

Meeting of:	Cabinet
Date of Meeting:	Thursday, 20 July 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 8th June, 2023.
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 8th June, 2023.</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 8th June, 2023.

(a) Appointment of Cushman & Wakefield Via Crown Commercial Services Framework.

As part of the total team of consultants appointed to develop the levelling up Round 2 Bid, Cushman and Wakefield have been providing vital consultancy property support for our proposed Levelling Up Fund projects, Barry Mole and Marina and Barry Watersports Activity Centre.

The use of Emergency Powers was sought to enable the appointment of Cushman and Wakefield (Contract up to £100,000 + VAT) to provide further essential commercial property real estate services under a framework agreement (Crown Commercial Service), with specific workstreams to be agreed by the Director of Place on a project- by -project basis under the agreed format.

(Scrutiny – Environment and Regeneration)

(b) Welsh Coast Path 2023-24.

The Council had received an award of funding from Natural Resource Wales in the sum of £22K to fund works for the year 2023-2024 to support maintenance of the Wales Coast Path in the Vale of Glamorgan. The funding had to be spent by 31st March, 2024.

The use of Emergency Powers was sought to increase the 2023/24 Capital Programme by the grant funding for £29K to be funded £22K from Natural Resource Wales grant and £7K from the Countryside revenue budget.

(c) Green Waste Subscription Service.

Cabinet on 19th January, 2023 approved the introduction of a green waste subscription service to reflect the current budget position and the financial challenges for 2023/24 and beyond.

The report identified the need to make substantial savings to the waste management budget, as a result of unprecedented financial challenges. The report approved making a small subscription charge for the delivery of the non-statutory green waste service.

The use of Emergency Powers was sought to amend the green waste collection service arrangements that were to be offered as part of the new subscription service due to be launched from July 2023, which formed part of the Recycling and Waste Management service savings, considered by Cabinet, 19th January, 2023.

(Scrutiny – Environment and Regeneration)

(d) FCERM Small Scale Works 2023-24.

Two flood risk management schemes had been developed to undertake improvement works. Both schemes had been awarded Welsh Government grant funding through the FCERM Small Scale Works 2023-24 funding stream totalling £74k grant in aid with a 15% match funding requirement of £13k.

The use of Emergency Powers was sought to include a new scheme in the 2023/24 Capital Programme with a budget of £87k to be funded by grant of £74k from Welsh Government and match funding from a virement of £13k from the Flood risk Management scheme.

(Scrutiny – Environment and Regeneration)

(e) Schools Maintenance Capital Grant.

The Council had £2.276m of the Schools Maintenance Budget unallocated in the 2023/24 Capital Programme. The terms and conditions allowed that the funding be used in 2022-23 financial year for locally determined capital expenditure and the funding displaced by the grant would be spent in 2023-24 for investment in the improvement of schools in accordance with the grant terms and conditions. The grant had been put into a specific reserve at the end of the financial year and would fund the school's maintenance schemes in 2023/24 capital programme.

The use of Emergency Powers was sought to allocate identified schemes as part of the 2023/24 Capital Programme.

(Scrutiny – Learning and Culture)

(f) Transport Grants.

The Council had been awarded grant funding from Welsh Government in relation to various uses that related to the period 1st April, 2023 to 31st March, 2024.

Active Travel: £4,089,205 grant in relation to the Active Travel Fund 2023/24 as split between the projects below:-

- Core Active Travel £645,000
- Eglwys Brewis Active Travel Route £2,433,231
- Rhoose (Station Road) Activel - £674,900
- Port Road and Wenvoe Active Travel Improvements - £336,074

Safer Routes in Communities: £103,006 grant in relation to the Safe Routes in Communities grant 2023/24.

£53,006 was allocated to the Fairfield Primary School Community Street Design Project and £50,000 was allocated to School Streets.

20mph Grant: £1,590,000 grant from Welsh Government in relation to the 20mph Capital grant 2023/24 to support the implementation of the 20mph default speed limit on restricted roads across Wales coming into force on 17th September, 2023.

Local Transport Fund – Bus Infrastructure Fund: £200,000 grant in relation to the Local Transport Capital grant 2023/24 to develop integrated, effective, accessible, affordable and sustainable transport systems that support strategic outcomes by improving bus stops in the Vale of Glamorgan including Cardiff Airport Terminal.

The use of Emergency Powers was sought to increase the 2023/24 Capital Programme for the grants listed above that were funded from Welsh Government.

(Scrutiny – Environment and Regeneration)

(g) Penarth Leisure Centre – High Level Glazing/Cladding & Roof.

The approved budget in the 2023/24 Capital Programme for the Penarth High Level Glazing scheme was £2.246m.

The total scheme was estimated to cost £2.509m; £193k had already been spent in 2021/22 and 2022/23 leaving a residual cost required of £2.316m.

