

Meeting of:	Cabinet
Date of Meeting:	Monday, 13 September 2021
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 5th July, 2021.
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 5th July, 2021.</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 5th July, 2021.

(a) 21st Century Schools Programme – Consultancy Fee Cap Extension

The Council undertook a mini competition under the National Procurement Service (NPS) Framework to procure a multi-disciplinary consultancy service provider in November 2016. Since July 2019, significant work had been undertaken to further develop the programme. It was proposed that the fee cap be extended £4,200,000.

The use of Emergency Powers was sought to ensure projects can progress in line with the programme with sufficient resource. All costs were recharged to the relevant capital schemes and anticipated costs were included within the project cost plans.

(Scrutiny – Learning and Culture)

(b) Learning and Skills Electrical Tenders

Tenders had been returned for the four schemes below:-

- St Illtyd Primary Rewire – Current approved budget £90k
- Holton Primary Rewire (KS1) – Current approved budget £85k
- Jenner Park Primary KS1 Rewire – Current approved budget £50k
- Dinas Powys Primary KS1 Lighting Upgrade – Current approved budget £50k

The use of Emergency Powers was sought to vire monies in the 2021/22 Capital Programme as set out below:-

- £10k from St Illtyd Primary Rewire budget to the Dinas Powys Primary KS1 Lighting Upgrade budget.
- £18k from Holton Primary Rewire (KS1) budget to the Dinas Powys Primary KS1 Lighting Upgrade budget.

- £3k from Jenner Park Primary KS1 Rewire budget to the Dinas Powys Primary KS1 Lighting Upgrade budget.

(Scrutiny – Learning and Culture)

(c) Cowbridge Leisure Centre Re-Roofing

Tenders relating to the roof had been returned and a cost reduction exercise had been completed to bring the scheme within the original budget. This however does not cover the solar PV panel element of the scheme.

The use of Emergency Powers was sought so that the scheme could be committed as soon as possible as there were increasingly long lead in time for the roofing materials required for the project and to increase this scheme budget by £80k to be funded from the Energy Management reserve.

(Scrutiny – Environment and Regeneration)

(d) Extension to Current Supported Living Contract

At Cabinet on 19th October 2021, agreement was given for the Supported Living contract to be retendered via a procurement process to identify providers for the service from 1st October 2022. (Cabinet minute C349A attached).

The Pre-Qualification Questionnaire had been evaluated and providers who made it through that process were preparing their Invitation To Tender submissions. One current provider submitted their information 2 weeks after the ITT went live. As a result, the current timetable did not give potential providers sufficient time in which to properly consider the current staffing arrangements, which could have an influence on the price submission part of the process.

The use of Emergency Powers was sought for the current contract to be extended by one calendar month, with a revised end date of 31st October 2021

(Scrutiny – Healthy Living and Social Care)

(e) Caru Cymru Grant

The Council has been awarded a capital grant of £15k in relation to the Welsh Government Rural Communities – Rural Development Programme grant and the project of Caru Cymru. This grant would be paid to the Council by Keep Wales Tidy.

The use of Emergency Powers was sought to include this new scheme with a budget of £15k in the 2021/22 Capital Programme, to be funded from a grant.

(Scrutiny – Environment and Regeneration)

(f) Neighbourhood Services and Transport schemes

Aberthin and Peterston-Super-Ely 20mph scheme

This scheme included the Introduction of 20MPH experimental speed limits in Aberthin and Peterston-Super-Ely (Cabinet 21st June 2021). The total anticipated

cost of the scheme was £120k. There was £45k s106 monies available for the works in Aberthin. It was requested to include a new scheme in the 2021/22 Capital Programme with a budget of £120k to be funded from £45k s106 monies and £75k from the Neighbourhood Services and Transport reserve.

Residential Parking Schemes

This scheme would include the Introduction of residential parking schemes at Cosmeston, Cowbridge, Llandough, Barry Island and the Knap. The works were anticipated to cost £75k. It was requested to include a new scheme in the 2021/22 Capital Programme by £75k to be funded from the Neighbourhood Services and Transport reserve.

St Athan Station Investigation Work

There was currently a budget of £15k in the 2021/22 Capital Programme for the 'WelTAG 1 Study Transport Link from the Five Mile Lane to Cardiff Airport' scheme. This scheme was no longer, currently, considered feasible following on from Covid- and the Welsh Government stance regarding no new roads being built.

