

Report Title:	Virement of Capital within the Approved Capital Programme, to fund the overage payment due under the contract for the purchase of Land Purchase at Thriftwood Farm
Contains Confidential or Exempt Information	No – Part I
Cabinet Member:	Councillor Hilton Cabinet Member for Asset Management & Commercialisation Finance & Ascot
Meeting and Date:	Council 27 September 2022
Responsible Officer(s):	Andrew Durrant, Executive Director of Place
Wards affected:	All

REPORT SUMMARY

This report deals with Capital expenditure required to pay an overage sum that is due to the vendor of the land at Thriftwood, Ockwells Road, Cox Green, which the Council purchased in 2016 and formed part of the contractual agreement of sale.

The overage sum isn't within the approved Budget but can be paid by using a virement as authorised under the Constitution. The in-year virement requires Cabinet approval, however the overage payment is a contractual obligation for the Council that relates to the original terms of the sale/purchase back in 2016 (and related verification of the urgent decision made by officers which was reported to Council on the 10 August 2016) and such payment was made under the urgency provisions in the Constitution.

The proposed virement is to re-allocate some of the approved capital provision which is within the approved Capital Programme of the Council for the further expansion of the Hostile Mitigation Measure for Windsor (CC60). This is not currently required for the that scheme and the proposal is to use this, to fund the overage payment (Thriftwood CX36).

At the time of purchase there was a known risk that an overage payment could become due if planning permission was obtained for the site. There has now been an independent valuation completed by an expert witness to assess the overage payment and the value of the amount due. This report addresses that funding requirement and advises Council that the debt has been paid so to avoid any further interest payments being incurred.

1. DETAILS OF RECOMMENDATION(S)

RECOMMENDATION: That Council notes the report and:

- i) Approves the virement of capital funds from the approved scheme CC60 Hostile Vehicle Mitigations Measures to CX36 Purchase of land at Thriftwood as set out in Appendix 3.**

- ii) **Notes the decision taken under the Urgent Powers within the Constitution to make the payment to seek to stop further interest payments**

2. REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

Options

Table 1: Options arising from this report

Option	Comments
To approve this proposed virement to fund the payment that is contractually due. This is the recommended option	This proposed virement does not increase the overall total of the approved capital scheme.
To identify an alternative capital scheme or seek to increase the capital programme to fund this payment.	This option would require an increase in the current capital programme, if an alternative capital programme could be identified which has funds available to cover this amount. No other scheme has been identified at this time.

- 2.1 The Council purchased 86 acres of land at Thriftwood Farm, Cox Green on the 17 August 2016 at auction, as it was adjacent to Ockwells Park. The purchase of the land was to increase the Council's overall open space available for residents to enjoy.
- 2.2 As part of that purchase there was an overage clause that stipulated that overage was payable on the granting of any planning permission. The overage clause provided that any increase in the value of the land would trigger a 40% overage payment. On the 8th May 2022 the change of use of the land from agriculture to public open amenity space was valued in accordance with the terms of the sale agreement, by a jointly appointed single expert valuer. An overage payment became payable as an outcome of this valuation review.
- 2.3 The payment includes an uplift in value of the land and interest payable on this uplift. In addition, there is also the Council's share of the cost of the independent expert valuer. In total there is a capital requirement as set out in Appendix 3 and it is proposed that this sum be provided for by a virement from the current capital scheme CC60 Hostile Vehicles Mitigations Measures for Windsor. (This sum was included in the capital scheme as a subsequent phase to the works completed in 2019/20, but is not currently being progressed).

3. KEY IMPLICATIONS

- 3.1 The Council is contractually obligated to make this overage payment, and the value has been determined in accordance with the overage contractual terms agreed at the time of the land sale/purchase. Although the level of virement is within the delegations to Cabinet, the payment has been made under the urgency powers provided for in the Standing Orders of RBWM Constitution to ensure the council

was able to meet its legal obligations, and accordingly are being reported to the next full Council meeting. The Officer decision form is shown in Appendix 2

Table 2: Key Implications

Outcome	Unmet	Met	Exceeded	Significantly Exceeded	Date of delivery
The overage payment is provided for in the approved Capital programme.	Overspend on the capital code for the project	Payment is made	N/A	N/A	21 June 2022
The decision taken under the urgent powers is noted	N/A	Decision is noted.	N/A	N/A	21 June 2022

3.2 The report is seeking to obtain formal approval for the virement of the capital provision that enabled the Thriftwood overage payment to be made within the current approved overall capital programme and to avoid the further accumulation of interest and avoid legal action for non-payment of the debt.

3.3 The decision to make the payment under the urgent powers provided for within the RBWM Constitution is noted. The terms of the overage required payment within 10 working days of the determination by the expert and became payable on the 15 June 2022.

