

# COBTREE MANOR ESTATE CHARITY COMMITTEE MEETING

Date: Thursday 11 July 2019  
Time: 2.30 p.m.  
Venue: Town Hall, High Street, Maidstone

Membership:

Councillors Cox, Daley, Mrs Gooch (Vice-Chairman), Mrs Hinder and McLoughlin (Chairman)

*The Chairman will assume that all Members will read the reports before attending the meeting. Officers are asked to assume the same when introducing reports.*

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## AGENDA

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| 1. Apologies for Absence  |         |
| 2. Notification of Substitute Members   |         |
| 3. Urgent Items   |         |
| 4. Notification of Visiting Members   |         |
| 5. Disclosures by Members and Officers  |         |
| 6. Disclosures of Lobbying  |         |
| 7. To consider whether any items should be taken in private because of the possible disclosure of exempt information. |         |
| 8. Minutes of the meeting held on 11 June 2019  | 1 - 3   |
| 9. Presentation of Petitions (if any)   |         |
| 10. Questions and answer session for members of the public (if any)   |         |
| 11. Land and Building at Cobtree Manor Estate   | 4 - 8   |
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| 13. Cobtree Manor Park Golf Course Development Works  | 70 - 76 |

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**Issued on Wednesday 3 July 2019**

**Continued Over/:**

*Alison Broom*

**Alison Broom, Chief Executive**

## PART II

**To move that the public be excluded for the item set out in Part II of the Agenda because of the likely disclosure of exempt information for the reason specified having applied the Public Interest Test.**

	<b>Head of Schedule 12A and Brief Description</b>	
14. Exempt Appendix to the Report Relating to Cobtree Manor Park Golf Course Development Works	3 – Financial/Business Affairs	77

### **PUBLIC SPEAKING AND ALTERNATIVE FORMATS**

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In order to speak at this meeting, please contact Democratic Services using the contact details above, by 5 p.m. one clear working day before the meeting (i.e. Tuesday 9 July 2019). If asking a question, you will need to provide the full text in writing. If making a statement, you will need to tell us which agenda item you wish to speak on. Please note that slots will be allocated on a first come, first served basis.

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## MAIDSTONE BOROUGH COUNCIL

### COBTREE MANOR ESTATE CHARITY COMMITTEE

#### MINUTES OF THE MEETING HELD ON TUESDAY 11 JUNE 2019

**Present:** Councillor McLoughlin (Chairman), and  
Councillors Cox, Daley, Mrs Gooch, Mrs Hinder

6. APOLOGIES FOR ABSENCE

There were no apologies.

7. NOTIFICATION OF SUBSTITUTE MEMBERS

There were no substitute members.

8. URGENT ITEMS

There were no urgent items.

9. NOTIFICATION OF VISITING MEMBERS

There were no visiting members.

10. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members or Officers.

11. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

12. EXEMPT ITEMS

**RESOLVED:** That Agenda Item 13 – Exempt Appendix – Cuddle Corner Roof Defect Works be taken in private due to the possible disclosure of exempt information.

13. MINUTES OF THE MEETING HELD ON 9 APRIL 2019

**RESOLVED:** That the minutes of the Meeting held on 9 April 2019 be agreed as an accurate record of the meeting and signed.

14. MINUTES OF THE MEETING HELD ON 21 MAY 2019

**RESOLVED:** That the minutes of the Meeting held on 21 May 2019 be agreed as a correct record of the meeting and signed.

15. PRESENTATION OF PETITIONS

There were no petitions.

16. QUESTIONS AND ANSWER SESSION FOR MEMBERS OF THE PUBLIC

There were no questions from members of the public.

17. CUDDLE CORNER ROOF DEFECT WORKS

The Committee considered the report of the Leisure Manager which provided information on a roof defect in the Cuddle Corner building at the Kent Life visitor attraction.

The Leisure Manager highlighted to the Committee the photographs of the building which were included in the report and exposed the hole in the roof. The defect had been discovered when the contractor, Planning Solutions, was assessing the suitability of the building for conversion to a party room. Previously the barn had been used as a store room so was not accessed frequently.

The Committee was advised that a full survey would be difficult to complete due to the uncertainty of the damage sustained as there was a risk that it would be unsafe for a person inspecting the damage from the roof top. It was not known at this stage if the tree abutting the building had caused the damage.

In response to questions from Members, the Leisure Manager advised that:-

- One quotation had been received initially but due to the fact that it was over the threshold of £10,000, two other quotations had to be obtained and were still awaited.
- As the building had been used infrequently, the defect had gone unnoticed. However, there were plans in place for the contractor to undertake monthly checks of the buildings and the Council would undertake their own checks on a six monthly basis.
- If an insurance claim was made there would be a £10,000 excess. However, an enquiry would be made to the Insurance Officer.
- The Council had some spare peg tiles so they could be used to replace those lost on the roof and the tree would be trimmed back.

Councillor Mrs Gooch asked for her concerns to be noted that regular checks had not been made.

The Committee felt that the tree should be removed so it would not sustain any further damage to the barn. They also considered that the full extent of the damage had not been realised and the potential cost of the

repairs could be in excess of £15,000 so the threshold should be increased to £20,000.

**RESOLVED:** That

1. Delegated authority be given to the Head of Regeneration and Economic Development, in consultation with the Chairman of Cobtree Manor Estate Charity Committee, to agree the final expenditure on the repair works to the roof up to £20,000.

18. DURATION OF MEETING

1.45 p.m. to 2.10 p.m.

# Agenda Item 11

## COBTREE MANOR ESTATE CHARITY COMMITTEE

11<sup>th</sup> July 2019

### Land and Building at Cobtree Manor Estate

<b>Final Decision-Maker</b>	Cobtree Manor Estate Charity Committee
<b>Lead Head of Service</b>	Georgia Hawkes
<b>Lead Officer and Report Author</b>	Lucy Stroud
<b>Classification</b>	Public
<b>Wards affected</b>	Boxley

#### Executive Summary

The Council leases land and building at Cobtree Manor Estate to Travis Perkins. There has been a new inter-group company established within Travis Perkins to deal with property holdings and the lease now needs to be in the name of this new company.

#### This report makes the following recommendations to this Committee:

1. That a Licence to Assign be granted to Travis Perkins (Properties) Ltd and the Licence backdated to allow for the delay in getting a report to the Committee.
2. That Mid Kent Legal Services prepare the relevant legal documents and complete the transaction.

#### Timetable

<b>Meeting</b>	<b>Date</b>
Cobtree Manor Estate Charity Committee	11 <sup>th</sup> July 2019

# Land and Building at Cobtree Manor Estate

## 1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<b>Impact on Corporate Priorities</b>	<p><i>The four Strategic Plan objectives are:</i></p> <ul style="list-style-type: none"> <li>• <i>Embracing Growth and Enabling Infrastructure</i></li> <li>• <i>Safe, Clean and Green</i></li> <li>• <i>Homes and Communities</i></li> <li>• <i>A Thriving Place</i></li> </ul> <p>We do not expect the recommendations will by themselves materially affect achievement of corporate priorities. However, they will support the Council's overall achievement of its aims as set out in section 4 [preferred alternative].</p>	Georgia Hawkes
<b>Risk Management</b>	There are no risks associated with the recommendations.	Georgia Hawkes
<b>Financial</b>	There are no financial implications associated with the recommendations.	Section 151 Officer & Finance Team
<b>Staffing</b>	There are no staffing implications associated with the recommendations.	Georgia Hawkes
<b>Legal</b>	Mid Kent Legal Services will be instructed to prepare the relevant documents and completed the transaction.	Legal Team
<b>Privacy and Data Protection</b>	Accepting the recommendations will increase the volume of data held by the Council. We will hold that data in line with our retention schedules.	Policy and Information Team
<b>Equalities</b>	The recommendations do not propose a change in service therefore will not require an equalities impact assessment.	Equalities and Corporate Policy Officer
<b>Public Health</b>	We recognise that the recommendations will not negatively impact on population health or that of individuals.	Public Health Officer

## **2. INTRODUCTION AND BACKGROUND**

- 2.1 In 1993 the Council granted a lease of land and building at Cobtree Manor Estate to Travis Perkins (Properties) Ltd. The lease is for 999 years less 3 days, and the rent is a peppercorn because Travis Perkins paid a premium for the lease in 1993 of £93,750. Travis Perkins have now established a new inter-group company to hold its property and have therefore requested that the lease be assigned to the new company.
- 2.2 The new inter-group company is TP Property Company Limited.
- 

## **3. AVAILABLE OPTIONS**

- 3.1 There are two options available to the Council, to grant the assignment or refuse the request for an assignment. Granting the assignment allows the lease to continue under its existing terms, to the same tenant, and the only variation is to the company name.
- 3.2 Refusing the request for an assignment would render the Council in breach of the lease terms because a request of this nature cannot be unreasonably withheld under the terms of the lease.
- 

## **4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

- 4.1 The preferred option is to grant the assignment and allow Travis Perkins to put the lease into the name of their new inter-group company. This will allow the lease to continue, for Travis Perkins to remain the Council's tenant and prevent the possibility of the Council being in breach of its obligations as a landlord. Travis Perkins are a good tenant and there is no reason why the assignment wouldn't be recommended.
- 

## **5. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION**

- 5.1 The Legal Team will be asked to draft the Licence to Assign and this will be sent to Travis Perkins. On completion of the Licence, the lease will be assigned to TP Property Company Limited.
- 

## **6. REPORT APPENDICES**

The following documents are to be published with this report and form part of the report:

- Appendix 1: Site plan

**These are the notes referred to on the following official copy**

The electronic official copy of the title plan follows this message.

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TITLE NUMBER

## K731518



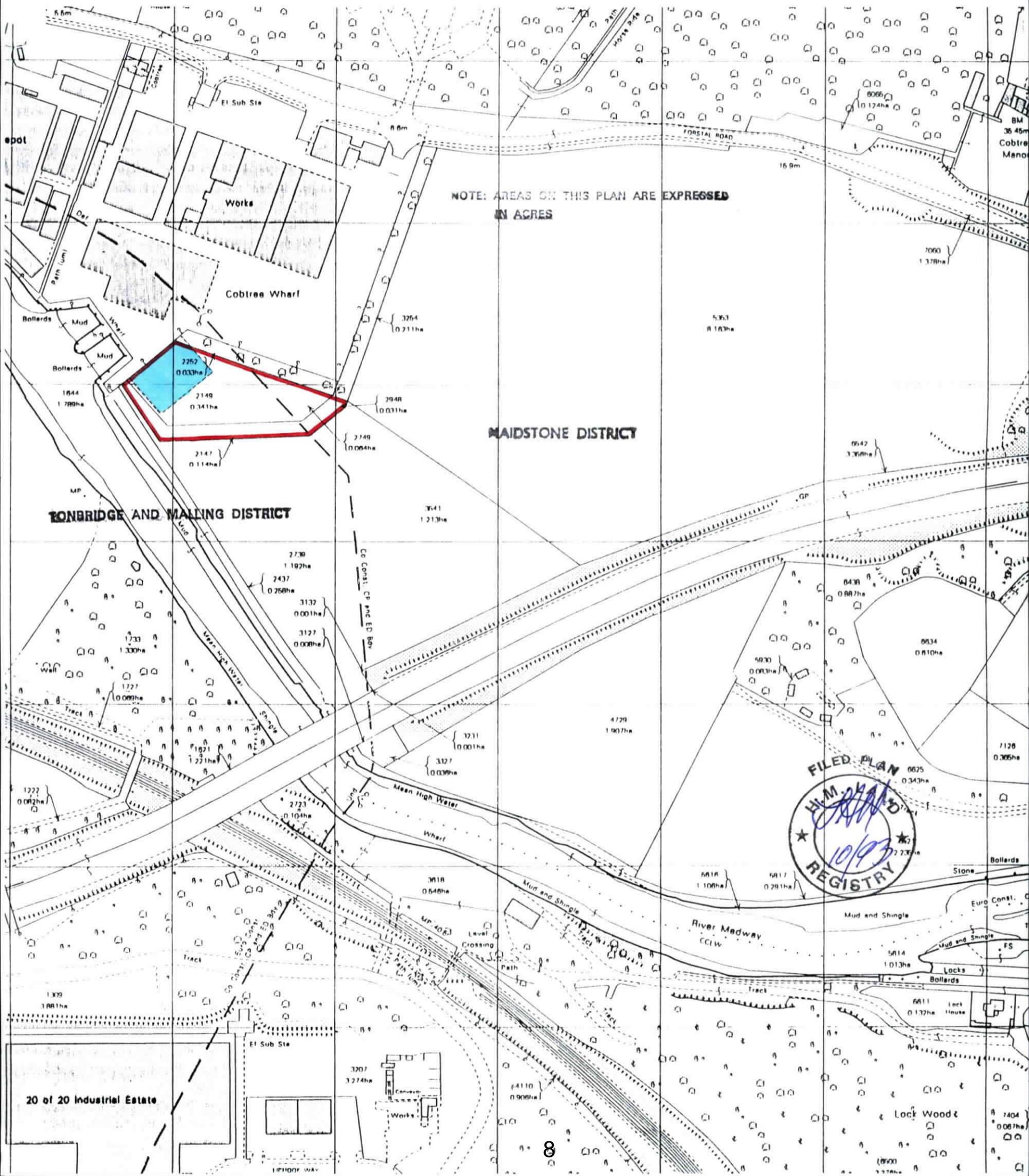
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MAIDSTONE DISTRICT

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FILED PLAN  
H.M. LAND REGISTRY  
10/93

20 of 20 Industrial Estate

## Cobtree Manor Estate Charity Committee

**11 July 2019**

### Cobtree Manor Estate Financial Position

<b>Final Decision-Maker</b>	Cobtree Manor Estate Committee
<b>Lead Head of Service</b>	Head of Regeneration & Economic Development – John Foster
<b>Lead Officer and Report Author</b>	Paul Holland, Senior Finance Manager (Client)
<b>Classification</b>	Public
<b>Wards affected</b>	Boxley

#### **Executive Summary**

The report summarises the current financial position of the Estate as at 31 May 2019 covering the activities at the golf course, Kent Life, the Manor Park and the Café/Visitor Centre. It also includes updates on the Service Level Agreement, the car park loan agreement and the new financial management system.

#### **Purpose of Report**

To update the Committee on the current financial position and any other relevant matters that may impact the financial position of the Trust.

#### **This report makes the following recommendations to this Committee:**

1. That the current financial position be noted.
2. That the progress to date with the Service Level Agreement is noted.
3. That the proposed repayment term for the car park works loan is agreed.
4. That the progress to date with the new financial management system is noted.

