

DATA LABEL: PUBLIC



**CORPORATE POLICY AND RESOURCES POLICY DEVELOPMENT AND SCRUTINY
PANEL**

**PROPOSED POLICIES AND PRACTICES EMPLOYED IN THE MANAGEMENT OF THE
COUNCIL'S NON-OPERATIONAL PROPERTY ASSETS (TNRP/CPP)**

REPORT BY HEAD OF FINANCE AND PROPERTY SERVICES

A. PURPOSE OF REPORT

The purpose of this report is to advise the Panel of the proposed amendments to the policies and practices to be employed by the Head of Finance and Property Services in the management of the council's non-operational property portfolio (otherwise known as the Tenanted Non-Residential Portfolio (TNRP) and Commercial Property Portfolio (CPP)).

B. RECOMMENDATION

The Panel is asked to note the following recommendations that it is intended to present to Council Executive:

1. Notes the amendments and updated approach to the policies and practices contained within this report.
2. Notes the content of the proposed policies and practices employed in the management of the council's non-operational property assets contained within Appendix 1 of the report.

C. SUMMARY OF IMPLICATIONS

| | | |
|------------|--|--|
| I | Council Values | Focusing on our customers' needs; being honest, open and accountable; working in partnership; making best use of our resources. |
| II | Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment) | <p>Establishment of future policies and practices for the management of the Council's non-operational property assets.</p> <p>The disposal and leasing of property is governed by S74 (2) of the Local Government (Scotland) Act 1973 and the Disposal of Land by Local Authorities (Scotland) Regulations 2010.</p> |
| III | Implications for Scheme of Delegations to Officers | To amend the Scheme of Delegation to Officers accordingly. |
| IV | Impact on performance and performance Indicators | The efficient management of Council assets will improve the performance of the TNRP/CPP and non-operational property |

assets.

There are currently a number of performance indicators related to the performance of the Commercial Property Portfolio and these are outlined in the CPP Strategy and Management Plan.

The proposals in the report will provide an ability to assist and realise the performance of the council's commercial and non-operational property assets.

V Relevance to Single Outcome Agreement

We make the most efficient and effective use of resources by minimising our impact on the built and natural environment.

Our economy is diverse and dynamic, and West Lothian is an attractive place for doing business.

VI Resources - (Financial, Staffing and Property)

The Policies and Practices employed in the Management of the Council's Non-Operational Property Assets focus on the steps to assist and improve the performance of the council's non-operational property portfolio.

VII Consideration at PDSP

These proposals are being presented to the Panel before reporting to Council Executive.

VIII Other consultations

Governance (Legal Services) – to be consulted.

D. TERMS OF REPORT

D.1 Background

The council's Corporate Asset Management Strategy and Corporate Asset Management Plan establish the framework for performance of operational and non-operational property assets.

The corporate strategic asset management hierarchy has defined the framework on which commercial property decisions and management operations are based to ensure a consistent approach to planning, management and reporting purposes. The hierarchy is shown below;

- Council Corporate Plan 2018/19 to 2022/23
- Corporate Asset Management Plan 2018/19 to 2027/28
- Property Asset Management Plan 2018/19 to 2027/28
- Commercial Property Portfolio Strategy and Management Plan 2021/22 to 2027/28.

The vision of the Corporate Asset Management Plan is to 'manage assets efficiently and effectively to support the achievement of corporate priorities and outcomes'. This vision is also shared by the remaining plans within the hierarchy.

The Commercial Property Portfolio Strategy and Management Plan 2021/22 to 2027/28 was established in September 2021 to outline a number of activity themes, performance measures and actions to measure progress in respect of the council's non-operational property assets.

West Lothian Council has a substantial history of providing quality commercial property to support the local and national economy whilst accommodating a significant number of businesses ranging from small independent local companies to national and international organisations.

The council's non-operational portfolio, also known as the Tenanted Non-Residential Portfolio (TNRP) comprises over 730 leased or licenced properties. 570 are offered for lease on commercial terms which form part of the core Commercial Property Portfolio (CPP). The CPP mainly consists of traditional commercial property regularly transacted such as retail, office, industrial and other lettable land and property assets.

Day to day management of the TNRP/CPP is the responsibility of the Head of Finance and Property Services and is delivered by Property Services' Commercial Property Portfolio team, often under delegated authority. The management of the portfolio is guided by formal council policies and good estate management principles.

The Commercial Property Portfolio Strategy and Management Plan 2021/22 to 2027/28 highlighted the importance of a review of the council policies adopted for the management of the non-operational portfolio (TNRP/CPP) to ensure that strategic aims and outcomes are achieved and furthermore where possible, improved.

D.2 Priorities, Actions and Targets

D.2.1 Council Executive approved the current Policies and Practices employed in the management of the council's non-operational property assets on 28 October 2014 which is specifically related to the TNRP/CPP portfolio.

A review of existing policies, practices and procedures, as highlighted within the CPP Strategy and Management Plan, seeks to ensure relevance and alignment with corporate, social and statutory requirements which also impacts upon performance aims and outcomes.

The CPP Strategy and Management Plan identifies a number of activity themes, performance measures and actions to measure progress. These are designed to sustain and where possible enhance performance. The priority outcomes and performance measures are as follows:

| Priority Outcome | Performance Measures |
|-----------------------------|---|
| Compliance | Properties are statutorily and regulatory compliant. |
| Condition | Properties are in satisfactory or better condition. |
| Suitability | Properties are suitable for letting and use. |
| Sufficiency and Utilisation | The portfolio is sufficient to meet demand and not underutilised (voids). |
| Accessibility | Properties are accessible for people with disabilities and also available across the county in communities where private provision is insufficient. |
| Financial | The portfolio will provide sustained and increasing valuable revenue for the council. |
| Sustainability | Properties and agreements are suitable to attract tenants and a diverse range of business uses. |
| Economic Regeneration | The portfolio will contribute positively and influence business space provision in West Lothian and support economic development and regeneration priorities. |
| Good Estate Management | The portfolio will be managed in accordance with recognised effective and efficient commercial property principles and reflect Council Values. |

Performance indicators, and current and future actions have been identified for each priority performance outcome and are outlined in the relevant sections of the proposed CPP Strategy and Management Plan providing a strong link to the aims and objectives of the Corporate Asset Management Plan.

In order to monitor progress against the outcome targets, performance and actions will be reported annually throughout the course of the strategy life cycle further determining the efficient management of the CPP. The consolidation and proposal of additional policies and processes will seek to assist the achievement of the performance outcome targets.

D.2.2 Proposed Changes

The proposed changes to policy are focused upon the specific performance outcomes relating to the CPP however will also be rolled out across the overall TNRP and where appropriate the operational portfolio.

The appendices highlight the main proposals summarised below;

- **Marketing Activities:**
The updated process provides a clear approach as to how properties are advertised on the open market and how this activity will gain as much interest as possible.
- **Permitted Uses:**
The proposed updated approach comprises previously approved policies in conjunction with recent market experiences to ensure the properties continue to be marketable to as wide an audience as possible. It is also intended that the permitted uses will ensure continuity of business for existing and future tenants' purposes.
- **Best Value considerations:**
Property Services is committed to ensuring the council meets its obligations to achieve Best Value. Whilst recognising there are some circumstances where exceptions may be required to Market Value.
- **Good Estate Management Principles:**
The proposed amendments allow for a more streamlined approach to providing tenant support opportunities, health and safety compliance requirements, sustainability considerations and debt recovery procedures assisting in the day to day management of the portfolio.
- **Surplus Property and Acquisition Opportunities**
Appendix 1 includes the existing surplus property procedures previously agreed at Council Executive however also notes the potential for additional properties to be added to the TNRP with a view of increasing revenue.

