



10 Mehefin 2022 ❖ 10 June 2022

Annwyl Aelod ❖ Dear Member

### Pwyllgor Cyllid ❖ Finance Committee

Fe'ch gelwir i fod yn bresennol yng nghyfarfod misol Pwyllgor Cyllid y Cyngor Tref a gynhelir yn Siambr y Cyngor, Neuadd Ddinesig San Pedr, Maes Nott, Caerfyrddin a thrwy gyswllt fideo **Nos Iau, 16eg o Fehefin 2022**, am 7.30yh.

*Croesawir aelodau o'r cyhoedd i arsylwi'r cyfarfod yn y neuadd, neu ar-lein drwy ddilyn y linc isod.*

You are summoned to attend the monthly Finance Committee of the Town Council to be held in the Council Chamber, St Peter's Civic Hall, Nott Square, Carmarthen via video link, on **Thursday evening, 16<sup>th</sup> of June 2022**, at 7.30pm.

*Members of the public are welcome to observe the meeting at the hall, or online by following the link below.*

Yn gywir ❖ Yours faithfully

*Alun Harries*

Clerc y Dref ❖ Town Clerk

Join Zoom Meeting:

<https://us06web.zoom.us/j/81608668469?pwd=VE9TZER0VmhEVUdFY0ZEYThyclZRZz09>

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## A g e n d a

1. Election of a Chair 2022/23
2. Election of a Vice-Chair 2022/23
3. Apologies for absence
4. Declarations of interest
5. To authorise the signing of the Order for Payment of Accounts Schedule for June 2022 - Invoices available for inspection **(Appendix 1)**
  - (i) Town Council
  - (ii) Tea Shop
6. Town Clerk's Report **(Appendix 2)**:
  - a) Financial Report
  - b) Schedule of Monthly Income **(Appendix 3)**

c) Regular payments (**Appendix 4**)

7. Pre-paid debit card for the Tea Shop
8. The General Power of Competence (GPOC)

**CARMARTHEN TOWN COUNCIL  
REPORT OF THE TOWN CLERK TO THE  
FINANCE COMMITTEE – 16<sup>th</sup> JUNE 2022**

**Agenda Item 6(a): Financial Report**

Council's Bank balances on the 31<sup>st</sup> of May 2022 were as follows:

	£
HSBC Current Account	40,323.48
HSBC Reserve Account	558,653.23
<b>Total Cash in Bank</b>	<b>598,976.71</b>

**Balances in Other Accounts on 31<sup>st</sup> of May 2022:**

Mayor's Allowance	-	£3,532.04
Mayor's Fun Run	-	£7,392.13
Carmarthen Park Tea Shop	-	£18,675.32

- Gross expenditure for the period 1st April to the 31<sup>st</sup> of May 2022 totalled £65,705.81
- Income for the same period, including the Park Tea Shop, totalled £24,993.86. The overall net expenditure is therefore £40,711.95
- The Net Budget/Precept requirement for 2022/23 is £788,855.58, of which £262,951.86 has been received. Members will note from the above that Council completed the year within budget on 31<sup>st</sup> May 2022.

For the **INFORMATION** of Members.

**Agenda Item 6(b): Schedule of Income (Appendix 3)**

Attached at **Appendix 3** is the schedule of income for the period 1<sup>st</sup> April 2022 to 31<sup>st</sup> May 2022.

For the **APPROVAL** of Members.

**Agenda Item 6(c): Regular Payments (Appendix 4)**

Section 5.6 of Council's Financial Regulations state "*For each financial year the Clerk and RFO shall draw up a list of due payments which arise on a regular basis as the result of a continuing contract, statutory duty, or obligation (such as but not exclusively, Salaries, PAYE and NI, Superannuation Fund and regular maintenance contracts and the like for which Council or a duly authorised committee, may authorise payment for the year provided that the requirements of regulation 4.1 (Budgetary Controls) are adhered to, provided also that a list of such payments shall be submitted to the next appropriate meeting of Finance Committee.*"

Attached at **Appendix 4** is a list of regular payees and the typical costs per month or quarter for those suppliers. Approval is sought to facilitate payment to these suppliers ahead of Finance Committee meetings, if the need should arise (e.g., overdue invoice).