#### **Timetable**

<b>Meeting</b>	<b>Date</b>
Cobtree Manor Estate Charity Committee	11 July 2019

# Cobtree Manor Estate Financial Position

## 1. CROSS-CUTTING ISSUES AND IMPLICATIONS

<b>Issue</b>	<b>Implications</b>	<b>Sign-off</b>
<b>Impact on Corporate Priorities</b>	The operation of the Estate directly supports the objects of the Trust as set out when the Council became the Corporate Trustee	Head of Regeneration & Economic Development
<b>Cross Cutting Objectives</b>	The operation of the Estate supports the Council's strategic objective to ensure there are good leisure and cultural attractions in the Borough.	Head of Regeneration & Economic Development
<b>Risk Management</b>	There is a potential reputational risk if the facilities are operated poorly. This is addressed in the annual risk management report.	Leisure Manager
<b>Financial</b>	There is a financial risk to the Trust if the operations cost more than predicted or fail to generate sufficient income to cover the costs of running the estate.	Senior Finance Manager (Client)
<b>Staffing</b>	There are no additional implications arising from this report.	Leisure Manager
<b>Legal</b>	Under the Council's Constitution the Committee as Corporate Trustee is responsible for all matters relating to the Charity with the exception of daily management. Law applicable to charities in England and Wales requires the trustee to prepare financial statements for each financial year which give a true and fair view of the Charity's financial activities during the year and of its financial position at the end of the year. This update report assists in meeting those requirements  There are no further implications arising from this report.	Team Leader (Corporate Governance), Mid Kent Legal Services
<b>Privacy and Data Protection</b>	There are no specific privacy or data protection issues to address.	Team Leader (Corporate Governance), Mid Kent Legal Services
<b>Equalities</b>	No impact identified as a result of the recommendations set out in this report.	Equalities and

		Corporate Policy Officer
<b>Public Health</b>	There are no additional implications arising from this report.	Senior Public Health Officer
<b>Crime and Disorder</b>	There are no additional implications arising from this report.	Head of Regeneration & Economic Development
<b>Procurement</b>	There are no additional implications arising from this report.	Head of Regeneration & Economic Development

## 2. INTRODUCTION AND BACKGROUND

1.1 This is a regular update report on the financial position of the Estate, which enables the Committee to see how the various areas of activity are performing. The last few years have seen a number of significant financial pressures and issues, and it is important for the future of the Estate that these are addressed and monitored.

## 3. CURRENT FINANCIAL POSITION

3.1 The table below summarises the position as at 31<sup>st</sup> May 2019. **Appendix 1** provides a more detailed breakdown of the figures.

### 3.1.1 Overall Summary Position:

#### SUMMARY TOTALS

	A	B	C	(B-C)	
	<b>Budget for Year 2019/20</b>	<b>Budget to end of May 2019</b>	<b>Actuals to end of May 2019</b>	<b>Variance as at end of May 2019</b>	<b>Provisional Outturn 2018/19</b>
Golf Course	-£101,370	-£34,192	-£34,604	£321	-£103,437
Manor Park	£108,590	£24,765	£19,573	£5,192	£99,656
Kent Life	-£33,860	£6,218	£2,835	£3,383	-£38,476
Café/Visitor Centre	-£29,280	-£6,547	-£8,054	£1,507	£6,661
<b>Totals</b>	<b>-£55,920</b>	<b>-£9,755</b>	<b>-£20,250</b>	<b>£10,403</b>	<b>-£35,596</b>

The table above shows a positive variance of £10,403 for the Committee at the end of May. The forecast for the year is for an operational surplus of £55,920, compared to a provisional surplus of £35,596 for 2018/19.

Comments on the individual service areas are as follows:

- 3.1.2 **Cobtree Golf Course** – There are no issues to report at this stage. Mytime have been invoiced for the first quarter for 2019/20, and this has been paid.
- 3.1.3 **Cobtree Manor Park** –Car park income continues to be high. The variance in employee costs is due to the new Apprentice post still being vacant. There is a small overspend in controlled running costs where the new arrangements for locking the gates are not yet fully in place, so the services of the security firm are still being used. This is due to the new team not being in place to cover all the hours. The contract with the security firm has been cancelled and will end in September.
- 3.1.4 **Kent Life** - There are no issues to report at this stage.
- 3.1.5 **Café/Visitor Centre** – Responsibility for running the facility passed to DAGT in April 2018, and as has previously been reported to the Committee there have been on-going discussions with them regarding invoices sent for staffing costs. Whilst there has been some progress on this matter there are still a number of outstanding invoices, and the Leisure Manager will provide a verbal update to the meeting on the latest position.
- 3.2 Future budget reports will show a separate heading for the residential properties, and the residual budgets for the café/visitor centre will be incorporated into the Manor Park budget.
- 

#### 4. SERVICE LEVEL AGREEMENT

- 4.1 Attached at **Appendix 2** is a draft version of the Service Level Agreement between the Trust and the Council. This has been drawn up by the Council's legal services team using a standard template. The intention at this stage is to give the Committee an early opportunity to consider the issues to be addressed by the Service Level Agreement and make any relevant comments. It has not been formally considered by the Council so the contents should not be taken as representing a formal Council position on any of the matters contained within the draft. Subject to the Committee's comments and other issues that may be raised it is then planned to bring the Agreement back for formal adoption by the Committee to the scheduled meeting in September.
- 4.2 The time allocations that were reported to the Committee have also been reviewed with a view to minimising the VAT liability, and updated figures are also attached as part of **Appendix 2**.
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#### 5. LOAN AGREEMENT – CAR PARK RESURFACING WORKS

- 5.1 The final cost of the works was £320,643. This breaks down as £289,803 for the works themselves and £30,840 for other project management costs.
- 5.2 As has been previously discussed the cost of these works will be funded by a loan from the Borough Council. A draft loan agreement has been drawn

up and a copy is attached at **Appendix 3**, along with a repayment schedule.

- 5.3 The Committee has previously expressed a wish to repay the loan in the shortest possible period. The cashflow projection that has been reported to the Committee in the past has been updated and attached at **Appendix 4**.
- 5.4 The projection shows the loan being repaid over 5 years. It would be possible to repay the loan over a shorter period, but this could lead to cashflow issues should the need to fund any further unexpected costs arise. It should also be noted that the projection does not take into account any implications from proceeding with the proposed railway project. It would therefore seem prudent to spread the repayments over 5 years to maintain adequate resources for any other costs.
- 5.5 As indicated on the projection there is further capital expenditure that needs to be funded. In light of the recent building issues at Kent Life officers will be undertaking a review of the Trust's assets and this may lead to the need for further expenditure being identified.
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## **6. FINANCIAL MANAGEMENT SYSTEM**

- 6.1 The new system went live on 1<sup>st</sup> July 2019. This was slightly later than indicated at the last meeting due to the Council's year-end accounts closedown being slightly more complicated than in previous years.
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## **7. AVAILABLE OPTIONS**

- 7.1 Sections 3, 4 and 6 are for noting only.
- 7.2 For section 5 the Committee could choose to repay the loan over a shorter period than the proposal of 5 years.
- 

## **8. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

- 8.1 For section 5 the recommendation is for the loan to be repaid over 5 years as this will enable the Trust to maintain a cashflow that will allow for any future unexpected costs to be funded adequately.
- 

## **9. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION**

- 9.1 Officers will continue to monitor the financial position and take appropriate action where necessary.
-

## 10. **REPORT APPENDICES**

- Appendix 1: Financial Position and Draft Budgets as at 31<sup>st</sup> May 2019
  - Appendix 2: Draft Service Level Agreement and revised time allocations.
  - Appendix 3: Draft car park loan agreement and repayment schedule.
  - Appendix 4: Updated cashflow projection.
- 

## 11. **BACKGROUND PAPERS**

None.

	A	B	C	(B-C)	
	Budget for Year 2019/20	Budget to end of May 2019	Actuals to end of May 2019	Variance as at end of May 2019	Provisional Outturn 2018/19
<b>GOLF COURSE</b>					
Repairs & Maintenance	£4,950	£825	£108	£717	£3,443
Premises Insurance	£710	£118	£0	£118	£1,030
Equipment Maintenance	£1,020	£170	£0	£170	£0
General Expenses - VAT	£5,100	£850	£1,523	-£673	£4,058
Licence Fees	£200	£33	£0	£33	£0
Direct Telephones	£820	£137	£0	£137	£0
<b>Controlled Running Costs</b>	<b>£12,800</b>	<b>£2,133</b>	<b>£1,631</b>	<b>£502</b>	<b>£8,531</b>
Contract Income	-£159,130	-£39,875	-£39,785	-£90	-£154,500
Rent Income	-£5,300	£0	£0	£0	-£5,250
<b>Controlled Income</b>	<b>-£164,430</b>	<b>-£39,875</b>	<b>-£39,785</b>	<b>-£90</b>	<b>-£159,750</b>
MBC Staff Recharges	£21,300	£3,550	£3,550	£0	£18,229
<b>Rechargeable Costs</b>	<b>£21,300</b>	<b>£3,550</b>	<b>£3,550</b>	<b>£0</b>	<b>£18,229</b>
<b>Cobtree Golf Course</b>	<b>-£130,330</b>	<b>-£34,192</b>	<b>-£34,604</b>	<b>£412</b>	<b>-£132,990</b>
MBC 2/9ths share	£28,960			-£92	£29,553
<b>CMET Total</b>	<b>-£101,370</b>	<b>-£34,192</b>	<b>-£34,604</b>	<b>£321</b>	<b>-£103,437</b>

<b>MANOR PARK</b>					
Salaries	£82,960	£13,827	£10,180	£3,647	£49,182
Overtime	£4,000	£667	£0	£667	£1,257
Employers NI	£6,370	£1,062	£894	£168	£4,636
Employers Superannuation	£10,070	£1,678	£1,435	£243	£17,895
Staff Advertising	£0	£0	£0	£0	£164
Employee Insurances	£840	£140	£140	£0	£780
Medical Recharges	£40	£7	£7	-£0	£39
<b>Employee Costs</b>	<b>£104,280</b>	<b>£17,380</b>	<b>£12,656</b>	<b>£4,724</b>	<b>£73,953</b>
Repairs & Maintenance	£70,100	£11,683	£10,747	£936	£78,930
Gas	£3,960	£660	£392	£268	£3,016
Electricity	£8,860	£1,477	£0	£1,477	£4,514
Water Metered	£1,180	£197	£0	£197	£645
Sewerage & Env Services	£1,080	£180	£0	£180	£0
Cesspool Emptying	£0	£0	£380	-£380	
Trade Refuse Collection (Internal)	£13,260	£2,210	£1,938	£272	£10,404
Premises Insurance	£2,400	£400	£0	£400	£1,080
Public Transport	£0	£0	£0	£0	£35
Casual User Allowance	£620	£103	£0	£103	£0
Equipment Purchase	£1,020	£170	£390	-£220	£10,567
Equipment Maintenance	£2,040	£340	£528	-£188	£2,543
Equipment Rental	£0	£0	£48	-£48	£96
Equipment Hire	£510	£85	£0	£85	£290
Materials & Supplies	£1,020	£170	£901	-£731	£400
Catering Provisions	£0	£0	£54	-£54	£6
Cash Collection	£2,370	£395	£358	£37	£2,444
Protective Clothes	£510	£85	£49	£36	£0
Photocopying	£510	£85	£0	£85	£239
Stationery	£210	£35	£0	£35	£0
General Expenses	£510	£85	£0	£85	£695
General Expenses - VAT	£5,100	£850	£2,996	-£2,146	£6,940
Audit Fee	£5,130	£855	£0	£855	£5,130
Licence Fees	£0	£0	£0	£0	£102
Courier/Delivery Services	£0	£0	£19	-£19	
Professional Services	£7,640	£1,273	£129	£1,144	£6,755
Professional Services Security	£0	£0	£2,936	-£2,936	£12,471
Direct Telephones	£210	£35	£46	-£11	£142
Mobile Telephones	£110	£18	-£160	£178	£305
Mobile Telephones - Cashless Parking	£1,530	£255	£624	-£369	£1,021
Conferences	£0	£0	£0	£0	£432
Subscriptions to Professional Bodies	£0	£0	£304	-£304	
Other Subscriptions	£0	£0	£375	-£375	£369
General Insurances	£960	£160	£160	£0	£180
Non-Staff Advertising	£0	£0	£33	-£33	
External Print & Graphics	£170	£28	£0	£28	£0

