

<b>MIDDLESBROUGH COUNCIL</b>	
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<b>Report of:</b>	Director of Finance (s151 Officer)
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<b>Relevant Executive Member:</b>	Executive Member for Finance and Governance
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<b>Submitted to:</b>	Council
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<b>Date:</b>	17 January 2024
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<b>Title:</b>	Flexible Use of Capital Receipts (FUoCR) Strategy – 2023/24 Refresh
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<b>Report for:</b>	Decision
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<b>Status:</b>	Public
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<b>Strategic priority:</b>	All
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<b>Key decision:</b>	Yes
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<b>Why:</b>	Decision(s) will incur expenditure or savings above £250,000
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<b>Subject to call in?:</b>	No
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<b>Why:</b>	
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<b>Proposed decision(s)</b>
<p>That the Council:</p> <ul style="list-style-type: none"> <li>• Approve the proposed revisions to the FUoCR Strategy increasing the planned expenditure in 2023/24 from £3.000m to £4.299m.</li> <li>• Note the use of the Change Fund to provide interim revenue financing arrangements pending receipt of cash from asset disposals enabling the application of capital receipts in line with the regulations.</li> </ul>

## Executive summary

Local authorities are ordinarily only able to utilise capital receipts from the sale of fixed assets for specific purposes. This precludes the financing of revenue expenditure under s15(1) of the Local Government Act 2003 (as amended).

In 2016/17, the Department of Levelling up Housing and Communities) (DLUHC) implemented a time limited relaxation to the regulations under the Local Government Act 2003 Sections 16(2)(b) and 20: Treatment of Costs as Capital Expenditure.

This allows capital receipts to be used to finance revenue expenditure in specific circumstances and subject to certain conditions. The current statutory direction applies to financial years from 1 April 2022 up to and including 31 March 2025 and it is expected that the scheme will continue into future years as a tool that brings flexibility to local authorities pursuing transformation and modernisation to improve value for money.

Eligible expenditure under the regulations relates to revenue expenditure which:

- is designed to generate ongoing expenditure savings, income generation, and/or more efficient delivery of services, and/or
- transforms service delivery to reduce costs/ reduce demand; and/or
- improves the quality-of-service delivery in future years.

The annual Flexible Use of Capital Receipts (FUoCR) Strategy for 2023/24 was approved by Full Council in February 2023 as part of the approval of the budget and Medium-Term Financial Plan (MTFP). The Strategy set out plans of up to £3.000m of eligible revenue expenditure to be incurred during 2023/24 to be funded by capital receipts in accordance with statutory regulations.

The Council is not permitted to apply flexible capital receipts to fund expenditure in excess of the sum set out in the approved FUoCR Strategy. However, the regulations enable the revision of the FUoCR strategy during the financial year to reflect an increase in the plan provided that it is approved by Council and notified to the Department of Levelling Up Housing and Communities (DLUHC).

Officers have worked over the course of the year to develop financial recovery plans that will deliver cost reductions in the current year and into 2024/25 and future years. Some of these plans require investment in additional skills, capability and capacity on a short-term basis in order to develop and implement projects and initiatives that will deliver improved outcomes and ongoing cost reductions. Such expenditure meet the criteria above for the flexible use of capital receipts.

As a result of this work, the value of planned expenditure to be funded from FUoCR within 2023/24 has therefore increased by £1.299m from £3.000m to £4.299m for the 2023/24 financial year.

Given the critical level of Council revenue reserves, the primary source of funding for such investment is further utilisation of capital receipts in accordance with the FUoCR Strategy. As part of the review of the Strategy, the opportunity has been taken to optimise the use of capital receipts to fund in year transformation expenditure.

The revised Strategy was endorsed by the Executive on 21 November 2023 and is now submitted for consideration and approval by Full Council.

## **1. Purpose**

- 1.1 This report proposes a revision of the FUoCR Strategy for the Council for 2023/24 that is subject to approval by Full Council. The report sets out the revisions to the Strategy that are required in order to enable a range of transformation and efficiency plans to be progressed within the 2023/24 financial year to be funded from Usable Capital Receipts which are the primary source of funding available given the Council's usable revenue reserves are critically low.
- 1.2 The report sets out the approach that will be taken to optimise the Flexible Use of Capital Receipts during 2023/24 in accordance with Statutory Guidance within the context of the Council realising a pipeline of cash receipts from the disposal of capital assets which was approved by Executive on 21 November 2023 as part of the recommendations of the Asset Review report.

## **2. Recommendations**

That the Council

- Approve the proposed revisions to the FUoCR Strategy increasing the planned expenditure in 2023/24 from £3.000m to £4.299m.
- Note the use of the Change Fund to provide interim revenue financing arrangements pending receipt of cash from asset disposals enabling the application of capital receipts in line with the regulations.