E. CONCLUSION

The updated Proposed Policies and Practices Employed in the Management of the Council's Non-operational Property Assets (TNRP/CP) builds upon the existing policies and procedures to ensure continuity, effective and efficient management of the council's non-operational commercial property portfolio to assist ultimately in the achievement of the performance outcomes over future years.

Although not an exhaustive list of processes it provides guidance to professional staff and tenants for the purposes of optimising revenue income whilst satisfying good estate management principles and supporting economic activity in West Lothian. It is intended to report the updated policies and practices to Council Executive for approval.

F. BACKGROUND REFERENCES

- West Lothian Council Corporate Plan 2018/19 to 2022/23.
- Corporate Asset Management Strategy 2018/19 to 2027/28.
- Property Asset Management Plan 2018/19 to 2027/28.
- Commercial Property Portfolio Strategy and Management Plan 2021/22 to 2027/28.
- Policies and Practices Employed in the Management of the Council's Non-Operational Property Assets – (Council Executive 28 October 2014).
- Policies and Practices Employed in the Management of the Council's Non-Operational Property Assets – (Council Executive 20 May 2008).
- Surplus Property Procedures – (Council Executive 28 November 2017).

Appendices/Attachments: Updated Proposed Policies and Practices Employed in the Management of the Council's Non-operational Property Assets (TNRP/CPP)

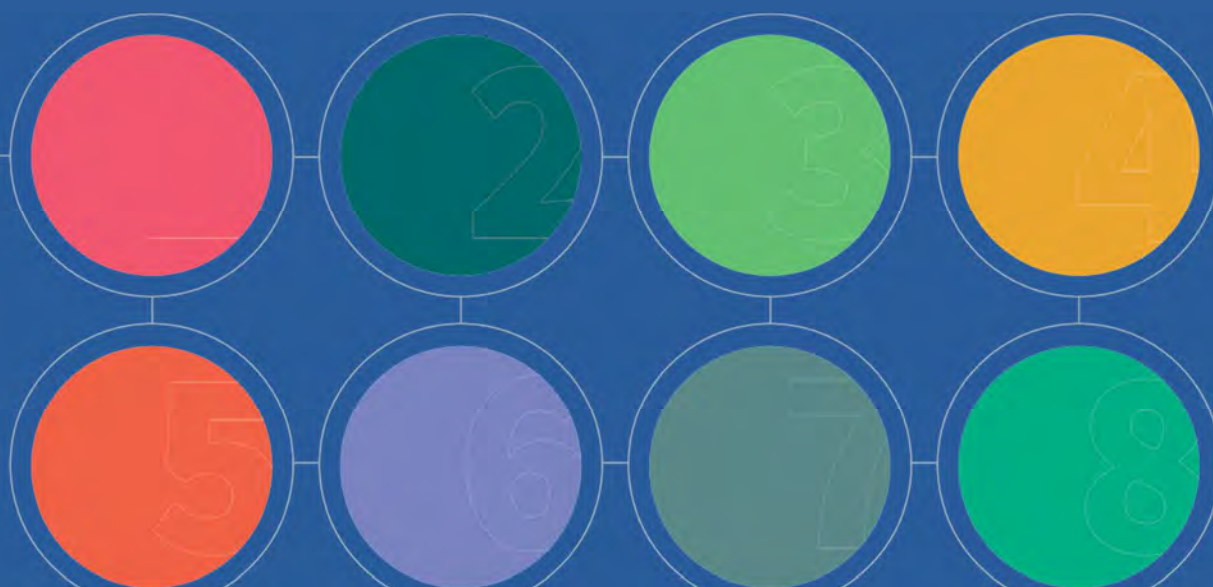
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Date of meeting: 19 August 2022

Policies and Practices Employed in the Management of the Council's Non-Operational Property Assets (Commercial Property Portfolio / Tenanted Non-Residential Portfolio)

August 2022



DATA LABEL: PUBLIC

POLICIES AND PRACTICES EMPLOYED IN THE MANAGEMENT OF THE COUNCIL'S NON-OPERATIONAL PROPERTY ASSETS (COMMERCIAL PROPERTY PORTFOLIO / TENANTED NON-RESIDENTIAL PORTFOLIO)

1.0 INTRODUCTION

- 1.1 The council's strategic vision for the management of the commercial portfolio is to "manage the assets efficiently and effectively to support the achievement of corporate priorities and outcomes whilst delivering growing rental and capital values".
- 1.2 This document intends to blend a combination of existing policies and practices with necessary updates into a single document which will be utilised in the management of the council's non-operational property with specific tasks and activities noted below. The document will also provide guidance for the Head of Finance and Property Services to adopt additional practices within the day to day management of the portfolio.

2.0 GENERAL

- 2.1 West Lothian Council provides a range of properties for let across the council area. There are two principal reasons why the council leases commercial property.

The council retains an economic development role by providing commercial accommodation in areas where the market is recognised to have failed, and in this way plans to generate business and employment in areas where it would otherwise not flourish.

The leasing of commercial properties: generates income which sustains council operations and investment in the existing portfolio.

3.0 STAGE 1: MARKETING OF PROPERTIES

3.1 Inspection and Marketing

When a property becomes vacant and is ready to be advertised it will be subject to a survey and inspection allowing for marketing particulars to be prepared detailing key information including;

- Location
- Size
- Price
- Planning
- Business Rates
- Statutory requirements
- Any other information relating to the property

A wide range of advertising tools will be used to market commercial property. A summary is noted below of existing practices which are utilised to ensure properties are gaining the optimum level of interest. The marketing strategy is continually reviewed to promote and improve letting performance whilst increasing brand awareness.

3.2 Current marketing activities include:

- Property particulars are made available for download from an online commercial property marketing website (currently www.novaloca.com).
- Lists of all available property are circulated upon request by post and electronically to interested parties.
- Prominent properties/land are individually advertised through the use of mounted advertising boards on walls/fascia, window displays or general boards at the entrances of office or industrial estates where appropriate.
- If appropriate, industrial estates and business centres are promoted through general advertising boards for each location. Industrial or less prominent properties are not generally promoted through the use of advertising boards to reduce the risk of burglary and vandalism.
- High profile or well sought-after properties may be advertised in local newspapers and occasionally in the national and trade press.

3.2.1 The use of online platforms has become a common and useful tool for private commercial property agents in respect of building relationships with potential customers and marketing property for lease/sale. It is apparent that the Commercial Property Portfolio (CPP/TNRP) could benefit from a greater but controlled online presence. An update of the council website is underway on behalf of Property Services which will increase marketing activity. Digitalisation of services will promote good relationships with customers and assist with streamlining services such as electronic forms, the potential use of tenant portals, where functionally possible, is currently being investigated.

Monthly volume sampling of enquiries and requirement type is also produced to monitor demand. Waiting lists have proven difficult to manage in the past and, as such, all enquiries are directed to the incumbent online advertising/marketing site, application forms are received on a 'first come first serve' basis. The quick turnaround of properties such as small industrial units further obviates the need for waiting lists.

The commercial property team continues to develop and produce information which is designed to support existing and prospective tenants. This will be developed to provide augmented advice on those seeking properties and, more particularly, development of the existing Tenant's Handbook will assist prospective tenants in taking on a lease and after they have taken entry.

