Review of Akzo Nobel Purchase and Disposal

To: Adele Taylor, Executive Director of Finance and Commercial

8th April 2024

From: Marcus Richards, FCPFA, Partner – Corporate Finance

1. Transmittal Letter

In accordance with the terms of our engagement agreement dated 30th January 2024, we EY have prepared this report to Slough Borough Council.

Purpose of Report and Restrictions on its use

This report was prepared on your instructions solely for the purpose of supporting the assessment of the treatment of the acquisition and subsequent disposal of the Akzo Nobel site ('the site').

As others may seek to use it for different purposes, this report should not be quoted, referred to or shown to any other parties unless so required by court order or a regulatory authority, without our prior consent in writing.

In carrying out our work and preparing our report, we have worked solely on the instructions of Slough Borough Council. Our report may not have considered issues relevant to any third parties. Any use that such third parties may choose to make of our report is entirely at their own risk and we shall have no responsibility whatsoever in relation to any such use.

This report should not be provided to any third parties without our prior approval and without them recognising in writing that we assume no responsibility or liability whatsoever to them in respect of the contents of our deliverables.

Scope of our work

Our work in connection with this assignment is of a different nature to that of an audit. Our scope of work does not provide for formal accounting or legal advice, and as such the views presented represent an indicative commercial view. We recommend that the Council commissions formal accounting and legal advice, where it considers it necessary to do so.

Our report to you is based on inquiries of, and discussions with, Slough Borough Council.

We have not sought to verify the accuracy of the data or the information and explanations provided. Our work has been limited in scope and time and highlights that further work will be required to conclude on a number of points raised within this report.

2. Executive Summary

Slough Borough Council (''the Council'') purchased a site for development of housing in January 2021, known as the Akzo Nobel site. This was initially purchased for the HRA and funded by a mixture of borrowing and various reserves. Under Section 120 of the Local Government Act 1972 the Council has power to acquire by agreement any land for the purposes of any of its functions under the above Act or any other enactment or for the benefit, **improvement,** or development of its area.

Following on from the issuance of a Section 114, as part of the Council's asset disposal strategy, this site was sold in November 2022.

This paper sets out the accounting adjustments required to appropriately account for the transaction, and transfer excess capital receipts from the HRA to the General Fund, utilising the principle of no detriment to the HRA in line with relevant Government guidance.

The Council need to make a number of accounting adjustments, which can be split into three phases:

1. initial purchase and operation,
2. following approval to dispose, and
3. following approval to transfer excess capital receipts.

The nature and rationale for each accounting entry is provided in an Appendix.

There is no basis to appropriate the asset from it's use within the Housing Revenue Account (HRA) to a use within the General Fund (GF) prior to or following disposal. However, subject to certain requirements being met, excess capital receipts from the disposal of HRA assets can be used to offset against General Fund capital expenditure. Where the Council can demonstrate that:

1. there is no detriment to the HRA, and
2. that the HRA does not require the 'excess capital receipts' to deliver a sustainable 30-year business plan

then it is within the Council's gift to apply excess capital receipts to the General Fund. This indicative view should be tested with the Council's legal advisors. A formal process for assessing further excess capital receipts from the HRA will be set out as part of an upcoming review of the Council's Capital Disposals Process.

Specifically, for the Akzo Nobel transaction, we have calculated that there are excess capital receipts of £101,802,214. When applied to the Council's Capitalisation Direction (CD), this has the following impact on the Council's Minimum Revenue Provision (MRP) over the Medium-Term Financial Planning Period (MTFP):

Summary Table: Impact of Akzo Nobel transaction on MRP charges, 2022/23 to 2027/28

MRP Charge, £	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28
Total MRP charge	21,059,243	16,620,899	16,114,272	12,419,193	11,114,848	11,205,152
Impact of Akzo Nobel Transaction	-	-4,369,067	-4,375,591	-3,495,818	-1,842,651	-2,207,903

The review highlighted a number of areas where the Council could improve the quality and consistency of it's documentation. This should enable robust governance, with decisions based on appropriate and sufficiently transparent information. This is particularly important to demonstrate a clear audit trail to the Council's auditors.