For the **APPROVAL** of Members.

A list of direct debit payments has also been included for the information of members.

### **Agenda Item 7: Pre-paid debit card for the Tea Shop**

Section 6.19 of Council's Financial Regulations make the following provision:

*"A pre-paid debit card may be issued to employees with varying limits. These limits will be set by the Council after recommendation by the Finance Committee. Transactions and purchases made will be reported to the Finance Committee and Council and authority for topping-up shall be at the discretion of the Finance Committee and Council."*

The provision of a pre-paid debit card that could be used in the same way as petty cash for the Tea Shop would be far more convenient and efficient way for the Parks & Activities Officer to purchase stock. A suggested maximum balance of £500 would mirror the current arrangements in place for petty cash and replenishment of funds would be submitted to Finance Committee for approval.

For the **APPROVAL** of Members.

### **Agenda Item 8: The General Power of Competence (GPOC)**

The general power of competence permits qualifying authorities to do anything that an individual generally can do. It is a power of first resort which means that a qualifying authority does not need to rely on specific powers in legislation to do something, so long as what is intended to do is not otherwise prohibited. If, however, there are restrictions on the use of an existing specific power, those restrictions will also apply to the use of the general power. The general power enables eligible community councils to act in their communities' best interests, generate efficiencies and secure value for money outcomes. Eligible community councils will also be able to raise money by charging for discretionary services and to trade for commercial purposes and in their ordinary functions.

The 2021 Act sets out the conditions community councils must meet to be an 'eligible community council' with access to the general power. Only councils which meet the eligibility conditions are able to use this general power. The three conditions are specified in the 2021 Act, section 30 (2)-(4) and are set out below:

- At least two-thirds of the total number of members of the council have been declared to be elected (including unopposed), whether at an ordinary election or at a by-election.
- The clerk to the council holds such named qualification or certification as may be specified by the Welsh Ministers by regulations.
- The two most recent Auditor General for Wales (AGW) opinions on the council's accounts are unqualified. The most recent must have been received in the previous 12 months.

The three conditions, working together, serve as indicators that a community council represents the views of its electorate, that the council has a recent history of sound governance and that its clerk has the core knowledge, skills and understanding to support a community council in the exercise of the new general power. This provides a level of confidence in a council's ability to execute the general power appropriately. To formally become an eligible community council, a council must meet the conditions set

out above and pass a resolution at any meeting confirming that it meets the conditions.

In accordance with Schedule 4, Part 1 of the 2021 Act, the outcome of the decision to become an eligible community council should be published on the council's website within seven working days of the resolution being passed. These conditions will be kept under review and there is scope for the Welsh Ministers to amend the conditions. Any proposed changes to these conditions would be made through regulations and subject to consultation prior to being made.

## **The Three Conditions**

### **Condition 1: Proportion of elected members**

This condition reflects the principle that a council which exercises the general power should reflect the democratic views of the community. Local services are best provided within a democratic framework of local accountability. People who use local services should have as much of a say as possible in the way they are managed and delivered. The condition is for at least two-thirds of members to be elected. This includes those elected at by-elections and those elected unopposed. This means that the minimum number of elected councillors must be a whole number equal to, or higher than, two thirds of councillors. For example, a council with nine councillors must have at least six elected councillors. A council with eight elected councillors must also have at least six elected councillors as this is the next whole number of two-thirds of eight (i.e. as two-thirds of eight is 5.3).

### **Condition 2: Relevant clerk qualification**

This condition reflects the importance that any council which exercises the general power needs to be supported in doing so. The Certificate in Local Council Administration (CiLCA) is widely recognised by the sector as providing a broad knowledge of all aspects of the community council clerk's work, role and responsibilities, including the law, council procedures, finance, planning and community involvement.