4.0 BASIS OF MARKETING

4.1 Property Application Form

Due to the nature of the portfolio, a large portion of the properties may have no competing interests when they become available for re-letting. In such cases, it is appropriate to let these properties on a first come first served basis. This allows for an expedited letting process which is vital for many businesses, and also supports a high level of occupancy by reducing void periods.

Interested parties must complete and submit a Property Application Form before a property is considered "Under Offer. An application does not place the interested party under any form of contract to lease the property. Once a property is Under Offer, the applicant has the right of first refusal on that property for the period of one month. If, after the period of up to a month, no substantive progress is being

made in the letting, officers retain the right to re-advertise the property on the market subject to issuing a seven-day ultimatum to the applicant in writing.

The application form covers such matters as gaining crucial background information regarding the applicant's proposed business, checking the identity of a prospective tenant, gaining the ability to store and share their data with parties associated with the letting (utility companies/government agencies, HMRC, Police Scotland, SEPA etc). A financial reference will be applicable at this stage to ensure tenants are capable of meeting the financial obligations of the lease.

4.2 Tender Process

- 4.2.1 There may be occasions whereby some properties or estates receive a high volume of interest. When such properties become available, officers may choose to offer the properties on a closed tender basis. In situations where offers to lease commercial property are submitted, these require to be returned as sealed bids to Property Services officers on or before a nominated date and time, and they will then be opened and recorded in accordance with established procedures.

During this process, officers will make interested parties aware of the estimated rental value for the property if applicable. Officers will ensure prospective tenants are advised to only submit bids which are sustainable in terms of their business plan.

- 4.2.2 The Commercial Portfolio Manager or equivalent will consider any offers received and determine which offer is successful in accordance with officers' delegated authority. For offers received over officer's delegated authority, recommendations shall be submitted to the Council Executive for authorisation to proceed. It should be noted that Property Services are not obliged to recommend the highest offer or any offer if it is considered to be materially at odds with market expectations.
- 4.2.3 Whilst the rental to be paid is always the predominant consideration in determining the success of an offer, other factors may be taken into consideration such as the use the property is to be put to, sustainability of the business, prior tenancy experiences of the bidder, benefit to local economy/area and the length of lease required. Incentives requested will also be factored into the assessment of the offer and a recommended tender bid will be progressed.
- 4.2.4 Offers received shall be considered in conjunction with Section 6 below.
- 4.2.5 Officers shall advise the recommended bidder of their application being successful and shall progress with the letting process.
- 4.2.6 In the event no offers are received at a closing date, the property shall be placed back on the open market. Should it be determined that there is low demand for the property, the Commercial Portfolio Manager shall determine whether a further tender exercise is necessary.

5.0 BUSINESS SUPPORT

- 5.1 Details of potential tenants who contact officers regarding available property are passed to the council's officers in Economic Development and Regeneration to determine whether the council or Business Gateway can provide any form of business support.
- 5.1.2 Officers will actively seek to direct prospective tenants to business support, especially in respect of new businesses operations.

6.0 BASIS OF RENTS

- 6.1 West Lothian Council is a registered organisation under the regulatory governance of the Royal Institution of Chartered Surveyors (RICS). The council's Property Services team is therefore compelled to complete valuations on behalf of West Lothian Council in accordance with RICS regulations and guidance. This also ensures that officers meet the requirements of the council's Professional Indemnity Insurance Policy.
- 6.1.2 West Lothian Council as a public body and commercial landlord, is obliged to recognise Land Disposal Regulation. Under the terms of the Local Government (Scotland) Act 1973 Section 74(2), "*a local authority shall not dispose of land under subsection (1) above for a consideration less than the best that can reasonably be obtained*", this legislation applies equally to sale or lease. While Section 74 has been modified by the Local Government in Scotland Act 2003 and The Disposal of Land by Local Authorities (Scotland) Regulation 2010, this central assumption remains out-with exceptional circumstances. Achieving Best Value has continually been a focus of the TNRP/CPP to ensure sustainability and future viability of the portfolio.
- 6.1.3 For the vast majority of rented properties, the best return is determined by deriving a rent based upon lettings of similar properties in the same or similar locations around the same date as the valuation. This is known as the Market Rent which is determined by the comparative method of valuation. Listed below is a brief explanation of how that relates to the valuations that are carried out for leased purposes.

6.2 Marketing Rent

- 6.2.1 Marketing Rent (asking rents) utilised, in marketing materials are based upon evidence of recent comparable rents in the area. Where evidence is limited, market knowledge and rental trends are used to inform and underpin professional judgement. Marketing rents are produced to provide guidance for prospective tenants, the marketing rent is simply a guide price. The rental finally agreed may be above or below that figure depending on market conditions and the level of interest.

Whilst the comparative method is generally utilised in terms of standard commercial valuations, some properties are valued by utilising the turnover which may be achieved from properties. This type of valuation is utilised for the valuation of ground leases, leisure/commercial entities and public houses/hotels.

6.3 Initial Rent

- 6.3.1 The Initial Rent is the rental which is generally paid in the first year as agreed between officers and a new tenant, upon occasion this may vary from the marketing rent for a number of reasons;
- **Tenders:** in a bidding situation, applicants may decide that a property is more or less valuable to their business than the marketing rent.
 - **Repairs:** it may be agreed between officers and the incoming tenant that the tenant carries out repairs to the fabric or services of the building which would fall under the landlord's remit to fund, and that part or all of that cost can be deducted from the rent over a period of time.
 - **Market Forces:** changes in the economy or competing private landlords offering rental incentives can impact on officers ability to secure a letting at the marketing rent. In these cases, officers may be required to match the rental incentives being offered elsewhere in the wider market to secure the letting of a property which may otherwise remain vacant for a considerable period of

time. This would benefit the landlord in terms of securing revenue, reducing rates liability and securing employment within the local area. Any such incentives must be signed off by the Commercial Portfolio Manager before being offered to ensure this proposal meets Best Value.

- **Rent Review:** These transactions are calculated on the same basis as other rentals with reference to rental evidence in the local area, which would represent the Market Rent if it were to be let on the open market at the rent review date. There may be occasions whereby older lease styles may differ.

6.4 Lease Renewals

- 6.4.1 Lease renewals are transactions which are also reviewed to Market Rent, based upon the recent comparable evidence at the date of renewal. The council offers highly flexible leases, let on either a monthly, annual or short term basis to tenants. In many cases a review date cannot be specified therefore leases must be terminated and renewed to allow for the rent to be reviewed. Under best value provisions, short term leases must be considered for rental uplift on a regular basis.

6.5 Rental Negotiations

All rental negotiations must comply with the 1973 Act in so far as determining that rentals established and negotiated are in line with private sector rents.

6.6 Exceptions to Market Rental/Value

6.6.1 Interim Arrangements

Emergency repairs and interim arrangements can from time to time occur whereby existing tenants seek emergency assistance from the council. Occasionally instances such as these do occur and the council may, where possible, provide emergency assistance for short periods of time with the utilisation of vacant property whereby a week to week/short term lease arrangement on a peppercorn rental may be agreed. Properties utilised under this category shall continue to be marketed in order to secure a commercial tenancy.

6.6.2 Economic Development

Property held for economic development purposes will be leased at full market rental, with any financial support for business development considered separately. This is intended to ensure compliance with S74, and separates council responsibility for rental income from consideration of the award of financial assistance.