It was therefore requested to vire the £15k budget in the 2021/22 Capital Programme to a new scheme called 'St Athan Station Investigation Work'. The budget would allow for an options and feasibility study to be undertaken on a potential site for a train station in St Athan.

(Scrutiny – Environment and Regeneration)

(g) PSB Timebanking expansion project underspend grant award

Vale Homes were awarded grant funding of £45k per year over 3 consecutive years. The total grant awarded to the project to date is £135k.

The use of Emergency Powers was sought to make the award of a total of £47,715 to the two organisations to address the underspend and commence the project week starting 1st of June 2021.

(Scrutiny – Homes and Safe Communities)

(h) Barry Leisure Centre Flume

Quotes received for the removal of the flume at Barry Leisure Centre were slightly higher than anticipated and in order to ensure that the building is made good, following the removal of the slide, further funding was required in addition to the £30k allocated.

The use of Emergency Powers was sought to increase the Barry Leisure Centre Flume scheme budget by £16,900 in the 2021/22 Capital Programme, to be funded by a virement of £12,500 from the Leisure Centres Works Scheme budget which was currently unallocated and from a £4,400 revenue contribution from the Leisure Centre revenue maintenance budget.

(Scrutiny – Environment and Regeneration)

(i) Sully Primary School, Rhoose Primary School and Ysgol Y Draig

The Council had been given WLGA Education grant from Welsh Government to support all schools and settings to put in place mitigating measures for ensuring their school environments are as COVID-19-safe as possible. The total grant allocation for the Council was £243,746. Three capital schemes had been identified in 2021/22 to be funded from this grant.

Ysgol Y Draig

It was requested to increase the 2021/22 Capital Programme by £13k for an outdoor classroom facility, to be funded from the WLGA Education grant.

Rhoose Primary School

It was requested to increase the 2021/22 Capital Programme by £16.5k for two outdoor classroom facilities, to be funded from the WLGA Education grant.

Sully Primary School – Reception Toilet

It was requested to add the following scheme to the 2021/22 Capital programme with a budget of 42.8k to be funded from the WLGA grant to carry out reconfiguration and refurbishment of the reception year toilets. This would also add an additional toilet to satisfy statutory ratios.

Sully Primary School – Reconfiguration of staffroom and kitchen

It was requested to increase the 2021/22 Capital Programme by £29,800k to be funded by a revenue contribution from the school for works to the staffroom, kitchen and gents WC. Works would include refurbishing and increasing the size of the current staff room to incorporate a children's cooking practical teaching area. In addition, provision of an additional staff gents w.c.

Sully Primary School - WC Refurbishment

There was currently an approved budget of £46k in the 2021/22 Capital Programme to carry out works to the Key Stage 2 toilets. Tenders had been returned and when taking into account professional fees and other known associated costs the total scheme was anticipated to cost £52k. It was therefore requested to vire £6k from the Education asset renewal contingency budget to this scheme.

(Scrutiny – Learning and Culture)

(j) Acceptance of Waterloo Bursary Grant

The request sought to accept funding of £60,000 from the Waterloo Foundation to support the delivery of a business start-up bursary scheme.

Subject to Cabinet approval, the Council had identified match funding and planned to operate a new bursary scheme from October 2021.

The use of Emergency Powers was sought to accept the grant subject to the above Cabinet approval. Should this approval not be granted then the funding would be returned.

(Scrutiny – Environment and Regeneration)

(k) Emergency Extension to Supporting People Contract: TESS 1 & 2

The Supporting People Team's current contract for the TESS (Tenancy Support Service) 1&2 floating support service expired on the 30th of June. A one-month extension from 1st July 2021 until 31st July 2021 would be sufficient to allow such a transition to take place.

To avoid the existing TESS 1 & 2 contract from expiring and to allow sufficient time for a smooth transition to the new service provider, the use of emergency powers was sought to extend the existing TESS 1 & 2 contract for a period of 1 month from the 1st to 31st July 2021 inclusive.

