

Somerset West and Taunton Council

Full Council – 5 July 2022

Use of Urgency Powers and Supplementary Capital Budget for Coal Orchard Regeneration Project

This matter is the responsibility of Executive Member for Corporate Resources

Report Author: Chris Hall, Director of Place and Climate Change

1 Executive Summary / Purpose of the Report

- 1.1 Following a period of poor performance, the programme team served a termination notice on Midas on 27th January 2022. During the notice period Midas announced their intention to appoint administrators, left site and have not returned.
- 1.2 The contract was officially terminated by SWT on 25th Feb 2022 following expiry of the notice. A plan to complete the outstanding works was established.
- 1.3 Whilst Midas owed money to its supply chain SWT were up to date with contractual payments at the point of termination.
- 1.4 The team have worked hard to establish the programme of works necessary for completion in addition to securing contractors and material supply.
- 1.5 Having taken into account the approved budget, including contingency and incentives fund, the budget gap to completion is estimated at £775,000.
- 1.6 Urgency powers of the Chief Executive were used to add £675,000 of these costs to the capital programme, a decision usually reserved for Full Council but required urgently due to the limited ability to establish a special Full Council meeting during the pre-election period. Using these powers has allowed the scheme to continue, whilst reducing the risk of further delays and cost growth.
- 1.7 Since the urgent decision further costs have been identified which increase the overall gap by £100,000. This report seeks to add this addition amount to the capital programme.

2 Recommendations

- 2.1 Full Council note the use of urgency powers by the Chief Executive who approved the increased capital budget allocation of £675,000 towards the completion of the Coal Orchard regeneration scheme.
- 2.2 Full Council notes the allocation of a refundable £45,000 bond to National House

Building Council, approved by the S151 Officer and managed through cash flow.

- 2.3 Full Council approves the transfer of £185,000 from General Reserves to a new Coal Orchard Warranty Earmarked Reserve to manage any potential financial liabilities under warranty claims.
- 2.4 Full Council delegates authority to allocate funds from this reserve and approve related uplifts in relevant budgets to the Director of Development and Place, the Assistant Director Major and Special Projects, and the S151 Officer.
- 2.5 Full Council approve a further supplementary capital budget increase of £100,000 for the Coal Orchard scheme additional £100,000 to be funded by capital receipts.

3 Risk Assessment

- 3.1 There are no risks associated with the use of the Council's urgency powers.
- 3.2 There remain risks in delivery of the scheme, but these are being managed by the delivery team and reduce with each phase completing. We are in the final stages of the delivery programme.
- 3.3 Should Council not support the additional £100,000 capital allocation completion of the scheme will be at risk.
- 3.4 Should Council not support the creation of a warranty reserve we will not be able to establish an NHBC warranties on the properties for sale, making mortgage lenders for those units unable to release funds leading to a collapse of the sale.

4 Background

- 4.1 The Coal Orchard scheme is a mixed use regeneration scheme made up of residential units, commercial space, and public realm.
- 4.2 The fixed price contract was awarded to Midas following a competitive public procurement exercise.
- 4.3 The programme team became increasingly dissatisfied with the performance of Midas and despite a range of control measures being implemented, progress slowed to an unacceptable level and notice of termination was issued on 27th January 2022.
- 4.4 During this notice period Midas announced their intention to appoint administrators and left site. In doing so the programme team had to ensure the security of the site, the materials already paid for and site insurance. They also had to manage a range of subcontractor contacts wishing to gain entry to collect their own tools.
- 4.5 The cost of these initial actions was met by reallocating underspends within the Development and Place directorate.
- 4.6 We are aware that most of the subcontractors working on the scheme are owed money from Midas. SWT are not able to step in and pay these costs as the council has already paid Midas for these works in accordance with the contract valuations. The contract also required Midas to pay their supply chain on receipt of council funds, and evidently in part they did not do so.

