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# DARTFORD BOROUGH COUNCIL Strategic Asset Management Plan 2021 -2024

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## 1 SCOPE

- (1) The Chartered Institute of Public Finance and Accountancy (CIPFA) advises that it is important for local authorities to understand the current and future service needs of the local population, so they can develop an appropriate 'service led' asset management strategy.
- (2) Assets can be used proactively to initiate and support service related outcomes. This may be through the provision of capital as a result of asset disposals but it could also be through the acquisition, management and development of assets to create income flows, to commence estate regeneration, to support community initiatives and to encourage investment.
- (3) Effective utilisation of capital and property resources is essential to meeting the Council's priorities and improvement aims, with specific emphasis on:
  - meeting the challenge of providing properties that will directly contribute to the delivery of good quality services to the community and other stakeholders in the Borough of Dartford;
  - supporting substantial and sustainable income streams for service delivery long-term;
  - helping plan and manage property utilisation in support of the Council's initiatives and service delivery;
  - supporting the delivery of the Council's corporate vision, aims and priorities;
  - providing an integrated approach to resource planning by combining capital and asset management into this single cohesive strategy;
  - cataloguing systems, procedures and controls;
  - considering, through performance review, the state of the Council's assets and capital resources, reporting on changes over the previous year;
  - taking forward actions (through the action planning process), by identifying measurable objectives for a three-year timeframe,

together, forming this Strategic Asset Management Plan (SAMP) and applying to all Council owned land and buildings, with the exception of Council housing stock and amenity land, which are managed separately, through the Housing Revenue Account and financial Business Plan.

- (4) This SAMP is based on CIPFA's Guide to Local Authority and Public Sector Asset Management.<sup>1</sup>

## 2 PROPERTY STRATEGY

21 **Using assets to promote regeneration** - The redevelopment of under-used and surplus Council owned and is an important driver for regeneration. The strategies which maximise the financial opportunities of growth and regeneration, promoting skills and enterprise and engaging with and supporting the business community are active considerations in determining future options for surplus land.

22 **Innovation** -The creative use of the property portfolio can act as an effective driver for change. The Council has a track record of delivering joint ventures and continues to seek new opportunities for collaboration with the private sector. By attracting private sector financing and sharing some of the risks, these innovative ways of working may allow the Council to progress ambitious, large-scale regeneration plans that were previously considered unaffordable or too long-term.

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<sup>1</sup>December 2020

23 **Suitability** - The Council is committed to understanding how the performance of its assets contributes to satisfaction levels amongst service users. It will use this information to ensure that its buildings remain fit for purpose and continue to deliver accessible services that meet the needs of the community. This is against a background of changing service requirements and rising levels of public expectation.

24 **Value for money** - The Council will ensure that its property portfolio delivers value for money in terms of service benefit, operating costs and financial returns. The Council will continually challenge whether its property portfolio is required, fit for purpose and contributes to the delivery of Council priorities.

25 **Asset management** - The systematic process of acquiring, developing, operating, maintaining, upgrading and disposing of assets in the most cost-effective manner. The broad objective of asset management is to maximise property usage, value and investment returns. This means reducing expenditure when possible, finding the most consistent and highest sources of revenue and mitigating liability and risk, among other things.



26 **Property Acquisitions** – The property portfolio can be a burden as well as an asset and the cost/benefits of freehold or leasehold ownership are addressed in any option appraisal. The availability of prudential borrowing and preferential interest rates tends to make freehold purchase more cost-effective in the long-term but different solutions may be appropriate for short-term uses. Any newly acquired or constructed buildings should fully comply with current statutory access and environmental standards. Unless there are exceptional circumstances, the Council will only acquire property where the acquisition:

- contributes towards the provision of Council services;
- provides a direct link to improving the economic, social and environment well-being of the community;
- leads to strategic benefits to the Council in relation to regeneration or redevelopment proposals;
- furthers the provision of services for the community by third parties;
- generates revenue income and/or capital growth.

27 **Property Disposals** -The disposal of surplus property provides the funding for much of the Council's discretionary capital spending that will help deliver its priorities. Therefore, the identification, marketing and disposal of surplus or under-utilised property is a priority for the Council. Timing of disposals will always have regard to prevailing market conditions to ensure that any benefits are maximised, generating capital receipts for re-use in support of Council priorities or reducing costs.

Future disposals may arise:

- through changing operational needs;
- where the asset has the potential for development, redevelopment or other beneficial use;
- where it is considered that the Council's needs can be provided by alternative accommodation, joint use or rationalisation of existing property holdings;
- as a result of approaches from interested parties (e.g. developers or adjacent land owners);
- where the management of an asset can be delivered more effectively by another organisation.

When disposing of assets, the Council is subject to statutory provisions. Under section 123 of the Local Government Act 1972, the Council has the general power to dispose of land, subject to obtaining the best consideration that can be reasonably obtained for the disposal. Where the land was acquired or appropriated for a particular statutory purpose, other provisions may apply. If so, it may be the case that there might be other restrictions/requirements relating to its disposal, for example, if the land is held for planning purposes then, any disposal should be made under section 233 of the Town and Country Planning Act 1990, or if the land is held by the Council as open space, any proposed disposal will subject to the additional procedural requirements in section 123(2A) relating to advertising. Where land is held for housing purposes (for example the Council's shop units), there is a general power of disposal under section 32 of the Housing Act 1985, subject to the General Consent(s) issued under that section.

#### [The Policy on The Disposal of Surplus & Underused Land & Property Owned by the Council:](#)

- sets out the procedure to be adopted in connection with the disposal of surplus and under-used assets and ensures that requests to purchase Council owned assets are dealt with in a fair and consistent manner and that any person who may have an interest in making an offer to purchase, has the opportunity to do so in circumstances no less favourable than anybody else;
- distinguishes requests for small areas of land that may be considered for sale by private treaty and larger areas with development potential that should be sold on the open market.

28 **Data Management** - To make informed decisions, it is vital that information on the property portfolio is up-to-date, accurate and accessible. This will allow the performance of the property portfolio to be proactively managed, benchmarked and monitored against targets for improvement.

**See section 7 of this SAMP for further details.**

29 **Maintenance and maintenance standards** - The Council will prioritise spending within available maintenance budgets to ensure that the Civic Centre is maintained to a standard appropriate to the service provided from it, including providing a safe and secure working environment, having regard to its un-expired functional life. In most cases, the minimum standard will be to a satisfactory condition (category B)<sup>2</sup>.

210 **Compliance with statutory requirements** -The Council will ensure that its operational property portfolio (Civic Centre, Museum, Multi-Storey Car Park and outsourced sports and leisure facilities) are fully compliant with the Equality Act 2010 and in relation to the Civic Centre, Museum and Multi-Storey Car Park, with health and safety requirements.

**See sections 11, 16 and Appendix E (Compliance and Risk) of this SAMP for further details.**

211 **Ensuring the protection of the commercial property portfolio** – The Council will protect its investment in the commercial property portfolio by ensuring dilapidations are attended to both during the term of the lease and after it ends.

**See Appendix G (Full Repairing and Insurance Leases) of this SAMP for further details.**

212 **Working with Partners and Outsourcing** - The Council fully embraces the opportunities that partnership working and outsourcing the management of certain of its leisure facilities can deliver. In a time of declining public spending and weak growth, the best way to stimulate the economy is through the public and the private sectors leading the way and working together.

**See Sections 9, 10 and Appendix A (Operational Property Portfolio (specifically Sports and Leisure Facilities)) of this SAMP for further details.**

213 **Encouraging Community Use** - Wider community benefits can be derived from shared use of assets and from community ownership and management of assets. Third sector and community aspirations will be evaluated alongside potential Council uses for surplus assets in order to identify the option that delivers the best outcome for people in Dartford. Potential solutions could involve freehold transfer, the grant of leases or the completion of management agreements, with or without financial support i.e. grants.

**See Appendix B (Non Operational – Investment Properties' Portfolio (specifically Community Property)) of this SAMP for further details.**

214 **Environment and sustainability**- The Council is keen to minimise the adverse impact that its activities may have on the environment. It is committed to reducing energy consumption and carbon emissions from its buildings and to adopting sustainable forms of construction.

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<sup>2</sup> Based on BCIS SFCA

Extending this commitment further, the Council aspires to build all new property to high levels of environmental performance and to undertake improvements to existing low performing buildings. The Council also recognises that, as a result of climate change, its assets will need to be capable of performing well in the face of more severe weather conditions.

**See section 11 of this SAMP for further details.**

### 3. PROPERTY PORTFOLIO

3.1 Many factors will influence how the Council manages its property portfolio, including:

- the size, location, ages and types of buildings and land in the portfolio;
- what information it holds about the portfolio;
- land tenure and constraints;
- area based considerations.

3.2 The property portfolio comprises a [wide range of assets](#) such as offices, public conveniences, leisure facilities, assets leased to community organisations and assets used to generate a commercial income.

3.3 The operational property portfolio (properties held for the delivery of services - **Appendix A**) and non-operational portfolios (investment/surplus properties - **Appendix B**), have been categorised in this way, mainly to reflect their functional use and the way they are currently maintained and/or accounted for.

3.4 A list of the Council's assets is publicised on its [website](#).

3.5 The Council's social housing stock and amenity land are subject to separate management and reporting procedures referred to in **Appendix C - Housing Revenue Account Property Portfolio**), which is included in this SAMP, for information purposes only.

### 4. AIMS/OBJECTIVES OF STRATEGIC ASSET MANAGEMENT

4.1 Strategic asset management for the operational and non-operational property portfolios is:

- involved with business, corporate and organisational objectives;
- concerned with both non-financial and financial matters;
- connected with property management;
- systematic and coordinated;
- concerned with whole life costs and benefits;
- involved with planning on a medium/long term basis;
- a corporate activity and not solely the province of property, construction and facilities professionals;
- an activity that sees property as a key strategic resource for the Council,

with the following aims:

- to ensure that the property portfolio is optimally structured in the corporate interest of the Council;
- to ensure that property portfolio matters are properly managed so that they operate efficiently and effectively;

- to set out the Council’s vision, aspirations and objectives for its property portfolio;
- to focus on how the Council utilises its property portfolio to deliver its Corporate Plan;
- to enable the Council to meet its statutory and other obligations to deliver various operational functions and services within the Borough of Dartford,

and interlinked objectives:

- compliance with regulation and responsiveness to risk (**Appendix E - Compliance and Risk**);
- improving the quality of services delivered by the property portfolio (**Sections 9 and 10 of this SAMP**);
- reducing expenditure associated with the property portfolio (**Appendix G – Full Repairing and Insurance Leases**);
- increasing the level of income generated by the property portfolio (**Appendix F – Leases-Standard Terms**);
- effective management of the property portfolio (**Appendix F- Leases – Standard Terms**);
- innovative strategic procurement (**Sections 9 and 10 of this SAMP**).

## 5. LINKS TO PLANS & STRATEGIES ETC

(a) The Corporate Plan 2017 - 2020 sets out the Council’s corporate vision ‘To make Dartford “the place of quality and choice, a place where people choose to live, work and enjoy their leisure time” applying the following objectives:

- Economic Development and Regeneration;
- Health and Wellbeing;
- Safer Communities;
- Environment and Sustainability;
- Housing and Stronger Communities,

which are underpinned by the following core values:

- Ensuring Value for Money;
- Transparency in Decision Making;
- Delivering Accessible Services;
- Valuing our Heritage;
- Valuing our Staff;
- Working in Partnership.

The Council’s property portfolio has a significant and growing value and represents a means to drive investment and resources despite the significant pressures on public finances. This SAMP is at the heart of delivering the corporate vision and the Council’s policies and programmes going forward.

(b) **The Capital Strategy and Capital Budget** provides a high level overview of how capital expenditure, capital financing and management activity contribute to the provision of local public services along with an overview of how associated risk is managed and the implications for future financial sustainability. The Capital Strategy’s objectives are to:

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<sup>3</sup> Under review



- maintain an affordable three year rolling capital programme;
  - ensure capital resources are aligned with the Council’s strategic vision and corporate priorities;
  - undertake Prudential Borrowing only where there are sufficient monies to meet in full the implications of capital expenditure, both borrowing and running costs;
  - maximise available resources by actively seeking external funding and disposal of surplus assets;
  - engage local residents in the allocation of capital resources where appropriate.
- (c) **One Public Estate Programme<sup>4</sup>** – delivered in partnership by the Local Government Association and the Cabinet Office, which sets out the following strategic objectives for local authorities and associated public sector organisations:
- delivering more integrated and customer focused services - by encouraging publicly funded services to co-locate, to demonstrate service efficiencies and to work towards a more customer-focused delivery;
  - creating economic growth - by enabling released land and property to be used to stimulate economic growth, regeneration, new housing and jobs;
  - reducing running costs - by reducing maintenance, repair and operating costs by estate rationalisation;
  - generating capital receipts - by selling redundant and surplus land and property.