(Scrutiny – Homes and Safe Communities)

(l) Emergency Extension to Supporting People Contracts: TESS 4 & Refuge

The Supporting People Team's current contracts for the Refuge service and Floating support service are due to expire simultaneously on the 30th of June. A 1-month extension to the existing TESS 4 (Tenancy Support Service) and Refuge contracts would prevent both from expiring, ensure continuity for the vulnerable service users being supported and also allow sufficient time for the new VAWDASV (violence against women, domestic abuse and/or sexual violence) contract to be set up to commence from 1st August 2021.

To avoid existing TESS 4 and Refuge contracts from expiring and allow sufficient time to establish the VAWDASV service, the use of emergency powers was sought to extend the existing TESS 4 and Refuge contracts for a period of 1 month from the 1st to 31st July 2021 inclusive.

(Scrutiny – Homes and Safe Communities)

(m) Emergency Extension to Supporting People Contracts: TESS 5

The Supporting People Team's current contract for the TESS 5 (Tenancy Support Service) floating support service expired on the 30th of June. A 1-month extension to the TESS 5 contract from 1st July 2021 until 31st July 2021 would be sufficient ensure a suitable transition to take place, thus allowing the new contract to commence from 1st of August 2021.

To avoid the existing TESS 5 contract from expiring and to allow sufficient time for a smooth transition to the new service provider, the use of emergency powers was sought to extend the existing TESS 5 contract for a period of 1 month from the 1st to 31st July 2021 inclusive.

(Scrutiny – Homes and Safe Communities)

(n) Allotment Support Grant 2021/22

The Council had been awarded £32,837 capital funding in relation to the 2021/22 Allotment Support Grant. The Funding related to the period 5 July 2021 to 25 February 2022 and must be claimed in full by Friday 4 March 2022.

The use of Emergency Powers was sought to include this new scheme into the 2021/22 Capital Programme with a budget of £32,837 to be funded by a grant from Welsh Government.

(Scrutiny – Environment and Regeneration)

(o) Dinas Powys Primary – Tarmac Playground

Works have previously carried out at Dinas Powys Primary School in Summer 2019 with a further phase in February 2020. Phase 3 of these works to resurface the playground were urgently required to be carried out during the Summer holidays for Health and Safety reasons.

The use of Emergency Powers was sought to increase the 2021/22 Capital Programme by £20,565 to be funded by a revenue contribution from the school.

(Scrutiny – Learning and Culture)

(p) Housing ICT procurement

The procurement of the replacement housing ICT system was essential to the day to day running of both Housing and Building Services. The systems currently in use were unstable and in need of replacement. Following a lengthy analysis of the existing systems and market testing a specification had been developed as a basis for re-procurement.

The use of Emergency Powers was sought to progress the procurement of the replacement system with a further Cabinet report to be submitted for the appointment and acceptance of the preferred software provider.

(Scrutiny – Homes and Safe Communities)

(q) Waste Transfer Station

Current grant funding provided from Welsh Government CCP and internal monies made up an approved budget in the 2021/22 Capital Programme of £4.6m. It was proposed to split the scheme into two separate phases.

Phase 1 was estimated to cost £6m thereby delivering the Collections Blueprint roll-out across the remaining areas of the Vale of Glamorgan. It was proposed to fund the £1.4m shortfall with the virement of £1m from the Atlantic Trading Estate- Operations Fleet Parking scheme to the Waste Transfer Station (WTS) and increasing the WTS scheme by £400k funded from capital receipts in the 2021/22 Capital Programme.

The use of Emergency Powers was sought to vire £1m from the Atlantic Trading Estate- Operations Fleet Parking scheme to the WTS and increase the WTS scheme by £400k to be funded from capital receipts in the 2021/22 Capital Programme to allow for the completion of Phase 1 construction works of the Waste Transfer Station at Atlantic Trading Estate in Barry.

(Scrutiny – Environment and Regeneration)

(r) Welsh Language Translation Service Contract Award

At Cabinet of 24th May 2021, it was resolved (minute C575 refers):

(1) T H A T the proposals as set out in the report to enable a tender process to be conducted to renew the Council's Welsh Language translation service be approved.

(2) T H A T a further report at the conclusion of the tender exercise to seek approval to award the contract at that stage be received by Cabinet.

Due to the timing of the procurement process, summer recess of Cabinet meetings and end of the existing contract from 1st September 2021, the use of Emergency Powers was sought to award the contract to ensure continuity of provision.

Delegated authority to the Monitoring Officer/ Head of Legal and Democratic Services or Operational Manager Legal Services was also sought to execute the contract with Bilingual Cardiff (Cardiff Council)/ Cardiff Council.