For the purposes of exercising the general power of competence, the clerk to the community council must have obtained one or more of the following, at the time, or before the council passes a resolution that it meets the criteria and is an eligible community council:

- The Certificate in Local Council Administration (CiLCA)
- The Certificate of Higher Education in Community Governance
- The Certificate of Higher Education in Community Engagement and Governance
- The Certificate of Higher Education in Local Policy.

At the time of the council passing a resolution to be an eligible community council, it would be insufficient to declare that the clerk is currently undertaking one of the above; or intending to undertake one at a future date. It will also be insufficient to say that a deputy clerk holds CiLCA. It must be the recognised proper officer of the council that holds the CiLCA qualification. Clerks who gained any of the above sector specific qualifications before May 2022 are advised to undertake additional training to confirm that they understand how the general power of competence operates. The Society of

Local Council Clerks provide the standalone unit for assessment. Clerks who hold a CiLCA certificate without this module would benefit from completing this prior to the council passing a resolution that it is an eligible community council. The clerk qualification is only required for those councils who wish to resolve themselves as eligible to exercise the general power of competence. There is no general requirement for community or town council clerks to be qualified.

### **Condition 3: Audit opinions**

Principles of transparency, professionalism and public accountability should be followed in all financial procedures of community councils. Adherence to an appropriate audit regime and the production of an annual financial statement should be cornerstones of a council's financial management practices. To meet this condition, the council must have received unqualified auditor's opinions from the Auditor General for Wales (AGW), for the two most recent financial years. The latest unqualified auditor's opinion must have been received during the twelve months leading up to the day on which the community council's resolution is passed. Community councils which have recent qualified audits will not be eligible to exercise the general power of competence. At the community council annual meeting in May 2022, the council would normally have confirmation of the outcome of the AGW's audit opinion for the financial years 2019-20 and 2020-21. This is subject to the council providing the external auditor with all the relevant information and evidence, in a timely manner, for them to reach a conclusion and to confirm the audit opinion outcome. Provided that the audit opinion is unqualified for both financial years 2019-20 and 2020-21, this condition would be satisfied. If either of the opinions is qualified, then the condition cannot be satisfied and the council cannot pass a resolution that it is an eligible community council.

In future years, annual consideration of the third condition means that the relevant audit opinion taken into account will continue to change. For instance, in 2023, consideration of the third condition would rely on the audit opinions from 2020-21 and 2021-22. Future changes to the audit regime Audit Wales has given notice that the audit regime is due to change in 2022. This does not affect the way in which the third condition is assessed as audit opinions will continue to be issued each year by the AGW.

### **Exercising the general power for a commercial purpose**

An eligible community council may use the general power to do something for a commercial purpose. However, the council may only do so if it would also rely on the general power to carry out that activity for a non-commercial purpose i.e. it could not charge for an activity that it is required to carry out. An example of this is that a council which currently maintains its own lawns and grounds may want to use the general power to be able to offer their services to local sports grounds for a fee. An eligible community council is required to undertake any trading operations through a company (as defined by the Companies Act 2006 or a registered society under the Co-operative and Community Benefits Societies Act 2014). Eligible community councils must take adequate steps to consider the implications of their proposed exercise of the power for a commercial purpose.

The specific conditions are set out in the General Power of Competence (Commercial Purpose) (Conditions) (Wales) Regulations 2021 and provide that:

- Before exercising the power, an eligible community council must prepare and approve a business case in support of the proposed exercise of the power. The above regulations set out the requirements for the business case.
- Where the eligible community council has supplied anything to the company through which the general power is being exercised, the council must recover its costs from that company.
- The business case must be published as soon as practicable after the decision is taken to approve it.

For instance, a council may wish to open a local shop or café. While an eligible community council might reasonably support the start-up of a company for this purpose, it should recover the costs of doing so. These costs could include accommodation, goods, services, staff or anything else to help set-up the shop or café. Ongoing subsidy or funding could both distort the market unfairly and could also lead to public funds being placed at undue commercial risk.