3. Scope of Work

Documents provided by the Council were reviewed, to provide advice on the appropriate accounting transaction regarding the Akzo Nobel transaction (November 2022). Currently, the Council are considering how best to account for the transaction, given that at the point of sale it was considered a General Fund asset, however, was accounted for in the Housing Revenue Account. In reaching the following recommendations, the following documents have been reviewed:

- **Cabinet papers from January 2021 and November 2022:** Relating to the acquisition and subsequent disposal of the land. Many appendices were not publicly available, including the financial case for the acquisition. These appendices were not made available during the review, however, were referenced in the legal review paper noted below.
- **Akzo Nobel Briefing Note - Legal Review 9 Aug 2023**: Setting out the legal implications of the transaction.
- **Briefing Note - Akzo Nobel Acquisition - Fixed Asset Register:** Which sets out the fixed asset register entries made on acquisition. We assume that no further entries have been made regarding any revaluation, change of asset class, or disposal.
- **Historic Budget reports and Cabinet papers**: Budget reports were reviewed with information utilised where referenced in this paper, however inconsistencies between underlying financial data and Cabinet papers more broadly limited the use of this source.

- **Relevant government guidance:** Such as November 2020 guidance on the 'Operation of the Housing Revenue Account ring-fence[1]

4. Report structure

The structure of this report is guided by the key items of focus within the review. Recommendations are summarised in the section 'Recommendations' and have provided additional observations that have informed these recommendations in the section titled 'Observations'. The structure of the report is summarised below:

4. **Recommendations:** indicative accounting treatment of the transaction.

5. **Timeline of transaction**: summary of the timeline of the transaction.

6. **Observations**: additional observations highlighted during the review.

7. **Financial considerations:** summary of the financial considerations that are relevant to the transaction.

8. **Governance and legal considerations:** governance and legal considerations that are relevant to the transaction.

5. Recommendations

The accounting treatment should reflect the substance of the transaction, with appropriate approvals obtained prior to making each accounting transaction. The detailed accounting transactions are set out in an Appendix, where the nature and purpose of each transaction is also shown.

Before actioning the accounting entries, approval must be obtained from the commissioners to transfer 'excess capital receipts' to the GF from the HRA. As part of this approval, officers must provide appropriate evidence to demonstrate that:

1. there is no detriment to the HRA, and
2. that the HRA does not require the 'excess capital receipts' to deliver a sustainable 30-year business plan.

Indicative legal advice has indicated that Cabinet approval is not required to transfer excess capital receipts from the HRA to the GF. Given the materiality of excess capital receipts, the Council should as a minimum inform Cabinet of the approach being taken. Subject to legal and Cabinet approval, the Council could adopt a policy whereby excess capital receipts from the HRA are applied to the General Fund, subject to the conditions set out above. This decision is for the authority to take, and it should be able to explain the basis of its decision to its tenants and external auditor.

6. Timeline of transaction

In order to provide an indicative accounting treatment for the transaction, it is important to consider the sequencing of events relating to the acquisition and disposal. This timeline has been used to inform the recommended accounting transactions.

Table 1: Timeline of the Transaction

Date	Description
May-20	Cabinet delegated authority to officers, in consultation with the Lead Member for Housing & Community Safety, to complete Heads of Terms to seek to acquire land on the former Akzo Nobel site for the purposes of supplying future housing. Under Section 120 of the Local Government Act 1972 the Council has power to acquire by agreement any land for

[1] Operation of the Housing Revenue Account ring-fence - GOV.UK (www.gov.uk)

Date	Description
	the purposes of any of its functions under the above Act or any other enactment or for the benefit, improvement, or development of its area. Accordingly, provided that the Council determines that the acquisition of the Akzo Nobel site meets the criteria in Section 120, it has power under the Section to acquire the site
Jan-21	Cabinet approval sought to acquire the residential element of the former Akzo Nobel site on Wexham Road for the development of up to 1,000 new homes.
Feb-21	The Akzo Nobel site was acquired by the Council in February 2021 for £46,236,662.40 (comprised of £38,530,552 + £7,706,110.40 representing 20% VAT). £2,000,000 plus VAT was retained as security to guarantee the Seller's performance of its obligations to construct a spine road leading to the property. The legal review performed in August 2023 references closed working papers, which were not provided during this review. They reference funding from the HRA, £14,719,000 from the Major Repairs Reserve and £21,817,000 from borrowing. In any case, accounting entries indicate that the initial £36,536,100 was funded as follows: - £5,000,000 from the Capital Receipts Reserve, - £6,874,479 from the Major Repairs Reserve, - £1,886,695 from the s106 Reserve, - £22,774,926 from External Borrowing. Stamp Duty Land Tax (SDLT) relief was claimed due to the scheme being a housing development, therefore no SDLT was paid on acquisition.
Aug-22	Payments made in relation to the deferred payment for the construction of a road on the Akzo Nobel site, totalling £2,191,330. The Council's finance team have assumed this was funded by increased HRA borrowing. At the time of the review, the Council were unable to confirm this assumption.
Nov-22	The property was sold in November 2022 for £143,750,000 (the completion amount was £143,737,617.67 as allowance was made for rent apportionment and rent deposit and interest thereon in relation to the Blu-lease). Following disposal of the site, SDLT of £2,301,033 became due, as the site had not been developed for housing.
Aug-23	A review of the purchase and subsequent disposal was carried out by the Council's finance team. This indicated that the disposal could be treated as a General Fund disposal, subject to any legal and governance considerations.
Jan-24	Under the Best Value Directions the Finance Commissioner would need to 'sign off' any movement of Capital Receipts Reserve, and ensure the transaction is aligned to guidance and approach supported by its external auditors. There is no legal requirement for any compensation for the HRA, however, in applying a who benefits principle and being fair to tenants and council taxpayers it is fair that tenants should not suffer a detriment and the Council should be able to transfer capital receipts to the credit of the MRR, provided that this is done in accordance with proper accounting practices. This implies that the Council should demonstrate sufficiency of resources within the HRA to support the 30-year business plan.