(Scrutiny – Corporate Performance and Resources)

(s) Upgrade of Backup and Recovery Infrastructure

The Council required a new centralised backup and recovery system that would safeguard the Council's critical on-premises and off-premises data. Tenders had been returned and the scheme was anticipated to cost £200k. The amount of the original capital allocation of £177k was an estimate based on market trends at that time, but following the tender exercise, the winning tender came in at c. £200k.

There was an ICT budget allocation in the 2021/22 Capital Programme of £150k which was currently unallocated.

The use of Emergency Powers was sought to vire £23k from the ICT allocation budget to the Upgrade of backup and recovery infrastructure budget in the 2021/22 Capital Programme.

(Scrutiny – Corporate Performance and Resources)

(t) Covid-19 Homelessness and Housing Related Support Services Phase 2 Project – Former Civic Amenity Site, Court Road, Barry

On the 6th January 2021, the Head of Finance / s.151 Officer used Delegated Powers in order to enter into a JCT 2016 Edition Design and Build Contract with Holbrook Homes Ltd for the sum of £923,082.16, in accordance with Cabinet Minute No.C385.

The project had now been successfully completed with the handover of the 11no. units of emergency housing being achieved on the 2nd August 2021.

However, in delivering the project, costs had increased which were not originally provided for in the original contract sum.

The use of Emergency Powers was sought to vire an additional £138,000 to cover the increased contract sum.

(Scrutiny – Homes and Safe Communities)

(u) Ysgol Dewi Sant Meithrin

On 24 February 2020 Cabinet approved the appointment of ISG Construction to construct a new childcare provision at Ysgol Gymraeg Dewi Sant. The Council subsequently entered into a contract with ISG Construction for the agreed tender price of £629,285. The Council was due to receive a £650,000 grant from Welsh Government to fund the scheme.

In January 2021, the Council requested an additional £150k from Welsh Government to support decarbonisation measures and to offset increased costs as a result of COVID-19. This request was approved by Welsh Government in March 2021.

On 12 March 2021, the Managing Director approved emergency powers to increase the 'Childcare Offer Capital grant - Welsh Medium' scheme in the 2021/22 Capital Programme by £150k to be funded by a grant from Welsh Government.

The scheme was currently under construction and due to be completed by the end of August. In order to ensure the additional works could be completed, it was recommended that the contract value with ISG construction be increased from £629,285 to £771,894.

The scheme was 100% funded by Welsh Government grant. The scheme was projected to be delivered within the £800,000 budget.

The use of Emergency Powers was sought to ensure the scheme was delivered in line with the agreed programme.

(Scrutiny – Learning and Culture)

(v) Acceptance of external funding awarded through the Welsh Governments, Visit Wales Brilliant Basics Fund 2021 /2022

The Council had been awarded a total of £122,124.00 to undertake improvement works to the main gateway entrance at Cosmeston (capital). The grant award covered 80% of the project costs, with 20% match funding required by the applicant, the total cost of the project being £152,655.00. The match funding of £30,531.00 would be funded from the Regeneration & Planning reserves.

The use of Emergency Powers was sought to increase the 2021/22 Capital Programme by £152,655.00 to be part funded by Welsh Governments, Visit Wales, Brilliant Basics Fund grant (£122,124.00) and 20% match funding from the Regeneration & Planning reserve (£30,531.00); the funding must be spent by 31st March 2022.

(Scrutiny – Environment and Regeneration)

(w) Saint Brides Major CIW Primary School: Solar Photovoltaic Works

The works included a structural building survey and the supply, installation and commission of a new PV System as detailed in the plans and schedules of the Specification.

This work would be funded in the main with the Council's energy- and Carbon-saving SALIX fund for investment of energy-saving technologies (within the Energy Management Reserve); and topped up with the Council's ECRF (within the Energy Management Reserve). Both funds had sufficient monies to pay for the Works.

The use of Emergency Powers was sought to include this new scheme in the 2021/22 Capital Programme with a budget of £17,383.94 to be funded as stated above.

(Scrutiny – Learning and Culture)

(x) Penarth Leisure Centre - Lift Refurbishment

Tenders relating to the lift refurbishment works at Penarth Leisure Centre had been returned and were in excess of the current funding identified in the capital programme. The current budget for this scheme was £46,669 however the works are anticipated to cost £62,669.