**The One Public Estate Programme is discussed in further detail in section 9 of this SAMP.**

- (d) **Core Strategy 2011- 2026** - provides a long-term plan to regenerate the Borough by outlining where, and how many, new homes, infrastructure and jobs will be created.

Over the past 15 years, high levels of demand and constraints on land availability have driven above-average growth in house prices in the Borough. The opportunity to buy a property is increasingly out of reach of many and the private rented sector has grown with high competition for properties. With population figures forecast to continue to rise, access to genuinely affordable and high quality housing is one of the most significant issues facing the Borough.

The **Three Strands Approach** - at a strategic level, the Three Strands Approach guides the Council’s future planning, regeneration and development of its housing agenda by protecting and enhancing the Borough, whilst recognising the need to accommodate housing growth where appropriate, particularly as a means of improving less successful parts of the Borough.

Demand for primary and secondary school places in recent years has exceeded the Borough’s supply of permanent places. Over the next five years, the Borough will need the equivalent of 3/4 additional primary schools providing 1470 primary school places and one additional secondary school, along with the further expansion of existing secondary schools, providing 1800 secondary school places to meet the forecast demand for permanent school places, resulting from the Borough’s continuing growth.

The Council’s land (declared surplus to requirements), plays a role in achieving the Core Strategy’s priorities, by creating opportunities to develop new housing supply of all tenures and making land available for the construction of new homes and schools.

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<sup>4</sup>CIPFA- Place-based management presents the main concepts of a collaborative approach to managing property assets

## 6. FINANCIAL MATTERS

(a) **General Fund Capital Financing** - property (other than the core housing stock and other HRA held assets) is held by the Council in a 'General Fund', which shows the aggregated financial position of the Council's non housing portfolio.

(b) **HRA Capital Financing** - applies to the Council's core housing stock and other HRA held assets. Self-financing was introduced in 2012. The Council's HRA capital financing position is set out in a 30 year financial Business Plan (referred to in **Appendix C – Housing Revenue Account Property Portfolio**).

### (c) **Grant Funding**

The **Community Grant Scheme** is open to applications from 'not for profit' registered charities or community groups with a constitution management structure, bank account and staff/volunteers delivering services to Dartford's residents, in support of the Corporate Plan's objectives and on the recommendations of the Grants Approval Panel. The maximum award is £3,000 and the minimum is £500. The Scheme funds:

- **Sporting Provision** - projects that promote excellence, reach new audiences, or work towards improving club standards, e.g.: gaining accreditation, training;
- **Young People** - projects that provide new or expand upon positive activities which directly benefit young people (aged 25 or under);
- **Older People** - projects that provide new or expand upon current services or activities that directly benefit older people.

**Recurring Grants** are payable to voluntary and community sector organisation tenants, to facilitate the delivery of their community-based services, in support of the Corporate Plan's outcomes. In practice, the Council pays the rent for a specified period.

Although the Council is firmly committed to supporting voluntary community schemes and the management and use of the Council's asset base is one of the ways to achieve this (see **Appendix B (Non Operational – Investment Properties' Portfolio (specifically section 1- Community Property)) of this SAMP for further details**), in order to ensure consistency, accountability and transparency, a policy for paying and ensuring review of Recurring Grants, should be implemented.

**SAMP 8 - The Action Plan at Appendix J, identifies the need to implement a policy for paying and reviewing Recurring Grants.**

### (d) **Subsidy Control – the Subsidy Control Act 2022**

Although likely to vary on a case-by-case basis, subsidy compliance is an area that the Council must always consider in matters involving land dealings, where the Council acquires or disposes of a land interest.

Subsidy control seeks to ensure that the Council does not use public resources to give an advantage to a business or enterprise (this can include not-for-profits engaged in market activities). Paying more than the market value for a land interest or receiving less than a market value when disposing of a land interest/charging rent, would both be unlawful unless there is an exemption/justification.

Where a land transaction, would under subsidy control, mean that the Council is deemed to have given a subsidy to an economic operator, then it will be necessary for the Council to undertake the [subsidy control principles assessment](#), even if the transaction would be permitted under sections 123 or 32 (or their related consents) – see above.

The Subsidy Control Act 2022 places a legal duty on the Council to respond to pre-action information requests about subsidy awards within 28 days of a request being made. Further, the Council is incentivised to promptly publish awards on the [UK subsidy control database](#), as this then time limits (in most cases) a legal challenge being made about that subsidy to within a month of publication. Having the subsidy control assessments recorded and the information to hand, will assist the Council deal with these property-based requests.

Subsidy control does not apply to non-economic activity - i.e. a reduced rent for letting out a community hall to a voluntary group is unlikely to be subsidy.

Compliance with the subsidy control rules will remain critical to ensure Council projects start on a sound footing. The key to dealing with subsidy effectively, is to do so at a project's formative stage. This is likely to provide the greatest number of options for ensuring compliance.

**(See Appendix I -Subsidy Control Guidance).**

**SAMP 1 - The Action Plan at Appendix J, identifies the need to review the guidance on Subsidy Control at Appendix I, following the implementation of the UK's subsidy control legislation.**

## **7. DATA MANAGEMENT**

In order to manage its property portfolio effectively, both now and in the future and to enable priorities to be met, the Council requires accurate information on its property assets, including legal title, landlord and tenant matters, running costs and good quality stock condition and performance information.

- (a) There are numerous property databases (Property Terrier, UNIFORM, GIS, Idox, the card index and Land Registry records), which hold the ownership records of assets of a non-residential type such as acquisition, usage, tenancy, head-lease, disposal details, rent reviews, lease renewals, assignments, unique property references etc.
- (b) It is essential that a single central corporate register be maintained, that stores, manages and reports on all the Council's non-housing property portfolio data. This needs to be central to Council service planning and to achieving compliance with statutory obligations, management of risk and delivery of value for money and quality. Ensuring the Council holds and maintains accurate information at the appropriate level of detail is central to ensuring compliance with statutory requirements and effective management of risk as well as enabling assets to be part of a high quality service offer and taking opportunities for cost reduction and increased income where they arise.
- (c) Having numerous databases presents risks of duplication and inconsistency. Further, the UNIFORM database is out of date and is not used to its fullest capacity, giving limited functionality in an overall asset management context. The lack of a single comprehensive system has led to a fragmented approach to managing asset information and has created problems for consistency and accuracy.

- (d) Legacy systems and capacity within the Council's corporate asset function have in the past struggled to meet demands of the service, resulting in a backlog of case work and administrative functions that built up over time. This backlog of work existed in a number of areas, including rent reviews, grant of new leases etc. Addressing this backlog was a priority in 2019 with additional capacity provided by GEN<sup>2</sup> Property. The backlog has been cleared. The critical issue going forward will be to ensure sufficient capacity is maintained and that the Council has the correct systems in place to receive, assess and respond to casework in the most efficient way.
- (e) The UNIFORM database will be cleansed and updated so as to provide a robust system for maintaining the integrity and currency of all the non-housing stock/non-residential property portfolio data, which is fundamental to the management of the property portfolio and the Council's ability to take a strategic approach to planning and use, through a corporate landlord model **(see section 8(5) of this SAMP for further details on the corporate landlord model)**.

Once cleansed and updated, UNIFORM will:

- maintain a complete and accurate non- residential property asset register;
- support the continuous management and maintenance of the non- residential property asset base;
- enable the Council to satisfy statutory and other reporting and compliance requirements;
- enable the implementation of performance across the non- residential asset portfolio;
- enable accuracy and timeliness in property assets' reviews, appraisal, decision-making and planning;
- provide a single corporate resource for managing non- residential assets.

UNIFORM will also include in-built processes that will enable a proactive rather than reactive approach to asset management. For example, early notification from the system direct to the property services department that a lease will be coming to an end, allowing early negotiation and where relevant, marketing to reduce void periods and maximise income.

**SAMP 2 -The Action Plan at Appendix J, identifies the need to undertake the UNIFORM cleanse, to bring the system up to date and to include ancillary property related matters such as insurance, energy performance certificates, audits etc.**

## **8. MANAGING THE PROPERTY PORTFOLIO**

- (1) Governance arrangements aim to support the use of property assets as a corporate issue and to underpin corporate responsibility for ensuring the efficiency and effectiveness of property asset use and achieving the aims of this SAMP. The governance arrangements should also achieve a proactive alignment of corporate programmes with asset management, including in particular, planning for capital and revenue expenditure. The key relationship is with the financial planning process, but it is also important that ongoing monitoring of strategic financial information continues, for example, total maintenance expenditure, overall income collection, total energy expenditure etc.
- (2) The Strategic Director (Internal Services) has overall responsibility for the management of the property portfolio, in particular, driving a corporate approach to property asset management within the directorates.
- (3) The valuation service is managed by the Head of Legal Services (assisted by an external qualified valuer (GEN<sup>2</sup> Property), for two days a week, under an extended contract with GEN<sup>2</sup>

Property, from 1 December 2020 until the establishment of a new property services department (see para. (6) below).

(4) Heads of Service currently discharge the Council's landlord's responsibilities as 'asset holders' in relation to the property portfolio they manage. These responsibilities include:

- acting as the responsible custodian of the property portfolio that they utilise in the provision of their services;
- managing relevant budgets e.g. maintenance;
- prioritising repairs and maintenance activities, managing delivery of repairs and maintenance works and managing performance of repairs and maintenance services;
- managing risk, statutory compliance and health and safety;
- responsibility for condition surveys.

Where applicable, these responsibilities are discharged in consultation with and by the Corporate Maintenance team (managed by the Housing Maintenance Manager), acting as 'contractor'.

(5) Recent years have seen an increasing focus on the public estate – what it comprises, what it is used for, how much it costs and increasingly how effectively it is managed. Best practice suggests that a **centralised corporate landlord function** should be established to create the capacity and expertise to prioritise resources, manage risks and obtain greater value from the Council's estate. In practice, this would include the establishment of a property services department, headed by a qualified valuer.

Implementation of a corporate landlord model will involve comprehensive building of information on asset condition of the portfolio and service activity. Six components of service are delivered by the full corporate landlord model:

- i. Strategic Asset Management
- ii. Estate Management
- iii. Repairs and Maintenance
- iv. Facilities Management
- v. Statutory Compliance
- vi. Project Management

On 12 October 2020 [Min.No.105], the General Assembly of the Council agreed the restructure of the directorates.

Within the Growth and Community directorate, a property services function (applying a corporate landlord model approach will be established ), for the management of the Council's land and property portfolio (excluding the Housing Revenue Account, housing stock and amenity land) and to provide high level property advice, corporate asset management, estate management and valuation services, together with supervisory and other associated asset management functions, managed by a Property Services Manager, reporting to the Director of Growth and Community.

**SAMP 3 - The Action Plan at Appendix J, identifies the need to implement a Corporate Landlord Model.**

## 9. PARTNERSHIPS

- (a) The British Property Federation and the Local Government Association share the belief that effective partnership lies at the heart of the economic recovery. In a time of declining public spending and weak growth, the best way to stimulate the economy is through the public and the private sectors leading the way and working together.
- (b) Partnership enables greater levels of finance to be leveraged, and expertise and capacity to be pooled. However, it is not just a financial advantage. Partnering also enables a range of other benefits to be realised. Across the country, partnerships between councils and the private sector are innovating and finding new ways to push forward growth in a challenging environment.

**Case study:** In 2005, the Council entered into a joint venture with Prologis to deliver a major mixed use Thames Gateway development at north Dartford, comprising 264 acres. The 264 acre development included 1,500 homes built by Wimpey, a science park, 1.5 million sq. ft. of commercial space, including offices, distribution facilities, hotels, community facilities and over 80 acres of public open space.

By joining forces, the Council and Prologis as partners, have each contributed according to where their strengths lie, producing an effort that has more impact than each partner operating in isolation. By combining these strengths, some of the most significant barriers to development have been overcome. The Bridge and its infrastructure investment has resulted in job creation, greater competitiveness for businesses and economic growth.