7. Observations

The review of this transaction has highlighted some observations about current working practices, which be relevant to other transactions and broader finance improvement initiatives at the Council.

Table 2: Initial Observations

Observation	Description	Broader relevance
Insufficient documentation supporting decision	There is a lack of documented rationale supporting the initial purpose of acquisition. This not only makes it difficult to assess the appropriate accounting transaction but would also make it difficult to assess whether the purchase provided value for money or had a robust financial or economic case for the initial purchase. There is evidence that the purchase supported the strategic objectives of the Council.	It is important that the Council maintains proper documentation to promote accountability and transparency on its decision making. Where this documentation is not kept, it is difficult to review past decisions and use them to inform future decision making.
Lack of process	Instances of accounting entries being made with no supporting governance approvals or decision making. This relates to an asset category transfer from HRA to GF (made in September 2023, backdated to March 2021).	There is a risk that financial information does not reflect the nature and timing of transactions, or the delegated authority in place to process transactions.
Underlying evidence contradicts assumptions in Cabinet paper	Instances of Cabinet papers and underlying accounting entries contradicting each other. This specifically related to funding of the initial purchase.	There is a risk that delegated authority is provided based on inaccurate information.

8. Financial considerations

This section sets out the financial considerations, including accounting adjustments. In summary, the Akzo Nobel site was purchased as an HRA asset, and should have been accounted for as such up to and including it's disposal. Following disposals, any excess capital receipts that are not required by the HRA can be utilised by the GF, subject to commissioner approval.

i. Initial recognition

The Council has recognised the purchase of the property as an Investment Property within the HRA. Investment property is property (land or a building or part of a building or both) held (by the owner or by the lessee under a finance lease) to earn rentals or for capital appreciation or both (IAS 40.5). IAS 40 – Investment Property provides examples of investment property, which includes 'property that is being constructed or developed for future use as investment property'. Therefore, initial recognition as an investment property appears to be valid.

Cabinet papers from January 2021 indicate that the intention was to develop the site to build homes that would be used for housing needs. Therefore, it appears appropriate to recognise this within the HRA.

Given the Council's intention to recognise the eventual disposal as part of the General Fund, we have considered whether there would be grounds to consider this acquisition part of the General Fund on initial recognition. Cabinet papers from January 2021 indicate that this purchase was made on the basis that the land could be developed to provide up to 1,000 homes for the HRA. No information was reviewed that would suggest that at the time of purchase, there are grounds to treat the asset as part of the General Fund.

Finding: *The initial recognition as a HRA investment property appears to be valid in accounting terms. We have not received any evidence which would suggest treatment as part of the General Fund on initial recognition.*

The property was purchased for £38,530,552 net of VAT, with £2,000,000 of this deferred to pending satisfactory completion of seller obligations. The review paper from August 2023 suggests the purchase was funded from a mixture of the Major Repairs Reserve (£14,719,000) and from borrowing (£21,817,000) covering the initial purchase. However, accounting entries indicate that the initial £36,536,100 was funded as follows:

- £5,000,000 from the Capital Receipts Reserve,
- £6,874,479 from the Major Repairs Reserve,
- £1,886,695 from the s106 Reserve,
- £22,774,926 from Borrowing.

Finding: *Cabinet papers indicate that the purchase was funded solely by the HRA, from the Major Repairs Reserve and borrowing, contradicting the funding approach shown in the underlying accounting entries.*

We have not been provided any information to verify how the £2,000,000 deferred payment has been accounted for.