Slippage had been identified in the 2022/23 Capital Programme, which had been requested to be vired to this scheme under a separate Emergency Powers in the sum of £39k. Once approved the scheme budget would total £2.285 in the 2023/24 Capital Programme.

The use of Emergency Powers was sought to increase the Penarth Leisure Centre High Level Glazing scheme by £31k to be funded from a virement from the Leisure Centre works scheme in the 2023/24 Capital Programme.

(Scrutiny – Environment and Regeneration)

(h) Ultra Low Emission Vehicles (ULEV) Capital Funding.

The Council had been awarded a grant of £350k to enable delivery of a capital project demonstrating support of the aim to move to a low carbon, circular economy in Wales - where waste was avoided, and material was kept in use for as long as possible. The Funding must be used for the purchase of 2 New Electric Powered Resource Recovery Vehicles (RRV) and be claimed by 31st December, 2023.

The use of Emergency Powers was sought to increase the Vehicle Replacement fund scheme budget in the 2023/24 Capital Programme by £350k to be funded from the Welsh Government grant.

(Scrutiny – Environment and Regeneration)

(i) ENABLE Grant 2023-25.

The Council had received an award of funding from Welsh Government in relation to the ENABLE Grant for 2023-24 and 2024-25 in order to help older, disabled and vulnerable people.

	2023-24 (Year 2) £	2024-25 (Year 3) £
Baseline Enable Grant	161,200.00	161,200.00
Grant uplift	80,576.00	80,576.00
Total Grant available	241,776.00	241,776.00

Year 2 funding related to the period 1st April, 2023 to 31st March, 2024 and had to be claimed in full by 30th April, 2024. Year 3 funding related to the period 1st April, 2024 to 31st March, 2025 and the uplift element claimed in full by 30th April, 2025.

The use of Emergency Powers was sought to increase the 2023/24 Capital Programme by £242k and the 2024/25 Capital Programme by £242k, to be funded by Welsh Government grant.

(Scrutiny – Environment and Regeneration)

(j) Tennis Court Management – Penarth Athletic Field.

The use of Emergency Powers was sought to enter into a lease with Tennis Wales for 7 years to manage and control the refurbished tennis courts at Penarth Athletic Field, subject to no objections being received to the loss of public open space.

(Scrutiny – Healthy Living and Social Care)

(k) Eich Lle - Moves to Facilitate Transfer of C1V to Civic Offices.

As a result of the pandemic, and ongoing corporate challenges around climate change and Project Zero, there were fundamental changes in the way in which the Council's office-based staff were to be accommodated and equipped to work in an agile way. The 'Eich Lle' office accommodation project was currently being

developed to consider the optimum proposals for rationalising the Council's office and Internal Day Service accommodation.

The estimated maximum cost of all the works required to move C1V into the Civic Offices was £200,000. However, with careful cost control and management throughout the process, and a focus on minimising cost expenditure, it was hoped that this cost can be reduced.

There was currently a scheme on the 2023/24 Capital Programme, 'Ventilation & Lighting Upgrade to Contact One Vale' with a budget of £247k. As a result of the scheme detailed above this scheme was no longer required.

The use of Emergency Powers was sought to vire £200k from the scheme to a new scheme called 'Eich Lle -Transfer of C1V to Civic Offices', with the remaining budget of £47k removed from the 2023/24 Capital Programme.

(Scrutiny – Corporate Performance and Resources)

(l) Housing Pontalun Close External and Environmental Refurbishment Scheme.

The Housing and Building Services Team requested emergency powers to accept the most advantageous tender bid received from SERS Energy Solutions Group Ltd. and enter into a JCT intermediate contract as soon as possible to ensure any further price increases due to the turbulent market were not incurred.

The use of Emergency Powers was sought to:-

- Award the Housing Pontalun Close External and Environmental Refurbishment Scheme contract to SERS Energy Solutions Group Ltd. at the value of £2,102,374.83 as a 26-week contract running into the 2024/25 financial year. The works would be funded from the HRA, capital budget Individual Schemes (Pontalun Close) line which contained a £1.7m budget for 2023/24 and £300k Budget for 2024/25 and the Energy Efficiency (EWI) line which contained £1.49m for 2023/24.
- 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)

(m) Albert Primary – External Works.

There was a budget of £20k for the Albert Road – External Works scheme, £21k for the Albert Primary – External Repairs (Stores) scheme and a budget of £69k currently unallocated on the Victorian Schools scheme.

A project had been tendered to address all the works associated with external works and external repairs. However, the project had increased in cost as a result of the findings of the recent structural engineering report which highlighted the need for additional local areas of rebuilding, and extensive repointing of the existing boundary wall.