## **3. Rationale for the recommended decision(s)**

- 3.1 The revised FUoCR strategy is critical to enable the progression of Financial Recovery Plans to deliver cost reduction and/or income generation that will contribute to reducing the in-year overspend and the Council's ability to balance the 2024/25 budget and MTFP to 2026/27.

## **4. Background and relevant information**

- 4.1 Local authorities are ordinarily only able to utilise capital receipts (the disposal proceeds from the sale of fixed assets or repayment of loans for capital purposes). Statutory guidance issued under section 15(1) of the Local Government Act 2003 (as amended) by the Ministry of Housing, Communities and Local Government (now Department of Levelling Up Housing and Communities – DLUHC) precludes capital receipts being used to fund revenue expenditure and requires them to be applied to

either fund capital expenditure or repay debt. The Act also requires local authorities to have regard to other guidance as issued or directed by the Secretary of State – this currently includes the following guidance issued by the Chartered Institute of Public Finance and Accountancy [CIPFA]:

- The Prudential Code for Capital Finance in Local Authorities; and
- The Code of Practice on Local Authority Accounting.

4.2 The Spending Review 2015 included a relaxation to the above regulations allowing the use of capital receipts for a limited period, initially between 2016/17 and 2018/19, to fund revenue expenditure which:

- a. is designed to generate ongoing expenditure savings, income generation, and/or more efficient delivery of services, and/or
- b. transforms service delivery to reduce costs/ reduce demand; and/or
- c. improves the quality-of-service delivery in future years.

Further revisions to the regulations have been implemented, refining, and extending the scheme, the latest of which was issued on 2 August 2022 to apply to financial years 2022/23, 2023/24 and 2024/25.

4.3 A summary of the key points of the current direction and the Statutory Guidance are set out below and a link to the detailed Statutory Guidance is included in the Background Papers section to this report.

- a. Capital receipts are the money that councils receive from asset sales, the use of which is normally restricted to either funding capital expenditure or repaying debt. The receipts cannot usually be used to fund revenue expenditure.
- b. The direction allows authorities to use the proceeds from asset sales to fund the revenue costs in specific circumstances where projects:
  - i. will reduce costs, or
  - ii. increase revenue income, or
  - iii. support a more efficient provision of services.
- c. Local authorities are only permitted to use the flexible use of capital receipts concession from a 'qualifying disposal' of property, plant and equipment assets received in the years in which this flexibility is offered under the direction (i.e. currently 2021/22 to 2024/25).
- d. In 2022, a new restriction was introduced to ensure that capital receipts obtained must be from disposals by the local authority to an entity outside the local authority's group structure. The intent of this condition is that capital receipts which are to be used by authorities under the flexibilities afforded by the direction, should be from genuine disposals of assets by the authority. Where an authority retains some control of the assets, directly or indirectly, and retains exposure to the risks and rewards from those assets, the disposal does not give rise to a capital receipt that can be used in accordance with the direction.

- e. 'Qualifying expenditure' is defined as 'expenditure on any project that is designed to generate ongoing revenue savings in the delivery of public services and/or transform service delivery to reduce costs and/or transform service delivery in a way that reduces costs or demand for services in future years for any of the public sector delivery partners. The Statutory Guidance provides some examples of qualifying expenditure.
- f. In 2022 a further new restriction was also introduced to prevent authorities from funding discretionary redundancy payments, i.e., those not necessarily incurred under statute. This does not affect other types of severance payments, and to be clear, does not restrict including pension strain costs, which may still be qualifying expenditure.

Statutory payments that can be claimed through the flexible use of capital receipts are:

- Redundancy pay – based on the capped weekly wage for statutory payments of £643 and a maximum 30 weeks as per the statutory guidance (therefore the maximum statutory redundancy pay claimable under flexible use of capital receipts is £19,290)
  - Pension strain costs – not including any discretions, added years etc.
- g. Authorities wishing to take advantage of FUoCR are required to annually prepare a "Flexible Use of Capital Receipts Strategy" to be approved by Full Council. This requirement can be satisfied by including relevant documents within the Annual Budget documents or as part of the Mid-Term Financial Plan (or equivalent).
  - h. As a minimum, the Strategy should list each project for which it is proposed to make use of the capital receipts flexibility and that on a project-by-project basis, details of the expected savings/service transformation are provided. The Strategy should report the impact on the local authority's Prudential Indicators for the forthcoming year and subsequent years.
  - i. Since 2022 local authorities must send details setting out their planned use of the flexibility in advance of use for each financial year to DLUHC. This condition can be met by sending the authority's own strategy documents, provided they contain the detail asked for in the direction. The form to cover this requirement and for submitting the strategy for the Flexible Use of Capital Receipts for 2023/24 is to be submitted via DLUHC's DELTA system by 30 September 2023. This is not an approval process, but the information must be sent to ensure transparency and allow proper monitoring by central government.
  - j. Since 2022/23 the Strategy is required to contain details on projects approved in previous years, including a commentary on whether the planned savings or service transformation have been/are being realised in line with the initial analysis.
  - k. The Statutory Guidance allows local authorities to update their Strategy during the year and must notify DLUHC to enable central Government to keep track of planned and actual use of the flexibility. Full Council must approve the revised plan.