The Fixed Asset Register contains the following entry in financial year 20/21:

Table 3: Fixed Asset Register entry on Initial Recognition

Category	RptLevel 1 Name	RptLevel 2 Name	Asset Reference	Balance at Start of Year	Acquisitions	Balance at End of Year
Investment Properties	Housing	Housing Non-Operational (Non-Op)	9097	0.00	37,343,547.36	37,343,547.36

This clearly shows a discrepancy between the purchase price reported in Cabinet papers, and on the fixed asset register.

Finding: *The asset has been initially recognised at £1,187,005 below it's purchase price. This is assumed to be due to the £2,000,000 deferred payment net of directly attributable transaction costs, however no evidence was provided by the Council to support this.*

ii. Subsequent measurement

There are many examples in the sector of appropriation from the HRA to the General Fund, and vice versa. S122 of the Local Government Act 1972 states that a 'council may appropriate for any purpose for which the council are authorised by this or any other enactment to acquire land by agreement any land which belongs to the council and is no longer required for the purpose for which it is held immediately before the appropriation'.

Generally, a Council would appropriate an asset from the HRA to the General Fund if the asset was not used by the HRA, and the General Fund had a use for the asset. When an appropriation takes place, then guidance[2] requires that there are appropriate adjustments made to the Capital Finance Requirements of both the HRA and General Fund, with the appropriation occurring at a market value. As any appropriation would be at a market value, there is no General Fund benefit to appropriating from the HRA to the General Fund for the purposes of disposal through the General Fund.

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[2] Equally, properties which may originally have been provided under one of the powers in section 74 of the 1989 Act (or their predecessor powers) may no longer fulfil their original purpose. In these circumstances, the authority should consider their removal from the HRA by appropriating the property to a different purpose….The decision is for the authority to take, though it should be able to explain the basis of its decision to its external auditor and tenants, if called upon to do so [Operation of the Housing Revenue Account ring-fence - GOV.UK (www.gov.uk)]

Finding: *There is no benefit to the General Fund in appropriating assets from the HRA to the General Fund prior to disposal.*

For completeness, consideration was made to determine if there was a basis to appropriate from the HRA to the General Fund, prior to disposal. Two criteria that need to be satisfied to appropriate the asset from the HRA to the General Fund:

1. **Legal basis** – there appears to be a legal basis for the appropriation at the point in time which the Akzo Nobel site ceased to be held for the purpose of developing homes. Based on Cabinet papers at the time of the disposal, it is suggested that the Council did not have the financial means to develop the site, potentially at the point of purchase, but certainly not from March 2022. However, S122 specifically refers to why the site was being held, as opposed to the Council having the financial means to deliver the development. Therefore, there does not appear to be a legal basis to transfer to the General Fund. Based on Cabinet papers, Avison Young (AY) as the Council's commercial property advisors, began to market the Akzo Nobel site in July 2022. This would indicate that the site was no longer being held for the development of housing.

2. **Delegated Authority –** based on the Cabinet papers reviewed, no approval was sought to appropriate the asset from the HRA to the General Fund prior to it's disposal. The approval sought to dispose of the asset, however no reference was made to appropriation of the asset, or receipts being used for the benefit of either the HRA or General Fund.

Finding: *No delegated authority was in place to appropriate the Akzo Nobel site from the HRA to the General Fund, prior to the asset being sold. Therefore, no accounting adjustments from the HRA to the General Fund should be made until after the sale in November 2022.*

iii. Derecognition

Disposal of the Akzo Nobel site was approved at Cabinet in October 2022, with the sale completing in November 2022 for £143,750,000 (the completion amount was £143,737,617 'as allowance was made for rent apportionment and rent deposit and interest thereon in relation to the Blu-lease'. Legal advice obtained by the Council indicates that the disposal was lawful (under either s123 of the Local Government Act 1972, or the General Housing Consent 2013 paragraph A3.1.1). As no approval was sought to appropriate from the HRA to the General Fund prior to the disposal of the site, it appears appropriate to initially recognise the disposal from the HRA.

Finding: *The disposal should initially be recognised within the HRA.*

Following disposal, the funding sources utilised by the HRA should be repaid. This includes the s106 reserve, Major Repairs Reserve, Borrowing and Capital Receipts Reserve. The remaining capital receipts should be held in the Capital Receipts Reserve, with their use to be determined by the Council.

Finding: *On disposal, all HRA funding sources should be reimbursed from the capital receipts.*

iv. Transfer of excess capital receipts from HRA to the General Fund

As the asset has already been sold, there is no asset to appropriate, therefore appropriation is not a valid way of transferring any excess capital receipts from the HRA to the General Fund.