- (c) In 2017, One Public Estate (OPE) expanded its partnership to include the Ministry for Housing, Communities and Local Government's Land Release Fund (LRF), a fund which supports local authorities to deliver new homes on their land. Together, OPE and LRF create a wider support package to unlock more surplus public land and property to support housing delivery.

The Kent Estates Partnership, of which the Council is a member, leads on the OPE programme in Kent. It takes a collaborative approach to estate management across the County and is committed to creating an integrated, flexible and affordable public estate, underpinning and enabling the efficient delivery of social and economic outcomes for the whole of the County. The priorities for the Partnership are:

- Supporting the release of land for housing delivery;
- Identifying and developing partnership led town centre community projects to support regeneration, economic growth and the wellbeing of communities;
- Identifying opportunities for co-location of public sector services.

Through the Kent Estates Partnership, the Council was supported in its bid for OPE funding towards the feasibility stage of its plans for a health hub as part of the wider Co-op site development.

The Council is also currently working with the Partnership to see how local authority buildings across Kent could be used to provide work hubs, as more staff no longer require fixed office space.

## 10. OUTSOURCING/THIRD PARTY MANAGEMENT OF THE PROPERTY PORTFOLIO

- (a) In its simplest form, outsourcing is the use of third party specialists to deliver a particular business function or process. It is not to be confused with privatisation. When the Council

outsources a service, it usually maintains full control and accountability for that service, while privatisation takes ownership away from the Council.

- (b) Using third party specialists that are willing to invest in new technologies and improve processes makes economic sense and is of benefit to the Council and the end consumers of its public services.
- (c) Local authorities have the legal power (Section 135 Local Government Act 1972) to make use of different forms of service delivery. Up to the mid-1980s, local authorities provided most of their services 'in house' with their own departments. Following the introduction of compulsory competitive tendering in the Local Government Act 1988, authorities were legally required to open many of their services to competitive tender. This requirement was replaced by the 'Best Value' regime under the Local Government Act 1999, since when, many forms of alternative service provision have been in use.
- (d) As public finances continue to be squeezed, the Council has to be more creative and more willing to be flexible in how it operates, creating the impetus for delivery of its public facilities by third parties. The Council may decide to outsource services as it sees fit, providing that quality and value for money are maintained and the rules on public procurement are adhered to.
- (e) The Council's overarching strategy is to maintain its property portfolio, whilst making the most of the opportunities to rationalise the use of space and to generate income.

**Case study:** The Council has a central role to play in the provision of community sport and recreation facilities and the championing of health through the promotion of healthier lifestyles.

Fairfield Pool was constructed in 1976. By 2014, it was no longer fit for purpose and needed a substantial overhaul. As the Council's main public leisure facility, the Council decided on a technically complex project to extensively refurbish the facility and re-open it with a new build addition. The building was re-opened in February 2016, is managed by Places for People Leisure Ltd (until February 2026) and offers a range of facilities – pools, gym, studios, indoor cycling, sports hall etc.

**Section 1 of Appendix A - Operational Property**, provides further details of the sports and leisure facilities that have been outsourced by the Council.

## 11. RISK MANAGEMENT

- (a) The Council supports a focused and structured corporate approach to managing risks. In this way, it will better achieve its corporate objectives and enhance the value of services it provides to the local community.
- (b) The key identified risks in relation to the Council's property portfolio and asset function are:
  - Failure to comply with legislative/statutory obligations resulting in risk of death or injury to staff or public, criminal prosecution, civil litigation, reputational damage, or damage to property or equipment;
  - Corporate assets no longer fit for purpose due to location or suitability for service delivery resulting in service delivery impact, increased costs, loss of income;
  - Loss of a strategic asset or premises through failure to maintain it in a safe and effective condition resulting in prosecution by the Health and safety Executive with cost and time implications, front line service failure, major reputational damage to the Council;

- Failure to achieve projected net new financial position for the Council resulting in impact on future years' budgets and savings' targets, impact on ability to maintain asset function effectively;
- Failure to have service specific strategies aligned with asset strategy resulting in inadequate or insufficient use of accommodation, lack of integration with disposal or investment programmes, loss of forecast savings and new income;
- Failure of disaster recovery and/or business continuity plans in the event of a serious incident resulting in criminal charges, loss of communication/ICT; loss of essential service provision;
- Failure to adequately manage revenue or capital budgets and to manage income or expenditure resulting in increased exposure to financial risk, inability to meet budgets or savings targets, reputational damage;
- Lack of accurate and robust data resulting in poor decision-making, lack of transparency in use of assets, lack of compliance with statutory requirements, reputational damage, increased exposure to financial risk.

(c) The measures being undertaken to respond to these risks are set out within the body of this SAMP (where applicable) and **Appendix E – (Compliance and Risk) and Appendix F- (Full Repairing and Insurance Leases)**. The key elements that address the risks are:

- ensuring robust data capture, storage and analysis through the UNIFORM database and associated systems);
- ensuring effective capacity for the asset management function through the reorganisation and clearance of backlogs;
- effective management of the property portfolio through effective budget management, categorisation of assets, decision-making and investment opportunities;
- effective governance and partnerships with others;
- reducing exposure to cost and driving quality in the operational estate;
- effective understanding, resourcing and management of compliance and risk;
- development of underutilised commercial assets;
- increased income through an optimised commercial estate.

**SAMP 4- The Action Plan at Appendix J, identifies the need to:**

- **undertake a level of additional technical monitoring to assess and reduce potential reputational and financial risks under lease arrangements, for the commercial property portfolio (see Appendix E- Compliance and Risk);**
- **undertake a level of additional monitoring to ensure dilapidations are attended to both during the term of the lease and after it ends (see Appendix G – Full Repairing and Insurance Leases);**
- **review the tenure of temporary allotment sites (see section 5 of Appendix A- Operational Property Portfolio).**

## 12. ENVIRONMENT AND SUSTAINABILITY

- (a) The effective use of resources is at the heart of corporate sustainability.
- (b) Under the Minimum Energy Efficiency Standards (MEES), the Council (as landlord) cannot grant, extend or renew a lease of its commercial properties with an **energy performance certificate** (EPC) rating of below E. From 1 April 2023, it will be an offence to continue to let a commercial property with an EPC rating of below E.



- (c) MEES will not apply to commercial buildings that do not require an EPC, for example, small standalone buildings (total floor area of less than 50 square meters) and temporary buildings.
- (d) MEES will not apply to commercial leases of less than 6 months or more than 99 years and will not apply to a licence agreement or occupation under an agreement for lease.
- (e) It may not be practical or possible for the environmental performance of a substandard property to be improved. Accordingly, a commercial property will be exempt from MEES if one or more of the following exemptions apply:
  - **Relevant improvements exemption:** Where all “relevant” energy efficiency improvements (i.e. those listed in a recommendation report or other survey) have been made, or there are no such improvements that can be made, and the property remains sub-standard.
  - **Golden rule exemption:** Where the relevant energy efficiency improvements would not pay for themselves in energy savings over the course of the next 7 years.
  - **Devaluation exemption:** Where the relevant energy efficiency improvements would decrease the market value of the property by more than 5%.
  - **Consent exemption:** Where the landlord requires the consent of a third party (such as a superior landlord, mortgagee, planning authority or a tenant) to undertake energy efficiency improvements and such consent cannot be obtained, despite the landlord’s reasonable efforts to obtain it.
  - **New landlord exemption:** Where a landlord is required to grant a new lease of a sub-standard property pursuant to an agreement for lease, or court order (including a statutory renewal under the Landlord and Tenant Act 1954).
- (f) The potential impact of MEES is not limited to new leases. MEES may well play a significant role in a number of areas within an existing landlord and tenant relationship including:
  - rent reviews
  - dilapidations
  - alterations
  - reinstatement
  - lease renewals

**Reducing environmental impacts:** The Committee on Climate Change’s ‘How local authorities can reduce emissions and manage climate risk’<sup>6</sup> provides guidance on how local authorities can be encouraged to show strong leadership and responsibility in cutting carbon emissions both from their own estates and operations and those arising within their areas.

In 2009 [Min. No:167], Cabinet approved a Carbon Management Plan which sets out a number of carbon related projects e.g. renewable energy, water efficiency, insulation and energy efficiency for the Council’s operational buildings (Civic Centre, Acacia Hall and multi-storey car park). The plan was successful and led to a 35% reduction in the Council’s carbon emissions.

The Council continues to review the Green House Gas Emissions from its operational buildings and reports to Cabinet, on its carbon emissions against its baseline figures.

In 2020, the Council endorsed the Kent County Council Environment Strategy and the Kent Energy and Low Emissions Strategy and the associated draft Implementation Plan. The actions that the

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<sup>6</sup> May 2012

Council is currently working towards and developing, will be reported to Cabinet in the summer of 2021.

Reducing the environmental impacts of its operational property portfolio continues to be an important consideration for the Council, in the context of carbon budgets and to underpin its wider leadership role.

### **Carbon related projects:**

- limiting the amount of carbon emissions/footprint generated as a result of the development and use of its operational buildings;
- implementing efficient waste and recycling and energy and water conservation measures;
- undertaking improvements to existing low performing operational buildings;
- ensuring that its operational buildings are capable of performing well in the face of climate change such as more severe weather conditions;
- reducing exposure to rising energy costs and achieving value for money energy contracts across its operational buildings;
- cutting waste and driving efficiency across its operational buildings;
- minimising the risk of energy supply disruption and maintaining acceptable temperatures in operational buildings delivering services to service users and staff;
- ensuring compliance with legislation and statutory functions relating to energy supply and use in its operational buildings;
- working in partnership with others to promote the use of renewables to cut carbon emissions as well as create opportunities for further investment and exploring the scope for energy supply as a means to deliver against wider social and environmental objectives and generate economic benefits.

The matters referred to in para.(g) above, can be achieved through:

- establishing an evidenced based approach to improving energy efficiency
- benchmarking against best practice
- identifying and responding to high consuming buildings
- staff engagement and better use of buildings and equipment
- updated protocols for heating standards
- investment in more energy efficient buildings
- design for new build
- standardised specifications for equipment across buildings
- targeted maintenance programmes ensuring equipment runs efficiently
- upgrading heating systems and plant where there is an economically viable case to do so
- taking a strategic approach to operational sites

### **SAMP 6 - The Action Plan at Appendix J, identifies the need for the Council to:**

- **review the environmental impacts of its operational buildings (Civic Centre, Museum, multi-storey car park, Acacia Hall);**
- **review whether its let commercial property portfolio complies with EPC ratings.**

## **13. TRANSPARENCY**

In accordance with the [Local Government Transparency Code 2015](#), the Council is required to [publish on its website](#), details of:

- all service and office properties occupied or controlled by user bodies, both freehold and leasehold, any properties occupied or run under Private Finance Initiative contracts;
- all other properties owned or used by the Council, for example investment properties;
- garages unless rented as part of a housing tenancy agreement;
- surplus, sublet or vacant properties;
- undeveloped land;
- serviced or temporary offices where contractual or actual occupation exceeds three months; and
- all future commitments, for example under an agreement for lease, from when the contractual commitment is made.

The Council must also publish details of the value of its social housing stock held in its HRA.

#### 14. VALUATION OF THE PROPERTY PORTFOLIO

In order to meet local authority financial reporting standards, the Council's property portfolio must be held at a materially correct value in the statement of accounts and all assets must be valued at least every five years. The Council is obliged to consider the carrying value of all its assets and provide compelling reasons if some classification of assets do not require revaluation. Additionally, there are certain categories of assets that must be valued every year such as investment assets and Council housing. There is also a requirement to have an asset re-valued within the five-year period, if the reported value has undergone a material difference since its initial valuation.

As the emphasis is placed on the carrying value at the 31st March each year, the Council aims to undertake its valuations at the 31st of January each year.

#### 15. RENT REVIEWS AND LEASE RENEWALS

The tenanted property portfolio should be pro-actively managed to maximise income with regard to new lettings, rent review, lease renewal and minimising arrears of rent.