The use of Emergency Powers was sought to vire £16,000 to the Penarth Leisure Centre Lift Renewal scheme in the 2021/22 Capital Programme.

(Scrutiny – Environment and Regeneration)

(y) LGV Drivers

Since Brexit and the global impact of Covid-19 there had been a general resource shortage that had steadily impacted on the supply of professional drivers to the waste management service as well as across other private and public sectors.

To manage this issue as quickly as possible, authority was sought to create an additional 12 driver posts that would offer full time employment to temporary agency workers to prevent them leaving for other opportunities.

The engagement of 12 drivers would bring the establishment up to 33 and precautionary under the normal operating number to accommodate future savings. 11 posts would be for full time driving and one post would be a driver/trainer, that would deliver the statutory and mandatory training and drive all the other times.

The use of Emergency Powers was sought to create 12 additional posts (11 drivers and 1 Driver/Trainer) to secure drivers for the waste management service and to ensure continuity of service due to a national skills shortage and the general availability of professional drivers.

(Scrutiny – Environment and Regeneration)

(z) Barry Regeneration

In 2022 Welsh Local Authorities would be responsible for bidding into a variety of UK Government funding programmes such as the Levelling Up Fund and the Shared Prosperity Fund.

In order to prepare bids for those funds the Council needed a number of pieces of preparatory, masterplanning and other development work to be undertaken

specifically for Barry. This could not be accommodated within the necessary timeframe from internal resources, so it was therefore proposed that it be procured externally. This was in line with the approach adopted by most Councils in the UK.

The cost of this work would be £120k. There was funding available within the 2021/22 Barry Regeneration capital budget of £919k, however, this could only be spent on capital related work while the expenditure incurred would be classed as revenue.

The use of Emergency Powers was sought to reduce the Barry Regeneration capital budget by £120k and that the equivalent amount of funding is made available in the revenue budget.

(Scrutiny – Learning and Culture)

(ai) Traffic Signal Maintenance Contract

The Council originally awarded a contract on 1st April 2014 following a competitive tendering process for the Maintenance of Traffic Signals and Pedestrian Crossings, Vehicle Activated Signs and Associated equipment.

The contract included an option to extend the contract up to a maximum of three times subject to agreement between the Council and Contract. In August 2018 the then Cabinet Member for Neighbourhood Services subsequently gave delegated authority on 2nd August 2018 to extend the contract by a further year to 31st March 2019 in accordance with the conditions of the contract.

Due to the ongoing Coronavirus pandemic in Spring 2020, Emergency Powers were granted on 18th May 2020 to extend the contract again by an additional year to ensure continuity of maintenance services on the basis that the contractor did not increase their rates and prices provided in the original contract awarded in April 2014..

Therefore, to ensure essential continuity of service and enable payment of invoices whilst the contract for this work is being re-tendered, it was necessary that the current contract with the contractor be formally extended with no increase in prices for a final time from beginning of April 2021 to the end of November 2021 to regularise the current position and enable time for the contract to be retendered with no breaks in the provision of this vital service.

The use of Emergency Powers was sought to approve a final temporary extension to the Maintenance of Traffic Signals and Pedestrian Crossings, Vehicle Activated Signs and Associated equipment Contract with Centregreat Ltd until the end of November 2021 to ensure continuity of service whilst arrangements are made to retender and implement a new contract arrangement for these vital maintenance works.

(Scrutiny – Environment and Regeneration)

(bi) Social Services - 4 Carys Close Refurbishment Project

The Adult Services Team had successfully been awarded £275k 'in principle' of Integrated Care Fund Capital money to renovate, upgrade and remodel 4 Carys Close. The end provision would be a supported living fully accessible bungalow, with a studio flat conversion of the existing garage. Both dwellings would utilise smart technology to maximise citizens independence.

The Council are going to incur expenditure on the project following receipt of the award letter. Expenditure would be incurred at our own risk, until such a time as all appropriate considerations had been met to Welsh Government's satisfaction. Only at that point would a formal award of funding be made. The value of at risk work would be £25k to £30k.

The use of Emergency Powers was sought for the project be included in the 2021/22 Capital Programme to be funded from ICF grant.

(Scrutiny – Healthy Living and Social Care)

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.