	A	B	C	(B-C)	
	Budget for Year 2019/20	Budget to end of May 2019	Actuals to end of May 2019	Variance as at end of May 2019	Provisional Outturn 2018/19
<b>Controlled Running Costs</b>	<b>£131,010</b>	<b>£21,835</b>	<b>£23,247</b>	<b>-£1,412</b>	<b>£149,751</b>
Fees & Charges - Car Parking	-£90,000	-£15,000	-£18,741	£3,741	-£96,294
Other Income - Cobtree Charity Trust Ltd	-£40,000	£0	£0	£0	-£30,250
Other Income	-£5,000	-£833	£0	-£833	-£525
Licences	-£420	-£70	£0	-£70	-£900
Rent Income	-£26,000	-£4,333	-£3,376	-£957	-£25,558
<b>Controlled Income</b>	<b>-£161,420</b>	<b>-£20,237</b>	<b>-£22,117</b>	<b>£1,880</b>	<b>-£153,527</b>
MBC Staff Recharges	£34,720	£5,787	£5,787	-£0	£29,479
<b>Rechargeable Costs</b>	<b>£34,720</b>	<b>£5,787</b>	<b>£5,787</b>	<b>-£0</b>	<b>£29,479</b>
<b>Cobtree Manor Park</b>	<b>£108,590</b>	<b>£24,765</b>	<b>£19,573</b>	<b>£5,192</b>	<b>£99,656</b>
<b>KENT LIFE</b>					
Repairs & Maintenance of Premises	£12,500	£2,083	£0	£2,083	£2,612
Premises Insurance	£4,640	£773	£0	£773	£2,270
General Expenses	£3,650	£608	£0	£608	£0
General Expenses - VAT	£5,100	£850	£932	-£82	£3,406
Direct I.T. Purchases	£0	£0	£0	£0	£80
<b>Controlled Running Costs</b>	<b>£25,890</b>	<b>£4,315</b>	<b>£932</b>	<b>£3,383</b>	<b>£8,368</b>
Contract Income	-£71,170	£0	£0	£0	-£64,000
<b>Controlled Income</b>	<b>-£71,170</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>-£64,000</b>
MBC Staff Recharges	£11,420	£1,903	£1,903	£0	£17,156
<b>Rechargeable Costs</b>	<b>£11,420</b>	<b>£1,903</b>	<b>£1,903</b>	<b>£0</b>	<b>£17,156</b>
<b>Kent Life</b>	<b>-£33,860</b>	<b>£6,218</b>	<b>£2,835</b>	<b>£3,383</b>	<b>-£38,476</b>
<b>CAFÉ/VISITOR CENTRE</b>					
Salaries	£0	£0	£0	£0	£11,546
Overtime	£0	£0	£0	£0	£5,034
Employers NI	£0	£0	£0	£0	£859
Employers Superannuation	£0	£0	£0	£0	£2,515
Holiday In Excess	£0	£0	£0	£0	£569
Agency Temp Staff	£0	£0	£0	£0	£922
Employee Insurances	£0	£0	£0	£0	£10
Medical Recharges	£0	£0	£0	£0	£20
<b>Employee Costs</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£21,475</b>
Repairs & Maintenance	£0	£0	-£7,056	£7,056	£7,309
Cleaning Materials	£0	£0	£0	£0	£16
Contract Cleaning	£0	£0	£0	£0	£1,469
Trade Refuse Collection (Internal)	£0	£0	£0	£0	£360
Premises Insurance	£0	£0	£0	£0	£1,490
Vehicle Licences	£0	£0	£0	£0	£370
Equipment Purchase	£0	£0	£15	-£15	£417
Equipment Rental	£0	£0	£0	£0	£1,005
Materials & Supplies	£0	£0	£392	-£392	£971
Catering Provisions	£0	£0	£0	£0	£11,363
Cash Collection	£0	£0	£0	£0	£180
Printing	£0	£0	£0	£0	£19
General Expenses	£0	£0	£0	£0	£385
Bank Charges	£0	£0	£0	£0	£231
Professional Services	£0	£0	£0	£0	£335
Mobile Telephones	£0	£0	£0	£0	£16
General Insurances	£0	£0	£0	£0	£800
<b>Controlled Running Costs</b>	<b>£0</b>	<b>£0</b>	<b>-£6,649</b>	<b>£6,649</b>	<b>£26,736</b>
Sales	£0	£0	£0	£0	-£15,918
Other Income - Profit Share	-£14,000	-£2,333	£0	-£2,333	-£19,607
Other Income - Staff Recharges	£0	£0	£2,808	-£2,808	-£6,913
Rent Income	-£20,000	-£5,000	-£5,000	£0	-£19,109
<b>Controlled Income</b>	<b>-£34,000</b>	<b>-£7,333</b>	<b>-£2,192</b>	<b>-£5,141</b>	<b>-£61,547</b>
MBC Staff Recharges	£4,720	£787	£787	-£0	£19,997
<b>Rechargeable Costs</b>	<b>£4,720</b>	<b>£787</b>	<b>£787</b>	<b>-£0</b>	<b>£19,997</b>
<b>Cobtree Manor Park Visitor Centre</b>	<b>-£29,280</b>	<b>-£6,547</b>	<b>-£8,054</b>	<b>£1,507</b>	<b>£6,661</b>
<b>OVERALL TOTALS</b>	<b>-£55,920</b>	<b>-£9,755</b>	<b>-£20,250</b>	<b>£10,403</b>	<b>-£35,596</b>

**DRAFT ONLY**

**[Maidstone] BOROUGH COUNCIL**

**and**

**Cobtree Manor Estate Trust**

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**SERVICES AGREEMENT**

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Relating to

Mid Kent Legal Services  
Maidstone Borough Council  
Ref:

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**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 201\_

**BETWEEN:**

- (1) **MAIDSTONE BOROUGH COUNCIL** of (the "**Service Provider**"); and
- (2) COBTREE MANOR TRUST whose registered office is situated at (the "**The Trust**").<sup>1</sup>

**WHEREAS:**

- (A) Maidstone Borough Council (the "Authority") is the corporate trustee of the Cobtree Manor Estate Charity (the "Trust") and provides administrative support to the Trust through work done by Council officers
- (B) Further to a decision by the Trust on the [ ] 20[ ] it was resolved that **an agreement between the Trust and Service Provider be drawn up to define the scope of the services to be provided by Service Provider to the Trust.**
- (B) Service Provider has agreed to provide the Services to the Trust on the terms and conditions set out in this Agreement.

**NOW IT IS HEREBY AGREED:**

**1. DEFINITIONS**

In the Agreement (including the Recitals):

- 1.1 Unless the context indicates otherwise the following expressions shall have the following meanings:

- "Agreement"** means this Agreement, including the Schedules and all other documents referred to in this Agreement;
- "Agreement Commencement Date"** means the date for commencement of this Agreement specified in **Schedule 1**;
- "Trust's Data"** means all information and documentation provided by the Trust to Service Provider pursuant to and in connection with this Agreement;
- "Charges"** means the charges payable by the Trust, in consideration of the due performance of the Services, as specified or calculated in accordance with **Schedule 3**;
- "Confidential Information"** means all information (whether written or oral) that by its nature may reasonably be regarded as

<sup>1</sup> Where the Service Provider is not a limited company refer to Legal Services for advice as to appropriate Attestation (page .

confidential by the Trust (whether commercial, financial, technical or otherwise) including information which relates to the business affairs, customers, suppliers, products, and/or software, telecommunications, networks, trade secrets, know-how or personnel of the Trust;

**"Contract Information"**

- (i) this Agreement in its entirety (including from time to time agreed changes to the Agreement); and
- (ii) data extracted from the invoices submitted pursuant to Clause 5 which shall consist of Service Provider's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;

**"Contract Manager"**

means Service Provider's Contract Manager identified in **Schedule 1**.

**"FOI Legislation"**

means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department for Constitutional Affairs or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

**"Force Majeure Event"**

means any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes to the extent that such event has materially affected the ability of the Party relying on the Force Majeure Event ("**Affected Party**") to perform its obligations in accordance with the terms of this Agreement but excluding any such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent

	such Force Majeure Event or its impact;
<b>“Information”</b>	means information recorded in any form held by Service Provider or by the Service Provider on behalf of the Trust;
<b>“Information Request”</b>	means a request for any Information under the FOI Legislation;
<b>“Intellectual Property Rights”</b>	means any patent, know-how, trade mark or name, service mark, design right (in each case whether registered or unregistered), copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;
<b>“Key Personnel”</b>	means Service Provider’s key personnel named as such in <b>Schedule 1</b> ;
<b>“Losses”</b>	means all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and judgments;
<b>“Parties”</b>	means Service Provider and the Service Provider (including their successors and permitted assignees) and <b>“Party”</b> shall mean either of them as the case may be;
<b>“Prohibited Act”</b>	means the offering or giving to any person, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done, any act in relation to the obtaining or execution of this Agreement except in the respect of payments made to the Service Provider in the normal course of this Agreement; or showing or forbearing to show, favour or disfavour to any

person in relation to this or any other contract with Service Provider; or in relation to this Agreement; or committing any offence under the Bribery Act 2010 or any related legislation or any of the money laundering related offences listed in the Public Agreement Regulations 2006 or giving any fee or reward, the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972.

**“Project Plan”**

means the plan (if any) in **Schedule 2** in relation to the performance and timing of the Services which may include Milestones;

**“Services”**

means:

- (a) all or any part of the services to be provided to, or activities to be undertaken and completed for, Service Provider by the Service Provider in **Schedule 2** and in the Tender (provided that where there is a conflict between Schedule 2 and the Tender set out in Schedule 5, Schedule 2 shall prevail), including any variations to such services and/or activities pursuant to Clause 40; and
- (b) any responsibilities, services, or functions which may be reasonably regarded as incidental to the Services or activities and which may be reasonably inferred;

**“Service Provider’s Personnel”**

means all such employees, officers, suppliers, sub-contractors and agents of Service Provider as are engaged in the performance of any of the Services and including the Key Personnel;

**“Service Provider’s Representative”**

means all such employees, officers, suppliers, sub-contractors and agents of Service Provider as are engaged in the performance of any of the Services and including the Key Personnel;

**“Specification”**

means the Specification (if any) and other requirements set out in **Schedule 2**;

**“Sub-Contract”**

means any contract between Service Provider and a third party pursuant to

which Service Provider agrees to source the provision of any of the Services from that third party.

**"Sub-Contractor"**

means the contractors or suppliers that enter into a Sub-Contract with the Service Provider.

**"Term"**

means the period during which this Agreement continues in force as set out in **Schedule 1**;

**"VAT"**

means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature

**"VAT Invoice"**

VAT Invoice means Service Provider's invoice, displaying Service Provider's VAT registration number and detailing the applicable VAT element(s) to be added to the agreed charges for the goods and service delivered under this Agreement

**"Working Day"**

means any day excluding Saturdays, Sundays or public or bank holidays in England.

**2. COMMENCEMENT AND DURATION**

This Agreement commences on the Agreement Commencement Date and continues in force for the Term unless terminated earlier, either in whole or in part, in accordance with this Agreement.

**3. SERVICES**

3.1 Service Provider acknowledges that it has sufficient information about Trust, the Services and the Specification (if any) and that it has made all appropriate and necessary enquiries to enable it to perform the Services.

3.2 Service Provider shall provide the Services:

3.2.1 with the high degree of skill, care and diligence in compliance with the terms of this Agreement; and

3.2.2 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner.

3.3 Service Provider shall comply with all lawful and reasonable directions of the Trust relating to its performance of the Services.

**4. CHARGES**

- 4.1 Service Provider shall invoice the Trust in accordance with the procedures set out in Clause 5 and in consideration of, and subject to the due performance of the Services and the Trust shall pay Service Provider the Charges in accordance with those procedures.
- 4.2 Service Provider is not entitled to reimbursement for expenses unless such expenses are specified in **Schedule 3** or have been incurred with the prior written consent of the Trust, in which case Service Provider shall supply appropriate evidence of expenditure in a form acceptable to Trust
- 4.3 [Save where the context so requires or as otherwise stated herein all costs charges or payments required to be made under or pursuant to this Agreement are exclusive of VAT and insofar as such costs, charges or payments are made or to be made in respect of the supply of goods or services which are subject to the addition of Value Added Tax then the applicable amount of such Value Added Tax shall be added to such costs, charges or payments and shall become payable against the provision of a valid VAT Invoice.]<sup>3</sup>
- 4.4 Service Provider shall submit a valid VAT Invoice for goods and services delivered pursuant to the Trusts's requirements under this contract. The valid VAT Invoice shall be payable in accordance with the provision of this Agreement.

## **5. PAYMENT PROCEDURES AND APPROVALS**

- 5.1 [Service Provider shall invoice the Trust in respect of the Charges monthly in arrears] during or at such dates or at the end of such other periods as may be specified **Schedule 3**.
- 5.2 It is a condition precedent of the submission of an invoice on completion of a milestone that all preceding milestones specified in **Schedule 2** have been completed.
- 5.3 Service Provider shall submit invoices to the address set out in **Schedule 1**, each such invoice shall contain all information required by Service Provider including Service Provider's Account Details, Service Provider's name and registered address, VAT registration number, a separate calculation of VAT and a brief description of the Services provided. Invoices shall be clear, concise, accurate, and adequately descriptive to avoid delays in processing subsequent payment.
- 5.4 In the event of a variation to the Services in accordance with this Agreement that involves the payment of additional fees or charges to Service Provider, Service Provider shall identify these separately on the relevant invoice.
- 5.5 If the Trust considers that the Charges claimed by Service Provider in any invoice have:
- 5.5.1 been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved and payment shall be made by bank transfer (Bank Automated Clearance System (BACS)) or such other

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<sup>3</sup> Please ensure the Service or Commissioner of works has confirmed that VAT is applicable to the arrangement, that Supplier is VAT registered and the registration number has been provided

method as Service Provider may choose from time to time within 30 days of receipt of such invoice or such other time period as may be specified in **Schedule 3**; or

- 5.5.2 not been calculated correctly and/or if the invoice contains any other error or inadequacy, Service Provider shall notify the Service Provider and the Parties shall work together to resolve the error or inadequacy. Upon resolution, the Service Provider shall submit a revised invoice to Service Provider.
- 5.6 No payment made by the Trust (including any final payment) or act or omission or approval by the Trust or its Contract Manager (whether related to payment or otherwise) shall:
  - 5.6.1 indicate or be taken to indicate the Trust's acceptance or approval of the Services or any part of them or any act or omission of Service Provider, or otherwise prejudice any rights, powers or remedies which Trust may have against Service Provider or absolve Service Provider from any obligation or liability imposed on Service Provider; or
  - 5.6.2 prevent the Trust from recovering any amount overpaid or wrongfully paid including payments made to Service Provider by mistake of law or fact. The Trust shall be entitled to withhold such amount from any sums due or which may become due to Service Provider or the Trust may recover such amount as a debt due under this Agreement.

5.7 Where Service Provider enters into a Sub-Contract, Service Provider shall include in that Sub-Contract:

- 5.7.1 provisions having the same effect as Clause 5.5.1 to [Clause 5.5.2](#) of this Agreement; and
- 5.7.2 a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as Clause 5.5.1 to [Clause 5.5.2](#) of this Agreement.

In this [Clause 5.7](#), "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from Service Provider in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

## **6. SERVICE PROVIDER'S WARRANTIES**

- 6.1 The Service Provider warrants and represents that:
  - 6.1.1 it has the full capacity and has taken all steps and obtained all approvals, consents and licences required to enable it to lawfully enter into and perform each of its obligations under this Agreement;
  - 6.1.2 this Agreement shall be executed by its duly authorised representatives;

- 6.1.3 the information supplied by the Service Provider in the Tender is true and accurate in all material respects;
- 6.1.4 there are no material facts or circumstances in relation to the financial position or operational constitution of the Trust which have not been fully and fairly disclosed to Service Provider and which, if disclosed, might reasonably have been expected to affect the decision of Service Provider to enter into this Agreement; and
- 6.1.5 it has not committed any Prohibited Act.

## **7. CONTRACT MANAGEMENT**

- 7.1 The Trust authorises its Contract Manager to act as its Authorised Representative for all purposes in connection with this Agreement and Service Provider shall deal with the Contract Manager (or his or her Nominated Representative) in respect of all matters arising under this Agreement.
- 7.2 Service Provider shall appoint a Representative who shall be duly authorised for all purposes in connection with this Agreement and Service Provider shall provide the Key Personnel. Service Provider's Representative and the Key Personnel shall:
  - 7.2.1 diligently supervise the performance of the Services;
  - 7.2.2 attend all contract meetings with the Trust the location, frequency and time of which may be specified by the Contract Manager; and
  - 7.2.3 be available to the Trust to resolve any issues arising in connection with this Agreement at such time periods as may be specified by the Contract Manager.
- 7.3 Service Provider may only make any changes to Service Provider's Representative or Key Personnel (except in the event of sickness, incapacity or resignation) with the prior consent of the Trust which shall not be unreasonably withheld.
- 7.4 No act of or omission by or approval from the Trust or its Contract Manager in performing any of their respective duties under or in connection with this Agreement shall in any way operate to relieve Service Provider of any its duties, responsibilities, obligations or liabilities under this Agreement.