For completeness, we have considered under what circumstances Secretary of State approval would be required before processing any transfer of excess capital receipts from the HRA capital receipts reserve to the General Fund capital receipts reserve. Guidance[3] on the operation of the HRA ring-fence indicates that it is within the

[3] Equally, properties which may originally have been provided under one of the powers in section 74 of the 1989 Act (or their predecessor powers) may no longer fulfil their original purpose. In these circumstances, the

Council's gift to appropriate, however it should be able to demonstrate the basis for doing so to it's tenants and external auditors.

Secretary of State approval would be required in the following circumstances:

- If housing is present on the land - Section 19 of the 1985 Housing Act is clear that if housing exists on a piece of land, that the land cannot be appropriated for any other purpose without explicit Secretary of State approval. As the site had not been developed and did not contain any housing, there is no requirement for Secretary of State approval.
- If the asset was incorrectly accounted for within the HRA – per Section 12 of the 1985 Housing Act. As set out in section i. above, it does not appear that this is the case.

The Council should be able to demonstrate through any transfer that there is no detriment to the HRA. This is taken to mean that any accounting adjustments should mean that the HRA is not penalised for purchasing and disposing of the Akzo Nobel site. Therefore, the Council should ensure that there is a nil net impact on the HRA for the entire transaction, considering:

Table 4: Reconciliation of Gross to Excess Capital Receipts

Reconciliation of Gross to Excess Capital Receipts	£
Gross Receipts	**143,737,617**
Initial Purchase Price (includes repayment of funding sources)	37,343,547
Addition of Spine Road	2,191,330
SDLT	2,301,333
Costs of sale - directly attributable	99,192
Excess Capital Receipts	**101,802,214**
Revenue - HRA Borrowing Costs	1,418,424

Finding: *There are no provisions within the MRP guidance or associated legal acts, that suggest the Council is not permitted to transfer 'excess capital receipts' from the HRA to the General Fund. The Council should seek appropriate legal advice to confirm this indicative view.*

Finding: *Commissioner approval should be sought to transfer the 'excess capital receipts' from the HRA to the General Fund at a value of £101,802,214 in March 2024.*

Finding: *Indicative legal advice has suggested that Cabinet approval is not required to transfer the 'excess capital receipts' from the HRA to the General Fund.*

v. Impact on Minimum Revenue Provision

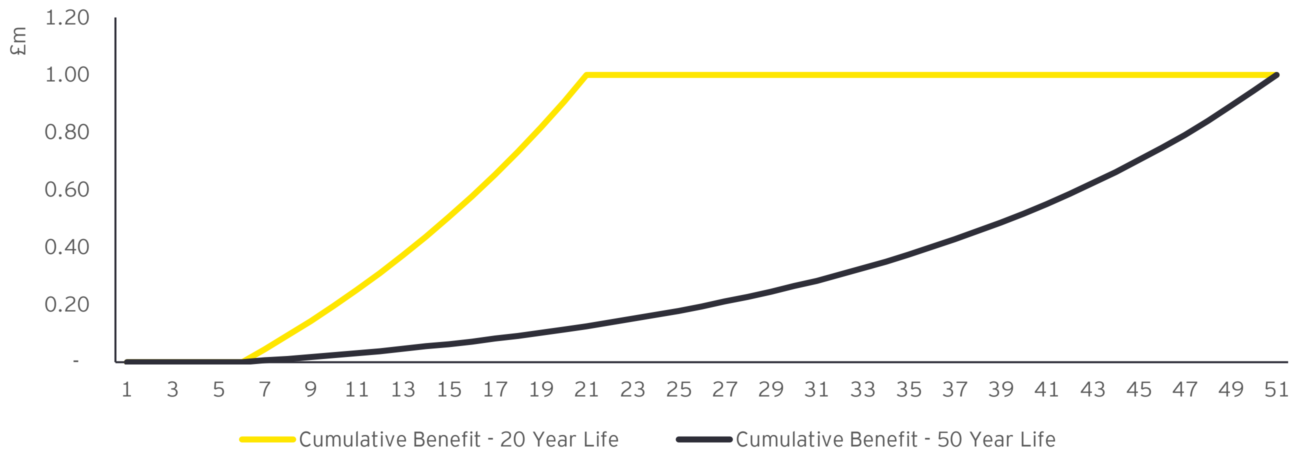
In transferring the excess capital receipts of £101,802,214 to the General Fund there is an increased amount of capital receipts available which can be used to finance the capitalisation direction or repay debt, and as such will reduce the MRP charge for future years.

