to include savings on the basis that these schemes would progress at the same time, which would reduce preliminary costs. As the timescales for the revised scheme would not be consistent with the other schemes, ISG Construction have claimed these additional preliminary costs.

On 12th October, 2021 an emergency powers request was approved to issue a compensation event as part of the existing PSC with ISG Construction for St Nicholas Primary School of £138,369. This has resulted in the overall contract value for the scheme increasing to £368,083 to cover additional preliminary costs and a redesign of the scheme. This increase in the PSC can be accommodated within the £205,000 project contingency factored in to the overall £5,010,000 budget for the scheme. This will leave £66,631 as contingency for the remainder of the scheme.

The use of Emergency Powers was sought so:-

- That the error in the value of the professional services contract for St Nicholas referenced under the Emergency Powers Request dated 4th February, 2022 is noted and the value provided under this Emergency Powers Request of £368,083 is the true contract value.
- That the overall Western Vale Primaries professional services contract value is £819,562 and the total sum of the professional services and NEC contracts for the 3 schemes is £14,244,057.

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

- 3.1** The use of the Chief Executive’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.