

Meeting of:	Cabinet
Date of Meeting:	Thursday, 19 January 2023
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 17th November, 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 17th November, 2022.</p> <p>The Council's Constitution at page 318 (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 17th November, 2022.

(a) Transitional Accommodation Capital Programme – Eagleswell School, Llantwit Major.

The Council had the opportunity to access Transitional Accommodation Capital Programme (TACP) from Welsh Government, in order to provide more appropriate temporary accommodation for Ukrainian refugees whom the Council had a statutory duty to rehouse.

Working in collaboration with Cardiff Council's OJEU compliant contractor, the Wates Group, it was proposed that a scheme of 98 units of accommodation be delivered at the former Eagleswell Primary School, Llantwit Major.

The use of Emergency Powers was required due to the summer Cabinet recess, to allow a decision to be made to appoint and enter into a contract with the Wates Group for the delivery of the scheme, to ensure that a significant proportion of the project is delivered by the end of March 2022.

(Scrutiny – Homes and Safe Communities)

(b) Penarth Pier – Decking and Access Ramps Restoration.

The decking and access ramps around the Pier Pavilion were in a state of disrepair and funding was sought to replace all the external areas in hardwood and in keeping with the building.

The proposed works would involve renewing the wooden structure/disabled access ramps to the front of the pavilion, the side entrances, the rear external part of the café and the upper external landings. The work would be coordinated in-house by the Council's Building Maintenance team.

The use of Emergency Powers was sought to increase the Council's 2022/23 Capital Programme by £110,000 which was to be funded from Council Building Fund.

(Scrutiny – Environment and Regeneration)

(c) Porthkerry Country Park Interpretation.

In 2021, officers commissioned a new branding and interpretation project at Cosmeston Country Park. Following the completion of the scheme at Cosmeston, officers were now seeking to deliver a similar project at Porthkerry by engaging with contractors to develop a brand identify for the park, which would include new signage and interpretation throughout. Signage strategy would be developed that would provide recommendations and outline possible installations to improve the visitor experience within the site.

The use of Emergency Powers was sought to include the new scheme for Porthkerry Interpretation and increase the 2022/23 Capital Programme by £35k to be funded from the Regeneration and Planning reserve.

(Scrutiny – Environment and Regeneration)

(d) City Deal Re-Profiling.

The Vale of Glamorgan Council was a participant in the Cardiff Capital Region City Deal (CCR) which had been established between the UK Government, the Welsh Government and 10 local authorities in South East Wales.

The Wider Investment Fund (WIF) 2022/23 Budgets for Cardiff Capital Region were approved by Regional Cabinet at its meeting of 31st January, 2022 as part of the 2022/23 Annual Business Plan which included the programme of activity.

The current approved profile was set out as below:

	2022/23	2023/24	2024/225	2025/26	Total
	£'000	£'000	£'000	£'000	£'000
Borrowing	273	2,475	2,289	0	5,037
Reserve	0	1,898	0	0	1,898

Since the approval of the Business Plan and in order to keep the Partner Authorities updated in terms of Capital Contribution requests, the WIF Financial Model was regularly reviewed and updated. The CCR Regional Cabinet met on 26th September, 2022 and an email received on 12th October set out the expected Capital Requirement. The proposed funding was suggested as follows:

	2022/23	2023/24	2024/25	2025/26	Total
	£000	£000	£000	£000	£000
Borrowing	0	608	1,835	2,594	5,037
Reserve	557	1,341	0	0	1,898

This amendment delayed a need to borrow to finance the programme, although the amount the Council needed to borrow remained the same across the overall period. The revenue impact of borrowing would need to be re-profiled within the Council's cost pressures and would be considered as part of the Council's budget proposal.

The use of Emergency Powers was sought to reprofile the City Deal scheme within the Capital Programme to be funded from borrowing and the City Deal reserve as set out in the table above.

(Scrutiny – Corporate Performance and Resources)

(e) Dinas Powys Primary – Canopy.

Dinas Powys Primary were installing a Coinston 35 wall mounted canopy system. The works were expected to take place on 4th January and complete on 6th January, 2023.

The use of Emergency Powers was sought to include the new scheme in the 2022/23 Capital Programme with a budget of £18k, to be funded by a revenue contribution from the school.