##### Proactive income collection, void minimisation and debt recovery

- (a) The review and updating of the UNIFORM database, described in section 7 of this SAMP, will ensure more robust data is held on assets within the commercial portfolio and will enable a more proactive approach to identifying properties due for rent reviews and leases that are due to expire in any financial year.
- (b) The process of ascertaining lease expiry dates will assist in **reducing voids**. A complete and consistent management plan is to be put in place (through action planning), to ensure that when a lease is due to expire (preferably 9-12 months in advance) appropriate pro-active steps are actioned. This includes formally notifying a tenant to determine whether they intend to renew their lease, or if the Council is entitled to seek vacant possession, marketing the property prior to expiration of the lease or putting in plans for redevelopment.
- (c) The prioritisation of **rent arrears** and **rent recovery** requires a consistent corporate approach. The focus is to ensure rental income is maximised through an established debt recovery culture. The main objectives are to reduce the debt owed to the Council, from both previous and current tenants and promote a stronger payment culture through the management of the property portfolio.

(d) In accordance with the Council's standard lease, the incoming tenant is responsible for paying rent to the Council on time. However, this is not always the case. A proactive approach to income collection comprises:

- Providing tenants with clear information about rent and other charges throughout their tenancy;
- Setting up all rental payments, including service charge, by Direct Debit and ensure that it is easy for tenants to understand the process;
- Maximising the collection of income and minimising any outstanding debts;
- Having effective and fair procedures in place to take early actions before debts accumulate further;
- Setting up the timing on when the legal action is to take place and when bailiffs are to be instructed, if necessary as a last resort, where direct attempts by the Council's debt recovery is unsuccessful;
- Agreeing fair and satisfactory repayment arrangements and plans with tenants;
- Ensuring that there are internal policies on sustaining leases and existing tenants;
- Adopting best practice and having benchmarks in place,

achieved through:

- on-going monitoring and prompt written notifications to tenants to develop a culture of good payment;
- providing existing and incoming tenants with clear information of their rental obligations and repayment plans;
- prompt instigation of court proceedings for non-payment of rent;
- undertaking an annual review of its rent recovery procedures.

**SAMP 5 - The Action Plan at Appendix J, identifies the need for the Council to:**

- ensure a rolling programme of rent reviews and lease renewals due to expire, at least 9-12 months in advance of the expiry date;
- review the rent recovery mechanism;
- review its full repairing and insurance commercial lease clause to ensure the scope of the premises the tenant is responsible for is clearly defined, any Schedule of Condition contains high-quality photographs and before agreeing to a tenant's exercise of a break option, an early surrender or assignment or other dealing with the lease, the tenant has complied with all of its lease obligations, including repair.

## **16. EQUALITIES**

(a) The Council's adopted Equality and Diversity Framework (2018-2022) (the EDF) identifies its aims to achieving equality of opportunity in all its activities, including the delivery of services to the community.

The EDF is underpinned by a set of high-level strategic objectives that incorporate the requirements of the Equality Act 2010 and the Public Sector Equality Duty. These objectives include:

- services which are accessible to everyone and do not discriminate on any unjustifiable ground;
- services seek to meet the needs of the Council's customers and local communities;

- equality and diversity is championed within the Council and its workforce, at all levels, representative of the local community.

The Public Sector Equality Duty is a duty on the Council and that responsibility cannot be delegated to a contractor/service provider and is a continuing duty.

- (b) The Council must take positive steps to remove the barriers individuals face because of their disability<sup>7</sup>. This is to ensure they receive the same services, as far as this is possible, as someone who is not disabled i.e. the duty to make reasonable adjustments.
- (c) Management and investment in the Council's property portfolio has the potential to make a significant difference to opening up access to services and enabling service delivery to become more inclusive and physically accessible as well as responsive to risk.
- (e) Compliance with the duty to make reasonable adjustments and the Public Sector Equality Duty should continue be an integrated part of the Council's work to optimise and invest in the operational property portfolio (Civic Centre, Museum, multi-storey car park and outsourced sports and leisure facilities). Audits should be carried out on the operational property portfolio to identify and address the requirements of the Equality Act 2010.

**SAMP 7 - The Action Plan at Appendix J, identifies the need for the Council to ensure a rolling programme of equality act audits<sup>8</sup> on operational buildings (Civic Centre, Museum, Multi-storey car park and outsourced sports and sports and leisure facilities.)**

## APPENDIX A

**Operational Property Portfolio** (held for service delivery) - the operational property portfolio comprises:

- sport and leisure facilities;
- parks, open spaces, lakes and marshes;
- Civic Centre;
- cemeteries;
- allotments;
- car parks;
- Museum.

The Council's **overarching strategy is to maintain its operational property portfolio whilst making the most of the opportunities to rationalise the use of space and to generate income.** Development or changes to the operational property portfolio will be considered in respect of these and other corporate objectives.

With commercial leases, the ideal for the Council as landlord, is to be able to pass on liability to the tenant as soon as the lease is granted, often by using a full repairing and insuring lease (**see Appendix G – Full Repairing and Insurance Leases**).

**1. Sport and leisure facilities** - local sport, leisure and physical activity services can help people to live longer, healthier and happier lives. The Council's overarching strategy for its sports and leisure facilities is based on the ethos of providing an environment conducive to physical activity centred on leisure

<sup>7</sup> An individual is disabled under the Equality Act 2010 if they have a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on their ability to do normal daily activities

<sup>8</sup> BS8300: 2009 - Design of Buildings and Their Approach to Meet the Needs of Disabled People - Code of Practice; along with other sources where applicable

centres, wide ranging leisure facilities and parks/open spaces that seek to encourage participation from people of all ages.

The provision of sport and leisure facilities by the Council is fundamental to achieving its aspirations for the wellbeing of its communities and the Corporate Plan's objective<sup>9</sup> 'To make Dartford the place of quality and choice, a place where people choose to live, work and enjoy their leisure time'. In the current economic climate and in the face of national challenges such as high levels of obesity and inactivity and an ageing population, it is more important than ever that the Council and its delivery partners, demonstrate strong evidence of impact, value for money and service excellence.

The following aims underpin the Council's overarching strategy for its sports and leisure property portfolio:

- to ensure that current and future sports and leisure offerings is adaptable and able to respond to customer needs;
- to ensure that current and the future sports and leisure offerings align with the Council's health agenda;
- as a minimum, to ensure that the current condition of the sports and leisure property portfolio is maintained in accordance with lease/management contract terms and conditions;
- to ensure that where sports and leisure property portfolio assets are disposed of, there is an appropriate re-provision;
- to ensure that costs to residents for the use of sports and leisure facilities are appropriate for the Borough to enable access.

The following sports and leisure facilities are provided on Council owned land, under lease (L) from the Council and where applicable, an associated management contract (MC) or tenancy at will (TW):

- 1051(Dartford) Squadron Royal Air Force Air Cadets – L;
- Acacia (Mansion House, Darenth Suite, Building D, Coach House, the sports centre) - TW (storage of archaeological material and gymnastics equipment and in use for Covid-testing)
- Arrow Riding Centre for the Disabled, Darenth Country Park - L
- Bailiffs Cottages – vacant (part of the premises in use by the Council for storage)
- Brooklands Lake (south side) – L
- Central Park Athletics – L
- Dartford & White Oak Triathlon Club/Bridge Events Boathouse( licence to use The Bridge Southern Lake for training and events) – L
- Dartford Amateur Operatic and Dramatic Society – L
- Dartford Cricket Club Pavilion – L
- Dartford Football Club, Princes Park – L
- Dartford Football Club, Princes Park mini football pitches- MC
- Dartford Judo Club – L
- Dartford Lions Club – L
- Dartford Valley Rugby Club – L
- Fairfield Leisure Centre – L & MC
- Fleetdown United Football Club – L
- Halls Bowls Club – L
- Hesketh Park Bowls Club – L
- Leigh Academies Trust Playing Fields – L
- Orchard Theatre – L & MC
- Stone Lodge Indoor Bowls Club - L
- TS Anson Dartford and Crayford Sea Cadets – Brooklands Lakes - L

The lease arrangements comprise full repair and insurance, where tenants take on all of the costs for repairs and insurance for the properties being leased from the Council. The lease arrangements provide a stable income for the Council.

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<sup>9</sup> Under review

**2. Parks, open spaces, lakes and marshes** – this property portfolio is a substantial part of the Council’s asset base, with an extensive and varied range of asset type and functionality. The nature of this portfolio is multi-faceted with a varied and in some cases, secondary infrastructure that may include buildings, play facilities, café, skatepark etc.

The Council’s **overarching strategy for its parks, open spaces, lakes and marshes’ property portfolio is to:**

- **protect, conserve and enhance green spaces and the leafy character of the Borough for current and future generations;**
- **protect and conserve biodiversity – parks and open spaces offer refuges for threatened species;**
- **involve the local community and businesses in the maintenance and development of this property portfolio;**
- **implement specific Green Grid projects utilising developer contributions through section 106 agreements.**

**(a) Parks:**

- Central Park, Market Street, including the Kidd Legacy land (see section 5.4 - Charitable Property Portfolio), Bandstand and Outdoor Theatre;
- Hesketh Park, Park Road (see section 5.4 - Charitable Property Portfolio);
- Worcester Park, Greenhithe;
- Darenth Country Park - 102 acres - developed through Groundworks 'Changing Places' programme comprising grazing fields, open meadows, woodland, hedgerows, orchard and a pond. The site also includes two cemeteries from Darenth Park Hospital (which used to occupy the site) and chalk grassland SSSI<sup>10</sup> - offers a variety of surfaced and unsurfaced paths, including cycle routes;

**(b) ‘Formal’ Open Spaces:**

- Dartford Heath - 320 acres - one of the last remaining lowland heaths in Kent, with a wide variety of habitat types, including woodland, scrub, open grassland and three ponds, providing opportunities for informal recreation. The heathland soils support a unique range of wildlife and is popular with dog walkers. Adult football pitches and an associated pavilion with changing rooms etc. are located in Swan Lane;
- Darenth/Ladies Woods – 88 acres of ancient coppiced woodland and designated as a SSSI;
- Heath Lane – mainly used for football related activities;
- Savoy Road (children’s paying field and recreation ground - see section 5.4 - Charitable Property Portfolio).

**(c) Informal Open Spaces:**

- Approximately 4000 unnamed small open spaces around the Borough (including grassed areas at Temple Hill)

**(d) Lakes and Marshes:**

- Brooklands Lakes (licence to water - carp fishing rights to Dartford and District Angling and Preservation Society and leased to TS Anson Dartford and Crayford Sea Cadets);
- Dartford Marshes - contributes to the Green Grid initiative in North Kent, forming an important part of the “Greening the Kent Gateway” and linking Kent Thameside Green Grid and East London Green Grid, combining nationally significant wildlife habitats with recreational use and flood management.

### 3. Civic Centre:

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<sup>10</sup> A Site of Special Scientific Interest (SSSI) is a formal conservation designation. Usually, it describes an area that’s of particular interest to science due to the rare species of fauna or flora it contains - or even important geological or physiological features that may lie in its boundaries

Good asset management can make council buildings work better for the people using them, by providing a welcoming, safe and secure environment for delivering services.

The Civic Centre is the Council's office and administrative building.

An assessment of the condition of the building was undertaken in or around 2018. The assessment concluded that the building was showing major defects and/or not operating as intended. The assessment led to the refurbishment of office space to predominantly open plan.

The Civic Centre's footprint is 4,185 sq.ft (or 6331sq.m). The floor space area of the whole building, including stairwells, kitchens etc. is 68,122 sq.ft (or 1318 sq.m). Parts of the building are leased or licensed to:

- the Member of Parliament
- Kent Police



The COVID pandemic has forced employers to challenge how they do business from the very core, with flexible working becoming the new norm, that may see a shift in the working culture, with more employees likely to ask for flexibility to work from home.

The Civic Centre includes a significant amount of unused space. The introduction of a more flexible and agile working environment will enable the Council to occupy a much smaller footprint, thereby providing opportunities for income generation, through the leasing or licensing of the unused space.

Any potential long term relocation of the Civic Centre and the options available to the Council, will be considered in light of accessibility, ease of access and other influencing factors such as the Council's investment in online services which includes a 'My Account' self-service facility, resulting in a significant shift away from both the telephone and face to face channels, towards self-service.

## 4. Cemeteries:

In addition to their primary function as somewhere to bury the dead, cemeteries should be a place of peace, tranquillity for the public to visit, to pay respect to interred relatives and friends. As spaces that touch people at a particular poignant moment, cemeteries need to be managed in a particularly sensitive manner.

There is no statutory obligation on local authorities to provide suitable spaces for the disposal of human remains. If they do, there is an obligation to comply with the Local Authorities' Cemeteries Order 1977 (LACO) which provides the rules for the management and operation of cemeteries. Matters of operation and management are for the discretion of the Council.