6.6.3 Small Industrial Units

The Tenant Handbook makes provision for the rent charged on these units are increased by reference to the RPI index or open market values, whichever is greater. This increase is usually applied annually to ensure consistency with market comparisons and to further ensure the council as landlord obtains Best Value. Leases are generally set on standard month to month, internal repairing terms, at all-inclusive rentals. It shall remain at the discretion of the Commercial Property Manager to assess the benefit to the council of an alternative lease structure.

6.6.4 Short-Term Low Value Leases

Conclusion of leases for more than five years may be documented by legal services following Council Executive approval. The Property Services Manager may authorise agreements under delegated authority for a lease term of less than five years.

7.0 MANAGEMENT OF THE COMMERCIAL PORTFOLIO

7.1 Permitted Use

The council seeks to provide commercial accommodation to a wide range of businesses, however the council is unable to support all businesses in all localities. Certain uses can be regarded as a nuisance which can cause difficulty and disruption to neighbouring occupiers ultimately leading to a reduction in the quality of an estate, rental income and occupancy levels. Such cases can be resource intensive in terms of adjudicating between competing interests of different parties and subject to a high volume of tenant complaints.

Specific types of uses which can potentially cause the greatest inconvenience to neighbouring tenants and challenges from a good estate management aspect are as follows:

- Vehicle Maintenance or refurbishment– congestion /pollution issues.
- Car Wash/Valeting - water and chemical run-off and congestion.
- Taxi/ Hire Car – congestion.
- Haulage and Distribution - congestion and road/landscaping damage issues.
- Waste Handling – unwanted waste and pollution.

- 7.1.1 These issues are continually considered by officers and applications are ultimately determined by the Commercial Portfolio Manager or equivalent.

If suitable accommodation is not available in any of the appropriate industrial estates, lease applications will be refused.

Other potentially challenging uses include:

- Heavy Engineering - heavy equipment, noise, and pollution issues.
- Dirty industrial uses - noise and pollution issues.
- Food processing/Catering - food waste, vermin, blocked drains.
- Hot food takeaways and restaurants – odour nuisance to neighbours.
- Construction - construction waste and congestion.
- Licensed off sales and other Licensed uses.
- Fitness/Gym use – large client bases can cause parking congestion issues.
- Dog Grooming – May be unsafe for animals in working industrial yards with no amenable space.

- 7.1.2 The portfolio has evolved to meet the ever-changing market demands, such as broadening of the use of industrial units to consider alternative uses on the basis that there would be no perceived detrimental impact upon the adjoining units or the estate in general and Planning, Economic Development and Regeneration Services would not oppose the granting of planning consent for such use and subsequently planning consent is obtained.
- 7.1.3 The allocated officer will consider the suitability of potential uses for specific locations on a case by case basis and reserves the right to refuse a letting for problematic uses.
- 7.1.4 The council has also adopted a number of formal policies since the reorganisation of local government. In addition a number of formal policies of its predecessor authorities are still operated. These are identified below:
- There is a ban on performing animals on council land.
 - The cultivation of Genetically Modified crops is forbidden on council land.
 - The sale and advertising of combat knives is prohibited in council shops.
 - The use of firearms is prohibited on council land.
 - The location of radio masts and wireless transmitters is restricted to “non-sensitive” buildings, and is monitored in association with the Public Analyst. This responded to Health and Safety concerns relating to the potential impact of low-level electro-magnetic emissions.
 - There are strict criteria governing the sponsorship of roundabout advertisements. This policy ensures that sites are not used for the promotion of products, activities and services inappropriate to a local authority, e.g. tobacco, alcohol, activities that encourage prejudice.
 - The use of council property for election offices, and the display of election posters. This is controlled by Statute under the Local Government Act 1986 and is intended to ensure probity and fairness.
- 7.2 Further considerations include Metal detection, off road vehicles and drones. Officers periodically receive requests from individuals or organisations for permission to use council land, and in particular land identified for future development, for metal detection or off-road vehicles (e.g. quad bikes). To date these have generally been resisted, but a formal council policy is set out in 7.2.1 and 7.2.2 below.
- 7.2.1 Metal detectors:
Where there are no immediate proposals for the use of the site and where this activity would not be detrimental to the council’s long-term interests, permission would be granted subject to the applicant entering into a Licence agreement that will ensure the reinstatement of the site, the transfer of any finds to the council, the applicant accepts full liability for any consequences of their activity and will cover the costs of the council in preparing the relevant documentation. Any applications shall be considered on an individual basis.
- 7.2.2 Off road vehicles:
As there may be issues for public liability, safety, nuisance and environmental concerns from off road vehicles, these uses will be declined.

7.2.3 Drones:

The use of drones over council land is declined where deemed to be for recreational use due to potential nuisance caused to neighbouring tenants, however shall be permitted where there is a legitimate commercial reason (for example mapping surveys/structural repairs survey/aerial photography).

7.3 Additional Policy Considerations

- 7.3.1 It has been evident during the course of the Covid-19 pandemic, that policies relating to the use of TNRP/CPP properties that may have been appropriate during periods of relative economic stability and prosperity have become restrictive, both for the council and prospective tenants, in difficult trading conditions.

The following practices combining a mix of existing policies and amendments are therefore recommended for approval;

7.3.2 Broadening the use of industrial units

Previous policy restricted uses to Planning Use Classes 4, 5 and 6. Uses such as a crèche/nursery, leisure, ancillary retail, and vehicle repairs are precluded. However, it is proposed that a more flexible approach should be introduced where the use is appropriate for the property on grounds of good estates management (i.e. it would not be detrimental to the use of adjoining units or the estate in general), and where Planning Services would not oppose the granting of planning consent for such use and subsequently planning consent is obtained.

7.3.3 The Use of Council Shops

The council previously adopted a policy of not intervening to prevent competing uses trading beside each other in retail parades by giving exclusivity to one particular tenant. By allowing market forces to determine whether a specific tenant mix is appropriate we seek to provide fairness to all tenants and this stance will be maintained. Consequently the permitted use included within marketing materials and the lease agreement itself shall state the permitted Planning Use Class acceptable to the council in line with the Town and Country Planning (Use Classes) (Scotland) Order 1997; for example Class 1 – Retail; Class 2 – Financial/Professional Services; Class 3 – Food and drink/hot food takeaway.

7.3.4 Mobile Catering Vans

The use of mobile catering/snack vans have been more prominent within West Lothian and in particular country parks and industrial estates. A review of current rental rates and conditions is underway and shall be implemented once complete. Council land is generally not made available for mobile catering vans due to perceived management issues that these can create.

Therefore previously, leases for these uses were precluded because of potential management issues. In response to an increase in demand, it was previously recommended that this policy be relaxed, on condition that a prospective tenant has, or is in the process of obtaining, all other necessary consents (street trading license, planning permission etc) on sites that are considered acceptable to the council as determined by the Commercial Portfolio Manager.

7.3.5 Installation of ATMs (cash machines) in leased properties

Existing tenants shall continue to be permitted, subject to consent and negotiation of revised terms of lease, to install ATMs. Currently where the withdrawal of cash is to

be free of charge to customers no additional rent will be payable to the council, but where a charge is to be made an additional rent will be negotiated. Tenants will also be required to take direct liability for reinstatement costs consequent to the removal of an ATM and associated equipment.