### **Power to trade in ordinary functions**

We will be consulting on remaking the General Power of Competence (Commercial Purpose) (Conditions) (Wales) Regulations 2021 (“2021 Regulations”) to extend to eligible community councils from May 2022. This provides for eligible community councils to trade in all services, so long as they are not required to by law to provide them. An authority’s power to trade in their ordinary functions is provided for in section 95 of the Local Government Act 2003. As with exercising the general power for a commercial purpose where an eligible community council intends to use the power to trade in its ordinary functions, it must prepare, approve and publish a business case. The ordinary functions of a community council are the functions set out in Acts of Parliament, and Measures or Acts of the Senedd, e.g. powers to provide allotments, to provide and maintain bus shelters, and the power to promote local energy saving schemes. They do not include delegated functions that some community councils operate under agreement from their principal council e.g. library services.

### **The Business Case**

A business case must be prepared prior to a community council using the general power for commercial purposes or the power to trade in their ordinary functions. The purpose of the business case is to be transparent that a reasonable assessment of the proposal has been made and agreed by the council. Business cases should be proportionate to the complexity of each case and the scale of investment being considered. There should be a clear audit trail showing that the community council has acted within its powers. All business cases must be published as soon as practicable following the council decision to approve it.

Appropriate guidance on preparing a business case will depend on the nature of the proposal, and ‘no one size’ will fit all circumstances. However under the 2021 Regulations, a business case must include the following elements:

- The aims and objectives of the proposed exercise of the general power;
- The costs, investments and other resources required to achieve those aims and objectives;
- The financial outcomes that are expected to be achieved;
- Any other relevant outcomes that are expected to be achieved;
- Any risks associated including an assessment of the severity of those risks, and any mitigating actions;

- The impact (including on the terms and conditions of employment) on any staff that it intends to supply to a company to do things for a commercial purpose;

The regulations do not specify an individual accountable for approving the business case – only that it is for the council to provide that approval. The matter is to be decided locally. However, it is recommended that through, for example, standing orders or schemes of delegation it is clear to members and to the public how the approval process works. Boundaries of the general power of competence The general power does not allow community councils to overturn legal limitations or restrictions in existing legislation. The need for due diligence and robust, transparent decision-making remains. Eligible community councils must act in accordance with the Wednesbury Principle when exercising the general power of competence.

Through the 2021 Act and associated regulations, there are other appropriate constraints on the use of the general power, including the following: – The requirement for a company structure when using the general power for a commercial purpose, and a business case which considers the costs, benefits and risk of each proposal; – Checks for pre- and post-commencement limitations (whereby a specific power may be identified); and – Limitations on fees and charges for discretionary services.

### **Annual review of eligibility**

Under section 31(1) of the 2021 Act, a community council which has resolved itself an eligible community council must pass a resolution at its next annual meeting that it remains an eligible community council. In order to do this, a council must pass a resolution that it meets the three conditions and is able to resolve itself eligible at that meeting. For a council which has appropriately resolved itself eligible at the first available annual meeting following commencement of the 2021 Regulations, it will retain that status until its next annual meeting. This would provide the council, and those they deal with, certainty as to the extent of their powers. Part 1, Schedule 4 to the Act amends the Local Government Act 1972 to require councils to publish the outcome of decisions within seven working days of the council meeting. Therefore, the outcome of the decision to continue either as an eligible community council, or not, must be published on the community council's website to the same timetable. This provides clarity for the council, and those it deals with, on its ability to exercise the general power.

### **Ceasing to be eligible**

A community council may decide that, despite meeting the conditions, it no longer wishes to be an eligible community council. An eligible community council may pass a resolution at any meeting of the council that it is no longer an eligible community council. The council would cease to be an eligible community council with immediate effect. In which case it must publish its decision that it is no longer an eligible community council within seven working days of taking the decision. Under section 31 of the 2021 Act, if the council does not pass a resolution at the appropriate annual meeting that it is an eligible community council then it ceases to be one at the end of the day following the annual meeting in question. It will not be able to exercise the general power of competence until it resolves itself eligible, which may be at the next council meeting.