The Council's **overarching strategy for its cemeteries' property portfolio is to continue to meet current and future needs in respect of local burial space, while providing accessible green space, biodiversity and sustainable environmental practices. LACO is an integral part of this strategy.**

### Cemeteries, currently in use for burials:

- Watling Street Burial Ground, Watling Street, Dartford, including a Chapel
- Stone Cemetery, St James Lane, Stone, Dartford, including a Chapel

### Closed cemeteries

- Swanscombe Cemetery, Swanscombe Street, Swanscombe
- East Hill Cemetery, Pleasance, East Hill (open to the general public as open space)

**Commonwealth War Dead** - There are graves commemorating the commonwealth war dead at Watling Street, East Hill, Stone and Swanscombe cemeteries.

**Watling Street Garden of Remembrance** – the Garden's creation was in response to local families wishing to have a place in which to remember their loved ones without the need to travel outside the Borough of Dartford.

**Fees and charges** are set annually by the Council. The objective is as far as possible to make the cemeteries cost neutral by balancing the costs of the service against the income generated through the sale of plots and actual burials. Income is likely to diminish on account of two factors: a change of burial practice – switching from burial to cremation and a diminishing amount of land being available for burials to take place in the cemeteries.

The Council **maintains** all the buildings, paths, site boundaries, drainage, water services, waste disposal and grounds maintenance of cemeteries in current use and those that have closed. Routine inspections are carried out of the paths and immediate remedial measures are taken if hazards are identified. Ongoing risk assessments are carried out to identify hazards encountered in the excavation of graves by both manual and mechanical means and risks that may be encountered by other maintenance operations and by the visiting public.

There are currently no **crematorium facilities** within the Borough of Dartford. Borough residents have the use of Eltham Crematorium (opened in 1956), run by the Eltham Crematorium Joint Committee, comprising the Royal Borough of Greenwich, London Borough of Bexley and Dartford Borough Council.

## 5. Allotments:

An 'allotment garden' is defined in the Allotments Act 1922 as "An allotment not exceeding forty poles<sup>11</sup> in extent which is wholly or mainly cultivated by the occupier for the production of vegetable or fruit crops for the consumption by himself or his family'.

Provided allotments are used mainly for growing vegetables or fruit, part of the plots can be used for growing flowers, as a leisure area<sup>12</sup> or for keeping small livestock and surplus produce can be shared with others.

The Council's allotments are an important asset to the Borough, providing a wide range of benefits to communities and the environment. The Council's **overarching strategy for its allotments' property portfolio is to optimise the use of its allotments, ensuring a sustainable future for further generations of gardeners.**

Where an allotments' authority is of the opinion that there is a demand for allotments in its area, Section 23 of the Small Holdings and Allotments Act 1908 puts the authority under a duty to provide a sufficient number of allotments and to let them to persons residing in its area who want them.

**'Statutory allotment site'** – pursuant to section 8 of the Allotments Act 1925, where a site has been acquired or appropriated by the Council for the specific purpose of being used as allotments, then this site has special protection and is known as a 'statutory allotment'<sup>13</sup> site. It will remain a statutory allotment site even if the management of the site has been devolved or a lease of the site granted from the Council to an allotments' association or similar managing body. Where management has been devolved or leased out, it is often known as a 'self-managed' site<sup>14</sup>.

The Council has two 'self-managed' sites:

- Dartford Road
- Gore Road

The sites are run and managed by allotments' associations or similar managing bodies, under long-term leases from the Council, with the nominal payment of rent p.a.<sup>15</sup> The allotments' associations or similar managing bodies will usually set their tenants' rents, decide codes of conduct for the sites, enforce the rules of the allotment tenancy agreements in place and maintain communal areas such as paths, water supplies, fences and hedges.<sup>16</sup>

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<sup>11</sup> 1,012 square metres

<sup>12</sup> The 1969 Thorpe Inquiry recognised the importance of allotments for recreational use

<sup>13</sup> There is no reference in the Allotments Acts to 'statutory' - it's a term that has come into use to differentiate from 'temporary'.

<sup>14</sup> Small Holdings & Allotments Act 1908 s29 & Allotments Act 1922 s22(4)(b)

<sup>15</sup> Circular 06/03:Local Government Act 1972 General Disposal Consent (England) 2003

<sup>16</sup> Small Holdings & Allotments Act 1908 s28(2)

Statutory allotments, with some exceptions, cannot be sold or used for other purposes without the consent of the Secretary of State. The requirement under section 8 of the Allotments Act 1925 to obtain Secretary of State's consent does not apply to all land, which is used as allotments. It applies only to land that has been 'purchased or appropriated' for that purpose<sup>17</sup>.

Section 32 of the Small Holdings and Allotments Act 1908 requires that any capital obtained from the sale or exchange of statutory allotment site be spent on discharging debts associated with the acquisition of allotment land, in acquiring new land for use as allotments or on improving the existing stock of allotments. Only the surplus may be used for other purposes.

**'Temporary allotment site'** – where a site has been acquired or held by the Council for another purpose, but in the meantime is used as allotments, then these are conventionally known as 'temporary allotments'<sup>18</sup> - even though they may be in use as allotments for decades.

Temporary allotments are outside the scope of the laws relating to statutory allotments. This means the Secretary of State's consent is not required for the disposal of temporary allotment sites but the Council will usually be required to give plot holders 12 months' notice to quit before the land can be used for another purpose. In addition, temporary allotment sites are also subject to the planning system, which regulates operational development and material changes of use.

Temporary allotments, whether the whole site or an individual plot, can be leased or licensed to community groups. The Council has seven temporary allotment sites within the overall control of the Council, but managed on a day-to-day basis by unincorporated associations or groups of individuals operating from each site, with the nominal payment of rent p.a, by allotment holders:

- Cedar Road -Tree Estate
- Marcet Road off Hallford Way
- Maypole Allotments off Old Bexley Lane
- Princes Road
- Tredegar Allotments - off King Edward Avenue
- Wellcome Avenue - Temple Hill Estate
- Wilmot Road

The management of these sites by unincorporated associations or groups of individuals can be problematic, in that the sites are never fully self-managed by them. Historically, day-to-day issues have been left with the 'committee members' to deal with, but the allotment tenancies are in the name of the Council. The Council therefore has to intervene if disputes arise between plot holders and 'committee members'. This intervention would be avoided, if all the Council's temporary allotment sites were to be leased, to a legal entity (such as trust). The alternative model is for the Council to fully manage its allotment sites, but that will be resource intensive.

## 6. Car Parks:

The Secretary of State's Statutory Guidance to Local Authorities on Civil Enforcement of Parking Contraventions states 'Local authorities should ensure that parking in town centres and other shopping areas is convenient, safe and secure, including appropriate provision for motorcycles and deliveries. Parking policies including enforcement should be proportionate and should not undermine the vitality of town centres'.

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<sup>17</sup> Snelling v Burstow Parish Council [2013] EWCA Civ 1411)

<sup>18</sup> There is no reference to temporary allotments in any of the five Allotments Acts (1908 to 1950) or the Land Settlement (Facilities) Act 1919 or the Agricultural Land (Utilisation) Act 1931

The Council's **overarching strategy for its car parks' property portfolio** is aimed at:

- **facilitating and favouring short-stay parking so that parking spaces are readily available to support the vitality, vibrancy and resilience of its town centre (higher turnover of spaces allows more users to be accommodated per space and shoppers are more likely to travel during inter-peak periods when there is more likely to be spare capacity on the road network);**
- **setting parking charges which encourage a turnover of short-stay parking spaces (e.g. by shoppers) close to town centre destinations and long-stay parking (e.g. by commuters), in parking areas more distant from Dartford town centre.**

The following sites have been acquired by the Council from third parties, pursuant to arrangements under a lease or licence/management agreement. These sites are used as public off-street car parks, managed by the Council:

- Dartford Heath (managed as part of Dartford Heath)
- Grove Car Park Swanscombe (managed on behalf Swanscombe and Greenhithe Town Council)
- Springvale
- Town Car Park - Eagles Road (Station Road end)
- Woodland Car Park - Eagles Road

## **7. Museum:**

This is a Council owned facility, which provides free educational and wellbeing benefits, set in an environment of culture and heritage, for the benefit of both residents of the Borough and visitors from further afield.

The Council's **overarching strategy for its Museum property asset is to continue to support its provision, with the following aims:**

- **to promote cultural cohesion;**
- **to facilitate good custodianship of its collections;**
- **to support and stimulate learning and local education;**
- **to promote wellbeing benefits, particularly mental health;**
- **to encourage new and repeat footfall to the area;**
- **to offer heritage facilities;**
- **to enable visitor enjoyment, including yielding tourism benefits.**

## APPENDIX B

### Non-operational – Investment Properties Portfolio (held for economic development and financial return)

It is believed that the properties referred to in this Appendix, may have been purchased many years ago, not originally as commercial investments, but for the wider benefits of the Borough, including improving the area and for economic development.

The Council derives revenue income in the form of rent or is holding the assets with a view to future capital appreciation.

In general, the Council's **overarching strategy in relation to its investment properties' portfolio seeks to hold property for long term strategic, planning or regeneration objectives and maximise rental income/yield wherever possible.**

With commercial leases, the ideal for the Council as landlord, is to be able to pass on liability to the tenant as soon as the lease is granted, often by using a full repairing and insuring lease (**see Appendix G**).

#### 1. Community property:

The voluntary and community sector (community associations, sports clubs and other community based groups) (VCSs) play a vital role in the Borough, by providing services at a local level, assisting with improving social cohesion and promoting local community activities.

The Council is firmly committed to supporting VCSs and the management and use of the Council's asset base is one of the ways to achieve this.

Although the Council's overall strategy includes maximising rental income/yield wherever possible, nevertheless, the Council is also committed to developing greater community participation and recognises the importance of providing support to VCSs that provide services to the community, which are compatible with the Council's wider objectives.

The Council recognises that being able to access property at affordable rates is very important to the continued success of VCSs. However, this needs to be balanced against other demands for Council available resources. It is therefore important to be able to make decisions on the use of corporate buildings by VCSs and allocate resources in an open and transparent way, in accordance with the Council's overarching strategy referred to below and the **Guidelines for Nominal/Peppercorn Rent at Appendix H**.

The Council supports the accommodation needs of VCSs by leasing property on suitable terms. A wide range of sports and community organisations benefit from this provision, which provides communities with established sports and community facilities. Council grant funding through its Community Grant Scheme or Recurring Grants, may be available for VCSs and if so, service level agreements may require VCSs to offer their facilities for hire, with the Council seeking to ensure that community use is the predominant focus of the premises.

The six neighbourhood based facilities i.e. community centres in the Borough are either leased out (L) or under a tenancy at will arrangement (TW):

- Fleetdown Community Centre - L
- Greenhithe Community Centre -L
- Joydens Wood Community Centre -L
- Longfield and New Barn Community Hall -L
- Temple Hill Community Centre –TW (with Healthy Living Centre Dartford to manage the THCC)
- Tree Estate Community Centre - TW (with Healthy Living Centre Dartford to manage the TECC)

The Council's **overarching strategic approach to its community property portfolio is as follows:**

- neighbourhood based facilities - generate a commercial yield, but this may be subsidised e.g. through nominal/peppercorn rent and/or grant, where an organisation is clearly supporting the Council's objectives or assisting with service delivery.
- sole occupancy of a building at full market rate – larger VCSs that can afford to pay full market rates or who are not delivering services that meet the Council's identified priorities, will be able to access Council buildings on its standard lease terms and conditions.

Through this overarching strategy, the Council seeks to outline the positive way in which it wishes to work with VCSs, for the benefit for its residents and communities across the Borough of Dartford.

## 2. Commercial property (shops):

Work is required to compile an up to date condition survey of the HRA investment properties (shops), in order to understand the overall dilapidations liability associated with the operational estate and to identify a financial provision and strategic plan to resolve any identified issues (see Appendix E). This will be a separate exercise (outwith this SAMP), undertaken by the centralised property services department, under the instructions of the Housing client.

The Council has no current plans for any new direct investment in commercial property. Any such opportunities or future policies on any new direct investment will be recommended to Cabinet and, being capital expenditure, will be approved as part of the Capital Programme. The Council considers that commercial opportunities are best undertaken in synergy with the priorities of the Council.