- 4.7 The Midas contract was entered at a fixed price. This usually affords the client (Somerset West and Taunton Council) a level of protection against increasing costs, however when this contract was terminated (which it would have done through the administration process even if SWTC had not proactively terminated) we become exposed to the rising costs of labour and materials. We consider that the rising costs were a key contributor to the poor performance and so a cost increase to the Council had become inevitable.
- 4.8 The team has engaged a range of contractors to complete the project, many of which were part of the original supply chain. This has been a testing time for both parties due to the debt owed by Midas.
- 4.9 Under the Midas contract National House-Building Council (NHBC) warranties would have been provided and funded. In the absence of the contract Somerset West and Taunton Council needs to establish these warranties to cover any future issues with properties post sale. Whilst there are other warranty providers NHBC are recognised as being one of the leaders and we know them to be acceptable to mortgage lenders. To join the NHBC scheme we must pay the developer bond of £45,000. This bond is to protect NHBC from the failure of the developer (SWTC). Whilst we are a public body and cannot fail in the way private developer might, we are still required to pay the bond. This would be returned to the Council on conclusion of the 2.5 year initial defects warranty period.
- 4.10 The bond held by NHBC is to cover administration of the warranty process in the event of our failure as a going concern. It does not pay for remedial works for which we must demonstrate access to sufficient funds. We proposed to do this by establishing an Earmarked Reserve of £185,000 to be funded through a transfer from the General Reserve.
- 4.11 It is easy to misunderstand the warranty process as we are joining a scheme but remain financially responsible for claims. It could be considered as an NHBC managed self-insurance scheme. A contractor has been identified to oversee the process on our behalf.

5 Links to Corporate Strategy

Homes and Communities:

A district which offers a choice of good quality homes for our residents, whatever their age and income, in communities where support is available for those who need it.

Objectives:

Increase the number of affordable and social homes in our urban towns, rural and coastal communities; including those built by the Council

A financially self-sufficient Council which has expanded its commercial activity and generated more income in order to support service provision.

An Enterprising Council

Objectives:

Pursue commercial investment opportunities that generate additional income that can be reinvested in service delivery in order to protect or enhance services on which our communities rely. Supported by a commercial investment strategy

Meet the challenge of Government completely withdrawing the Council's grant funding

Ensure our land and property assets support the achievement of the council's objectives (including service delivery, regeneration projects and community initiatives)

6 Finance / Resource Implications

- 6.1 Owing to the circumstances described above the scheme could not be completed within the approved budget, and the level of additional spend cannot be met within the directorate through in year underspends. To be able to commit to further costs of the scale required to complete the project it is appropriate to secure additional budget approval in line with the Council's Financial Procedure Rules. The additional capital required exceeded officer delegations and required the use of urgency powers to continue the works to completion on a timely basis with minimised risks.
- 6.2 A Supplementary Capital Budget increase of £675,000 was approved through the urgent decision taken by the Chief Executive Officer. A further increase of £100k is also required due to additional costs emerging that were not initially identified.
- 6.3 The S151 Officer has supported proposals to finance the budget for the additional capital costs as summarised below.

Table 1: Financing the Increased Capital Costs

Source	Amount £
Environment and Leisure Initiatives Fund (2022/23 Revenue Budget)	£50,000
Future High Streets Fund capital grant reallocation	£250,000
Temporary Borrowing initially – to be repaid by capital receipts from disposals	£475,000

- 6.4 The Environment and Leisure Fund is a one-off fund created as part of approved budget for 2022/23 financial year. It allows for the delivery of works and improvements that have been desirable but traditionally unfunded, such as to parks and open spaces. The allocation from this fund reflects the improved open space area that the project will deliver.
- 6.5 The Future High Streets Fund (FHSF) capital grant funding was awarded to deliver a range of improvements across Taunton. With the known costs for various FHSF activity planned thus far this budget had some capacity. With the agreement of Dept of Levelling Up, Housing and Communities (DLUHC) £250,000 has been transferred to support the completion of the Coal Orchard.
- 6.6 The balance of £475,000 will initially be funded through internal capital borrowing as up-front bridging finance; and will be financed by the anticipated uplift in the capital receipts to be generated through this development as identified in Table 2 and 6.8 below. The S151 Officer will oversee this bridging requirements and setting aside of future capital receipts to repay this debt.

- 6.7 The cost to deliver the scheme has increased, as has its capital value. During 2021 Taunton was identified as having the highest percentage in property price growth in the country at 21.8% (Revealed: the UK's 2021 house price growth winners - Halifax (insideconveyancing.co.uk)) This price increase has and will continue to lead to higher sale values of the residential units.
- 6.8 Whilst there remains the chance of property price fluctuation, the limited supply locally continues to feed price growth. The open market units that have been sold to date (Subject To Contract) have all achieved a higher price than the initial business case estimated.