## **8. HEALTH AND SAFETY**

- 8.1 Service Provider shall have regard to applicable Safety policies, and safe working practices in the provision of the Services, and shall ensure that all Health and Safety matters arising from the provision of the Services under this Agreement are dealt with in accordance with the the Health and Safety at Work Act 1974.
- 8.3 The Trust shall nominate a senior manager to be responsible for ensuring that all Health and Safety matters arising from the provision of the Services under this Agreement are dealt with in accordance with the the Health and Safety at Work Act 1974.

8.4 Service Provider shall conduct the Services so as to eliminate or minimise so far as is reasonably practicable any health and safety risks to members of the public, the Trust's employees and other staff carrying out the Services.

**9. STAFF AND KEY PERSONNEL**

**9.1 Service Provider's Staff**

9.1.1 Service Provider shall at all times during the Term ensure that its employees engaged in the provision of the Services have sufficient skill and ability and have been properly trained in order to carry out the Services in accordance with this Agreement;

9.1.2 Service Provider shall at all times be fully responsible for the payment of all income or other taxes national insurance contributions or levies of any kind relating to or arising out of the employment of any person engaged by Service Provider in the performance of the Services and shall indemnify Service Provider in respect of any liabilities which may arise to Service Provider as a result of the failure by Service Provider to comply with the obligation in this Clause 9.1.2.

**10. EQUIPMENT AND MATERIALS**

10.1 Regardless of whether or not Service Provider's equipment and materials are located at the Trust's premises, risk in all Service Provider's Equipment and Materials (including any of its sub-contractors) shall be with Service Provider at all times and all other equipment and materials forming part of the Services (title to which will pass to Service Provider) shall be with Service Provider until payment of the Services in accordance with this Agreement.

10.2 Service Provider shall ensure that all its equipment and materials meet all minimum safety standards required from time to time by law.

## **11. PERFORMANCE AND MONITORING**

### **11.1 Performance Standards**

Service Provider shall throughout the Term perform the Services so as to meet the minimum performance standards set out for the Services in **Schedule 2 and/or Schedule 4 and/or Schedule 5**.

### **11.2 Review and Monitoring of Performance<sup>4</sup>**

The performance of the Services shall be subject to monitoring by Service Provider and through the performance management and monitoring procedure which may set out in **Schedule 2** or otherwise agreed between the Contract Manager and Service Provider's Representative.

## **12. RECORDS, AUDIT AND INSPECTION**

12.1 The Service Provider shall and shall procure that its sub-contractors shall:

12.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Service Provider's obligations under this Agreement and all transactions entered into by the Service Provider for the purposes of this Agreement and where deemed appropriate include time-sheets for the Service Provider's Personnel where such records are material to the calculation of the Charges ("**Records**");

12.1.2 retain all Records during the Term and for a period of not less than 6 years (or such longer period as may be required by law) following termination or expiry of this Agreement ("**Retention Period**").

12.2 Service Provider and any person nominated by Service Provider has the right to audit any and all Records at any time during the Retention Period on giving to Service Provider what Service Provider considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Service Provider's performance of the Services and Service Provider shall give all reasonable assistance to Service Provider or its nominees in conducting such inspection, including making available documents and staff for interview.

## **13. SET-OFF**

The Trust shall be entitled at any time to set off any liability of Service Provider to the Trust against any liability of the Trust to Service Provider.

## **14. INDEMNITIES**

14.1 Subject to Clause 14.2, Service Provider is responsible for and shall indemnify, keep indemnified and hold harmless Service Provider (including its employees, sub-contractors and agents) ("**the Indemnified Party**") against all Losses which the Indemnified Party incurs or suffers as a consequence of any direct or indirect breach or any negligent performance of this Agreement by Service Provider (or any of its employees, agents or sub-contractors) including in each case any non-performance or delay in performance of this Agreement or of any breach of statutory duty,

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<sup>4</sup> Standards and Performance management regime to be set out in Schedule 2 including KPIs.

misrepresentation or misstatement by the Service Provider or any of its employees or sub-contractors.

- 14.2 The Trust is not responsible for and shall not indemnify Service Provider for any Losses to the extent that such Losses are caused by any breach or negligent performance of any of its obligations under this Agreement by Service Provider and/or any of its employees or agents.
- 14.3 Notwithstanding any other provision of this Agreement, neither Party limits or excludes its liability for fraud or fraudulent misrepresentation or for death or personal injury caused by its negligence.

## **15. INSURANCE<sup>5</sup>**

- 15.1 The Service Provider shall at all times have in force with reputable insurers or underwriters, approved by Service Provider, the following insurances for the period of the Term of this Agreement:
- 15.1.1 Public liability insurance with a limit of indemnity of not less than **£5 million** in relation to any one claim;
  - 15.1.2 Employers liability insurance with a limit of indemnity of not less than **£10 million** in relation to any one claim;
  - 15.1.3 Professional indemnity insurance with a limit of indemnity of not less than **£2 million** or, where professional indemnity insurance is not available, a "financial loss" extension to the product liability insurance referred to in Clause 15.1.4;
  - 15.1.4 Product liability insurance with a limit of indemnity of not less than **£5 million** in relation to any one claim; and
  - 15.1.5 All other insurances required by law.
- 15.2 Service Provider shall notify the Contract Manager as soon as reasonably practicable upon the notification of any event which may give rise to a claim of more than ten thousand pounds (£10,000) sterling.
- 15.3 Service Provider shall, prior to the Commencement Date of this Agreement and at any other reasonable times as the Contract Manager may require supply the Contract Manager with evidence of all of the insurance policies referred to in clause 15.1.

## **16. AUTHORITY'S DATA**

- 16.1 Service Provider acknowledges the Trust's ownership of Intellectual Property Rights which may subsist in the Trust's Data. Service Provider shall not delete or remove any copyright notices contained within or relating to Service Provider's Data.
- 16.2 The Trust and Service Provider shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Agreement) to preserve the integrity of the Trust's Data and to prevent any corruption or loss of Service Provider's Data.

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<sup>5</sup> Confirm with Insurance advisor the type and level of Insurance cover required and any special terms in relation to the Services.

## **17. INTELLECTUAL PROPERTY RIGHTS**

- 17.1 Save as the Parties may otherwise agree (in writing), Service Provider hereby assigns with full title guarantee to the Trust all Intellectual Property Rights in all documents, drawings, computer software and any other work or data prepared or developed by and on behalf of Service Provider in the provision of the Services ("**the Products**") provided that such assignment shall not include items not prepared or developed specifically for the purposes of providing the Services.
- 17.2 Service Provider shall provide the Trust with copies of all materials relied upon or referred to in the creation of the Products with a perpetual, irrevocable, royalty-free and transferable licence free of charge to use such materials in connection with the use of the Products.

## **18. PERSONAL DATA**

- 18.1 Each party shall ensure that it complies with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data, including, without limitation, (i) the Data Protection Act 2018, (ii) the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, and (iii) any successor legislation to the Data Protection Act 2018 and the GDPR.

## **19. CONFIDENTIALITY**

- 19.1 Subject to Clauses 18 and 19.6, the Service Provider shall keep confidential:
- 19.1.1 the terms of this Agreement and any agreed variation thereto; and
- 19.1.2 all Confidential Information that it may acquire in relation to Service Provider.
- 19.2 The Service Provider will not use Service Provider's Confidential Information for any purpose other than to perform its obligations under this Agreement. The Service Provider will ensure that its officers, employees and sub-contractors will comply with the provisions of Clause 19.1.
- 19.3 The obligations of the Service Provider set out in Clause 19.1 shall not apply to any Confidential Information which:
- 19.3.1 either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 19); or
- 19.3.1 a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure.
- 19.4 The Service Provider shall keep secure all data and materials containing any information in relation to the Agreement and its performance.
- 19.5 The Service Provider shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of the Agreement or that it is providing

the Services to Service Provider or in relation to any matter under or arising from the Agreement unless granted consent in writing by Service Provider. Service Provider shall have the right to approve any public announcement before it is made.

- 19.6 Service Provider may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing, and in its absolute discretion, Service Provider may take account of the exemptions that would be available in relation to information requested under the FOI Legislation. Service Provider may, in its absolute discretion, consult with the Service Provider regarding any redactions to the Contract Information to be published pursuant to this Clause 19.6. Service Provider shall make the final decision regarding publication and/or redaction of the Contract Information.

## **20. FREEDOM OF INFORMATION**

- 20.1 The Service Provider acknowledges that the Trust:

20.1.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Trust to enable the Trust to comply with its obligations under the FOI Legislation; and

20.1.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider.

- 20.2 Without prejudice to the generality of Clause 20.1, the Service Provider shall and shall procure that its sub-contractors (if any) shall:

20.2.1 transfer to the Contract Manager (or such other person as may be notified by Service Provider to the Service Provider) each Information Request relevant to this Agreement or the Services that it or they (as the case may be) receive as soon as practicable and in any event within 2 Working Days of receiving such Information Request; and

20.2.2 in relation to Information held by the Service Provider on behalf of Service Provider, provide Service Provider with details about and/or copies of all such Information that Service Provider requests and such details and/or copies shall be provided within 5 Working Days of a request from Service Provider or such other period and in such forms as Service Provider may reasonably specify.

- 20.3 Service Provider shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Service Provider shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Trust.

## **21. TERMINATION**

- 21.1 Without prejudice to Service Provider's right to terminate at common law, the Trust may terminate this Agreement immediately upon giving notice to the Service Provider, if the Service Provider:

21.1.1 has committed any material or persistent breach of this Agreement and, in the case of such a breach that is capable of remedy fails to

remedy that breach within 10 Working Days (or such other period as specified in writing by Service Provider) from the date of written notice to the Service Provider giving details of the breach and requiring it to be remedied; or

21.1.2 ; or

21.1.3 commits a breach of Clause 6 (Service Provider's Warranties); or

21.1.4 commits a breach of Clause 19 (Confidentiality); or

21.1.5 commits a Prohibited Act; or

21.1.6 commits a breach of Clause 34 (Assignment and Sub-Contracting)

## 21.2 **Force majeure**

21.2.1 Neither Party shall be in breach of any obligation under this Agreement if it is unable to perform that obligation in whole or in part by reason of a Force Majeure Event.

21.2.2 If either Party seeks to rely on this Clause it shall immediately give notice to the other with full particulars of the act or matter claimed as a Force Majeure Event. The Party so affected shall take all reasonable steps to remedy the failure to perform and to keep the other Party informed of the steps being taken to mitigate the effects of the Force Majeure Event.

21.2.3 Without prejudice to any accrued rights or remedies, if a Force Majeure Event lasts for more than 30 Working Days either Party may, following consultation with the other Party, give notice of termination of this Agreement.

## 21.3 **Replacement Service Provider**

21.3.1 In the event that Service Provider terminates this Agreement in accordance with Clause 21.1, then the Service Provider shall indemnify Service Provider in respect of procuring the performance of the Services by a Replacement Service Provider in accordance with Clause 21.3.2.

21.3.2 On termination of this Agreement under clause 21.1, Service Provider may enter into any agreement with any third party or parties to provide any or all of the Services and the Service Provider shall be liable for all additional expenditure ("**Costs**") reasonably incurred by Service Provider in having such services carried out including, but not limited to, direct loss and expense, legal and other costs and damages incurred in consequence of such termination. Service Provider may deduct such Costs from the Charges or otherwise recover such Costs from the Service Provider as a debt due.

## 22. **CONSEQUENCES OF TERMINATION AND EXPIRY**

22.1 Upon termination, the Service Provider shall continue to provide the Services in accordance with the terms of this Agreement and will ensure that there is no degradation in the standards of the Services until the

expiry of the termination period and, for a reasonable time thereafter, shall answer such questions from Service Provider's Contract Manager as may be relevant to the transfer of the Services to a replacement Service Provider.

22.2 Notwithstanding the provisions of Clause 19 (Confidentiality) whenever Service Provider chooses to put out to tender for a Replacement Service Provider some or all of the Services, the Service Provider shall disclose to tenderers such information concerning the Services as Service Provider may require for the purposes of such tender. The Service Provider may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.

22.3 The termination or expiry of this Agreement shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to the Parties prior to or after such termination or expiry.

22.4 Upon termination (howsoever caused) or expiry of this Agreement:

22.4.1 the Service Provider shall at the request of the Trust immediately return to the Contract Manager all information (including but not limited to data (including personal data), data bases, lists, correspondence, documents, specifications) and property belonging to Service Provider which may be in its possession, custody or control as acquired or developed in connection with the performance of the Services; and

22.4.2 the Trust shall (subject to its accrued rights of set off and deduction) pay the Service Provider any Charges remaining due in relation to any Services properly performed in accordance with this Agreement up to the date of termination or expiry calculated so far as is possible in accordance with Clause 5 or as otherwise reasonably determined by Service Provider.

### **23. DISPUTE RESOLUTION**

23.1 Trust and the Service Provider shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference ("Dispute") that may arise out of or relate to this Agreement before issuing proceedings in the High Court.

23.2 If the Dispute is not settled through discussion between the Contract Manager and a representative of the Service Provider within a period of 10 Working Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) ("**Senior Personnel**") of each of the Parties for resolution.

23.3 If the Dispute is not resolved within 20 Working Days of referral to the Senior Personnel, either Party may apply to the Centre for Effective Dispute Resolution ("**CEDR**") in London to appoint a Mediator. The costs of the Mediator shall be borne equally by the Parties.

23.4 Where a Dispute is referred to mediation under Clause 23.3, the Parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedure as the Mediator may recommend.

- 23.5 If the Parties reach agreement in mediation, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, shall be final and binding on the Parties.
- 23.6 If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within 40 Working Days of the service of the Mediation Notice either Party may commence proceedings in the High Court.
- 23.7 Unless otherwise instructed by Service Provider, the Service Provider shall continue to provide the Services in accordance with this Agreement without delay or disruption while the Dispute is being resolved pursuant to this Clause 23.