4. FINANCIAL DETAILS / VALUE FOR MONEY

4.1 The provisions for virement are set out in rules F1.10 to F1.19 of the Finance Rules. The rules are applied to virement between budgets and the levels delegated to officers are:

- Directors can vire up to £25,000 in respect of budgets under their control without the consent of the Head of Finance
- The Head of Finance, in consultation (via email if appropriate) with the Corporate Leadership Team can vire £25,000 up to £100,000 with the consent of Cabinet
- Cabinet can vire £100,001 to £500,000 without the consent of Full Council.

4.2 The virement will enable the payment to be made from within the existing approved capital programme. Funds to the required value as set out in Appendix 2 will be moved from Cost Centre CC60 Hostile Mitigation Measure for Windsor to Cost Centre CX36 Thriftwood.

4.3 This will avoid the need for any additional capital requirements within the already approved overall capital programme and potential increased borrowing requirements.

5. LEGAL IMPLICATIONS

5.1 The Council was aware of the overage clauses at the time that the council purchased the land. In 2021, the original vendor approached the Council to seek payment and an independent expert valuer was jointly appointed to complete the revised valuation and overage calculation. Legal Services have been directly involved in this process and have advised, ensuring the Council meets its contractual obligations.

5.2 To avoid any further interest payments the balances due were made as soon as the valuation work was completed and the overage and interest payments were confirmed to avoid any further interest payments being required.

5.3 The decision was taken under the urgency powers to avoid any further interest payments being accrued once the revised valuation was confirmed. As it was not practicable to convene a full meeting of the Council and there was no elected Chairman of the Place Overview and Scrutiny Panel the Mayor was asked to give consent in accordance with the requirements of the Constitution.

6. RISK MANAGEMENT

6.1 The steps taken to avoid any further interest payments and to cover the capital requirements through a virement from an existing capital scheme have been taken to reduce the risks of any further financial costs against the council. On the basis that once the overage payments had been identified it was in the Council's best interest to meet its contractual obligations as quickly as possible.

7. POTENTIAL IMPACTS

7.1 There are no EqIA implications arising directly from this report, see Appendix 1

7.2 Climate change/sustainability. There are no impacts on the Climate change and Sustainability policy arising from this report.

7.3 Data Protection/GDPR. This report is being considered under Part II of the agenda as the matter relates to the contractual financial obligations between the Council and Purchaser and a private individual as vendor, which arose as the result of the purchase agreement made in 2016 when the land was bought.

8. CONSULTATION

8.1 The Mayor of RBWM has been consulted as there was no elected Chair of the Place Overview and Scrutiny Panel.

9. TIMETABLE FOR IMPLEMENTATION

9.1 Implementation date if not called in: As a full Council decision, there is no provision for call in.

9.2 This decision is being reported retrospectively in accordance with the provisions set out above as it was taken under the urgent powers and relates to the contractual obligations which formed part of the terms of the contract for sale in 2016.

10. APPENDICES

This report is supported by three appendices:

- Appendix 1 – EQIA Screening Form
- Appendix 2 - Officer Decision Form
- Appendix 3 - Value of the Virement between capital codes being approved by Council.

11. BACKGROUND DOCUMENTS

11.1 This report is supported by one background document:

- Report to full Council 10 August 2016

12. CONSULTATION

Name of consultee	Post held	Date sent	Date returned
<i>Mandatory: Statutory Officers (or deputies)</i>			
Adele Taylor	Executive Director of Resources/S151 Officer	5/7/22	8/7/22
Emma Duncan	Director of Law, Strategy and Public Health / Monitoring Officer	5/7/22	7/7/22
<i>Deputies:</i>			
Andrew Vallance	Head of Finance (Deputy S151 Officer)	5/7/22	
Elaine Browne / Sean O'Connor	Head of Law (Deputy Monitoring Officer)	4/7/22	5/7/22
Karen Shepherd	Head of Governance (Deputy Monitoring Officer)	4/7/22	7/7/22
<i>Mandatory: Procurement Manager (or deputy) - if report requests approval to award, vary or extend a contract</i>			
Lyn Hitchinson	Procurement Manager	N/A	
<i>Other consultees:</i>			
<i>Directors (where relevant)</i>			
Duncan Sharkey	Chief Executive	5/7/22	6/7/22
Andrew Durrant	Executive Director of Place	4/7/22	5/7/22
Kevin McDaniel	Executive Director of People Services	N/A	
<i>Heads of Service (where relevant)</i>			

Zarqa Raja	Corporate Accountant	4/7/22	5/7/22
<i>External (where relevant)</i>			
N/A			

Confirmation relevant Cabinet Member(s) consulted	Councillor Hilton Cabinet Member for Asset Management & Commercialisation Finance & Ascot	Yes
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REPORT HISTORY

Decision type:	Urgency item?	To follow item?
Council decision	Yes – The Mayor has been consulted as there was no Chairman of the Place O&S Panel	No

Report Author: David Scott Head of Communities 07710 352 095
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