The Council's policy is to pay down their Capitalisation Direction (CD) with any capital receipts that have not already been used to fund capital expenditure. CD has a notional 20-year useful life, and a notional interest rate

authority should consider their removal from the HRA by appropriating the property to a different purpose**….**The decision is for the authority to take, though it should be able to explain the basis of its decision to its external auditor and tenants, if called upon to do so [Operation of the Housing Revenue Account ring-fence - GOV.UK (www.gov.uk)] of the usual Public Works Loan Board (PWLB) lending rate plus a premium of 1%. The Council receives the certainty rate from PWLB, which gives a 0.2% on usual PWLB lending rates ie a net adjustment of 0.8%.

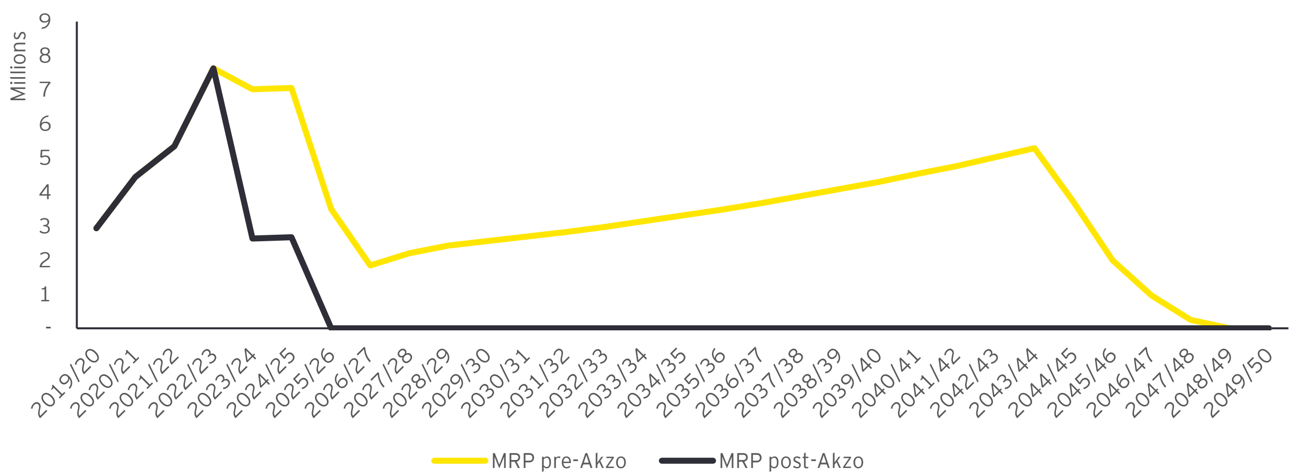
The policy of prioritising the financing of the Capitalisation Direction means that the Council are obtaining a more immediate benefit in the application of their available capital receipts, which is reflective of the short-term financial pressures the Council is under. This is demonstrated by the example below, where the MRP charges for a £5m Capitalisation Direction balance (20-year life) have been compared with the MRP charges for a longer-term loan (50 year-life). The cumulative benefit of applying a £1m capital receipt in year 5 has been shown.

Figure 1: Example showing cumulative reduction in MRP when applying a £1m Capital Receipt in Year 5



By applying the Council's policy and utilising the inputs as noted above, this reduces MRP by £82,152,240 in total compared to if there was no transfer of excess capital receipts to the General Fund. The application of Capital Receipts is shown **in Appendix 2.**

Figure 2: MRP Charges from Capitalisation Direction



Over the Medium-Term Financial Planning Period, this equates to:

Table 5: Impact of Akzo Nobel transaction on MRP charges, 2022/23 to 2027/28

MRP Charge, £, Pre-Akzo	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28
a) Finance Leases - Property	536,432	338,520	339,525	340,533	341,543	342,558
b) Finance Leases - Vehicles	-	-	-	-	-	-
c) PFI	803,596	1,470,040	1,802,788	1,905,528	1,441,963	1,444,067
d) Supported Borrowing	1,502,053	1,441,971	1,384,292	1,328,920	1,275,763	1,224,733
e) Capitalisation Directions	7,628,843	7,011,710	7,048,419	3,495,818	1,842,651	2,207,903
f) Prudential Borrowing	10,588,319	10,727,725	9,914,839	8,844,212	8,055,579	8,193,794
Total MRP Charge	**21,059,243**	**20,989,966**	**20,489,863**	**15,915,011**	**12,957,499**	**13,413,055**
MRP Charge, £, Post-Akzo	**2022/23**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28**
a) Finance Leases - Property	536,432	338,520	339,525	340,533	341,543	342,558
b) Finance Leases - Vehicles	-	-	-	-	-	-
c) PFI	803,596	1,470,040	1,802,788	1,905,528	1,441,963	1,444,067
d) Supported Borrowing	1,502,053	1,441,971	1,384,292	1,328,920	1,275,763	1,224,733
e) Capitalisation Directions	7,628,843	2,642,643	2,672,828	0	0	0
f) Prudential Borrowing	10,588,319	10,727,725	9,914,839	8,844,212	8,055,579	8,193,794
Total MRP Charge	**21,059,243**	**16,620,899**	**16,114,272**	**12,419,193**	**11,114,848**	**11,205,152**
Impact of Akzo Nobel Transaction	-	-4,369,067	-4,375,591	-3,495,818	-1,842,651	-2,207,903

9. Governance and legal considerations

i. Legal considerations

International Financial Reporting Standards (IFRS) requires that assets are categorised according to the purposes for which an entity holds them. For properties that a Council holds related to property, it is important that if held to support the provision of housing that they are accounted for In the HRA. As part of the development of financial statements a Council should continuously review its assets, identifying whether the purpose for holding the asset has changed since initial acquisition and whether it needs to be moved from one class of assets to another.

This includes considering whether an asset best sits in the HRA or General Fund. Part II of the Housing Act 1985, states that where the purpose of holding a property is not related to the provision of housing, it cannot be held within the HRA. As such, if a property currently held and accounted for in the HRA, is no longer being held to support this provision, then it must be transferred ("appropriated") to the General Fund.

Section 122(1) of the Local Government Act (the 1972 Act) provides Council's with the general appropriation power to do this. The act states that Councils:

"May appropriate for any purpose for which the Council are authorised by this or any enactment to acquire land by agreement any land which belongs to the Council and is no longer required for which it is immediately held before the appropriation..."

Appropriation between the HRA and General Fund is specifically dealt with in section 19 (1) of the Housing Act 1985 (the 1985 act):

"A local housing authority may appropriate for the purposes of this Part [2 - dealing with the provision of housing accommodation] any land for the time being vested in them or at their disposal and the authority have the same powers in relation to land so appropriated as they have in relation to land acquired for the purposes of this part".

Section 19 (2) of the Housing Act 1985 provides that the Council shall not appropriate land held for the purposes for Part II of the 1985 Act without the consent of the Secretary of State if any part of the land consists of a house or part of a house for any purpose.

As set out under the financial considerations in section 7iv, the Akzo Nobel site was initially correctly accounted for within the HRA and has no housing on the site. As a result, between these powers, the Council has the power to appropriate assets between the HRA and General Fund. It is the decision of the Council alone to make these decisions, acting or resolving issues within its usual legal constraints.

ii. Governance considerations

From a governance perspective it is important that prior to any transfers of ‘excess capital receipts’ between the HRA and the General Fund, appropriate Member and officer approval is obtained. Since the transaction has already occurred, this approval will need to be obtained in the current financial year, with corresponding impacts to the HRA and GF capital receipts reserve levels.

This approval will require negotiations between officers and members representing both the HRA and General Fund. Part of these negotiations will need be focussed on ensuring the there is no detriment to the HRA. This means that the ‘excess capital receipts’ available to transfer need to be netted off with any directly attributable costs of disposal, or costs of financing or maintenance whilst the asset was held by the HRA.

To support the transfer and serve as an evidence paper supporting the transaction, appropriate documentation should be developed that captures both member and officer agreement of these decisions. This documentation is important in capturing that the transfer has been agreed by relevant and affected decision makers.

This documentation should consider the range of options that are available to the Council in considering the accounting treatment of this acquisition, capturing how each meets Council objectives and capturing the financial implications of each. These working papers need to be of a sufficient standard that they can be provided to external auditors, when required to review the transaction.

As the Council are currently working alongside independent commissioners appointed by the Department for Levelling-Up, Housing & Communities (DLUHC), it is also important that approval of the accounting treatment is obtained from the commissioners.