#### **24. DATA QUALITY**

All Data held by the Service Provider in connection with this Agreement shall be stored and processed in a compliant, comprehensive, up to date, accurate manner which conforms with the relevant industry standard for Data Quality. Upon any reasonable request from the Contract Manager, the Service Provider shall supply a copy of the Data within 2 Working Days of the request or such other time as may be agreed by the Contract Manager (together with the means to read it where deemed necessary by Service Provider).

#### **25. BUSINESS CONTINUITY PLAN**

- 25.1 The Service Provider shall have in place by the Commencement Date of this Agreement a Business Continuity Plan ("**BCP**") a copy of which shall be provided to the Contract Manager. The BCP shall be current and up to date and prepared to British Standard 25999 or at least to an equivalent standard.
- 25.2 The BCP shall be maintained and regularly tested by the Service Provider throughout the Term of this Agreement. The results of such testing shall be forwarded to the Contract Manager within 5 Working Days of the test being completed. The Contract Manager shall then have the right within 20 Working Days, by written statement; to require reasonable alterations to the BCP to be made by the Service Provider at its expense should such alterations be judged by the Contract Manager as needed for sustaining the proper performance of the Services.

#### **26. SUSTAINABILITY**

The Service Provider shall make arrangements to secure continuous improvement in the way in which the Services are provided having regard to a combination of economy, efficiency and effectiveness and shall assist Service Provider in discharging its Best Value Duty in relation to the Services and either Party may propose alternative methods for the improvement of the economy, efficiency and environmental aspects of the Services or the introduction of or change in any information technology in use to support the provision of the Services and the Parties will co-operate to evaluate and, if appropriate, introduce such proposals as a variation of this Agreement.

#### **27. EQUALITY AND SOCIAL VALUES**

- 27.1 The Service Provider is required to have in place an equal opportunities (Equalities) policy at the Commencement Date of this Agreement and throughout the Term and shall comply with the Equality Act 2010 and all related and successor legislation.
- 27.2 The Service Provider shall take all reasonable steps to secure that all of its employees do not unlawfully discriminate and comply with the Service Provider's obligations under this clause.
- 27.3 In the performance of the Services and in its dealings with service users, Service Provider's employees and members of the general public the Service Provider shall comply and shall ensure that its employees comply with:
- 27.3.1 the Human Rights Act 1998 as if the Service Provider was a public body (as defined in the Human Rights Act 1998);
  - 27.3.2 all law relating to equal opportunities including without limitation relating to disability, discrimination, sex discrimination, and race relations;
  - 27.3.3 Service Provider's equal opportunities (Equalities) policies and procedures as may be adopted and amended from time to time and as notified to the Service Provider; and
  - 27.3.4 the Public Services (Social Value) Act 2012.

**28. WAIVER**

No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 33. The single or partial exercise of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

**29. THIRD PARTY RIGHTS**

No third party or other person who is not a Party to this Agreement may enforce any of its terms under the Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 which is hereby expressly excluded.

**30. NO AGENCY OR PARTNERSHIP**

Nothing in this Agreement constitutes, or shall be deemed to constitute, a partnership between the Parties. Except as expressly provided in this Agreement, neither Party shall be deemed to be the agent of the other, nor shall either Party hold itself out as the agent of the other.

**31. PREVENTION OF FRAUD**

The Service Provider shall take all reasonable steps to prevent a fraud by its employees, servants, agents and/or sub-contractors in connection with the receipt of monies under this Agreement. The Service Provider shall notify Service Provider immediately if it has reason to suspect that any Prohibited Act has occurred or is occurring or is likely to occur.

**32. SURVIVAL OF TERMS**

Nothing in this Agreement shall affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication to come into force or continue in force upon termination or expiry of this Agreement.

**33. NOTICES**

33.1 Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, post or email and if by post must be addressed to the recipient at its registered office, the address stated in **Schedule 1** or any other address (including an email address) notified to the other Party in writing in accordance with this Clause 33 as an address to which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served:

33.1.1 if delivered by hand, at the time of delivery;

33.1.2 if delivered by post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays); or

33.1.3 if delivered by email, at the time of transmission, provided that a confirming copy is sent by first class post to the other Party or Parties within 24 hours after transmission.

**34. ASSIGNMENT AND SUB-CONTRACTING**

34.1 The Service Provider shall not assign or sub-contract all or any part of the Services without the prior written consent of Service Provider.

34.2 Where the Service Provider sub-contracts all or any part of the Services to any person, the Service Provider shall:

34.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Service Provider under this Agreement insofar as they relate to the Services or part of them (as the case may be) which that sub-contractor is required to provide;

34.2.2 be responsible for payments to that person; and

34.2.3 remain solely responsible and liable to Service Provider for any breach of performance, non-performance, part-performance or delay in performance of any of the Services by any sub-contractor to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Service Provider.

- 34.3 Service Provider may assign, novate or otherwise transfer this Agreement (in whole or in part) without the consent of the Service Provider.
- 34.4 Within 10 Working Days of a written request from Service Provider, the Service Provider shall at its own expense execute such agreement as Service Provider or and/or may reasonably require to give effect to any such transfer of all or part of the rights and obligations under this Agreement to one or more persons nominated by Service Provider.

**35. VARIATION**

This Agreement may only be varied or amended with the written agreement of both Parties to this Agreement.

**36. COSTS**

Each Party will pay its own charges, costs and expenses in the performance of its own obligations in this Agreement and the negotiation, preparation and execution of this Agreement.

**37. ENTIRE AGREEMENT**

37.1 Subject to Clause 37.2:

37.1.1 this Agreement and any and all documents referred to in this Agreement contain all of the terms which the Parties have agreed relating to the subject matter of this Agreement which shall supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Services. No Party has been induced to enter into this Agreement by a statement which it does not contain; and

37.1.2 without prejudice to the Service Provider's obligations under this Agreement, the Service Provider is responsible for and shall make no claim against Service Provider in respect of any misunderstanding affecting the basis of the Service Provider's tender in respect of this Agreement or any incorrect or incomplete information howsoever obtained.

37.2 Nothing in this Clause 37 excludes any liability which a Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

**38. LAW AND JURISDICTION**

This Agreement shall be subject to and construed in accordance with the laws of England and Wales and the Parties hereby submit to the exclusive jurisdiction of the English courts.

**IN WITNESS** whereof this Agreement was executed and delivered as a Deed on the date above written

**THE COMMON SEAL of** )  
**MAIDSTONE BOROUGH COUNCIL** )  
was affixed to this Deed which was )  
delivered when stated in the presence )  
of:

.....

Authorised Signatory

**EXECUTED** as a **DEED** by )  
acting by )

.....

.....

Secretary

DRAFT

**SCHEDULE 1 - KEY AGREEMENT INFORMATION**

1. Agreement Reference Number:
2. Name of Service Provider:
3. Agreement Commencement Date:
4. Term:
5. Service Provider's Contract Manager:

Name:  
Address:  
Tel:  
Email:

6. The Trust's Representative:

Name and Position:  
Address:  
Tel:  
Email:

7. The Service Provider's Key Personnel:

Name and Position:  
Address:  
Tel:  
Email:

8. Address for service of notices and other documents in accordance with Clause 33 (Notices):

For Service Provider: Head of Legal Services at Service Provider's normal business address.

For the Trust:

## **SCHEDULE 2 – SERVICES**

**[insert]**

- **Communications**
- **Committee support**
- **Management services**
- **Finance**
- **Health and Safety**
- **Human Resources**
- **ICT services**
- **Learning and Development**
- **Legal services**
- **Parking services**
- **Contract management**
- **Property services**
- **Procurement services**

DRAFT

**SCHEDULE 3 – Service CHARGES**

**Full details of the charges due will be set out here, including the recharges schedule and costs of directly employed staff.**

DRAFT

DRAFT

DRAFT

APPENDIX 2

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Service	Description of Service Provided	Hourly Rate	Total Hours	Total Days	Draft Charge	Allocation across service areas			
						p.a.	p.a.	Golf Course	Manor Park
Communications	Provision of communications service as and when required	£30	11.5	1.6	£350	£20	£280	£30	£20
Democratic Services	Agenda management and attendance at Committee meetings	£30	56.4	7.6	£1,690	£80	£1,370	£150	£90
Director of Regeneration & Place	Management services - Cobtree included in the area of responsibility	£96	11.1	1.5	£1,070	£50	£870	£100	£50
Finance	Cobtree Finance Officer - Monthly accounts, budgets and year-end accounts	£50	74.0	10.0	£3,700	£350	£5,670	£630	£350
	Other financial services - accounts payable/receivable, VAT and banking	Activity based costing	N/A	N/A	£3,300				
Head of Regeneration & Economic Development	Management services - Cobtree included in the area of responsibility	£64	20.0	2.7	£1,280	£60	£1,040	£120	£60
Human Resources	Provision of HR services including payroll and learning & development	Per Capita charge	N/A	N/A	£1,500	£70	£1,220	£140	£70
ICT	Provision of ICT services including Kent Public Sector Network Service charge	Notional charge	N/A	N/A	£800	£0	£800	£0	£0
Legal Services	Provision of legal services	Estimate of expenditure based on previous activity	N/A	N/A	£8,000	£400	£6,480	£720	£400
Parking Services	Enforcement services	Contract cost	N/A	N/A	£1,200	£0	£6,120	£0	£0
	Software maintenance - parking services system	Contract cost	N/A	N/A	£2,500				
	Operational administration and finance	£18	144.0	19.5	£2,420				
Parks & Leisure	Management of Cobtree Manor Park and strategic direction. Management of contracts for the golf course and Kent Life attraction.	£41	500.0	67.6	£20,500	£1,020	£16,610	£1,840	£1,020
Procurement	Monitoring and contractual/statutory compliance of the service providers at Kent Life, the golf course and the café	£29	660.0	89.2	£19,140	£11,480	£2,490	£5,170	£0
Property Services	Property management and maintenance services	£52	90.0	12.2	£4,710	£240	£3,840	£420	£230
<b>Total Charge:</b>					<b>£72,160</b>	<b>£13,770</b>	<b>£46,790</b>	<b>£9,320</b>	<b>£2,290</b>

Full name: Loan agreement.

**DATED**

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**LOAN AGREEMENT**

**between**

**MAIDSTONE BOROUGH COUNCIL**

**And**

**Cobtree Manor Estate Trust Ltd**

Mid Kent Legal Services  
Maidstone Borough Council  
Matter Ref: M0 [ ]

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THIS DEED is made between

**PARTIES**

- (1) **Maidstone Borough Council** whose principal address is at Maidstone House, (**the Authority**).
- (2) **Cobtree Manor Estate Trust Ltd** a registered charity with registration number 283617 whose principal address is [ ] (the Trust) [acting by its trustees]

Chairman of Trustee and Director

**WHEREAS:**

- (A) Maidstone Borough Council is the corporate trustee of the Cobtree Manor Estate Charity and wishes to provide financial support to the Trust in its proposed improvements and ancillary works ("the Project") to the Cobtree Manor Park car park described in Schedule 1 and the accompanying attached [ plans/drawings].
- (B) Further to the Committee meeting of the 18<sup>th</sup> December, 2018 between the Trust and the Authority, it was resolved and agreed that the Authority award the sum of £[ ] 00.00 ([ ] pounds) to the Trust towards the Project.
- (D) This Agreement sets out the terms and conditions on which the Loan is made by the Authority to the Trust.
- (E) These terms and conditions are intended to ensure that the Loan is used for the purpose for which it is awarded.

**AGREED TERMS**

**1. DEFINITIONS**

In this Agreement the following terms shall have the following meanings:

**Bribery Act:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Commencement Date:** [ ] 2019

**Governing Body:** the governing body of the Trust including its directors or trustees.

**Intellectual Property Rights:** all patents, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and Know-How however arising for their full term and any renewals and extensions.

**Interest Rate:** the Bank of England Base rate plus [ ] %

**Know-How:** information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale.

**Loan:** the total sum of [ ] ([ ] thousand pounds sterling) to be paid to the Trust in accordance with this Agreement.

**Loan Period:** the period for which the Loan is awarded starting on the Commencement Date and ending in [ ] , and or such other date as advised and confirmed by the Authority to the Trust

**Prohibited Act:** means:

- (a) offering, giving or agreeing to give to any servant of the Authority any gift or consideration of any kind as an inducement or reward for:
  - (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Authority; or
  - (ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Authority;
- (b) entering into this Agreement or any other contract with the Authority where a commission has been paid or has been agreed to be paid by the Trust or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority;
- (c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation creating offences in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Authority; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Authority.

**Project:** the project described in 0 and the accompanying plan /drawing of the area.

**Project Manager:** the individual who has been nominated to represent the Authority for the purposes of this Agreement.

**Repayment Date:** the date by which the Loan must be repaid to the Authority

## 2. **PURPOSE OF LOAN**

- 2.1 The Trust shall use the Loan only for the delivery of the Project and in accordance with the terms and conditions set out in this Agreement. The Loan shall not be used for any other purpose without the prior written agreement of the Authority.
- 2.2 The Trust shall not make any significant change to the Project without the Authority's prior written agreement.
- 2.3 Where the Trust intends to apply to a third party for other funding for the Project, it will notify the Authority in advance of its intention to do so and, where such funding is obtained, it will provide the Authority with details of the amount and purpose of that funding. The Trust agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Project or any related administration costs that the Authority is funding in full under this Agreement.

## 3. **PAYMENT OF LOAN**

- 3.1 Subject to clause 12, the Authority shall grant the Loan to the Trust in accordance to the terms of this Agreement and subject to the necessary funds being available. The Trust agrees and accepts that payments of the Loan can only be made to the extent that the Authority has available funds.
- 3.2 No Loan shall be paid unless and until the Authority is satisfied that such payment will be used for proper expenditure in the delivery of the Project.
- 3.3 **The Council makes no commitment to increase the level of the Loan and the amount of the Loan shall not be increased in the event of any overspend by the Trust in its delivery of the Project.**
- 3.4 The Loan shall be paid into the Trusts' nominated bank account as approved by the Authority, via BACS within [ ] working days. All cheques from the bank account must be signed by at least two individual representatives of the Trust.
- 3.5 The Trust shall not transfer any part of the Loan to bank accounts which are not ordinary business accounts within the clearing bank system, without the prior written consent of the Authority.

3.6 The Trust shall promptly repay to the Authority any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Loan monies have been paid in error before all conditions attaching to the Loan have been complied with by the Trust.

3.7 The interest rate to be applied to the Loan amount is the Bank of England Base Lending Rate plus three percent (3%) and this will be calculated on a daily basis

3.8 The Authority will allow an interest free period where no interest will be applied to the Loan up to and including the [ ] 2019. Interest will be applied from the [ ] of [ ] 20[ ]

#### 4. USE OF LOAN

4.1 The Loan shall be used by the Trust for the delivery of the Project in accordance with the terms of this Agreement. For the avoidance of doubt, the amount of the Loan that the Trust may spend shall not exceed the corresponding sum of money listed in column 2 without the prior written agreement of the Authority.