- I. The amount of expenditure capitalised in the financial year must not exceed the amount set out in the plan, including any updated plans, provided to the DLUHC. This is to allow central Government to keep track of planned use of the flexibility for national accounts purposes.

4.4 The revised Flexible Use of Receipts Strategy is set out in Appendix 1. In accordance with the Statutory Guidance, this includes details of:

- a. Previous year projects including a commentary on whether the planned savings or service transformation have been/ are realised in line with the initial analysis
- b. The original plan for 2023/24
- c. The revised plan for 2023/24
- d. The forecast of capital receipts from approved asset sales, together with forecast receipts from asset disposals that were approved by the Executive on 21 November 2023 as set out in the Asset Review report

4.5 Given that the application of capital receipts is dependent upon the receipt of cash from asset disposal by 31 March 2024, arrangements have been made to provide revenue budget cover to fund the expenditure on financial recovery plan initiatives to enable them to progress quickly. An exercise will be undertaken at the year end to apply capital receipts to replace the committed revenue expenditure as explained in financial implications at paragraphs 6.1.1 to 6.1.6.

## **5. Other potential alternative(s) and why these have not been recommended**

5.1 If the revised FUoCR Strategy is not approved, then projects and initiatives to deliver cost reduction and income growth will either not be able to progress at all or will be constrained by limited revenue resources in the Change Fund.

## **6. Impact(s) of the recommended decision(s)**

### ***6.1 Financial (including procurement and Social Value)***

6.1.1 The Flexible Use of Capital Receipts Strategy is a core element of the Council's budget and policy framework that is approved by Council annually. The ability to capitalise eligible revenue expenditure in accordance with the regulations set out in the main body of the report, provides a mechanism through which the Council is able to invest in transformation and efficiency initiatives to achieve financial recovery and resilience over the short to medium term.

6.1.2 As noted in the strategy at Appendix 1, capital receipts realised from approved and new disposals that were approved by Executive on 21 November 2023, will be qualifying expenditure if cash from disposal is received by 31 March 2024. Whilst there is no guarantee that the capital receipts will be realised, officers are working to ensure that the forecast receipts are realised by the end of the financial year. Provided that they are, there is potential for qualifying expenditure during 2023/24 to be capitalised under the revised FUoCR Strategy in order to fund investment in

transformation and efficiency, whilst also improving the 2023/24 forecast outturn position as explained below.

- 6.1.3 Over the course of the year to 30 September, a total of £0.594m has been approved to be committed/ spent from the Central Contingency revenue budget. Of this sum, £0.373m is in relation to expenditure enabling transformation and efficiency measures to deliver reduced expenditure in future years. This is qualifying expenditure and is incorporated into the revised strategy at Appendix 1.
- 6.1.4 Subject to approval of the revised FUoCR Strategy and receipt of sufficient capital receipts by 31 March 2024, this would enable £0.373m of revenue expenditure to be capitalised, therefore reducing the revenue outturn position by the £0.373m and improving the 2023/24 outturn position as summarised in table 1 below.

<b>Table 1</b>	<b>Budget</b>	<b>Committed/ Spent at</b>	<b>Uncommitted Budget</b>
<b>Budget</b>	<b>at 1/4/23</b>	<b>30/9/23</b>	
	<b>£m</b>	<b>£m</b>	<b>£m</b>
Central Contingency	1.300	(0.594)	0.706
Potential to capitalise revenue expenditure under revised FUoCR subject to realisation of capital receipts and decommit from revenue budget		0.373	0.373
Potential revised position on the Central Contingency budget	1.300	(0.221)	1.079

- 6.1.5 In addition to the expenditure incurred to date, officers have identified opportunities to develop and deliver Financial Recovery Plans some of aspects which require investment of £0.984m within 2023/24 which is qualifying expenditure under FUoCR and is incorporated within the revised strategy at Appendix 1. Provided that sufficient capital receipts are realised by 31 March 2024, this expenditure will be capitalised in accordance with the revised strategy.
- 6.1.6 In the interim period until capital receipts are realised, revenue budget cover on the planned management interventions is required to enable expenditure to be incurred and the interventions to progress promptly. The s151 Officer has approved that this revenue funding will be provided by the Change Fund, subject to review and capitalisation of the expenditure upon realisation of capital receipts. The position on the Change Fund following the balance sheet review and provision of revenue budget cover, is summarised in Table 2.