Use Class <sup>19</sup>	Property Name
A1 <sup>20</sup>	171-175 Henderson Drive
A5	49 Temple Hill Square
A1	30 - 34 Fleetdale Parade
A1	37 Temple Hill Square
A1	25 Temple Hill Square
A1	50 Temple Hill Square
B1(a) <sup>21</sup>	2 Temple Hill Square
A3 <sup>22</sup>	35 Temple Hill Square
A1	36 Temple Hill Square
A1	38 Temple Hill Square
Sui Generis <sup>23</sup>	13 Temple Hill Square
A1	18 -20 Fleetdale Parade
A1	14 Temple Hill Square
A1	40 Temple Hill Square
A1	24-26 Temple Hill Square
A1	2-4 Fleetdale Parade
A1	39 Temple Hill Square
A1	48 Fleetdale Parade
A5 <sup>24</sup>	177 Henderson Drive
A1	1/1a Temple Hill Square
A1	12 Temple Hill Square
A1	23 Temple Hill Square
A3	14-16 Fleetdale Parade
A1	13 Riverview Henderson Drive
A1	14 Riverview Henderson Drive
A1	11/11a Temple Hill Square
A1	46 Fleetdale Parade
A1	36 Fleetdale Parade

<sup>19</sup>Planning use classes are the legal framework which determines what a particular property may be used for

<sup>20</sup> A1 - Shops

<sup>21</sup> B1(a)- as an office other than a use within class A2 (financial and professional services)

<sup>22</sup> A3- Food and Drink

<sup>23</sup> Sui Generis- buildings that do not fall within any particular use class

<sup>24</sup> Hot Food Takeaways

The following property portfolio is held by the Council in the 'General Fund':

A1	16 Market Street
D1 <sup>25</sup>	43 Overy Street
B8 <sup>26</sup>	High Street Bridge House

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<sup>25</sup> D1 - Non-residential institutions

<sup>26</sup> B8- Storage or Distribution

## APPENDIX C

### Housing Revenue Account Property Portfolio (for information purposes only)

Comprises:

- a core housing stock (2,310 houses and 2,388 flats), either tenanted or leasehold;
- 1,282 estate garages (tenanted or leasehold),
- 28 estate shops (leasehold);
- 3224 individual areas that are deemed as open spaces;
- 12 playgrounds.

The core housing stock generates significant rental income that is re-invested into the stock to ensure that the quality of accommodation is of a high standard, meets tenants' needs and contributes to the Council's wider strategic objectives around health and well-being.

The Council participates in the Government's 1-4-1 replacement scheme that enables use of capital receipts from right to buy sales to part fund provision of new social housing. This is achieved through both the Council's own new build programme and purchase of street properties. Purchase of street (existing) properties does not increase the overall supply of homes, but it does increase the stock of affordable homes by virtue of making these properties available again for social rent.

A register of housing stock properties used solely for residential purposes, which are either tenanted or leasehold, is maintained on Capita. The social housing portfolio is accounted for through the Housing Revenue Account, which is subject to separate statutory considerations.

Council housing represents a materially significant portion of the Council's balance sheet value for fixed assets. The Code of Practice on Local Authority Accounting<sup>27</sup> requires a full beacon revaluation of council houses every five years and annual reviews to ensure the value remains materially correct.

Under the IFRS Code of Practice on Local Authority Accounting, all Council housing stock is required to be valued on a 5-yearly cycle. In order to do this, 'Beacon Properties' are identified which act as a representative cross-section of the total portfolio. These are inspected, measured and valued, and used in a calculation to assess the total value of the Council's holding.

For this exercise, up to 200 properties may be identified as Beacons, and each will require a full valuation. An annual desktop re-valuation of the Council housing stock is then required in each of the next 4 years. This does not involve a full valuation of the Beacons but does still require specialist consideration.

All valuations are undertaken in accordance with RICS Valuation Standards, CIPFA guidance, Central Government guidance on Stock Valuation for HRA Resource Accounting, and the process is subject to external audit.

In addition, the Council has a statutory requirement to provide a valuation to Council house tenants who apply to buy their home under the Right to Buy scheme (RTB). This requires a full inspection and valuation. Numbers of RTB applications rise and fall depending on political and economic circumstances, but as a trend, have been increasing in recent years.

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<sup>27</sup> CIPFA - 2019/20



## APPENDIX D

### Charitable Property Portfolio

The Council is the sole trustee of a number of charitable land holdings:

- Kidd Legacy at Central Park – Charity No. 1134257
- Hesketh Park – Charity No. 4023456
- Children’s Playing Field and Recreation Ground, Savoy Road Dartford – Charity No. 302723

The Charities Act 2011 highlights the requirement for charities’ aims to be, demonstrably, for the public benefit. In order to be a charity, a body must be established for exclusively charitable purposes. Whilst the Council and the charities often both have close interests in local topics, the charities need to be independent of the Council as local authority, in that decisions about the administration and operation of the charities, including their finances, need to be taken solely in the interests of the charities, with a view to furthering their charitable purposes and for no other purpose.

The Trustees’ reports, accounts and updates are submitted to the Deed, Trust and Obligations Committee on an annual basis.

## APPENDIX E

### Compliance and Risk

Sections 3 and 4 of the Health and Safety at Work Act 1974, imposes a clear duty on the Council to conduct its undertakings in such a way as to ensure, so far as is reasonably practicable, the safety of staff and the public using its premises.

It is also important that management of the property portfolio ensures compliance with legal agreements, minimises the Council's exposure to risk as a result of environmental, social and economic change and understands and addresses the Council's exposure to risk of all kinds, including financial, legal and reputational.

The activity in this SAMP to reinforce accurate information, classify assets according to their use and ensure appropriate leases are in place, all contribute to reducing this exposure to risk.

**Health and Safety:** The primary statutory instruments driving statutory health and safety compliance for property assets are:

- Health & Safety at Work etc. Act 1974
- Managing Health & Safety at Work Regulation 1999
- Regulatory Reform (Fire Safety) Order 2005
- Building Regulations 2000 (as amended)
- Control of Substances Hazardous to Health COSHH Regulations 2002 & Amendment 2003
- Control of Asbestos Regulations 2012
- Health and Safety Executive Approved Code of Practice (ACoP) Guidance on Legionnaires Disease, the Control of Bacteria in Water Systems L8

This task has become increasingly complex in recent years because of:

- an increasing burden of legislative and regulatory duties falling on building occupiers;
- delegation of relevant budgets and property portfolio responsibilities to individual service departments, not all with the necessary knowledge and experience to fully undertake the role;
- the significant reduction in staffing resources retained centrally to develop and monitor compliance with relevant standards;
- an unknown level of risk associated with some sites within the commercial property portfolio due to the lack of robust data.

To meet this challenge, the aim is to ensure that the property portfolio (where applicable), has risk assessments for statutory health and safety compliance, and where relevant, an identified program of recommended remedial works to be agreed and resourced.

With concerns related to some leaseholders' wherewithal to effectively navigate the legal process, a level of additional technical monitoring to assess and reduce potential reputational and financial risks under lease arrangements, particularly with lettings of **commercial properties such as shops** should be considered, with action plans agreed with the leaseholder, where performance failures are identified. This monitoring should include, where applicable:

- Asbestos Register;
- Legionella monitoring and control;
- Electrical testing certificates;

- Water quality and water hygiene records;
- Health and safety record keeping;
- Fire risk assessments, fire and evacuation procedures and emergency lighting system test;
- Bacteriological testing of the hot and cold water systems;
- Major incident logs;
- Servicing and maintenance records.

The following sections describe in more detail the strands of activity relevant to regulatory compliance, contracts and legal agreements, including understanding other risks and ensuring quality assurance of the Council's systems, so as to provide a robust and effective management of risk:

**Data Management** – see section 7 of this SAMP;

**Environmental Sustainability** – see section 12 of this SAMP;

**Rent Reviews and Lease Renewals** – see section 15 of this SAMP;

**Equality Act 2010** – see section 16 of this SAMP.

### Leases – Standard Terms

- (a) A **Lease** is a written agreement whereby the Council (the **Landlord**) gives another person; company; charity; or other legal entity (the **Tenant**) the exclusive right to occupy and use the Landlord's property for a set period of time (the **Term**) in return for the Tenant making payments to the Landlord (the **Rent**).

The phrase '**Demised Premises**' generally refers to premises that have been transferred by Lease, as opposed to the 'retained parts' which are not transferred but are retained by the Landlord. The phrase can also be used in property deeds, and can sometimes be considered to include the duration of the Lease as well as the physical extent of the premises.

The Demised Premises therefore are generally the parts of the premises that the Tenant is permitted to occupy. It is very important to check that the extent of the Demised Premises set out in the Lease correctly reflects both parties understanding of what the Tenant is permitted to occupy and what are the retained parts.

**Peppercorn rent** – is a token or nominal rent. The name comes from leases where the rent is one peppercorn a year e.g. £1.00 per annum (**See Appendix H - Guidelines for Nominal/Peppercorn Rents**).

A Lease will set out the obligations of the Landlord and the Tenant and what rights each party has in relation to the property.

- (b) **Code of Practice for Commercial Leases**<sup>28</sup> - The Code aims to promote fairness in commercial leases, and recognises a need to increase awareness of property issues, especially among small businesses, ensuring that occupiers of business premises have the information necessary to negotiate the best deal available to them.

The Council has regard to the Code.

- (c) **Term** - A Lease is granted for a set period. Commercial Leases are usually granted for a "fixed term" which means the Lease will start and end on the fixed dates specified in the Lease.

Under the Landlord and Tenant Act 1954 (LTA 1954) (discussed in more detail in para.(n) below)), the Tenant may have a statutory right to renew the Lease at the end of the Term. If a Lease is contracted out of the LTA 1954, the Lease will be brought to an end at the end of the Term and the property must be vacated immediately. If the Lease does not contain such provisions, it may be a protected lease under the LTA 1954 and it may continue until it is terminated in accordance with the LTA 1954.

- (d) **Break Clause** - The Lease may, however, provide for either party to terminate the Lease at an earlier date.

- (e) **Area Demised** - The Lease will refer to the property that the Tenant has been granted the right to occupy and use as the Demise. The provisions within the Lease relating to the extent of the Demise are important for the following reasons:

- the Tenant is generally only responsible for its Demise;
- the Tenant will not usually be required to repair or maintain any property outside of the Demise;
- the Tenant will not be entitled to make any alterations or additions to any property which falls outside of the Demise; and
- the Tenant will not have any rights over any property that does not fall within the Demise, unless provided for under the Lease.

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<sup>28</sup> The Code for Leasing Business Premises, England and Wales 2020 (1st edition, February 2020) (effective from 1 September 2020)

- (f) **Rent** - The Lease will usually either: be granted at a substantial premium at the outset with only a small or nominal ground rent; or for no initial premium at an open market rent, or at a nominal/peppercorn rent.

Generally, the Rent will be expressed as an annual sum, which is to be paid in four equal instalments in advance. The Lease usually requires the Rent to be payable on the Council's usual rent payment days, which are 1 January, 1 April, 1 July and 1 October.

The Tenant may also have to pay an insurance premium charge, VAT on the rent and any other payments due under the Lease, as well and any outgoings such as rates and utility bills.

- (g) **Rent Review** – The Lease usually provides for the rent to be increased during the Term, although a Lease with a term of 5 years or less, will generally not have a rent review clause. The rent may be increased in a variety of different ways:

- There may be set dates within the Lease for the rent to be reviewed. The Lease will set out the procedure for the rent review. The rent may be reviewed to the **market rate**, in which case the reviews will usually take place every 3 to 5 years. Alternatively, the rent may be reviewed by reference to an index (usually the **Retail Price Index (RPI)**) or by reference to the **open market valuation**;
- The Lease may set out pre-agreed increments by which the rent is to be increased each year; or
- The Lease may provide for a set figure for rent and require the Tenant to pay an additional amount of rent relating to the Tenant's business profits (**turnover rent**).

- (h) **Rights, Exceptions and Reservations** - The Lease will usually provide for certain rights, exceptions and reservations, which are all important. Not only do they affect the Landlord's freedom to deal with, or develop, neighbouring land but they also affect the Tenant's use of the property and could have a considerable effect on the Tenant's ability to carry out its business.

It is important that the Lease grants the Tenant certain **Rights** over any property, which is outside of the Tenant's Demise but which the Tenant will require for its ordinary use of the property. For example, if a Tenant has a Lease over a floor in an office, it is important that the Lease grants the Tenant the right to use the stairs, lifts and entrance hall, so that the Tenant can access the office. The Tenant may also require a right to park vehicles over land belonging to the Landlord and a right to walk or drive over the Landlord's land if there is no direct access from the building to the public highway.