Table 2: Projected Capital Receipts from This Development

	No. of units	Business case income	Actual sales + Future values	Estimated Capital Growth
Original business case residential units	40	£6,680,147	£7,554,344	£874,188

- 6.9 Of the 29 units put to market for sale to date, 24 have been sold. The other 11 units are for future sale upon completion of the current lease to the University of Plymouth. The estimated valuation of these takes account of the equivalent unit type sale agreed price with an uplift in the region of 8%. These properties will complete on their leases in September 2023.
- 6.10 As outlined above in 4.9 the provision of a refundable bond will be deposited with NHBC for the sum of £45,000. This covers a period of 2½ years, at which point the bond will be refunded to the Council. This will be held on the balance sheet as a long-term receivable as a full refund is expected at the end of the term.
- 6.11 The allocation of £185,000 to an Earmarked Reserve to underwrite warranted costs is proposed to be funded by General Reserves. The funds will only be called upon in the event the Council has relevant future financial obligations to meet. It is proposed to delegate decision to allocate funds from this reserve and approve related uplifts in relevant budgets to the Director of Development and Place, the Assistant Director Major and Special Projects and the S151 Officer.
- 6.12 With the commercial units within the Coal Orchard development having been complete prior to the Midas contract termination all the additional costs included in this report relate to the residential units and public realm area. For this reason, the report is focused on the capital cost and value increases and excludes commercial rental price for the urgency decision.

Financial Implications for Somerset Council

- 6.13 The completion of the Coal Orchard regeneration scheme will clearly lead to assets transferring to the unitary authority on 1 April 2023. The obligations in respect of the bond and warranty will continue beyond vesting day such that ongoing risk management obligations and any potential surpluses arising from set aside funds would return to the unitary council as the successor local authority to SWTC.
- 6.14 It is anticipated that the additional costs associated with completing the capital development will be incurred prior to vesting day. Similarly, capital receipts from the disposal of residential units are likely to occur either side of vesting day. The financing

strategy for this scheme including planned use of capital receipts generated to reduce ongoing debt financing requirements will be advised to the unitary's S151 Officer through LGR transition arrangements. The rights and obligations in respect of commercial units will also transfer to the unitary on 1 April 2023.

7 Legal Implications

- 7.1 The Deputy Monitoring Officer has provided guidance on the governance process and correct use of Urgency Powers.

8 Asset Management Implications

- 8.1 There are no new Asset Management implications, the decision to build the scheme forms part of the original business case and Council approval. There would have been implications should the scheme not have completed.

9 Consultation Implications

- 9.1 The use of the Council's urgency powers requires consultation and agreement of the chair of Corporate Scrutiny, which was provided by Cllr Wren on 30th March 2022.

10 Corporate Scrutiny Comments

- 10.1 Clarity was sought on the number of units within the scheme that had been sold vs those that had been let. There are 40 units in total with 11 of these being let to the University of Plymouth. Of the remaining 29 units 26 have been sold subject to contract with 3 being available on the open market. 8 of the 26 sold units were sold at a discounted open market price, these figures were correct at the point as of 1st June.
- 10.2 The committee made several requests for commercially confidential information that could not be shared in public session, it was agreed that this would be provided as confidential response for committee Members following the meeting.
- 10.3 Several questions were asked regarding the mixed use of capital and revenue funding in the recommendations. The committee were reminded that we can use capital receipts to fund the capital programme increases, with revenue funds for revenue expenditure. Whilst the Earmarked reserve of £185k might be traditionally considered as capital the likely use of this fund would be for lower value individual items and are therefore revenue funded.
- 10.4 A question was raised as to how a contribution could be made from the Future High Street Funds. Officers were able to confirm that a representation had been made to transfer some of this money from the Firepool project, and whilst it was awaiting final sign off the correspondence of this has been positive.
- 10.5 The cost for the NHBC warranty was questioned by the committee. The £45,000 is a refundable deposit. The £185,000 earmarked reserve would be used to fulfil obligations on warranty issues for the two and a half years following sale. Officers were challenged on the warranties that would be in place with subcontractors. Whilst these will be in place in some if not all instances, they are not be deemed suitable to be transferred to the buyer as part of the mortgage / conveyancing process. Where a claim is made against this council as the developer we would need to resolve that claim, either by passing it to

the original subcontractor or by resolving the issue with this fund.

10.6 With Midas having entered administration the question was raised as to if we would receive any money back given the risking costs of the scheme. As this council are not owed anything from Midas we are not listed as a creditor with the administration. This council terminated the contract before Midas placed themselves in administration and whilst we have made the administrators aware of the rising costs of the scheme we do not anticipate any financial support.

Democratic Path:

- **Corporate Scrutiny Committee – Yes 1st June 2022**
- **Executive – No**
- **Full Council – Yes 5th July 2022**

Reporting Frequency: Once only

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