7.3.6 “Pop-up” Shops

The demand for temporary, short term and intermittent use of shops has arisen from businesses that see advantage of using empty premises without a long-term liability. The use of council shops for this purpose is inconsistent with the objective of obtaining a secure income stream, and may inhibit the ability to offer a long-term tenant early entry. In addition, the occupancy levels for council shops are generally high with relatively few long-term voids. In the circumstances leases for use as “pop-up” shops will normally be avoided. However given the recent changes in the market for traditional high street shops, this policy will be kept under review to ensure the council keeps abreast of market trends and the ability to utilise such lettings reduce the council's financial liabilities.

7.3.7 Signage Opportunities

The location of private property agents advertising boards for commercial property (For Sale/To Lease) is subject to an annual licence and fee. Specific guidance for applicants is available upon request regarding the use of advertising boards for commercial property and the necessary considerations.

7.3.8 Tenant Requirement for Planning Consent

On occasion the council has received an offer for lease of a property subject to obtaining planning consent for a Change of Use. It is not unreasonable to allow a tenant time to obtain consent, where the proposed use is considered suitable for the property on offer. However, in the event that planning permission is not forthcoming within a reasonable timeframe determined by Property Services acting reasonably, then the property would be placed on the market. If planning consent was denied, prospective tenants would only be allowed to continue in such circumstances if they are willing to compensate the council for the loss of rent for the period required for an appeal to be determined.

8.0 Stage 2: Granting Leases

- 8.1 As mentioned above, the council offers a wide variety of lease options, depending on prospective needs or security of tenure, demand and type of units. The majority are let on short term flexible periods.
 - 8.1.1 The Head of Finance and Property Services has a set level of delegated authority under the Scheme of Delegation to agree lease terms on behalf of the council.
- 8.2 Small industrial unit lease agreements allow flexibility for new or small businesses to respond to their changing needs, and keep the responsibility for the condition of the property with the landlord. Short term, standard agreements generally mean a quick turn-around of vacant units meaning tenants do not generally have to wait for a lengthy period of time or compete for units.
 - Leases are granted on a first come first served basis, subject to the status of the business.
 - Uses falling within planning Use Classes 1 and 2 (e.g. for retail, leisure, crèche/nursery, etc.) and for vehicles repairs are precluded. This is intended

to protect the supply of industrial accommodation, and ensure that uses do not adversely impact on other occupiers.

- Tenants are discouraged from leasing multiple units in a scheme. Businesses are encouraged to move up to larger units to free up the supply of space for other small and new businesses.

A subsequent check on the status of potential commercial tenants in line with the debt recovery procedures protects the council's financial interest.

8.2.1 Due to fitting out costs retail tenants are more likely to require a longer-term lease to realise return on their investment.

- Vacant units are marketed to secure the highest financial offer – to ensure that all prospective tenants have the opportunity to secure a property, and to obtain Best Value for the council
- Uses which compete with an existing tenant in a council shop in the near vicinity are discouraged – to protect the business activities of existing tenants

All other property types (offices/larger industrial etc) are considered on a case by case basis whereby market condition evidence shall determine the lease term.

8.3 LEASE TERMS

8.3.1 Repairs

8.3.2 The portfolio mix in terms of repairing liabilities comprise internal repairing obligations for tenants regarding small industrial units and tenant Full Repairing obligations for retail, office and larger industrial properties. The council is responsible for the cost of the buildings insurance and shall recover the premium from the tenant throughout the period of their lease term.

Under the council's block insurance policy, a five years fixed-term electrical inspection is undertaken. Dependant on the lease repairing terms, the council shall advise the tenant of any wants of repairs following this inspection and request remedial works are undertaken as quickly as possible. For example, for a longstanding tenant on full repairing lease terms, remedial works will be the sole responsibility of the tenant.

8.3.3 In cases, unless stated otherwise in the lease's condition schedule, whereby the tenant has identified issues shortly after moving in, the council shall take reasonable action to resolve any initial problems.

8.3.4 Common Repairs (e.g. tenements)

As some TNRP retail properties occupy the ground floor of residential blocks, multi-occupancy buildings there is a liability for common repairs. The responsibility for the procurement of, and payment for, such common repairs is usually set out in the Titles, and it is normal for the party with the majority interest to take responsibility for the coordination of all interested parties.

As well as the procurement of repairs, this may also involve paying for the repairs, and pursuing the recovery of the costs from the other parties. In future, in order to ensure the most effective use of council staff resources, only where the commercial part of the property in the council's ownership is the majority interest will Property Services' officers be expected to take that role seeking reasonable remuneration from common owners for the resource involved.

8.3.5 Service Charges/Sinking Funds

The council has a limited number of properties with common parts, where a service charge is recoverable. The RICS has established guidelines and procedures for charging and reconciliation of service charges, and the council will follow these. This will include the recharge of council officer time in managing the property where appropriate. Buildings with common plant equipment and building fabric with limited life expectancy levels requiring replacement in future years, provides the council with the expense of a replacement. It is envisaged that sinking funds will be investigated and, where possible, entered into with tenants to contribute towards such replacements within the period of their tenancy.

- 8.3.6 When leasing the property, tenants are responsible for all costs associated with that property including gas, electrical, water, telephone, broadband, contents and public liability insurance and non-domestic rates. It is the tenant's responsibility to make the necessary arrangements with these agencies.

8.4 Security of Tenure

Many leases are granted on a short term basis. Under Scots Law these leases can continue after the expiry date, unless the council or the tenant wishes to end the lease. If a tenant requires security of tenure for continuity of their business, then they should request and agree a longer-term lease with the council. This situation is particularly prevalent in respect of assignments whereby tenants will seek to sell their business and transfer the lease by way of an assignment.

8.5 Assignations

- 8.5.1 In order for the council to consider a tenant's proposal to assign their lease, the tenant must agree to specific terms and conditions. This can include the following:
- i. That the outgoing tenant will have met all the lease obligations.
 - ii. Any outstanding payments must be paid before the assignment is concluded. If arrears remain outstanding, the transfer will not be granted and the council may initiate debt recovery procedures.
 - iii. The incoming tenant will need to provide satisfactory proof of their ability to meet the financial commitments of the lease. This can be by means of a credit check/bank reference. Alternatively, other forms of documentation such as bank statements and landlord's references may be considered.
 - iv. The council's legal and administration fees must be paid before the settlement of the assignment.

9.0 Stage 3: Terminations

- 9.1 There are a number of reasons in which a tenancy may come to an end. When a lease comes to an end tenants are required to return the premises to the condition in which they were leased accounting for any rent abatements granted for works which the tenant had undertaken to carry out. This process is usually known as completing dilapidations and is discussed further in section 9.2 below.

9.1.1 The reasons whereby a tenancy could be terminated include:

(i) Natural Termination date

All leases will have an intended expiry date. Each tenant and the council as landlord will have a right to terminate a tenancy at this date upon service of the notice period noted in the lease. If notice is not served the lease may continue under Scots law for a period of one year or less in the case of month to month leases.

(ii) Early Termination with landlords consent

In some circumstances the council may be approached by a tenant seeking to terminate their tenancy before the date agreed in the lease, for example whereby the tenant's business is struggling to maintain financial obligations. In each circumstance the council's default position is to hold tenants to their contractual date of termination. However the Commercial Portfolio Manager may recommend to the Property Services Manager to allow a tenant to leave early to prevent an irrecoverable arrears situation in future months. Regardless the tenant shall be expected to complete any dilapidations necessary to the unit.

