

Meeting of:	<b>Cabinet</b>
Date of Meeting:	<b>Thursday, 16 March 2023</b>
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 19th January, 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><b>Executive Summary:</b></p> <p>To advise Cabinet of the exercising of Emergency Powers by the Chief Executive since the last report of 19th January, 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 19th January, 2023.

(a) Capital Funding Grant to support Community Focused Schools.

The Council had received an award of funding from Welsh Government for £910,350 in relation to capital expenditure to undertake projects that safely and effectively open Schools to the Community outside traditional hours, during the period 1st April, 2022 to 31st March, 2023. The overall funding was added to the capital programme following request for the grant to be added in Cabinet Report dated 21st July, 2022, minute C50.

Projects meeting the criteria had been identified for Gwenfo, Holton, Llanfair, Llangan Pendoylan, Peterston Super Ely, St Athan, St Brides, St Josephs, Wick & Marcross, and Ysgol Pen y Garth Primary Schools.

The use of Emergency Powers was sought to approve the identified projects for this grant funding, and the proposed procurement route.

(Scrutiny – Learning and Culture)

(b) Capital Funding Grant to support learners with Additional Learning Needs.

The Council had received an award of funding from Welsh Government for £910,350 in relation to capital expenditure to support learners with Additional Learning Needs during the period 1st April, 2022 to 31st March, 2023. Schemes had been identified at High Street, Holton, Jenner Park, Gwaun Y Nant, Ysgol Y Deri, Whitmore and Palmerston and the remainder of the grant was to be spent on ALN equipment.

The use of Emergency Powers was sought to include the scheme in the 2022/23 Capital Programme with a budget of £910,350 to be funded from Welsh Government grant.

(Scrutiny – Learning and Culture)

(c) Award of contract for Eastern Shelter Concrete Repair Works.

During 2020-21 a capital budget was made available for works associated with the Structural Management of The Barry Eastern Shelter. Those works included the replacement of the movement joint in the roof, and a survey of the remainder of the structure including, in particular, the underside of the roof above the public accessed areas, in order to ascertain the extent of concrete repairs required. During the survey any concrete found to be unsound and presenting a danger was removed and a temporary protective coating applied to any exposed reinforcement as a holding measure. A budget estimate was prepared by the specialist concrete survey / repair company, Concrete Repairs Limited (CRL), for the concrete repairs and roof waterproofing which amounted to approximately £390K in February 2021.

An updated quotation for the necessary and essential repair works was obtained from the specialist concrete survey / repair company, CRL Ltd. to the value of £442,664.93 which was considered fair and reasonable for the works required. The increase in cost since the budget estimate in February 2021 being generally attributed to the soaring material and fuel costs experienced across the building and construction industry over the last 12 to 18 months.

The use of Emergency Powers was sought to appoint Concrete Repairs Limited (CRL) to undertake the necessary concrete repair works to the Ester Shelter in accordance with their quotation of £442,664.93 and the conditions of contract. The contract was subject to remeasure and therefore should additional works be identified as a result of deterioration since inspection in February 2021 the outturn contract cost may increase accordingly.

(Scrutiny – Environment and Regeneration)

(d) New Resource Recovery Facility (RRF) at the Atlantic Trading Estate.

The Waste Management team of Neighbourhood Services received a £500,000 Welsh Government Circular Economy grants late 2020 for new sorting equipment and a bailer to prepare recycling for resale and reuse. Due to the ongoing construction of the RRF we are yet to receive delivery of the bailer. Due to a material price increase which took place last year, there was now a shortfall between the original tendered value of £530,930 and invoice amount of £584,850.

The use of Emergency Powers was sought to raise the order value by £53,920 and increase the order value of the purchased bailer for the new Resource Recovery Facility (RRF) at the Atlantic Trading Estate, relating to the Circular Economy projects, grant funded by Welsh Government.

(Scrutiny – Environment and Regeneration)

(e) Block booking of 80 rooms in Holiday Inn Express, Cardiff Airport from 1 April 2023 to 31 March 2024.

There was a requirement to block book 80 rooms in the Holiday Inn Express (HIE), Cardiff Airport, to ensure that homeless households have somewhere to stay after

31st March, 2023 (when the existing booking expires). Whilst sufficient funds had been identified in the draft Council budget, there was a need to confirm the booking with the HIE prior to a decision being made to approve the final 23/24 Council budget (scheduled to take place in March 23).

The use of Emergency Powers was sought to block book 80 rooms at the Holiday Inn Express at the continued tariff from 1st April, 2023 until 31st March, 2024.

(Scrutiny – Homes and Safe Communities)

(f) Leisure Centre Works.

Two schemes had been submitted in the Capital Bid process for inclusion in the 2023/24 Capital Programme. Funding had been identified from the Leisure Centre works budget (contingency budget) for Llantwit Major Leisure Centre, Boiler & Water Heater Renewal and Cowbridge Leisure Centre Boiler renewal. There was currently an approved budget of £337k for Leisure Centre scheme in the 2022/23 Capital Programme.