4.2 Where the Trust has obtained funding from a third party in relation to its delivery of the Project (including without limitation funding for associated administration and staffing costs), the Trust shall promptly notify the Authority of the amount of such funding with a clear description of what that funding shall be used for.

4.3 The Trust shall not use the Loan to:

- (a) make any payment to members of its [ Board and or Governing Body];
- (b) purchase buildings or land; or
- (c) pay for any expenditure commitments of the Trust entered into before the Commencement Date,

unless this has been approved in writing by the Authority.

4.4 The Trust shall not spend any part of the Loan on the delivery of the Project after the Loan Period.

4.5 Should any part of the Loan remain unspent at the end of the Loan Period, the Trust shall ensure that any unspent monies are returned to the Authority or, if agreed in writing by the Authority, shall be entitled to retain the unspent monies to use for charitable purposes as agreed between the parties.

4.6 Any liabilities arising at the end of the Project including any redundancy liabilities for staff employed by the Trust to deliver the Project must be managed and paid for by the Trust using the Loan or other resources of the Trust. There will be no additional funding available from the Authority for this purpose.

## **5. ACCOUNTS AND RECORDS**

5.1 The Loan shall be shown in the Trust's accounts as a restricted fund and shall not be included under general funds.

5.2 The Trust shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Loan monies received by it.

5.3 The Trust shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Loan for a period of at least six years following receipt of any Loan monies to which they relate. The Authority shall have the right to review, at the Authority's reasonable request, the Trust's accounts and records that relate to the expenditure of the Loan and shall have the right to take copies of such accounts and records.

5.4 The Trust shall provide the Authority with a copy of its annual accounts within six months (or such lesser period as the Authority may reasonably require) of the end of the relevant financial year in respect of each year in which the Loan is paid.

5.5 The Trust shall comply and facilitate the Authority's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Authority.

## **6. MONITORING AND REPORTING**

6.1 The Trust shall closely monitor the delivery and success of the Project throughout the Loan Period to ensure that the aims and objectives of the Project are being met and that this Agreement is being adhered to.

- 6.2 The Trust shall provide the Authority with a financial report and an operational report on its use of the Loan and delivery of the Project every quarter and in such formats as the Authority may reasonably require. The Trust shall provide the Authority with each report within three months of the last day of the quarter to which it relates.
- 6.3 Where the Trust has obtained funding from a third party for its delivery of part of the Project, the Trust shall include the amount of such funding in its financial reports together with details of what that funding has been used for.
- 6.4 Along with its first quarterly financial report, the Trust shall provide the Authority with a risk register and insurance review in the format provided by the Authority. The Trust shall address the health and safety of its staff in the risk register.
- 6.5 The Trust shall on request provide the Authority with such further information, explanations and documents as the Authority may reasonably require in order for it to establish that the Loan has been used properly in accordance with this Agreement.
- 6.6 The Trust shall permit any person authorised by the Authority such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Trust's fulfilment of the conditions of this Agreement and shall, if so required, provide appropriate oral or written explanations from them.
- 6.7 The Trust shall permit any person authorised by the Authority for the purpose to visit the Trust once every quarter to monitor the delivery of the Project. Where, in its reasonable opinion, the Authority considers that additional visits are necessary to monitor the Project, it shall be entitled to authorise any person to make such visits on its behalf. The Trust shall provide local transport and accommodation for such visits, the cost of which may be charged to the Authority for payment.
- 6.8 The Trust shall provide the Authority with a final report on completion of the Loan Period which shall confirm whether the Project has been successfully and properly completed.

## **7. ACKNOWLEDGMENT AND PUBLICITY**

- 7.1 The Trust shall acknowledge the Loan in its annual report and accounts, including an acknowledgement of the Authority as the source of the Loan.

- 7.2 The Trust shall not publish any material referring to the Project or the Authority without the prior written agreement of the Authority. The Trust shall acknowledge the support of the Authority in any materials that refer to the Project and in any written or spoken public presentations about the Project. Such acknowledgements (where appropriate or as requested by the Authority) shall include the Authority's name and logo (or any future name or logo adopted by the Authority) using the templates provided by the Authority from time to time.
- 7.3 In using the Authority's name and logo, the Trust shall comply with all reasonable branding guidelines issued by the Authority from time to time.
- 7.4 The Trust agrees to participate in and co-operate with promotional activities relating to the Project that may be instigated and/or organised by the Authority.
- 7.5 The Authority may acknowledge the Trust's involvement in the Project as appropriate without prior notice.
- 7.6 The Trust shall comply with all reasonable requests from the Authority to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Authority in its promotional and fundraising activities relating to the Project.

## **8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1 The Authority and the Trust agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either the Authority or the Trust before the Commencement Date or developed by either party during the Loan Period, shall remain the property of that party.
- 8.2 Where the Authority has provided the Trust with any of its Intellectual Property Rights for use in connection with the Project (including without limitation its name and logo), the Trust shall, on termination of this Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by the Authority.

## **9. CONFIDENTIALITY**

- 9.1 Subject to clause 10 (Freedom of Information), each party shall during the term of this Agreement and thereafter keep secret and confidential all

Intellectual Property Rights or Know-How or other business, technical or commercial information disclosed to it as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other party.

- 9.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property Rights, Know-How or other business, technical or commercial information which:
- (a) at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;
  - (b) is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or
  - (c) is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.

## 10. FREEDOM OF INFORMATION

10.1 The Trust acknowledges that the Authority is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIRs**).

10.2 The Trust shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Authority all requests for information relating to this agreement that it receives as soon as practicable and in any event within 2 working days of receipt;
- (c) provide the Authority with a copy of all information belonging to the Authority requested in the request for information which is in its possession or control in the form that the Authority requires within 5 working days (or such other period as the Authority may reasonably specify) of the Authority's request for such information; and

- (d) not respond directly to a request for information unless authorised in writing to do so by the Authority.

10.3 The Trust acknowledges that the Authority may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the Trust. The Authority shall take reasonable steps to promptly notify the Trust of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Authority shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## 11. DATA PROTECTION

The Trust shall (and shall procure that any of its staff involved in connection with the activities under the Agreement shall) comply with any notification requirements under the Data Protection Act 2018 (**DPA**) and both Parties will duly observe all their obligations under the DPA, which arise in connection with the Agreement.

## 12. WITHHOLDING, SUSPENDING AND REPAYMENT OF LOAN

12.1 The Authority's intention is that the Loan will be paid to the Trust in full. However, without prejudice to the Authority's other rights and remedies, the Authority may at its discretion withhold or suspend payment of the Loan and/or require repayment of all or part of the Loan if:

- (a) the Trust uses the Loan for purposes other than those for which they have been awarded;
- (b) the delivery of the Project does not start within [6 months] of the Commencement Date and the Trust has failed to provide the Authority with a reasonable explanation for the delay;
- (c) the Authority considers that the Trust has not made satisfactory progress with the delivery of the Project;
- (d) the Trust is, in the reasonable opinion of the Authority, delivering the Project in a negligent manner;
- (e) the Trust obtains duplicate funding from a third party for the Project;
- (f) the Trust obtains funding from a third party which, in the reasonable opinion of the Authority, undertakes activities that are

likely to bring the reputation of the Project or the Authority into disrepute;

- (g) the Trust provides the Authority with any materially misleading or inaccurate information;
- (h) the Trust commits or committed a Prohibited Act;
- (i) any member of the governing body, employee or volunteer of the Trust has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project or (b) taken any actions which, in the reasonable opinion of the Authority, bring or are likely to bring the Authority's name or reputation into disrepute;
- (j) the Trust ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- (k) the Trust becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due; or
- (l) the Trust fails to comply with any of the terms and conditions set out in this Agreement and fails to rectify any such failure within 30 days of receiving written notice detailing the failure.

12.2 The Authority may retain or set off any sums owed to it by the Trust which have fallen due and payable against any sums due to the Trust under this agreement or any other agreement pursuant to which the Trust provides goods or services to the Authority.

12.3 The Trust shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

12.4 Should the Trust be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Project or compliance with this Agreement it will notify the Authority as soon as possible so that, if possible, and without creating any legal obligation, the Authority will have an opportunity to provide assistance in resolving the problem or to take action to protect the Authority and the Loan monies.

**13. ANTI-DISCRIMINATION**

- 13.1 The Trust shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.
- 13.2 The Trust shall take all reasonable steps to secure the observance of clause 13.1 by all servants, employees or agents of the Trust and all suppliers and sub-contractors engaged on the Project.

**14. HUMAN RIGHTS**

- 14.1 The Trust shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement as if the Trust were a public body (as defined in the Human Rights Act 1998).
- 14.2 The Trust shall undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

**15. LIMITATION OF LIABILITY**

- 15.1 The Authority accepts no liability for any consequences, whether direct or indirect, that may come about from the Trust running the Project, the use of the Loan or from withdrawal of the Loan. The Trust shall indemnify and hold harmless the Authority, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Trust in relation to the Project, the non-fulfilment of obligations of the Trust under this Agreement or its obligations to third parties.
- 15.2 Subject to clause 15.1, the Authority's liability under this Agreement is limited to the payment of the Loan.

**16. WARRANTIES**

The Trust warrants, undertakes and agrees that:

- (a) it has all necessary resources and expertise to deliver the Project (assuming due receipt of the Loan);
- (b) it has not committed, nor shall it commit, any Prohibited Act;

- (c) it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Authority immediately of any significant departure from such legislation, codes or recommendations;
- (d) it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Project;
- (e) it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- (f) it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- (g) all financial and other information concerning the Trust which has been disclosed to the Authority is to the best of its knowledge and belief, true and accurate;
- (h) it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Loan;
- (i) it is not aware of anything in its own affairs, which it has not disclosed to the Authority or any of the Authority's advisers, which might reasonably have influenced the decision of the Authority to make the Loan on the terms contained in this Agreement; and
- (j) since the date of its last accounts there has been no material change in its financial position or prospects.

## 17. **INSURANCE**

17.1 The Trust shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Trust, arising out of the Trust's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss (the **Required Insurances**).

17.2 The Required Insurances referred to above include (but are not limited to):

- (a) public liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Project; and

- (b) employer's liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims arising from the Project.

The Trust shall (on request) supply to the Authority a copy of such insurance policies and evidence that the relevant premiums have been paid.

## **18. DURATION**

18.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until the anniversary of expiry of the Loan Period or for so long as any Loan monies remain unspent by the Trust, whichever is longer.

18.2 Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

## **19. TERMINATION**

The Authority may terminate this Agreement and any Loan payments on giving the Trust three months' written notice should it be required to do so by financial restraints or for any other reason.

## **20. ASSIGNMENT**

The Trust may not, without the prior written consent of the Authority, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement or, except as contemplated as part of the Project, transfer or pay to any other person any part of the Loan.

## **21. WAIVER**

No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

## **22. NOTICES**

All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally

delivered, e-mailed, or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered (or if e-mailed) all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

**23. DISPUTE RESOLUTION**

23.1 In the event of any complaint or dispute (which does not relate to the Authority's right to withhold funds or terminate) arising between the parties to this Agreement in relation to this Agreement the matter should first be referred for resolution to the Project Manager or any other individual nominated by the Authority from time to time.

23.2 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the Project Manager or other nominated individual, as the case may be, either party may refer the matter to the Chief Executive of the Authority and the Chair OR Chief Executive of the Trust with an instruction to attempt to resolve the dispute by agreement within 28 days, or such other period as may be mutually agreed by the Authority and the Trust.

23.3 In the absence of agreement under clause 23.2, the parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both parties). Unless otherwise agreed, the parties shall bear the costs and expenses of the mediation equally.

**24. NO PARTNERSHIP OR AGENCY**

This Agreement shall not create any partnership or joint venture between the Authority and the Trust, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

**25. JOINT AND SEVERAL LIABILITY**

Where the Trust is not a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Agreement on behalf of the Trust shall be jointly and severally liable for the Trust's obligations and liabilities arising under this Agreement.

26. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

27. **GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

DRAFT

**Schedule 1:**

**The refurbishment of the Cobtree Manor Park Car Park**

- To upgrade the existing main and lower car parks to provide 172 parking spaces in total, 10 of which will be disabled bays. This includes creating a tarmac circulation road and installing adequate drainage and surface water run-off.

**Drawing / Plan of Area**

DRAFT

**Schedule 2**

**Payment Schedule.**

That the Payment Schedule is as follows;

DRAFT

**Schedule 3**

**Repayments**

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**THE COMMON SEAL** of )  
**MAIDSTONE BOROUGH COUNCIL** )

Was hereunto affixed in the presence of )

Authorised Signatory

**EXECUTED** as a **DEED** by  
**Cobtree Manor Estates Ltd** acting by

Authorised Signatory

Director/Company Secretary



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NUMBER OF TREES  
INCREASED FROM 17 TO 19

NUMBER OF TREES  
INCREASED FROM 10 TO 21

SHALLOW BUND BEHIND  
KERB TO RETAIN RUN  
OFF WATER TOP OF  
BANK 6.80M

NEW EXIT FROM EXISTING  
OVERFLOW CAR PARK &  
DROPPED KERBS  
INSTALLED

EXISTING ACCESS TO  
OVERFLOW CAR PARK  
ALTERED TO ENTRANCE ONLY

ADDITIONAL PARKING  
SPACE ADDED

Car Park

6.6m



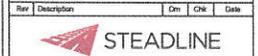
**Notes:**  
 1. DO NOT SCALE FROM THIS DRAWING.  
 2. THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL OTHER DRAWINGS AND SPECIFICATIONS ASSOCIATED WITH THIS PROJECT.  
 3. THE CAR PARK LAYOUT IS BASED ON THE UNCREDITED SURVEY INCLUDED WITH THE INVITATION TO TENDER ISSUED BY MAIDSTONE BOROUGH COUNCIL.

**CDM REGULATIONS 2015 - RESIDUAL RISKS -**

1. EXISTING UTILITY MANS & SERVICES ARE PRESENT WITH EVIDENCE OF SERVICE TRENCHES ON SITE. THERE IS A RISK OF FURTHER UNCHARTERED SERVICES BEING PRESENT.  
 2. THE WORKS WILL INVOLVE THE MOVEMENT OF PLANT AND MACHINERY IN AND AROUND A LIVE CARREGEWAY SERVING THE EXISTING CAR PARK WHICH IS TO REMAIN PARTIALLY OPERATIONAL. THERE IS A RISK OF POTENTIAL CONFLICT BETWEEN PLANT/OPERATIVES AND ROAD/PEDES TRIAN USERS.