(Scrutiny – Learning and Culture)

(f) Barry Regeneration Partnership Project Fund to the Former Toilet Block Hoarding Scheme, Barry Island.

There was currently £121k in the 2022/23 Capital Programme for the Barry Regeneration Partnership Project fund and it was requested to vire £35k to the new scheme to replace the hoarding at the Former Toilet Block, Barry Island. It was the intention to use the opportunity to display positive messaging based on the principles of the Barry Making Waves toolkit.

The use of Emergency Powers was sought to include the new scheme to replace the hoarding at the Former Toilet Block, Barry Island for £35k, to be funded from the Barry Regeneration Partnership Fund.

(Scrutiny – Environment and Regeneration)

(g) Atlantic Trading Estate Fleet Parking Site.

Cabinet on 28th March, 2022 (Cabinet minute C894 refers) agreed in principle to the development of a fleet parking site at Atlantic Trading Estate subject to sufficient funding being made available in the Council's capital programmes.

The use of Emergency Powers was sought to execute the purchase of the land proposed for fleet parking using an independent valuation of the land (to ensure that the Council's' fiduciary duty under s123(2) Local Government Act 1972 were met) including the added purchase of an access road or agreeing access by a right of way (whichever was most economical to the service area) and dispose of the redundant land opposite the HWRC. This would be undertaken by the Director of Environment and Housing in consultation with the Cabinet Member for Neighbourhood and

Housing Services, the Head of Finance/S151 Officer, and the Head of Legal Services / Monitoring Officer (to ensure all necessary legal documentation to facilitate and complete the sale and purchase of the land).

(Scrutiny – Environment and Regeneration)

(h) Sully East Flood Risk Management Scheme – Strategic Outline Case

The Council had been awarded a capital grant from Welsh Government of £23k in relation to the Sully East Flood Risk Management Scheme. The funding related to the period 16th November, 2022 to 13th March, 2023.

The purpose of the funding related to the development and production of a Strategic Outline Case (SOC) in accordance with the Welsh Government's (FCERM) Business Case Guidance to manage flood risk to a site in eastern Sully.

The use of Emergency Powers was sought to include a new scheme in the 2022/23 Capital Programme with a budget of £23k to be funded by a grant from Welsh Government.

(Scrutiny – Environment and Regeneration)

(i) Completion of Construction Works – Hayeswood Road, Barry

At 4:00pm on the 20th October 2022, Jehu Project Services Ltd (JPSL) ceased trading and the Administrator, Begbies-Traynor, were appointed on 28th October, 2022, with the Council formally terminating the contract with JPSL on 10th November, 2022 and taking possession of the site on 14th November, 2022.

The Strategic Housing Board met on 23rd November, 2022, to discuss the options available to the Council in order to urgently complete the construction works at Hayeswood Road, Barry.

The decision taken by the Strategic Housing Board, based on legal advice provided by Hugh James Solicitors, was that all Subcontractors previously engaged by JPSL to deliver the Scheme would be directly appointed by the Council and that the Council would also appoint a Construction Management Contractor by way of a competitive procurement process advertised through Sell2Wales.

Due to the urgency of the matter and to protect the existing site assets, reduce programme delays and mitigate further financial loss, the use of Emergency Powers is required to ratify the decision of the Strategic Housing Board and approve the direct award of works to the existing Subcontractors and to appoint a Construction Management Contractor to manage all site activities to completion, on behalf of the Council. The use of Emergency Powers was further required to:

a) Grant delegated authority to the Director of Environment and Housing Services, in consultation with the Cabinet Member for Housing and Building Services and the Head of Finance/Section 151 Officer, to accept the tendered sum submitted by successful Construction Management Contractor to provide site management services to complete works at Hayeswood Road, Barry.

b) Authorise the Monitoring Officer / Head of Legal and Democratic Services to agree, prepare, execute and complete as necessary all contract documentation and agreements with both the successful Construction Management Contractor and existing Subcontractors required to complete the construction works at Hayeswood Road, Barry.

(Scrutiny – Homes and Safe Communities)

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. Climate Change and Nature Implications

- 4.1 There are no direct climate and nature implications associated with the report.

5. Resources and Legal Considerations

Financial

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

Employment

- 5.2 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)

5.3 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.

6. Background Papers

Relevant Emergency Powers proformas.