The use of Emergency Powers was sought to carry forward the £337k budget identified above into the 2023/24 Capital Programme to be allocated £160k for the Llantwit Major Leisure Centre Boiler & Water Heating renewal scheme and £140k for Cowbridge Leisure Centre Boiler renewal scheme and £37k for the Leisure Centre Works Contingency budget.

(Scrutiny – Environment and Regeneration)

(g) Oracle Fusion Implementation (Part I and Part II matters considered).

The use of emergency powers was sought to provide a further update on the Go Live date for the implementation of Oracle Fusion. The last update to Cabinet and SLT was provided on 29th September, 2022. The Go Live date for the new Cloud-based version of Oracle was noted as April 2023.

The use of Emergency Powers was sought to:-

- ensure that the Oracle Fusion system could be implemented on 1st April, 2023 to minimise further delay and mitigate the risk and additional cost with running both the Oracle Fusion Cloud system and the current R12 ERP Oracle system.
- update Cabinet on the Oracle Implementation and to report on a review of lessons learnt to take forward to future digital projects.

(Scrutiny – Corporate Performance and Resources)

(h) Centre for Learning and Wellbeing – Contract Increases.

The purpose of the request was to increase the Stage II contract value for the Centre for Learning and Wellbeing (Dderw Newydd).

The use of Emergency Powers was sought:-

- Whilst the Council was awaiting approval from the Government it was recommended that £166,886 of the Band B contingency budget be carried forward into the 2023/24 Capital Programme and vired to the Band B Centre for Learning and Wellbeing scheme. If approved the Welsh Government element of £125,165 would then be released back into the overall Band B Contingency scheme budget. This would result in a new total scheme budget of £8,135,326.
- So that the Stage II contract be increased to £7,336,062 to reflect the 4 compensation events issued by the Contractor.

(Scrutiny – Learning and Culture)

(i) Barry Waterfront – Contract Increases.

In September 2022, the Council received an updated cost profile for the project from the contractor which included additional costs associated with the low carbon measures instructed for the project in January 2022 following the Welsh Minister for Education and the Welsh Language's announcement in November 2021 that all new schools and colleges in Wales will be net zero carbon from January 2022.

The Council determined to address the concerns raised publicly and respond to the spirit of the Welsh Minister's announcement by re-designing the project to include low carbon measures to improve the school's energy efficiency and reduce its emissions. These measures included:

- All electric school build
- Air Source Heat Pumps
- PV Panels
- Battery Storage
- Under floor heating
- K2N Monitoring

The overall cost for the low carbon measures is £564,257.65. This has increased the overall cost of the project to £9,019,257.65 from the £8,455,000 currently approved. Welsh Government approved to 100% fund the low carbon measures on 16th January, 2022.

The use of Emergency Powers was sought to:-

- Request that the additional net zero carbon grant funding from Welsh Government of £564,258 is included in the 2023/24 Capital Programme.
- Whilst the Council is awaiting approval from the Welsh Government it is recommended that £164,474 of the Band B contingency budget be carried forward into the 2023/24 Capital Programme and vired to the Band B Barry Waterfront Scheme. If approved the Welsh Government element of £106,908 would then be

released back into the overall Band B Contingency scheme budget. The above requests would result in a new total scheme budget of £9,183,732.

(Scrutiny – Learning and Culture)

(j) Western Vale Primaries – St Nicholas School Project Clarification on Professional Services Contracts.

On 27th May, 2022 an Emergency Powers Report was approved which sought to clarify the recorded value for the St Nicholas CiW Primary School project. Unfortunately, due to unforeseen delays in the process the 3 schemes referred to in the EP report were progressed at different times resulting in changes to the contract value for the schemes as the St Nicholas CiW Primary School was delayed significantly.

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 27th May, 2022 was noted and the value provided under this Emergency Powers Request of £640,714.27 was the true contract value.
- So that the overall Western Vale Primaries professional services contract value was £1,092,193 and the total sum of the professional services and NEC contracts for the 3 schemes was £16,614,797.
- To note the contract value for the Stage II construction contract for St Nicholas CiW Primary School was £6,425,589.

(Scrutiny – Learning and Culture)

(k) Housing Communal Area Security Doors Replacement (24 Blocks) Scheme 2022-23.

The Housing and Building Services Team requested emergency powers to accept the most advantageous tender bid received from IDS Security Systems Ltd. and enter into a JCT Intermediate contract so as not to 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 IDS Security Systems Ltd. at a value of £407,680.
- 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)

(l) Penarth Pier Joists.

The scheme for Coastal facilities and infrastructure including pier structural work was currently in the 2022/23 Capital Programme with a budget of £154k and work had been ongoing to replace defective wooden joists on Penarth Pier.

Following other works undertaken under the Penarth Pier Urgent Sewer works scheme, to renew the defective cast iron sewer pipe under Penarth Pier, it was established that several joists were so defective that they would likely impact on the areas accessible to the public this year, as they posed a structural risk to public safety.

The use of Emergency Powers was sought to increase the Coastal facilities and infrastructure including pier structural work scheme in the Council's 2022/23 Capital Programme by £100k which was to be funded from Council Building Fund.

(Scrutiny – Environment and Regeneration)

### **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.