- REGRADE EXISTING TYPE 1 AND OVERLAY WITH 80mm AC22 DENSE BASE 70/100 AND 35mm AC10 CLOSE SURF 40/50
- FULL DEPTH RECONSTRUCTION 80mm AC22 DENSE BASE 70/100 AND 30mm AC10 CLOSE SURF 40/50 ON 35mm TYPE 1
- REGRADE EXISTING TYPE 1 AND OVERLAY WITH NOMINAL 100mm TYPE 1
- FOOTPATH CONSTRUCTION 20mm AC6 CLOSE SURF 100/150 ON 80mm AC10 DENSE BIN 100/150 ON 100mm TYPE 1
- PARKING BAY CONSTRUCTION 20mm AC6 CLOSE SURF 100/150 ON 80mm AC10 DENSE BIN 100/150 ON 150mm TYPE 1
- ROUND TOPPED HUMP - SEE DRAWING NUMBER 18-0773 / C110701AB CONSTRUCTION DETAILS.

AB	AS BUILT	DNT	DshM	28/03/19
C2	2x2.5 STANDARD @ PAGES REMOVED. ASPHALT AMENDED TO SUBT & DRAINABLE. NEW MANHOLE REQUIRED	DNT	DshM	31/05/19
C1	CONSTRUCTION ISSUE. SURFACING UPDATED	DNT	DshM	22/01/19
T3	FULL RECONSTRUCTION ACCOED	DshM	28/11/18	
T2	FOOTPATH ACCOED	DshM	28/11/18	
T1	TENDER ISSUE	DshM	26/11/18	



**BdR**

incorporating  
**K. L. Harrison & Associates Ltd**  
 Civil & Structural Engineering Consultants  
 The Old Engine House, Cobtree Farm Business Park,  
 Court Lane, Haslemere, Kent, TN11 0DP  
 Tel: 01732 874749  
 email: engineering@bdr.co.uk

Client  
 MAIDSTONE BOROUGH COUNCIL

Project  
 COBTREE MANOR CAR PARK

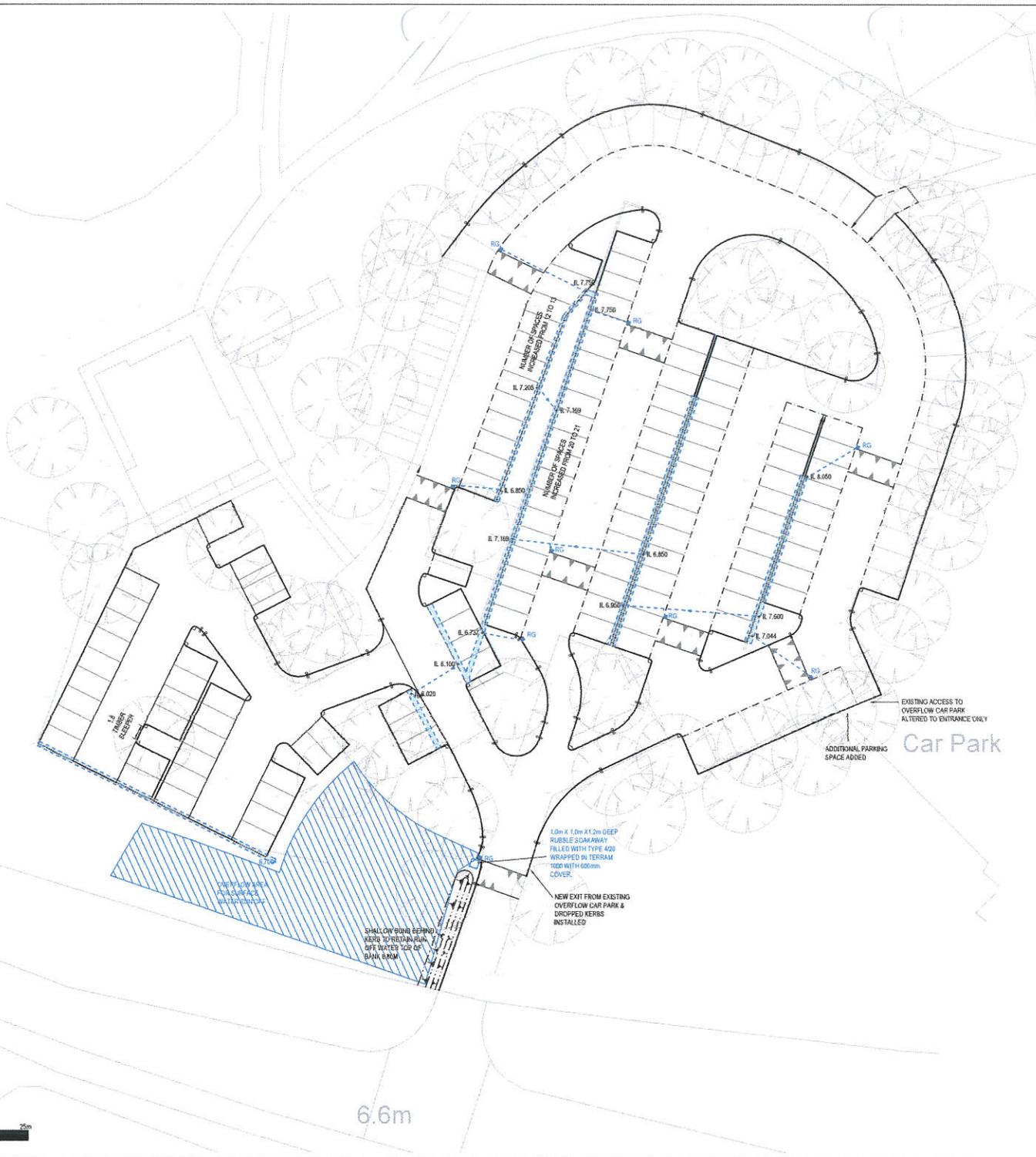
Drawing  
 SURFACING LAYOUT

**AS BUILT**

Sheet # A1 12509A1	Date 10.11.18	Drawn by DshM	Checked
Job No. 18-0773	Dwg. No. C10701AB	Rev	



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- Notes:**
- DO NOT SCALE FROM THIS DRAWING.
  - THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL OTHER DRAWINGS AND SPECIFICATIONS ASSOCIATED WITH THIS PROJECT.
  - THE CAR PARK LAYOUT IS BASED ON THE UNDATED SURVEY INCLUDED WITH THE INVITATION TO TENDER ISSUED BY MAIDSTONE BOROUGH COUNCIL.

**CDM REGULATIONS 2015 - RESIDUAL RISKS -**

- EXISTING UTILITY MAINS & SERVICES ARE PRESENT WITH EVIDENCE OF SERVICE TRENCHES ON SITE. THERE IS A RISK OF FURTHER UNCHARTERED SERVICES BEING PRESENT.
- THE WORKS WILL INVOLVE THE MOVEMENT OF PLANT AND MACHINERY IN AND AROUND A LIVE CARRIAGEWAY SERVING THE EXISTING CAR PARK WHICH IS TO REMAIN PARTIALLY OPERATIONAL. THERE IS A RISK OF POTENTIAL CONFLICT BETWEEN PLANT/OPERATIVES AND ROAD/PEDESTRIAN USERS.

- F FRENCH DRAIN 600 mm / 900mm WIDE x 450mm TO 1500mm DEEP - TYPE 400 COCR WRAPPED IN TERRAM 100 AS DRAWING NUMBER 18-0773 / C11110
- T TRAPPED ROAD GULLY 400mm DIA x 900mm DEEP AS DRAWING NUMBER 18-0773 / C11110. ALL PIPES SERVING GULLIES ARE TO BE 150mm DIAMETER uPVC IN 150mm STZ CONCRETE SURROUND

AB	AS BUILT	DIT	D6m	28/03/19
C2	1ND STANDARD SPACES REMOVED, KERBLINE AMENDED TO SUIT	DIT	D6m	31/01/19
C1	CONSTRUCTION LEVELS & CARRIAGEWAY LEVELS ADDED	DIT	D6m	24/01/19
T4	OVERFLOW PIPES ADDED	D6m		11/12/18
T3	FRENCH DRAINS AMENDED	D6m		28/11/18
T2	SEWERWAY AMENDED	D6m		27/11/18
T1	TENDER ISSUE	D6m		28/11/18
Rev	Description	Dim	CDK	Date

**STEADLINE**

**BdR**  
Incorporating  
**K L Harrison & Associates Ltd**  
Civil & Structural Engineering Consultants  
The Old Engine House, Cobtree Farm, Business Park  
Court Lane, Haslow, Kent, TN11 2DP  
Tel: 01752 251416  
email: engineering@bdr.co.uk

Client	MAIDSTONE BOROUGH COUNCIL
Project	COBTREE MANOR CAR PARK
Drawing	DRAINAGE LAYOUT

**AS BUILT**

Scale @ A1	Date	Drawn by	Checked
1:250 (B1)	18.11.18	D6m	
Job No.	Proj. No.	Rev	
18-0773	C10501AB		

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- Notes:**
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**CDM REGULATIONS 2015 - RESIDUAL RISKS -**

- EXISTING UTILITY MAINS & SERVICES ARE PRESENT WITH EVIDENCE OF SERVICE TRENCHES ON SITE. THERE IS A RISK OF FURTHER UNCHARTED SERVICES BEING PRESENT.
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- 125mm x 255mm HB2 PC KERB - 100mm FACE
- 125mm x 150mm TO 255mm HB2 PC KERB
- - - 125mm x 150mm SN PC KERB - 25mm FACE
- 125mm x 150mm SN PC KERB - FLUSH
- - - 125mm x 150mm EF FIN KERB - FLUSH
- ◻ HB2 QUADRANT KERB

AB	AS BUILT	DNT	Ddm	28/03/19
C2	2NO. STANDARD SPACES REMOVED, 2SPACES AMENDED TO 5M	DNT	Ddm	31/01/19
C1	CONSTRUCTION ISSUES & LEVELS FIXED	DNT	Ddm	22/01/19
T2	KERB AMENDED	Ddm	Ddm	28/11/18
T1	TENDER ISSUE	Ddm	Ddm	26/11/18
P1	INITIAL ISSUE FOR COMMENT	Ddm	Ddm	10/11/18
Rev	Description	Dm	Cde	Date



**BdR**  
Incorporating  
**K L Harrison & Associates Ltd**  
Civil & Structural Engineering Consultants  
The Old Engine House, Cobtree Farm Business Park,  
Court Lane, Haslemere, Surrey, GU27 0JH  
email: [engineering@bdr.uk.com](mailto:engineering@bdr.uk.com)

Client	MAIDSTONE BOROUGH COUNCIL
Project	COBTREE MANOR CAR PARK
Drawing	ENGINEERING LAYOUT

**AS BUILT**

Scale @ A1	1:250 @ A1	Date	10.11.18	Drawn by	Ddm	Checked	
Job No.	18-0773	Drawn No.	C11101AB	Rev			

RATE 3.000% Current PWLB rate +1%

MONTHS 60  
LOAN £ 310,000.00

MTHLY COST £ 5,570.29

TOTAL COST £ 334,217.65 = total repayable

MONTH	LOAN O/S	INTEREST	PAYMENT	PRINC PAID
1	310,000.00	775.00	5,570.29	4,795.29
2	305,204.71	763.01	5,570.29	4,807.28
3	300,397.42	750.99	5,570.29	4,819.30
4	295,578.12	738.95	5,570.29	4,831.34
5	290,746.77	726.87	5,570.29	4,843.42
6	285,903.35	714.76	5,570.29	4,855.53
7	281,047.82	702.62	5,570.29	4,867.67
8	276,180.14	690.45	5,570.29	4,879.84
9	271,300.30	678.25	5,570.29	4,892.04
10	266,408.25	666.02	5,570.29	4,904.27
11	261,503.98	653.76	5,570.29	4,916.53
12	256,587.44	641.47	5,570.29	4,928.82
13	251,658.62	629.15	5,570.29	4,941.14
14	246,717.48	616.79	5,570.29	4,953.50
15	241,763.97	604.41	5,570.29	4,965.88
16	236,798.09	592.00	5,570.29	4,978.29
17	231,819.79	579.55	5,570.29	4,990.74
18	226,829.05	567.07	5,570.29	5,003.22
19	221,825.83	554.56	5,570.29	5,015.73
20	216,810.09	542.03	5,570.29	5,028.26
21	211,781.83	529.45	5,570.29	5,040.84
22	206,740.98	516.85	5,570.29	5,053.44
23	201,687.54	504.22	5,570.29	5,066.07
24	196,621.47	491.55	5,570.29	5,078.74
25	191,542.72	478.86	5,570.29	5,091.43
26	186,451.29	466.13	5,570.29	5,104.16
27	181,347.12	453.37	5,570.29	5,116.92
28	176,230.20	440.58	5,570.29	5,129.71
29	171,100.49	427.75	5,570.29	5,142.54
30	165,957.94	414.89	5,570.29	5,155.40
31	160,802.54	402.01	5,570.29	5,168.28
32	155,634.25	389.09	5,570.29	5,181.20
33	150,453.05	376.13	5,570.29	5,194.16
34	145,258.88	363.15	5,570.29	5,207.14
35	140,051.74	350.13	5,570.29	5,220.16
36	134,831.58	337.08	5,570.29	5,233.21
37	129,598.36	324.00	5,570.29	5,246.29
38	124,352.07	310.88	5,570.29	5,259.41
39	119,092.65	297.73	5,570.29	5,272.56
40	113,820.09	284.55	5,570.29	5,285.74
41	108,534.35	271.34	5,570.29	5,298.95
42	103,235.39	258.09	5,570.29	5,312.20
43	97,923.19	244.81	5,570.29	5,325.48
44	92,597.70	231.49	5,570.29	5,338.80
45	87,258.90	218.15	5,570.29	5,352.14
46	81,906.76	204.77	5,570.29	5,365.52
47	76,541.23	191.35	5,570.29	5,378.94
48	71,162.29	177.91	5,570.29	5,392.38
49	65,769.90	164.42	5,570.29	5,405.87
50	60,364.03	150.91	5,570.29	5,419.38
51	54,944.64	137.36	5,570.29	5,432.93
52	49,511.71	123.78	5,570.29	5,446.51
53	44,065.20	110.16	5,570.29	5,460.13
54	38,605.06	96.51	5,570.29	5,473.78
55	33,131.28	82.83	5,570.29	5,487.46
56	27,643.81	69.11	5,570.29	5,501.18
57	22,142.63	55.36	5,570.29	5,514.93
58	16,627.70	41.57	5,570.29	5,528.72
59	11,098.97	27.75	5,570.29	5,542.54
60	5,556.43	13.89	5,570.29	5,556.40
TOTAL		24,217.67		