(iii) Moving to another council property

Should tenants wish to expand their business and require moving premises to do so, the council will try to accommodate their needs where possible and will allow an early termination of a lease for this purpose. The council may also allow tenants to downsize if the tenant is not in rental arrears and they are moving to another council property if it will support their business operation to do so.

(iv) Moving to another private property

In circumstances whereby tenants are seeking an early termination to move to another private landlord, the council may allow this if it believes it will be able to re-let the property quickly. In these circumstances it is usual to seek financial recompense or settlement for allowing a tenant to leave early.

(v) Termination due to court action

In circumstances where a tenant has built up significant arrears and is not able to enter or fulfil a repayment arrangement, the council can utilise Court Action to evict a tenant. This option is also available to the council if tenants are interpreted as being in a non-monetary breach of their lease obligations.

9.1.2 Officers will complete due diligence in such situations to ensure all factors are considered before a decision is taken to allow an early termination. This will usually include a financial assessment of a tenant's business and often include guidance from the council's economic development officers and Business Gateway to ensure a tenant's circumstances are fully understood.

9.2 Dilapidations

- 9.2.1 At the lease expiry or earlier termination, a tenant is required to fully reinstate the property to its original layout and condition as detailed in their lease terms. If the tenant has adapted or changed a property, even though they consider this an improvement, if required by the council, it must be fully reinstated to its original condition. The council requires this work to be carried out but may, if the alterations support future marketability in terms of leasing the property, accept the improvements at no additional expense to the tenant, provided that the property is clean, tidy and in all other respects acceptable.
- 9.2.2 Outgoing tenants also have an obligation to ensure that any gas appliances have been tested and are safe and that the fixed electrical wiring is safe. A certificate of compliance will be required from the outgoing tenant however may through agreement be undertaken by the landlord at a cost to be reimbursed by the tenant. Tenants are also required to provide an up to date asbestos register and a note of their utility suppliers.

10.0 STAGE 4: GOOD ESTATE MANAGEMENT

10.1 Good Estate Management Principles

Good Estate Management Principles are formed on the basis of existing practices to ensure the portfolio performs well aiding optimum occupancy levels. Tenants are continually advised that good estate management principles are directly impacted or formed by the respective links to Scots Law, therefore West Lothian Council is duty bound to adhere to such legislation which assists in the formation of policies and procedures to ensure it acts within the legal position.

10.1.1 Credit Checks and Financial References & Deposits

In order to comply with money laundering legislation and ensure that the tenant is able to fulfil financial obligations under the lease, the council shall undertake a series of checks before a tenant is granted a lease. For prospective tenants, these could include:

- **Personal Identification:** Tenants are required to produce photographic proof of identification (either a passport or driving licence). This also applies to company directors.
- **Proof of residence:** A copy of residential utility bill or proof of the company's existence.
- **Proof of the right to work in the UK / European Union citizenship.** If the individual is not an EU citizen, they must demonstrate clearly that they have the right to reside and work in the UK for the period of the lease. This check is not required for limited companies. The council shall continue to seek guidance on this matter in relation to the impact of the UK having left the EU.
- **Bank Reference or Credit Check:** A suitable bank reference or credit check shall be sought for each tenant.

- 10.1.2 It is necessary to establish the prospective tenant's ability to fulfil the financial obligations under the lease. This may be completed via a bank reference or some form of guarantee. As the council supports small and start up businesses, it is recognised that these businesses will find it difficult to provide financial references and may be unable to secure a lease from private landlords for that reason.

In such cases, officers shall approach the tenant for some other form of reference. If that is not available, the Commercial Portfolio Manager will discuss the matter with the responsible officer in terms of debt recovery processes. If they are satisfied with the merits of the tenant, a lease may still be offered on the basis of a three to six month advanced rent payment, or in exceptional cases a year's rent in advance.

However, following discussions should officers be unsatisfied with the credit worthiness of the prospective tenant, it may be in the council's best interests to refuse to lease property to this tenant.

- 10.1.3 Tenants and their associates who have defaulted on rental payments in the past will be required to make good any unpaid rental or other costs incurred by the council before a new lease or additional lease is considered.
- 10.1.4 Although instances of tenants leaving council property as a result of default are limited, and are decreasing as Property Services' staff foster good relationships that serve to act as an early warning of issues, there are nevertheless occasions where tenants have left having been in material breach of lease conditions. Should these tenants return seeking the lease of council property, officers in Property Services' have the discretion to refuse such an application.

10.2 Payment of Rent

- 10.2.1 Tenants shall not be permitted to be provided with keys and allowed to take entry to a property until a formal lease or licence agreement has been signed and first payment arrangements are complete. All tenants are requested to enter into a Direct Debit arrangement for rental and insurance billing purposes. In certain circumstances the insistence on direct debit may be waived.
- 10.2.2 As it is normal practice for the council to expect any prospective tenant to have carried out their market research, and produced a business plan, it is not unreasonable to expect that similar uses may be able to operate without detriment. There is a small increased risk to the council that the turnover of tenancies may increase, but this can be managed. To protect the council's position in so far as possible the following is requested;
- A three months rent deposit is payable to protect the council in the event of a tenant leaving a property with rent arrears and dilapidations.
 - Rent is payable by Direct debit in advance (where possible) to reduce the incidence of arrears.

10.2.3 Assets with a Low Rental Income

Unlike many commercial landlords, the council has assets of interest to customers, which have a low rental value. Where these rentals are payable in instalments during the course of a year the costs of managing the collection of rentals may become uneconomic.

- 10.2.4 In the interests of efficiency, where an annual rental is less than £250, the payment is required on the date of entry, for the full term of the lease, or the period until the next review. As leases will generally be for a period of less than five years, or will include a rent review on the fifth anniversary, the initial payment will be a maximum of £1,250.

Similarly it is suggested that where a lease has a rental of between £251 and £500 per annum, it is payable annually in advance. In each case, in the event of an early termination of the lease any balance of rent will be refunded.

While this would be applied to new leases it is also intended to offer this option to existing tenants, where applicable.

10.2.5 Electronic Invoicing

As postage charges increase, the issue of paper invoices becomes an expensive exercise for the council, particularly as most leases are based on monthly payments, which is to the general benefit of tenants. The standard leases do not require the issue of an invoice as a prerequisite for payment. Many existing tenants have already agreed to electronic invoicing, and it is expected of new tenants. However, this cannot be imposed on many of our existing tenants on longer leases. For new leases, tenants will continue to be expected to agree that invoices will be issued electronically, and there will be a charge if paper versions are required for their accounting purposes should this be a regular occurrence.

10.3 Rent Arrears / Debt Recovery

Debt recovery procedures have been consistently reviewed taking into consideration of the varying experiences relating to the current Covid-19 pandemic whereby the council has sought to support business tenants where possible. A level of risk exists in any lease transaction as a commercial landlord and officers seek to mitigate the council's risk wherever possible.

10.3.1 Although this process will be continually refined with advice from Legal Services, in current circumstances tenants are required to produce the following;

- Business plan where applicable.
- Personal identification.
- Proof of residence.
- Proof of right to work in the UK.
- Rental deposit of three months.

10.3.2 Whilst the above provides limited security, an increase in limited companies has caused greater difficulty in the recovery of rent arrears and monies owed to the council. It is envisaged that all newly formed Limited companies shall be accompanied by a director's guarantee or guarantor arrangement to reduce significant risk to the council and allow for income targets to be realised/received.

10.3.3 Tenants and their associates who have defaulted on rental payments in the past shall be required to make good any outstanding payments prior to a new or additional lease agreement is considered.