A community council may also fail to pass a resolution that it continues to be an eligible community council because it no longer meets all of the three eligibility conditions. However, if the council still meets the criteria, it may resolve itself as eligible again at its next meeting. What happens to agreements entered into by an eligible community council and then the council ceases to be eligible? Under section 33 of the 2021 Act, if an eligible community council relied on the general power to deliver services or undertake activities, the council would be able to continue those even though it had ceased to be eligible. However, the council could not enter into a new contract or change an existing arrangement so that it became qualitatively different from how it was while the council was still eligible.

### **Common Community Councils**

Under the Local Government Act, 1972, sections 27E and 27F, communities have the power to apply for an order grouping its community with other communities under a common community council. In circumstances where a common community council is formed after 20 January 2021 under an Order under section 27F of the 1972 Act, it is in effect a new council. In this case, a newly formed common community council could potentially meet two of the three eligibility conditions relating to:

- The proportion of elected members - since the order made by the principal council would make provision for an election under the Local Government Act 1972, section 27F(5)(a); and
- Employment of a clerk who holds one of the relevant qualifications specified in regulations. However they would be unable to satisfy the condition regarding the two most recent Audit Wales opinions for at least two years. To address the anomaly, this condition does not apply to the common community council where at least half of the communities grouped together to form the new common community council had separate community councils immediately beforehand which met this third condition. However, if the first Audit Wales opinion of the common community council is a qualified audit opinion, then the common community council ceases to be an eligible community council with immediate effect.

### **Section 137 of the Local Government Act 1972 and Community and Town Councils**

The general power under section 137(1) of the Local Government Act, 1972 has been retained for community councils that do not wish to resolve themselves as eligible community councils, or are not yet able to satisfy the eligibility conditions. Community councils which do not resolve itself as an eligible community council will still be able to use the current power under section 137(1) of the Local Government Act 1972. This power permits community councils to spend a limited amount of money on activities for which it has no other specific powers. They may only do this if the council considers that it will be for the direct benefit of its area, or part of its area, or all or some of its inhabitants. Community councils are also permitted under section 137(3) to incur expenditure for certain charitable and other purposes. The maximum expenditure is calculated annually. The appropriate sum for the purposes of section 137(4)(a) is calculated by applying the formula set out in Schedule 12B to the 1972 Act. Once a council resolves itself an eligible community council, section 137 of the Local Government Act 1972 no longer applies to the council. Unlike section 137 there is no financial limitation on what an eligible community council can spend if they are exercising the general power of competence. DRAFT 14 It should be noted that neither the general power nor the Local Government Act 1972, section 137 can be

used to circumvent a statutory prohibition on a community council carrying out a particular function.

### **The Local Government Act 2000 - Well-being Power**

Having three general powers in law is confusing and unnecessary, and has been reported as such by the sector. Therefore, the 'well-being power' provided in section 2 of the Local Government Act 2000 will be repealed for all community councils when the provisions relating to the general power of competence are brought into force for eligible community and town councils on 5 May 2022. Until the well-being power is repealed, community councils can continue to use the power. Anything which is started by councils before, and is ongoing at, the time this power is repealed can continue under this power until that activity is completed or until a council resolves to become an eligible community council. However nothing new may be started using the well-being power from 5 May 2022. Impact of the exercising the General Power of Competence Over time it is intended to take stock of the number of community councils resolving themselves eligible to exercise the general power of competence, and the purposes for which they use it. After commencement of the provisions in May 2022, the National Training Advisory Group, which meets quarterly, will assess the impact of the provisions at key points. They will draw on evidence from surveys, annual reports of community councils, and monitoring the uptake of the CiLCA training through the Welsh Government's national bursary scheme for council clerks.

For the **RECOMMENDATION** of Members.