The Lease will usually reserve certain rights to the Landlord over the property being demised to the Tenant. For example, the Lease may provide the Landlord with the right to enter onto the property Demised to the Tenant to carry out repairs. These rights are usually referred to as **Reservations**.

The Lease will usually provide for certain rights to be excluded; these are referred to as **Exceptions**. Exceptions effectively limit the Tenant's rights. For example, a Right to Light is often excluded within a Lease so that the Tenant is not able to raise any objection if the Landlord develops land in a way, which obstructs light getting through to the Tenant's windows.

- (i) **Insurance** – see Appendix G 'Full Repairing and Insurance Leases'.

- (j) **Repairs** – see Appendix G 'Full Repairing and Insurance Leases'.

- (k) Alterations and Improvements** - The Lease may impose certain restrictions on the alterations and improvements the Tenant is entitled to make. Such provisions are included within a Lease to protect the Landlord from alterations, which could damage the Landlord's investment interest in the property. The Lease would usually also provide for the property to be reinstated to its original condition before the end of the Term.

The restrictions within a Lease on alterations and improvement should be appropriate to the type of property and the length of the term. If the Lease is a Lease of the whole of the property and is for a long term, there may only be a few restrictions.

However, if the Lease is a Lease of part of a larger property, or is a Lease for a short term, the Lease may absolutely prohibit structural alterations. It may, however, allow for internal alterations in certain circumstances, either without the Landlord's consent or with the Landlord's consent. In some situations, the Landlord cannot withhold its consent unreasonably. If the Tenant was to put up or move internal partitioning, this would generally be regarded as an internal alteration unless the Lease stated otherwise. Therefore, the Tenant must ensure that the Landlord's consent is obtained prior to undertaking any alteration works at the property.

- (l) Assignment, Underletting, Occupation by Others and Charges** - A Tenant may want to sell its interest in the Lease, referred to as an **Assignment**. A Tenant may want to keep its interest in the Lease but allow someone else to use part of or the whole of the property by way of an Underlease, referred to as an **Underletting**. The Tenant may also have proposals to share the property with others or allow others to occupy the property.

There are likely to be a number of the restrictions associated with the Assignment and Underletting of the property, which need to be considered in detail at the outset.

Most Leases provide that the Landlord's consent will need to be obtained before the grant of an Assignment or an Underlease, The Tenant must ensure that such a consent is obtained prior to granting an Assignment or Underlease. If a Tenant fails to obtain such consent, the Tenant will be in breach of its Lease, which could result in the Landlord bringing proceedings to bring the Lease to an end, or claiming damages from the Tenant. Unless a Lease is for a very short term, the Landlord will not usually apply an absolute prohibition on Assignments and Underlettings of the whole of the property, as this would mean that the Tenant is tied into the Lease for the full Term of the Lease.

Sharing or allowing another party to occupy the property is generally prohibited, as are Assignments and Underleases of part of the property.

If the Lease is regarded as a "New Lease" for the purposes of the Landlord and Tenant (Covenants) Act 1995 - most tenancies granted after 1 January 1996 will be regarded as a New Lease - an Assignment which has not been authorised will be an '**excluded assignment**' for the purposes of the 1995 Act. This means that having made an 'excluded assignment', the Tenant remains bound by the covenants in the Lease, until the an authorised Assignment of the Lease takes place.

The Tenant may also wish to use its interest in the property as security for a mortgage or other loan arrangement. The Lease will generally allow the whole of the property to be charged with the Landlord's prior written consent, but prohibit a charge being taken only over part of the property. In some cases, and dependent upon the nature of the building and the circumstances, any form of charging may be prohibited.

- (m) Use** - Generally, a Lease will expressly set out how the property may be used which will usually be defined as the **Permitted Use**. The Lease will either express the permitted use positively i.e. "the Tenant shall use the property for [a permitted use]" or negatively i.e., "the Tenant shall not use the property otherwise than for [the permitted use]".

Irrespective of what the Permitted Use is under the Lease, if there is to be a change of use of the property, or the property has been altered, the Tenant may require planning permission. The Tenant will be required to obtain the Landlord's consent, in addition to planning permission, as the authorised use of a property could affect the Landlord's investment in the property and its rental value, which in turn affects the rent review.

- (n) **Contracting out of the LTA 1954** - Under the LTA 1954, if a Lease is regarded as a business lease, the Tenant may have certain rights to renew the Lease at the end of the contractual term, or receive compensation (under the LTA 1954) from the Landlord for its inability to do so. The Tenant may therefore be required to agree to forgo the rights under the LTA 1954. If so, this would have to be authorised effectively and recorded within the Lease.

If the Lease is "contracted out" of the LTA 1954, the Lease will contain an express clause, which confirms that sections 24-28 of the LTA 1954 have been excluded. The Tenant will have signed a Declaration or sworn a Statutory Declaration before the Lease was granted. The Tenant will have no right to renew the Lease and it will terminate at the end of the Term at which point the property must be vacated immediately. If a new Lease is still being negotiated, it may be possible to put in place temporary arrangements to allow the Tenant to remain.

If the Lease has not been 'contracted out' of the LTA 1954, it will not contain express provisions (referred to above) and will continue until the Lease has been properly terminated under the LTA 1954, or renewed, pending which, the Tenant will have the right to remain in the property, usually referred to as the "holding over" period.

- (o) **Tenant's indemnity covenant** - Leases contain a Tenant's covenant to indemnify the Landlord, for breach of covenant and for the Tenant's acts or omissions. An indemnity covenant will extend the Tenant's obligation from a promise to comply with laws, to an obligation to indemnify the Landlord for non-compliance.

- (p) **'Compliance with laws' clauses** - Many statutes impose obligations on Landlords, Tenants or both. Some of these statutes will also:

- specify whether the primary compliance obligation is on the Landlord or the Tenant;
- give the court the power to apportion the cost of compliance between those having an interest in the Demised Premises;
- state that the court may have regard to the terms of the Lease (which would include the 'compliance with laws' clause), when deciding what would be a just and equitable cost apportionment between the Landlord and Tenant.

The purpose of a 'compliance with laws' clause in a Lease is to:

- shift responsibility for all statutory compliance to the Tenant, where possible;
- remind the Tenant of its responsibility to comply with certain statutes;
- evidence the Landlord's and Tenant's intentions as to who is responsible for statutory compliance, in order that the court will have regard to this when apportioning the cost of compliance<sup>29</sup>;
- give the Landlord a direct right of action against the Tenant for breach of covenant, provided the statute in question does not contain cost apportionment provisions (see below).

If the Tenant is in breach, the Landlord might:

- forfeit the Lease to bring an end to the unlawful use; or
- claim in damages, if the Landlord has suffered any loss as a result of the Tenant's breach.

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<sup>29</sup> *Monro v Lord Burghclere* [1918] 1 KB 291

If a statute contains a mechanism for the court to apportion the cost of compliance, that is the only means by which the statutory compliance obligation can be passed to another person.<sup>30</sup> The Landlord can only use the statutory apportionment machinery and **cannot** sue the Tenant under the 'compliance with laws' clause.<sup>31</sup>

The 'compliance with laws' clause should be read in conjunction with the:

- Rent review provisions (if any);
- Tenant's indemnity covenant;
- Tenant's repair, alterations and user covenants.

A 'compliance with laws' clause will bolster such covenants to make it clear that the Tenant must, for example:

- comply with the CDM Regulations when carrying out works to the Demised Premises; and
- ensure its use of the Demised Premises is permitted under planning law.

The Council's Lease terms require the Tenant to comply with all legislation relating to the Demised Premises and its use. Where relevant, specific statutes will be detailed e.g. Town and Country Planning Act 1990.

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<sup>30</sup> Barraclough v Brown [1897] AC 615

<sup>31</sup> Horner v Franklin [1905] 1 KB 479; Stuckey v Hooke [1906] 2 KB 20



## APPENDIX G

### Full Repairing and Insurance Leases

Most all the Council's commercial property portfolio is let on 'full repairing and insurance' (FRI) lease terms.

FRI leases have a repair covenant requiring tenants to keep the property in good and substantial repair and condition. This is the highest standard of repair and means that, regardless of the state of the premises on occupation, it must be returned in good repair and condition.

The definition given to 'the property' in a lease is crucial because this will detail the extent of the property that a tenant is responsible for. For instance, is the lease an internal only demise or does the tenant have responsibility for the whole structure? On occasion, the tenant may negotiate with the Council as landlord, for certain parts of the building to be excluded from the repairing obligation in the lease and thereby saving that future cost to the tenant.

**Insurance:** The 'insuring' part of FRI' refers to the fact that the Council as landlord, passes on all costs of insurance to the tenant. Typically, the costs will be for insurance of the building itself to its reinstatement value, public liability insurance and cover for loss of rent due under the lease. The Council will also seek to recover any excesses payable and any valuations required by insurers.

**Repairs<sup>32</sup>** - The requirement for repair of the premises applies even if the property is in a poor state of repair to begin with. The common misconception is that a tenant only has to give the property back in the same condition in which they took it. This is not the case. By entering into an FRI lease, the tenant takes on complete responsibility for repairs, even if:

- that tenant was not responsible for the state of repair of the premises from the outset of the lease, or
- if the disrepair already existed when the lease was granted.

The repairing obligation is based on the wording of the lease. So the words 'good and substantial repair and condition' mean that the tenant is required to keep the property and structure in that level of repair and condition. Therefore, this would include an obligation to put the property into repair, if it is in disrepair at the start of the lease. This would be because the tenant cannot comply with their obligation under the repairing covenant, unless the tenant first puts the property into the level of repair required by their covenant.

The standard and nature of the work that the tenant has to carry out depends on the age and nature of the property at the date of the grant of the lease<sup>33</sup>. Therefore, in principle (but case-by-case can be different), if the property is old and dilapidated, a covenant to repair it will not require the tenant to modernise it.

A covenant that requires the tenant to keep the property in 'good and substantial repair and condition', is more onerous than one that specifies 'good repair' alone.

**Schedule of condition** - The tenant's responsibility to repair is as required by the wording of the lease, not the actual condition they take it in. Where the lease limits the tenant's repairing obligations to the state of the premises at the date of the grant of the lease, a schedule of condition should be prepared. This schedule should include photographs and a detailed description of the condition of the property and be signed by the parties to the lease. The schedule should give a comprehensive view of the state of the property and should not just be focused on areas in poor condition. This schedule should be kept with the lease for future reference and the covenant in the lease should expressly refer to the schedule.

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<sup>32</sup> In *Lurcott v Wakely & Wheeler* [1911] 1 KB 905, Lord Justice Buckley gave the definition of repair as being, ".....Repair is restoration by renewal or replacement of subsidiary parts of a whole

<sup>33</sup> *Lister v Lane* [1893] 2 QB 212

**Insured risks** – It is usual for the tenant’s repairing obligation to exclude damage caused by an insured risk. However, the tenant will normally be responsible for repairing damage caused by an insured risk if the insurance monies cannot be recovered because of an act or omission of the tenant or someone they have allowed onto the property.

**Dilapidations** - This refers to items of disrepair that are covered by the repairing covenants contained in a lease. The term is used to cover breaches of the tenant’s covenants relating to the physical state of the premises when the lease ends. Therefore, they are the tenant’s requirements to put the property in the repair as required by the lease at the end of the term.

An interim schedule [of dilapidations] may be served during the term of the lease, giving the tenant the opportunity to remedy any breaches before outstanding works escalate. Regular interim schedules are considered best practice and often prevent larger dilapidations claims arising when the lease is terminated.

A terminal schedule [of dilapidations] is served within the last 18 months of the lease expiring, although the Council has 6 years from lease end to make a claim. The process under the [Dilapidations Protocol](#) is that the Council as landlord will appoint a dilapidations surveyor to prepare a detailed ‘terminal schedule of dilapidations’, which will list all items of disrepair in the property and will quantify the cost of carrying out the repairs, including a calculation of lost rent for the period during which the repairs are carried out.

The terminal schedule of dilapidations is served on the tenant. At this point, the tenant will usually instruct a surveyor to validate the claim. It is then up to the tenant to decide whether to undertake the repair works, during the lease, or agree a financial settlement with the Council, after the lease ends. Once the lease has expired, the tenant loses the right to undertake the repair works.

The Council cannot profit from a dilapidations claim. Any financial settlement between it and the tenant must only relate to actual loss incurred as a result of the tenant’s failure to comply with the lease. The Council can only expect a building to be returned in the condition dictated by the lease covenants.