<b>Table 2</b>	<b>Budget/ Balance</b>	<b>Committed</b>	<b>Balance</b>
<b>Budget/Reserve</b>	<b>at</b>	<b>at</b>	<b>available to</b>
	<b>1/4/23</b>	<b>30/9/23</b>	<b>fund</b>
			<b>transformation</b>
Change Fund Reserve (top up from balance sheet review)	0.758	0.000	0.758
Change Fund – central budget	0.730	0.040	0.690

<b>Total available for transformation pending realisation of capital</b>	<b>1.488</b>	<b>0.040</b>	<b>1.448</b>
Planned qualifying expenditure under revised FUoCR			(0.984)
<b>Uncommitted balance on Change Fund pending realisation of capital</b>			<b>0.464</b>

## **6.2 Legal**

- 6.2.1 Local authorities are ordinarily limited in their ability to utilise capital receipts from the sale of fixed assets for specific purposes which precludes financing of revenue expenditure under s15(1) of the Local Government Act 2003 (as amended).
- 6.2.2 The Department of Levelling up Housing and Communities (DLUHC) implemented a time limited relaxation to the regulations under the Local Government Act 2003 Sections 16(2)(b) and 20: Treatment of Costs as Capital Expenditure. This allows capital receipts to be used to finance revenue expenditure in specific circumstances and subject to certain conditions. The current statutory direction applies to financial years from 1 April 2022 up to and including 31 March 2025.
- 6.2.3 As this is a budget and policy framework matter, it is for Full Council to approve, following the recommendation of the Executive to it in accordance with s.1.9(a) Financial Procedure Rules.

## **6.3 Risk**

- 6.3.1 This report forms an element of the Council's budget and policy framework which underpins the priority to deliver a legally balanced budget and sustainable medium term financial plan.

## **6.4 Human Rights, Public Sector Equality Duty and Community Cohesion**

Not applicable

## **6.5 Climate Change / Environmental**

Not applicable

## **6.6 Children and Young People Cared for by the Authority and Care Leavers**

Not applicable

## **6.7 Data Protection / GDPR**

Not applicable



## Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
If approved by Council on 17 January 2024 the revised Flexible Use of Capital Receipts Strategy for 2023/24 will be adopted and notified to DLUHC	Head of Financial Planning & Support	31/1/24
The capital expenditure prudential indicators will be amended and approved as appropriate.	Head of Financial Planning & Support	31/3/24
Regular monitoring of the Flexible Use of Capital Receipts Strategy for 2023/24 will take place throughout 2023/24 as part of the current quarterly budget monitoring reports to Executive, with any amendments required to the plans contained in the Strategy as proposals are developed and expenditure is incurred being reported to Executive and approved by Council and notified to DLUHC as appropriate.	Head of Financial Planning & Support	30/6/24

## Appendices

1	<b>Revised Flexible Use of Capital Receipts Strategy 2023/24</b>
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## Background papers

Body	Report title	Date
Department for Levelling Up, Housing & Communities (DLUHC)	Flexible use of capital receipts direction: local authorities <a href="https://publishing.service.gov.uk">Direction - Flexible use of capital assets (publishing.service.gov.uk)</a>	2/8/22
Department for Levelling Up, Housing & Communities (DLUHC)	Statutory Guidance on the Flexible Use of Capital Receipts (updated August 2022) <a href="https://www.gov.uk">Guidance on the flexible use of capital receipts (updated August 2022) - GOV.UK (www.gov.uk)</a>	2/8/22
Council	Flexible Use of Capital Receipts Strategy 2021/22	20/10/21
Council	Revenue Budget, Council Tax, Medium Term Financial Plan and Capital Strategy 2022/23	23/2/22
Executive	Revenue and Capital Budget – Year-End Outturn position 2021/22 report	14/6/22
Council	Flexible Use of Capital Receipts Strategy 2022/23	7/9/22

Executive	Children’s Services Financial Improvement Plan	14/2/23
Council	Revenue Budget, Council Tax, Medium Term Financial Plan and Capital Strategy 2023/24	27/2/23
Executive	Revenue and Capital Budget – Year-End Outturn position 2022/23 report	20/6/23
Executive	Revenue and Capital Budget – Forecast Outturn position at Quarter One 2023/24	23/8/23
Executive	Revenue and Capital Budget Forecast Outturn position at Quarter Two 2023/24	21/11/23
Executive	Asset Review	21/11/23
Executive	Flexible Use of Capital Receipts Strategy – 2023/24 Refresh	21/11/23

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