Per annum: 66,843.53 334,217.65

## COBTREE MANOR ESTATE TRUST - CASHFLOW PROJECTION

Activity	Year Ending 31st March	2020	2021	2022	2023	2024
Golf Course - MBC staff recharges		£13,770	£14,045	£14,326	£14,613	£14,905
Golf Course - Running Costs		£12,800	£13,184	£13,580	£13,987	£14,407
Kent Life - Running costs		£25,890	£26,667	£27,467	£28,291	£29,139
Kent Life - MBC staff recharges		£9,320	£9,506	£9,697	£9,890	£10,088
Manor Park - Running costs		£235,290	£242,349	£249,619	£257,108	£264,821
Manor Park - MBC staff recharges		£46,790	£47,726	£48,680	£49,654	£50,647
Residential Properties - MBC staff recharges		£2,290	£2,336	£2,383	£2,430	£2,479
<b>EXPENDITURE</b>		<b>£346,150</b>	<b>£355,813</b>	<b>£365,751</b>	<b>£375,973</b>	<b>£386,486</b>
Golf Course - Annual payment from operator		£159,140	£163,909	£168,826	£173,891	£179,108
Golf Course - Other income		£5,300	£5,300	£5,300	£5,300	£5,300
Kent Life - Annual payment from operator		£71,000	£74,000	£74,000	£71,000	£73,000
Manor Park - Car parking income		£90,000	£100,000	£100,000	£100,000	£100,000
Manor Park - Rental income		£31,420	£31,420	£31,420	£31,420	£31,420
Cobtree Charity Trust Ltd. Will Trust Income		£40,000	£40,000	£40,000	£40,000	£40,000
Café/Visitor Centre - Annual payments from operator		£34,000	£34,680	£35,374	£36,081	£36,803
<b>INCOME</b>		<b>£430,860</b>	<b>£449,309</b>	<b>£454,920</b>	<b>£457,692</b>	<b>£465,631</b>
Payment: MBC 2/9ths Golf Course Net Surplus		£30,638	£31,551	£32,493	£33,465	£34,466
Investment Income - Charifund		£40,000	£40,000	£40,000	£40,000	£40,000
<b>NET OPERATIONAL SURPLUS OR DEFICIT (-)</b>		<b>£94,072</b>	<b>£101,945</b>	<b>£96,675</b>	<b>£88,255</b>	<b>£84,679</b>
<b>Capital Expenditure:</b>						
Car park resurfacing loan repayment - total costs £335,000		£67,000	£67,000	£67,000	£67,000	£67,000
Power Supply (50% to be reimbursed by DAGT)		£23,000	-£3,000	-£3,000	-£3,000	
Security Works		£20,000				
Play Barn Repairs (Costs tbc)		£25,000				
Play Area Refurbishment				£50,000		
Entrance Gate Automation			£20,000			
		<b>£135,000</b>	<b>£84,000</b>	<b>£114,000</b>	<b>£64,000</b>	<b>£67,000</b>
<b>ADJUSTED OVERALL SURPLUS/DEFICIT (-)</b>		<b>-£40,928</b>	<b>£17,945</b>	<b>-£17,325</b>	<b>£24,255</b>	<b>£17,679</b>
<b>Cashflow Forecast:</b>						
<b>Bank Account balance at 1st April</b>		<b>£110,000</b>	<b>£146,000</b>	<b>£105,072</b>	<b>£123,017</b>	<b>£105,693</b>
Payment/receipt of prior year overall surplus/deficit (-)		£36,000	-£40,928	£17,945	-£17,325	£24,255
<b>Bank Account balance as at 31st March</b>		<b>£146,000</b>	<b>£105,072</b>	<b>£123,017</b>	<b>£105,693</b>	<b>£129,947</b>

# Agenda Item 13

## COBTREE MANOR ESTATE CHARITY COMMITTEE

11 July 2019

### Cobtree Manor Park Golf Course Development Works

<b>Final Decision-Maker</b>	Cobtree Manor Estate Charity Committee
<b>Lead Head of Service/Lead Director</b>	Head of Regeneration & Economic Development – John Foster
<b>Lead Officer and Report Author</b>	Leisure Manager – Mike Evans
<b>Classification</b>	Public
<b>Wards affected</b>	Boxley

#### Executive Summary

This report provides the Committee with an update on MyTime Active's plans to build a brand new clubhouse at Cobtree Manor Park Golf Course and seeks permission for a change to the contract that will facilitate a refurbishment to the current clubhouse in place of building a brand new clubhouse.

#### This report makes the following recommendation to this Committee:

1. That approval be given for the capital sum in the current contract to be invested into a refurbishment of the existing clubhouse building, with new extension, at Cobtree Manor Park Golf Course instead of being invested in a new clubhouse building.
2. That a waiver of the requirement to enter into a competitive procurement process for the contract to manage Cobtree Manor Park Golf Course be presented to and approved by the Director of Finance & Business Improvement before the actions in recommendation 3 below are undertaken.
3. That authority be given to the Director of Regeneration and Place to instruct Mid-Kent Legal Services to amend the contract and lease thus incorporating the changes approved in recommendation 1 above and for the amended contract, lease and any other ancillary documents to be entered into by the Council.

#### Timetable

<b>Meeting</b>	<b>Date</b>
Cobtree Manor Estate Charity Committee	11 July 2019

# Cobtree Manor Park Golf Course Development Works

## 1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<b>Impact on Corporate Priorities</b>	Accepting the recommendations will materially improve CMET’s ability to achieve the following corporate priorities: <ul style="list-style-type: none"> <li>• A vibrant leisure and culture offer, enjoyed by residents and attractive to visitors</li> </ul>	Head of Regeneration and Economic Development
<b>Risk Management</b>	The risks of the preferred option and the not preferred options are covered in sections 3.1, 3.2, 3.3, 3.4, 4.1 and 4.2. Future risks will be mitigated as described at 7.2 and 7.4.	Head of Regeneration and Economic Development
<b>Financial</b>	Not progressing with this option puts the income generation of the golf course operation at risk, which increases the risk of CMET not receiving its annual management fee from MyTime Active	Paul Holland, Senior Finance Manager (Client)
<b>Staffing</b>	Accepting the recommendations will not have an impact on staffing	Head of Regeneration and Economic Development
<b>Legal</b>	Pursuing a breach of contract will not overcome the construction issues faced by the contractor. If a challenge is received to the amended contract, as no new procurement will have been undertaken, the waiver will demonstrate that MBC have considered the risk and made	Team Leader Contracts and Commissioning

	the reasonable decision to amend the current contract due to the new information discovered re the site. The amount to be spent by MyTime Active under the current contract must remain the same or further decisions as to a new procurement process will have to be made.	
<b>Privacy and Data Protection</b>	No additional data will be held	Leisure Manager
<b>Equalities</b>	Any changes to existing buildings should consider government guidance on Access to and Use of Buildings: Approved Document M to ensure they are accessible as possible to all members of the community.	Policy & Information Officer
<b>Crime and Disorder</b>	Not progressing with the preferred option could leave the site vulnerable to criminal damage and deliberate destruction of property	Head of Regeneration and Economic Development
<b>Procurement</b>	Risks and mitigations are identified in paragraphs 2.11, 3.2, 3.3 and 3.4 and exempt appendix 1.	Head of Regeneration and Economic Development

**2. INTRODUCTION AND BACKGROUND**

- 2.1 MyTime Active has been operating Cobtree Manor Park Golf Course under the current contract since 1 September 2017.
- 2.2 The contract requires MyTime Active to invest the contract capital sum in a brand new clubhouse building, course improvements, driving range, and facility improvements. The contract capital sum is detailed in exempt appendix 1.
- 2.3 MyTime Active has been working to that end since the contract began. MyTime Active representatives have presented plans to CMET and ward councillors and engaged with Maidstone Borough Council Planning in a pre-app discussion. A planning application for the new-build clubhouse and associated works was submitted in August 2018, validated in October 2018 and planning permission was granted in February 2019.
- 2.4 The construction of the new-build clubhouse has been complicated by its location on the site. Ancient woodland close to the intended location meant

that a new location had to be sought. A new location was identified, adjacent to the existing clubhouse, but the topography there comes with added drainage complications which require additional piling work. This has led to increased construction costs.

- 2.5 Work has been done to re-profile the construction budget and deliver the scheme but this reduces the footprint and specification of the building to such an extent that it puts great pressure on the future income streams of the business, the income streams being the golf course, the new driving range, the new fitness and wellbeing facilities and the increased and improved food and beverage offer.
- 2.6 MyTime Active is no longer in a position to deliver the new clubhouse because the capital costs of doing so are greater than forecast and greater than the capital sum identified in the contract. The forecast return on investment makes that level of investment unviable.

### **Refurbishment of the existing clubhouse**

- 2.7 MyTime Active has proposed a refurbishment of the existing clubhouse as a solution to the affordability of the scheme. The refurbishment would give maximum value for money to CMET and MyTime Active as the high costs associated with the location of the building would be avoided. This would maximise the investment into the facility improvement, fixtures, fittings and equipment of the building and deliver maximum benefit to customers.
- 2.8 The same contract capital sum would be spent on the project, which would include the extended and refurbished clubhouse, new fitness and wellbeing gym and studio, golf course upgrades, new driving range and car park improvements. This level of capital investment is viable.
- 2.9 Delivering the four income streams in a refurbished building will ensure the future revenue of the business operations are delivered and the future payments to CMET are protected.
- 2.10 MyTime Active have some initial plans of the refurbishment available for CMET to see at the 11 July meeting. Representatives from MyTime Active will be present on 11 July to brief committee members.

### **Contract procurement**

- 2.11 Exempt appendix 1 contains details of MyTime Active's initial submission, their final submission and details of the other operators who bid for the contract to manage Cobtree Manor Park in 2016.
- 2.12 The risks associated with altering the contract arrangements are laid out in section 3.1, 3.2, 3.3 and 3.4

### **3. AVAILABLE OPTIONS**

#### **Do nothing**

- 3.1 Committee could insist the 2017 contract is followed and a new clubhouse is built by MyTime Active. With the increased construction costs the new building will be smaller than desired and will deliver an inferior project than was planned. Building a new clubhouse to the same specification will incur increased capital costs, which are not in the contract, and jeopardise the future business of MyTime Active and therefore its annual payments to CMET.

**This option is not recommended.**

#### **Re-tender the contract**

- 3.2 Committee could re-tender this contract, but any new or previous bidder will need to adjust their capital investment proposals based on the new information available today concerning the ancient woodland and the cost of overcoming the drainage issues at the second building location. Any other operators proposing this will be in the same position and will look to refurbish and extend the existing clubhouse instead. Competing the contract again is likely to put CMET in the same position and the duration of that work will take up capital repayment time and delay the implementation of improved facilities at Cobtree Manor Park Golf Course even further. Re-tendering would, however, avoid any risk of challenge that varying the contract with MyTime Active may elicit.

**This option is not recommended.**

#### **Pursue a breach of contract against MyTime Active**

- 3.3 MyTime Active is a leading operator of golf courses in the UK. Pursuing a breach of contract against them will not change the construction issues faced on site and it will limit the number of operators available to CMET to take the project forward.

**This option is not recommended**

#### **Alter MyTime Active's current contract to enable the capital sum to be invested into a refurbishment of the existing clubhouse building**

- 3.4 With the complications surrounding the construction on site a refurbishment of the existing building is the best option. It will deliver an extension to the existing building increasing the footprint beyond what was planned for the new clubhouse, bring improved facilities to the site in a cost-effective way, and it will protect the financial operations of the site and the annual payments this generates for CMET

**This is the recommended option.**

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### **4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

- 4.1 It is recommended that MyTime Active's 2017 contract be altered to approve a refurbishment and an extension of the existing building, instead of a new clubhouse, as part of the overall project to develop the site. The refurbishment will accompany the course upgrade works, new driving range and car park improvements and will be delivered with the same capital sum as is in the current 2017 contract.

- 4.2 It is recommended that a waiver to alter the contract be presented to the Director of Finance & Business Improvement, and an amended lease and Deed of variation be drafted for the creation and management of the new site. The amended contract will have the same end date as the current contract, which was signed in 2017 for 20 years with an option of a five-year extension. The end date of the lease and amended contract will be 31 August 2037, with an option to extend that by a further five years.
- 4.3 The refurbishment option will:
- overcome the problems with constructing a new building elsewhere on site
  - avoid expensive construction solutions and demolition costs
  - deliver a larger building and greater footprint able to meet the demands of increased visitors to the site
  - ensure capital is invested in facilities and improvements that customers can use and benefit from
  - avoid protracted re-tendering and contract breach procedures
  - ensure investment is made in to the Cobtree Manor Park Golf Club site
  - ensure future annual operating payments are made to CMET

### **Outcomes**

- 4.4 The Cobtree Manor Park Golf Course upgrade works can proceed and the benefits to customers can be delivered. Once a way forward is agreed by CMET the necessary legal steps can be taken by officers and MyTime Active will be able to submit a new planning application for the building refurbishment.
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## **5. RISK**

- 5.1 The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council's Risk Management Framework. That consideration is shown in this report at 3.1, 3.2 and 3.3 and identifies some risks assessed rated as "RED" or "BLACK" should agreement to vary the contract and progress with a refurbishment not be granted. However, we are satisfied that the further responses to those risks shown at 4.1 and 4.2 are sufficient to bring their impact and likelihood within acceptable levels. We will continue to monitor these risks as per the Policy.
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## **6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK**

- 6.1 No formal consultation with user groups has taken place.

## **7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION**

- 7.1 If Cobtree Manor Estate Charity Committee agrees to proceed with the recommended option the Leisure Manager, in conjunction with Legal Services, will proceed with this work.
- 7.2 A contract waiver will be presented to the Director of Finance & Business Improvement and an amended lease and Deed of Variation with MyTime Active will be drafted and signed. The amended lease and contract will have the same payment structure and end date as the current 2017 contract.
- 7.3 MyTime Active will progress with the plans for the refurbishment project and submit the required planning application.
- 7.4 Public communications regarding the change to the project will be managed by MyTime Active but must be approved by the Head of Economic Regeneration so that Cobtree Manor Estate Charity Committee's reputation is protected.

## **8. REPORT APPENDICES**

Exempt appendix 1: Procurement information relating to MyTime Active's contract to manage Cobtree Manor Park Golf Course

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

Document is Restricted