Appendix 1 – Summary of Findings and Recommendations

Findings
1 - The initial recognition as a HRA investment property appears to be valid in accounting terms. We have not received any evidence which would suggest treatment as part of the General Fund on initial recognition.
2 - Cabinet papers indicate that the purchase was funded solely by the HRA, from the Major Repairs Reserve and borrowing, contradicting the funding approach shown in the underlying accounting entries.
3 - The asset has been initially recognised at £1,187,005 below it's purchase price. This is assumed to be due to the £2,000,000 deferred payment net of directly attributable transaction costs, however no evidence was provided by the Council to support this.
4 - There is no benefit to the General Fund in appropriating assets from the HRA to the General Fund prior to disposal.
5 - No delegated authority was in place to appropriate the Akzo Nobel site from the HRA to the General Fund, prior to the asset being sold. Therefore, no accounting adjustments from the HRA to the General Fund should be made until after the sale in November 2022.
6 - The disposal should initially be recognised within the HRA.
7 - On disposal, all HRA funding sources should be reimbursed from the capital receipts.
8 - There are no provisions within the MRP guidance or associated legal acts, that suggest the Council is not permitted to transfer 'excess capital receipts' from the HRA to the General Fund. The Council should seek appropriate legal advice to confirm this indicative view.
9 - Commissioner approval should be sought to transfer the 'excess capital receipts' from the HRA to the General Fund at a value of £101,802,214 in March 2024.
10 - Indicative legal advice has suggested that Cabinet approval is not required to transfer the 'excess capital receipts' from the HRA to the General Fund.

Recommendations
1 - The accounting treatment should reflect the substance of the transaction, with appropriate approvals obtained prior to making each accounting transaction.
2 - Before actioning the accounting entries, approval must be obtained from the commissioners to transfer 'excess capital receipts' to the GF from the HRA. As part of this approval, officers must provide appropriate evidence to demonstrate that: 1. there is no detriment to the HRA, and 2. that the HRA does not require the 'excess capital receipts' to deliver a sustainable 30-year business plan.
3 - Indicative legal advice has indicated that Cabinet approval is not required to transfer excess capital receipts from the HRA to the GF. Given the materiality of excess capital receipts, the Council should as a minimum inform Cabinet of the approach being taken. Subject to legal and Cabinet approval, the Council could adopt a policy whereby excess capital receipts from the HRA are applied to the General Fund, subject to the conditions set out above. This decision is for the authority to take, and it should be able to explain the basis of its decision to its tenants and external auditor.

Appendix 2 – Application of Capital Receipts to Capitalisation Direction

Capitalisation Direction, pre-Akzo	Balance bf	Addition	MRP	Capital Receipt Applied	Balance cf
2017/18	-	-	-	-	-
2018/19	-	78,015,000	-	-	78,015,000
2019/20	78,015,000	47,536,000	-2,936,015	-7,842,000	114,772,985
2020/21	114,772,985	24,941,000	-4,444,041	-4,403,000	130,866,944
2021/22	130,866,944	59,966,000	-5,339,464	-	185,493,480
2022/23	185,493,480	56,614,000	-7,628,843	-50,020,000	184,458,637
2023/24	184,458,637	31,575,000	-7,011,710	-24,692,386	184,329,541
2024/25	184,329,541	23,078,000	-7,048,419	-113,048,122	87,311,000
2025/26	87,311,000	13,909,000	-3,495,818	-40,223,418	57,500,764
2026/27	57,500,764	9,151,000	-1,842,651	-	64,809,113
2027/28	64,809,113	3,260,000	-2,207,903	-	65,861,210
2028/29	65,861,210	-	-2,421,025	-	63,440,185
Cumulative		348,045,000	-41,954,864	-240,228,926	
Total - Lifetime to 2047/48			-107,816,074		

Capitalisation Direction, post-Akzo	Balance bf	Addition	MRP	Capital Receipt Applied	Balance cf
2017/18	-	-	-	-	-
2018/19	-	78,015,000	-	-	78,015,000
2019/20	78,015,000	47,536,000	-2,936,015	-7,842,000	114,772,985
2020/21	114,772,985	24,941,000	-4,444,041	-4,403,000	130,866,944
2021/22	130,866,944	59,966,000	-5,339,464	0	185,493,480
2022/23	185,493,480	56,614,000	-7,628,843	-151,822,214	82,656,423
2023/24	82,656,422	31,575,000	-2,642,643	-24,692,386	86,896,393
2024/25	86,896,394	23,078,000	-2,672,828	-107,301,566	-
2025/26	-	13,909,000	-	-13,909,000	-
2026/27	-	9,151,000	-	-9,151,000	-
2027/28	-	3,260,000	-	-3,260,000	-
2028/29	-	-	-	-	-
Cumulative		348,045,000	-25,663,834	-322,381,166	
Lifetime MRP Benefit from Akzo			82,152,240		