

Meeting of:	Cabinet
Date of Meeting:	Monday, 06 December 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 25th October, 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 285 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 25th October, 2021.</p> <p>The Council's Constitution at page 285 (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 25th October, 2021.

(a) Painting of Penarth Pier Pavilion and Highway Infrastructure

The use of Emergency Powers was sought to enter into a contract with J J Williams Painting Services Ltd, for painting the Pier Pavilion and highway infrastructure along the Esplanade in Penarth. The contract had been procured via Sell2Wales at a value of £155,359.20 and works commenced on 11th October 2021, via a letter of intent.

(Scrutiny – Corporate Performance and Resources)

(b) Atlantic Trading Estate Land Sale

The use of Emergency Powers was sought to declare surplus to Council requirements and dispose of an irregular shaped area of land to the owner of 12a to 12h Atlantic Trading Estate, Barry at market value, on terms and conditions agreed by the Director of Neighbourhood and Housing Services in consultation with the Head of Finance/S151 Officer, Cabinet Member for Neighbourhood Services and Transport and Head of Legal Services / Monitoring Officer.

(Scrutiny – Environment and Regeneration)

(c) Barry Waterfront – Cost Update

The use of Emergency Powers was sought to :-

1. Seek approval to increase the Council's total contribution for the new two form primary school at Barry Waterfront from £4,187,463 to £4,467,463, of which £4,178,463 would be paid to the Consortium via instalments, at stages throughout the delivery of the school.

2. Seek delegated authority so that the Council's Operational Manager, Strategy and Resources, in consultation with the Senior Planner (S106), could agree to payment instalments and additional costs, up to a maximum of £4,467,463.

3. Amend the capital programme to increase the Barry Waterfront total from £7,895k to £8,455k by:

- o Carrying forward £280k of the 'Band B Contingency' budget and allocating to the Barry Waterfront scheme in the 2022/23 capital programme; and

- o Increasing the 'S106 Developer Contribution' by £280k in the 2022/23 capital programme, which would be funded directly by the Consortium, as a requirement of their obligation within the S106 agreement.

(Scrutiny – Learning and Culture)

(d) Increase Consultancy Contract price ceilings for Barry Town Docks Interchange Weltag contract delivery.

The use of Emergency Powers was sought to provide delegated authority for the Head of Neighbourhood Services and Transport to increase Consultancy Contract price ceilings for contract with Amey to cover the costs of the additional tasks added into the contract. A new price ceiling of £682,503 was proposed.

It was requested to increase the 2021-22 budget provision in the Capital Programme to £327,000 in line with the additional grant funding agreed by Merthyr Borough Council acting as lead body for the allocation of funds from the Metro Plus Programme.

(Scrutiny – Environment and Regeneration)

(e) All Wales Play Opportunities Grant 2021-22

The Council had received an award of funding of £223,000 (Capital) in relation to the All Wales Play Opportunities Grant 2021-22.

The purpose of the capital funding was to provide better play opportunities for children and communities and to realise the benefits this brings in terms of child development and activity levels. It must support actions within the Council's 2021-2022 Play Sufficiency Action Plan. The capital funding could also be used to complement playwork provision

The use of Emergency Powers was sought to include this scheme within the 2021/22 Capital Programme to be funded by a grant from Welsh Government.

(Scrutiny – Learning and Culture)

(f) Central Promenade Café, Barry Island

Extensive roof defects identified by a structural survey carried out on Central Promenade Café costing £50,000 are required. The Council has an obligation as landlord under the lease to keep the exterior of the property in repair.

The use of Emergency Powers was sought to include the new scheme with a budget of £50k in the 2021/22 Capital Programme to be funded by the Miscellaneous Buildings reserve.

(Scrutiny – Corporate Performance and Resources)

(g) Applications for Discretionary Grant to Exceed Current Threshold

The statutory limit for grant aid for the Mandatory Disabled Facilities Grants is £36,000. Where the cost of adaptations exceeds the Mandatory Disabled Facilities Grant limit, and it is not reasonable for the disabled applicant to use the relocation grant to move to a more suitable property, the Council will fund a Discretionary Disabled Facilities Grant. The maximum grant is currently £60,000 inclusive of VAT and associated fees.

The use of Emergency Powers was sought to approve the following two cases:

- 1) Recommend a Grant Award of £75,000 for adaptations at Ty Twyn, Mill Road, Dinas Powys, Vale of Glamorgan.
- 2) Recommend Grant Award of £72,471.41 for adaptations at 46 Kingsland Crescent, Barry, Vale of Glamorgan.

(Scrutiny – Environment and Regeneration)

(h) WLGA Food Poverty Grant

The current budget for the Penarth Food Pod scheme was £26k, however £22k additional budget was required for the following:-

- £4k to complete the Building Works for the new Food Pod to include ramp extension and Care and Repair alterations.
- £5k for the purchases of fridges, signage, freezers and kitchen equipment.
- £10k for the installation of PV panels.
- £3k for garden development work.

The use of Emergency Powers was sought to vire £22k from the WLGA Food Poverty Grant scheme to the Penarth Food Pod scheme in the 2021/22 Capital Programme.

(Scrutiny – Corporate Performance and Resources)

(i) Request for a 3-month extension of the Housing Heating Installation Servicing and Maintenance Framework Contract

The current framework was due to expire on the 2nd January 2022. As a result of the current workload and resource within the corporate Procurement Unit the processing and publishing of the tender documentation was delayed by 4 weeks (published 12/11/2021, with a closing date of noon 16/12/2021) meaning that it would be unlikely that the tender returns could be evaluated, interview(s) held, tender bid analysis report written, delegated authority form signed, and the contract executed by the 2nd January 2022.

The 3-month extension until the 31st March 2022 would assist the Housing Development and Investment Team to complete the tender process, delegated authority sign off and execution of the contract to seamlessly transfer into the next framework agreement for 3 years plus 1.

The use of Emergency Powers was therefore sought in compliance with contract procedure rule 17.4.2 (c) to extend the Housing Heating Installations Servicing and Maintenance Framework contract (VOG/RM035/17).

(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 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.