The use of Emergency Powers was sought to vire the budget of £21k from the Albert Primary – External Repairs (Stores) to the Albert Primary – External Works and remove the scheme from the 2023/24 Capital Programme. It was also requested to vire £25k of the Victorian Schools scheme to the Albert Primary – External Works scheme, therefore giving a total budget of £66k to cover the works required.

(Scrutiny – Learning and Culture)

(n) Housing Upgrade to Internal Communal Areas (Lot 2).

The Housing and Building Services Team requested the use of emergency powers to accept the most advantageous tender bid received from SMK Building & Maintenance Ltd. and to enter into a JCT intermediate contract as soon as possible to ensure any further price increases due to the turbulent market were not incurred.

The use of Emergency Powers was sought to:-

- Award the Housing Upgrade to Internal Communal Areas (Lot 2) contract to SMK Building & Maintenance Ltd. at the value of £2,409,918.29. It should be noted that this was a 78-week contract running into the next financial year 2024/25. The works would be funded from the HRA, Common Parts capital budget which contained a £2.297m budget for 2023/24 and £3.350m Budget for 2024/25.
- 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)

(o) Local Places for Nature Funding 2023-2025.

The Council had received an award of funding from Wales Council for Voluntary Action (WCVA) across two financial years, 23/24 and 24/25. The allocation was subject to several conditions and requests that best practices were followed around biosecurity measures and that the use of local provenance seeds, plants and trees were prioritised wherever possible.

The use of Emergency Powers was sought to increase the 2023/24 Capital Programme by £376k and the 2024/25 Capital Programme by £445k to be funded from the Local Place for Nature Capital Funding provided by the WCVA.

(Scrutiny – Environment and Regeneration)

(p) Ysgol y Deri.

On 2nd November, 2020, Cabinet authorised the Director of Learning and Skills to undertake a consultation on the proposal to increase the capacity of Ysgol Y Deri by 150 places to meet future demand for special education.

The development of the school had been on hold for a few months due to the Welsh Government's policy on calling in planning applications. The Vale of Glamorgan

received a formal letter from Welsh Government on 14th June, 2023 stating that the call in has been rejected, therefore, it was acceptable to progress with the development of Ysgol y Deri.

The current contract value stood at £434,278.85. In order to make further payments to contractors for undertaking works, the contract value needed to increase to £497,675.38. The main reason for the cost increase was because stage 2 costs had been brought forward into stage 1, therefore the budget was already approved within the capital programme (the budget amount allocated for stage 2 was reduced by £63,396.53 and stage 1 increased by £63,396.53). No increase in budget was required at this stage

The use of Emergency Powers was sought to increase stage 1 contract order to £497,675.38 in order to make the payments on the scheme.

(Scrutiny – Learning and Culture)

(q) Penarth Leisure Centre – High Level Glazing.

It had proven challenging to find a contractor to take on the complicated works to replace the high-level glazing at Penarth Leisure Centre. It had also been necessary to work with the contractor to be appointed to agree a scheme which could be delivered within available resources.

The Council's Capital Programme was approved in March 2023 and following additional funding being identified within the Capital Programme due to the tender value exceeding the available budget, the total budget for the project of £2,509,000 was approved.

In accordance with the requirements of Contracts Procurement Rule 18.15.2 (c)(iii), the use of Emergency Powers was sought to appoint Central Roofing Limited to undertake the work as set out above.

(Scrutiny – Healthy Living and Social Care)

(r) Schools' Summer Build and Maintenance Programme.

The Property Team had been finalising the programme of works for the schools' summer break and as such needed a quick turnaround on the acceptance of tenders. This was especially the case in the current environment where there had been escalating costs and delays in supply chains.

The following table set out the programme of works for all schemes over £300k. Provision for all of the schemes existed in the Council's approved Capital Programme.

	Capital Programme Allocation	Value of works
	£	£
Rhws Primary – modular kitchen and dining	1,593,000	708,038.79
Gladstone Primary – kitchen dining facility		701,779.26
Ysgol Bro Morgannwg – cladding works	450,000	335,710.69
Y Bont Faen primary – roof renewal phase IV	4145,000	323,337.00

The use of Emergency Powers was sought to appoint the contracts as set out above.
(Scrutiny – Learning and Culture)

(s) 2022/23 Capital Slippage Request.

Approval for slippage of unspent capital budgets for 2022/23 into 2023/24 would normally require Cabinet approval as part of the Closure of Accounts report, however in order to progress schemes and to enable the budgets to reflect committed expenditure approval was required as soon as possible.

A number of movements and overspends, had also been included and were approved as part of the emergency powers request.

The use of Emergency Powers was sought to include funding to be carried forward from 2022/23 into the 2023/24 Capital Programme.

(Scrutiny – All Scrutiny Committees)

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.