10.3.4 For similar reasons, the first resort in cases of rent arrears is to agree a repayment plan. Only if a plan is not adhered to is enforcement action taken.

10.3.5 Should tenants be unable to clear an outstanding balance, officers shall seek to assist via a repayment plan on reasonable terms. Repayment plans are expected under standard circumstances to be completed within a twelve month period. In exceptional cases, officers shall be entitled to enter into a twenty-four month period repayment plan subject to reasonable justification and authorisation of the Commercial Portfolio Manager. Where repayment plans have not been honoured by tenants, officers shall

seek recovery via Legal Services and/or employ the use of sheriff officers to recover monies due and issuing of the appropriate legal notices.

10.3.6 Officers currently undertake a three stage approach in respect of recovery of rent arrears should communications be unsuccessful;

- 'Fourteen day letter' requesting payment or offer of repayment plan.
- 'Seven day letter' requesting payment or offer of repayment plan.
- Formal issue of Notice to Quit to terminate/irritate the lease agreement within the respective and defined parameters.

10.3.7 On occasion tenants have withheld rental payments to dispute lease management issues. West Lothian Council's standard lease agreements do not permit tenants to withhold rental on this basis and officers strive to remedy tenant disputes. Officers reserve the right to take appropriate action necessary to resolve debt cases regardless of the tenant's rationale for withholding payment. This process shall comprise authorisation and instruction to legal services for recovery purposes.

10.3.8 'Bad Debt' accrued which are deemed as irrecoverable in line with Standing Orders shall be recommended for sign off by Property Services with authorisation of the Head of Finance and Property Services.

10.3.9 In addition to the robust debt recovery process in place the above shall protect the council from avoidable current and bad debt scenarios and assist to reduce overall portfolio rent arrears.

10.5 Charging of Fees

10.5.1 Approved council policy allows the current imposition of surveyors and legal fees on certain property transactions where the council is purely reacting to the requirements of a third party, and the benefit is largely for their benefit. The council will seek to recover reasonably incurred surveyor and legal fees alongside expenses.

10.5.2 In respect of potential sales of mutual benefit, each party shall cover their own fees. As a continuation of previous arrangements, voluntary organisations and charities will not be charged fees in relation to the transaction.

10.5.3 Fees are not recoverable on transactions that are deemed to be of mutual benefit. This includes the majority of the sales in the capital receipts programme; and all leases, lease renewals and rent reviews of the non-operational property portfolio (where explicitly mentioned in the lease agreement).

10.5.4 Officers will continually review fees in relation to providing landlord consent and the associated legal fee per transaction type. Fees shall continue to be benchmarked and implemented following consultation with Legal Services. Legal Services determine their respective fees estimated on a case by case basis at all times.

11.0 Tenant Support /Economic Development

11.1 Property officers have continued to develop and produce information which is designed to support existing and prospective tenants. A planned review of the tenant handbook shall be completed in line with past and current experiences to assist both new and established businesses and individuals when leasing commercial property.

- 11.1.1 Relationships with colleagues in Economic Development shall also be further developed to assist prospective and existing tenants with business advice and associated plans.
- 11.1.2 Continuation of flexible 'easy in easy out' leases shall continue to assist businesses where appropriate across the portfolio.
- 11.1.3 Tenants and prospective tenants shall be permitted time to obtain planning consent for a change of use following a receipt of an offer. Should prospective tenants wish to appeal a refusal, the prospective tenant shall be required to fulfil the legal and financial obligations within the appeal. To maintain control, the council shall determine whether the application period is reasonable and shall retain the right to re-advertise or offer the premises to the next bidder or interested party.

11.1.4 Compliance

The safety of tenants and council officers is of the upmost importance in the management of the portfolio. The tenant is responsible for obtaining, exhibiting and complying with all levels of health and safety requirements throughout their occupation of the property. This includes the provision of all health and safety documentation such as electrical/gas safety certificates and updating the asbestos register throughout their occupation and shall supply the council with the same at the expiry of earlier termination of their lease agreement.

11.1.5 Sustainability

Sustainable properties are more likely to achieve greater income and support economic development throughout the life of the property. Officers will support tenants with guidance on energy efficiency and support tenants via planned improvements and landlord consent requests to improve the efficiency of property.

- 11.1.6 Energy efficiency and its impact upon commercial property shall be a major consideration for the council as landlord in the coming years due to the rise in energy tariffs. The council shall wherever possible acting reasonably support energy efficiency savings. With the rise of energy costs and greater interest from tenants in respect of energy efficiency the Commercial Property Strategy and Management Plan has highlighted activities and performance outcomes to realise this potential.
- 11.1.7 The 'Green Deal' initiative intended to allow occupiers of a property to fund improvements to enhance energy efficiency. As repayment is to be linked to the applicant's energy bill there is a risk to the Council that a commitment to make payments will continue after the expiry of a tenant's lease. To avoid the financial burden falling to the council or subsequent tenants, when the applicant vacates the property, it is recommended that consent should only be given where repayment is contained within the period of the lease.
- 11.1.8 There will remain a risk to the council should a business cease to trade, and a property become empty, prior to any commitment to repayments under the Green Deal having been completed.

12.0 Sharing of Information

- 12.1 Recent changes in legislation have increased the requirement for landlords to supply third parties with information regarding tenancy agreements. West Lothian Council shares information with external organisations comprising Non-Domestic Rates collections, Lothian Valuation Joint Board and Police Scotland.

- 12.1.1 In respect of new lettings or sales, officers notify the appropriate utility providers where essentially the tenant's name and the property address are shared.
- 12.1.2 Officers shall continue to assess any further requirements to share information with third parties in line with the General Data Protection Regulations Act 2018 (GDPR).

13.0 SURPLUS PROPERTY AND ACQUISITION OPPORTUNITIES

13.1 Background

A Council Executive report in November 2017 approved a strategy for the council's non-operational property.

13.2 Acquisition or Disposal of Property Rights

The council has a statutory obligation under s74 of the Local Government (Scotland) Act 1973 to obtain the best consideration reasonably obtainable. This obligation has underpinned the practices and processes followed by Property Services in the disposal of assets.

- 13.3 In general this means that property is sold or leased following exposure to the open market, and where there is, or is likely to be competing interest this usually follows a closing date for the submission of offers. However, there are circumstances where a degree of flexibility, and disposal "off market", may be appropriate. In addition, the clarification of delegated authority will assist officers in the efficient handling of requests for minor property rights required by the council or others.
- 13.4 Surplus Property Procedures were established in 2017 to manage all surplus property assets in a transparent and consistent manner. The following procedures were established for all property that is no longer required for service delivery. This has been adapted below for the purposes of the non-operational portfolio.

Stage 1 – Identification as Surplus

The property is identified by Property Services as no longer being required for the delivery of service and is therefore surplus to requirements. This may occur as a consequence of the property becoming a financial liability and unable to achieve or generate a reasonable rental income stream in line with Best Value requirements or insignificant disrepair.

As soon as this occurs, Property Services will initiate processes to mothball the property and progress the surplus property procedures as expediently as possible. Property that is not occupied can become vandalised, deteriorate in terms of condition and become a burden in terms of costs associated with statutory compliance. The period that any property remains vacant will be as short as practically possible and during this time steps will be taken to "mothball" services and secure the asset to prevent vandalism.