**The importance of an FRI lease for the Council as landlord:** It is imperative that the Council protects its investment and ensures dilapidations are attended to both during the term of the lease and after it ends.

To protect its interests, the Council should ensure the following when drafting and negotiating a commercial lease agreement:

- the scope of the premises the tenant is responsible for is clearly defined, for example, where only part of a building is being leased to identify the internal walls, floor, ceilings and other component parts which will comprise the tenant’s repair obligations;
- a Schedule of Condition should contain high-quality photographs;
- a Schedule of Condition needs to be referred to in the appropriate clauses of the lease; and
- before agreeing to a tenant’s exercise of a break option, an early surrender or assignment or other dealing with the the lease, the Council to ensure the tenant has complied with all of its lease obligations, including as to repair.

## APPENDIX H

### Guidelines for nominal/peppercorn rent

1. There are various powers available to local authorities when disposing of land, depending on the purpose for which the land is held and there are different requirements depending on the power used. For example, there are specific powers and requirements for the disposal of land held by a local authority for planning purposes, housing, allotments and open space.
2. 'A disposal' means any freehold disposal, by sale or exchange, of Council owned land/property (including buildings) and any disposal by the granting of a lease or licence for a period greater than 7 years. Leases of 7 years or less or assignment of a term which has not more than 7 years to run are not covered by these guidelines, as they are exempt from the statutory requirement to obtain best consideration.
3. When disposing of assets, the Council is subject to statutory provisions. Generally, disposals are made using the power under section 123 of the Local Government Act 1972, under which there is an overriding duty to obtain the best consideration that can be reasonably obtained for the disposal. This duty is subject to certain exceptions that are set out in the General Disposal Consent (England) 2003. The disposal of land held for housing purposes is governed by Section 32 of the HA 1985 and the General Consent for the Disposal of Land held for the purposes of Part II of the Housing Act 1985 –2013.
4. As a rule, the Council will not consider nominal/peppercorn rents for properties held within the investment portfolio (**see Appendix B**) unless one or more of the following applies:
  - to retain a facility;
  - to contribute to the regeneration of an area;
  - to access external funding;
  - to tenant an otherwise empty building;
  - to support a volunteer community service run activity (in support of Council objectives and services);
  - to host a partner service;
  - a long lease is being granted as an alternative to the Council disposing of its freehold interest (where generally the tenant pays a premium for the grant of the lease);
  - it is a requirement of any headlease;
  - in exceptional circumstances that support the Council's strategies and policies.

**NB:** For a volunteer community service run activity (in support of Council objectives and services), in the majority of cases, the Council will charge a market rent and provide support through grant funding.

5. Long-term leases at a nominal/peppercorn rent should include provision for financial renegotiation by way of a rent review or break clause. Long-term leases, which fix the rent for the whole of the term with no review provision, must be avoided, unless it is a requirement of an external funder or necessary to secure a tenant.
6. The approval of the relevant service Director, in consultation with the valuer, must be sought before agreeing to a peppercorn/nominal rent arrangement.

# Subsidy Control Assessment

### 1. Background:

Subsidy control regulates how public sector bodies, including local authorities, can use the assets and powers at their disposal to support businesses. Unlawful subsidy could result in judicial review proceedings and significant reputational issues for the Council.

Economic operators may receive as de minimis/minimal financial amounts (MFA) of up to £315,000 of subsidy over a continuous three year period (from all sources), which rises to £725,000 for organisations delivering services such as social housing or social care. MFA involves light touch paper work. The amounts are the total MFA from all public sources.

2. **When can subsidy be conferred?** - There are three main ways in which subsidy issues can arise in property transactions.

**(a) When the Council purchases or leases property from a third party above the market rate**

Subsidy can be conferred upon the seller of a property if the Council pays a purchase price, which exceeds the market rate e.g. overcompensating a third party seller for land.

**(b) When the Council sells or leases its property for below the market rate**

The Council can also confer subsidy upon purchasers of property, if it allows its property to be sold or leased below the market rate. This is sometimes a consideration in regeneration projects. It may be dealt with in subsidy terms via any discount from market value being assessed and determined as a "grant equivalent" (i.e. the value of the benefit conferred), unless that grant equivalent can be placed reliably within the de minimus rule.

**(c) Where the Council amends an existing deal in a way that benefits another party**

Subsidy can also arise where the Council varies the terms of an existing agreement with a third party in a way that creates an advantage which would not be found in a commercial market e.g. an amendment to a lease which creates an 18-month rent deferral for the property management company renting offices from the Council, amounting to a short-term loss for the Council.

3. **How to avoid subsidy risks** - complete the [subsidy control principles assessment template](#), before a decision is taken to grant fund or provide other financial support in property related transactions.

To be subsidy control compliant, the Council must ensure that it achieves full market value for the transaction i.e. acting in a comparable way to that of a private investor selling or leasing land or buildings in the same circumstances.

- (i) **Market value determined by placing the sale or lease on the open market and holding an unconditional bidding process** - The Council must advertise the sale/lease to attract interest. The buyer must also be free to decide how to use the land or buildings; or
- (ii) **Market value determined by one or more independent asset valuers** - In a state aid case<sup>35</sup> the General Court upheld a clarification provided by the European Commission on the five (5) criteria to be applied when opting to secure State aid compliance in public sector property transactions through an independent valuation:

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<sup>35</sup> Hammar Nordic Plugg v European Commission (Case T-253/12, 28 October 2015)

- (a) the valuation must be made prior to negotiation of the sale/lease; AND
- (b) the valuation must be commissioned by the initial owner of the land or building (i.e. the public body); AND
- (c) the valuation must be conducted by an independent third party; AND
- (d) the valuer must have extensive experience in the property sector; AND
- (e) the method of valuation must be credible, based on reasonable assumptions and the value must be fully explained rather than asserted.

Provided the Council can demonstrate that the valuation(s) used for non-advertised property transactions satisfy all of the five (5) criteria (a)to (e) above, it can be assured that it has taken the necessary steps to accurately determine the open market value of its land or buildings and mitigated the risk of the transaction involving subsidy.

Open market value is assured either by reference to an open competition such as a public procurement process, or by reference to independent expert opinion (which may refer to a benchmarking procedure).

## APPENDIX J

### Strategic Asset Management Plan – Action Plan Schedule

Action ref number	Action description	Key asset management policy	SMART Objective	Key Milestones 2021/22	Key Milestones 2022/23	Key Milestones 2023/24	Accountability	Resource implications
SAMP 1	Subsidy Control	Section 6(d) and Appendix	Compliance with the UK subsidy control rules will	<b>Review by 30</b>		<b>Reviewed 20</b>	Property	N/A
		I – Subsidy Control Guidance	remain critical to ensuring Council projects start on a sound footing. The key to dealing with subsidy effectively, is to do so at a project’s formative stage. This is likely to provide the greatest number of options for ensuring compliance	<b>September 2021,</b> subject to the implementation of UK domestic subsidy control legislation		<b>March 2023</b>	Services Manager, in consultation with the Head of Legal Services	
SAMP 2	Data Management-	Sections 2.8 and 7 of the	UNIFORM cleanse - To make informed decisions, it	<b>Complete the</b>	Conduct a	Conduct a review	GEN <sup>2</sup>	£10k for
		SAMP	is vital that information on the property portfolio is up-to-date, accurate and accessible. This will allow the performance of the property portfolio to be proactively managed, benchmarked and monitored against targets for improvement	<b>cleanse by 30</b>	review of	of Uniform to ensure on-going fitness for purpose	Property in consultation with Property Services Manager for the initial cleanse only	initial cleanse
SAMP 3	Asset Management	Sections 2.5 & 8 and	Implement a centralised Corporate Landlord	<b>Implement by 30</b>	Conduct a	Conduct a review	Property	N/A
		Appendices A & B of the SAMP	Model (CLM) to create the capacity and expertise to prioritise resources, manage risks and obtain greater value from the Council’s property portfolio	<b>March 2022</b>	review of the CLM to ensure on-going fitness for purpose	of the CLM to ensure on-going fitness for purpose	Services Manager in consultation with service departments and corporate maintenance	

Action ref number	Action description	Key asset management policy	SMART Objective	Key Milestones 2021/22	Key Milestones 2022/23	Key Milestones 2023/24	Accountability	Resource implications
<b>SAMP 4</b>	<b>Risk Management</b>							
<b>4A</b>	<b>Reputational and financial risk</b>	Section 11 and Appendix E (compliance and Risk) of the SAMP	Additional technical monitoring to assess and reduce potential reputational and financial risks under lease arrangements, for the commercial property portfolio	Establish a rolling programme of monitoring <b>by 30 March 2022.</b>	Implement to the monitoring programme	Complete	Property Services Manager	N/A
<b>4B</b>	<b>Repair and insurance</b>	Section 11 and Appendix G (Full Repairing and Insurance Leases) of the SAMP	Additional monitoring to ensure consideration is given to dilapidations both during the term of the lease and after it ends	Establish a rolling programme of monitoring <b>by 31 December 2021</b>	Implement the monitoring programme	Complete	Property Services Manager	N/A
<b>4C</b>	<b>Temporary allotment sites</b>	Section 5 of Appendix A- (Operational Property Portfolio)	To avoid the Council arbitrating in disputes, consider leases to legal entities (such as trusts)	Consult with relevant bodies <b>by 30 March 2022</b>	Implement new leases	Complete	Property Services Manager in consultation with the relevant service manager and Legal Services	N/A
<b>SAMP 5</b>	<b>Rent Reviews and Lease Renewals and Rent Recovery</b>							
<b>5A</b>	<b>Rent reviews and lease renewals &amp; void minimisation</b>	Section 15 of the SAMP	The tenanted property portfolio should be pro-actively managed to maximise income with regard to new lettings, rent review, lease renewal and minimising arrears of rent.	Establish a rolling programme of rent reviews and lease renewals due to expire, at least 9-12 months in advance of the expiry date, <b>by 31 December 2021</b>	Implement the programme	Complete	Property Services Manager	N/A
<b>5B</b>	<b>Full repairing and insurance lease clause (commercial lettings (FRI))</b>	Section and Appendix G (Full Repairing and Insurance Leases) of the SAMP	To protect the Council's interests, the drafting of the FRI clause to include the scope of the premises the tenant is responsible for, reference to photographs and compliance of lease obligations, including repairs, before agreeing to assignment etc.	Review commercial lease FRI clause <b>by 30 September 2021</b>			Property Services Manager in consultation with Legal Services	N/A
Action ref number	Action description	Key asset management policy	SMART Objective	Key Milestones 2021/22	Key Milestones 2022/23	Key Milestones 2023/24	Accountability	Resource implications

5C	Rent arrears and recovery	Section 15 of the SAMP	To ensure rental income is maximised through an established debt recovery culture. to reduce the debt owed to the Council, from both previous and current tenants and to promote a stronger payment culture through the management of the property portfolio	Review debt recovery mechanism by <b>31 December 2021</b>	On-going monitoring	Complete	Property Services Manager in consultation with Finance	N/A
SAMP 6	Environment and Sustainability	Sections 2.14 and 12 of the SAMP	To reduce emissions and manage climate risk in the Council's operational buildings (Civic Centre, Museum, Acacia Hall & multi-storey car park).  Review whether the let commercial property portfolio complies with EPC ratings	Review by <b>30 March 2022</b>	On-going monitoring	Complete	Property Services Manager in consultation with the Carbon Management Team	N/A
SAMP 7	Equality Act 2010	Section 13 and Appendix A (Operational Property Portfolio) and Appendix E (Compliance and Risk)	To ensure the Council takes positive steps to remove the barriers individuals face because of their disability (Civic Centre, Museum, Acacia Hall & Multi-storey car park & outsourced leisure facilities)	By <b>30 March 2022</b> , establish a rolling programme of equality act audits on the operational property portfolio (Civic Centre, Museum, multi-storey car park, shops and leisure facilities)	Implement rolling programme	Complete	Property Services Manager	N/A
SAMP 8	Recurring Grants	Section 6 and and Appendix H (Guidelines for nominal/peppercorn rent)	To ensure consistency, accountability and transparency, implement a policy for applying and reviewing Recurring Grants	By <b>30 March 2022</b>	Complete	Complete	Property Services Manager in consultation with relevant service department and Head of Finance	N/A

Adopted By Cabinet – 25 March 2021 – Min.No:203