Stage 2 – Appraisal

Property that is no longer required for the direct delivery of services following identification as being surplus will generally be subject to an appraisal by Property Services to identify how the asset can contribute to corporate priorities

Appraisal of general surplus properties recognises the council's legal obligations to maximise its return from the disposal or letting of property assets and ensure proposals comply with Best Value requirements. In addition it is recognised that

opportunities for redevelopment opportunities and reflect on the condition of the property and whether it should be considered for demolition to provide a clear site that could for instance then be available for development.

Whilst the CPP Strategy and Management Plan concludes that the sale of income producing assets will be avoided, it is possible from time to time that some properties may be deemed as having a negative financial impact upon the portfolio whereby vacant properties may be recommended to the Head of Financial and Property Services for determination. It is also envisaged that the proceeds of any eventual sales shall be reinvested in the non-operational portfolio.

The main options identified within the appraisal stage are noted as follows;

- Revenue generation (Lease) – With increasing pressure on the council's revenue budgets, the potential for a surplus asset to generate additional rental income will be considered. This option will also retain the asset for refurbishment purposes making it available for future disposal if appropriate.
- Capital Receipt (Disposal) – The generation of capital receipts by the council are utilised to support resources which enable the delivery of the respective Capital Programme and reinvestment in the portfolio.
- Demolition - In certain circumstances a property may only be suitable for demolition. This could be due to its condition or its size and location which make it unsuitable for letting, disposal or community asset transfer. In some instance the cleared site may be then be suitable for let, disposal, asset transfer or re-development.

Each of these options will be initially considered in terms of viability and stated in a report declaring the property surplus which will be reported to Council Executive.

Stage 3 – Declaring Surplus

Council Executive will be presented with a report confirming it is no longer capable of achieving the delivery of rental income and a summary of the initial appraisal confirming whether the property is proposed to be disposed of or subsequently demolished.

Stage 4 – Marketing

The majority of assets will be marketed on the basis of availability for lease or disposal. Particulars providing information on the property will be prepared by Property Services and distributed to interested parties and local elected members. Particulars will also be provided on the council's commercial property portfolio web-site (currently www.novaloca.com) and signage advising of availability erected at the property. Viewings will be arranged and all interests will have the opportunity to raise queries.

Stage 5 – Consideration of Offers / Expressions of Interest

Following a period of marketing, a closing date and time will be set whereby all offers and expressions of interest will require to be submitted. These will be evaluated by Officers and depending upon the outcome of the evaluation a recommendation will then be made to the appropriate committee for approval.

Evaluation of offers will include financial (i.e. revenue and capital sum offered), economic development (i.e. jobs created or secured, business expansion or establishment), corporate priority compatibility (alignment to corporate and single

outcome priorities) and community benefits (supporting regeneration, voluntary sector or wider social outcomes).

Stage 6 – Implementation of Decision

Following determination by committee of the offers received Property Services will commence implementation of the agreed course of action. For leases and disposals on a commercial basis, officers will engage with the appropriate party and finalise arrangements and instruct Legal Services to progress and conclude the necessary legal agreement(s). Where demolition is proposed Property Services will progress the necessary works and ensure the property is secured until it demolished.

13.5 Negotiation one-to-one

On occasion the council has been approached by a party who is interested in acquiring a property by negotiation, rather than it being exposed to the market. The circumstances behind an approach may differ, for example:

- A neighbouring owner may have an interest in property for the extension of their own asset. In such circumstances the council may be able to benefit from a marriage value as a result of a negotiated sale;
- An applicant may have identified an opportunity of which officers were unaware – for example, pitches for mobile catering vans. In certain circumstances it may then be unreasonable for the council to afford others the chance to offer for an opportunity on the back of work done by the initial applicant; and
- The report on the Strategy for the Non-Operational portfolio noted that it would be appropriate to review and dispose of assets that generate a low and static return. Disposal by negotiation with the existing tenant is likely to be the most productive means of disposal however this would require evidence that Best Value is achieved.

Whilst it is the council's standard practice to advertise land and property on the open market, Council Executive at its meeting on 28 October 2014 agreed that, on occasion, it is appropriate for officers to enter into negotiations for the disposal of property on a one-to-one basis without going to the market. In these cases, officers are authorised to undertake negotiations, subject to any final agreement on a disposal being approved by the Council Executive.

13.6 Sale by Public Auction

The sale of council assets may arise as a consequence of properties being declared surplus, or the rationalisation of TNRP/CPP assets. Surplus properties are usually exposed to the open market, with a closing date for offers. The sale of a TNRP asset, for example a long ground lease where there is a low income and no prospect of growth, would in the first instance be negotiated with the existing tenant. However, should these methods fail to secure a sale, the disposal of an asset by auction may be the most appropriate means of securing the best consideration, and it is a course of action that should be available to officers. However, as sale by auction is deemed to be binding once the hammer falls, it is recommended that proposals to sell by auction should be agreed to the Council Executive so that a reserve price can be set, with a delegation to the Head of Finance and Property Services to appoint an Auctioneer, and to instruct Legal Services to conclude the sale following the auction.

13.7 Wayleaves and Servitudes

The Council is regularly contacted by utility companies seeking consent to run utility services (gas, electricity, water) across council land. This is generally needed to enable development to take place. Property Services has continued to progress with applications under the Scheme of Delegation.

13.8 Licenses and Lease for Council Occupation

On occasion the council will need to take a right over land or property to allow it to fulfil the delivery of services. This may be the need for a licence to carry out a site investigation, for example for a housing site, or for works to a road bridge. Under the current Scheme of Delegation the Head of Finance and Property Services has authority to negotiate and approve these agreements, where they are for a period of less than a year.

The council is regularly approached by external organisations with requests to use council owned land and/or premises in connection with planned events. This may apply both to council buildings and to open space assets. In the case of commercial events, it is normal practice for other public bodies (e.g. Historic Scotland) to charge the organisers a commercial consideration for the use of their assets. The council takes a similar approach and will continue to do so in accordance with statutory requirements on Best Value and in compliance with the Disposal of Land by Local Authorities (Scotland) Regulations 2010. In addition we will continue to recover from the organisers any costs (including any loss of income) incurred by the council as a result of the event taking place.

13.9 Formal Policies on the Sale and Lease of Property

The council has a general obligation, under s74 of the Local Government (Scotland) Act 1973 to obtain the best consideration reasonably obtainable also known as Best Value. In addition, the council has also previously approved the following:

- Property held for economic development purposes shall be leased at full market rental, with any financial support for business development considered separately. This is intended to ensure compliance with Section 74, and separates council responsibility for rental income from consideration of the award of financial assistance (Strategic Services, August 1996).
- Procedures for the sale of land allocated for business and industry ensure that land is used to support the generation of employment (Council Executive, December 2007).
- The council entered into a Joint Venture for the land at Heartlands, Whitburn with a view to promoting economic development and inward investment. Should an occasion occur outwith the established delegated authority levels for council officers, recommendations shall be made to the Council Executive in relation to specific potential transactions.

13.10 Acquisition Opportunities

As there is likely to be continued pressure on the council's revenue budget, consideration will also be given to the potential for surplus assets elsewhere in the operational or under ownership of other council services being transferred to the TNRP/CPD to generate additional rental income.

Where appropriate, acquisition of non-council owned property may be undertaken subject to a suitable business case being presented adhering to the council's corporate priorities and outcomes.

14.0 CONCLUSION

This document sets out the policies and practices employed in the management of the council's non-operational property assets for the purposes of raising and maintaining revenue and supporting economic growth in West Lothian. The document provides a clear framework for the council.

Date: August 2022.