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<b>Decision Maker:</b>	<b>EXECUTIVE AND FULL COUNCIL</b> <b>For Pre-decision Scrutiny by RRH PDS Committee on 14 June 2022 and ECS PDS Committee on 21 June 2022</b>
<b>Date:</b>	<b>Wednesday 29 June 2022 and Monday 18 July 2022</b>
<b>Decision Type:</b>	Non-Urgent                      Executive                      Key
<b>Title:</b>	<b>NEXT STEPS FOR THE CRYSTAL PALACE PARK REGENERATION PLAN</b>
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<b>Chief Officer:</b>	Director of Environment and Public Protection, and Director of Housing, Planning, Property and Regeneration
<b>Ward:</b>	Crystal Palace & Anerley;

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1. Reason for decision/report and options

- 1.1 This report provides an update on the Regeneration Plan for Crystal Palace Park and sets out the next steps to take forward the capital scheme.
- 1.2 The report makes recommendations in relation to securing the legal agreements to dispose of the residential sites as part of the housing Enabling Development securing funding for the first phases of works, as well as transferring the Park to the Crystal Palace Park Trust.

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**2 RECOMMENDATION(S)**

That Members of the Environmental and Community PDS Committee, and the Renewal, Recreation and Housing PDS Committee:

- 2.1. Note and provide comment on the content of this report to the Executive.

**That the Members of the Executive:**

- 2.2. Delegate authority to the Director of Housing, Planning, Property and Regeneration, to settle

agree and negotiate the commercial terms in respect of the proposed disposal of the housing sites **subject to Executive approval** and disposal by way of a grant of lease to the CPPT of the Park.

- 2.3. Note the terms of the shadow section 106 agreement attached to the agenda (Ref. Appendix F Part 2 Report) and to confirm:
- (i) in respect of any section of CPP to be retained by the Council and developed under a planning permission granted under reference 20/00325/OUT, that it shall comply with the terms of the shadow section 106 agreement: or
  - (ii) in respect of any section of CPP to be sold or leased, that no development shall be progressed on the relevant land until such time as the purchaser or lessee has entered into a section 106 agreement with the Council, incorporating the obligations from the shadow section 106 agreement that are relevant to the part of the site. It is acknowledged that certain obligations in relation to (non-residential) development of CPP covered in the s.106 agreement may be discharged by the Council under commercial agreements made between the purchaser/lessee and the Council.
- 2.4. Approve an initial addition of £4.5m to the capital programme in 2023/24 to forward fund the capital regeneration works in CPP, which will need commence prior to any of the housing land capital receipt being received. Note that subsequent CPP works will then be funded from the capital receipt from disposal of the housing land.
- 2.5. Approve the commencement of the forwarded funded heritage restoration capital works, limited to £4.5m (expected housing receipt £17.5m) noting that the capital programme will regularly be updated to reflect the impact of this on total scheme expenditure.
- 2.6. Authorise Officers to action the disposal of the Sydenham and Rockhill housing sites ("**Housing Sites**") in line with the approved Outline Planning Application.
- 2.7. Approve the placing of advertisements of the intention to dispose of the Housing Sites and the proposed disposal by way of a grant of a long lease of CPP to CPPT to section 123(2A) of the Local Government Act 1972 and the preparation of a further report in respect of any representations received.
- 2.8. Approve the following course of action in respect of the capital requirements for the regeneration of the Park:
- 2.8.1. Approve that any capital receipt generated by the disposal of the Housing Sites will be ringfenced solely for heritage works in CPP, as required by the enabling development Planning Permission, as set out in para 3.10.
  - 2.8.2. Agree that any capital receipt generated by the Housing Sites will be spent on the Park's Regeneration Plan capital scheme (including returning funds spent to date to the Council and the endowment) within ten years of the capital receipt entering the Council's bank account. If the funds are not spent within this time period, as set out in this report, the Council will be penalised by 2% per annum of the remaining funds and required to grant the penalty monies to the Trust.
  - 2.8.3. Approve that once the capital receipt for the Housing Sites is received that the Council's capital programme budget is increased in line with the value of the receipt, subject to details of that amendment with updated scheme costs and funding being agreed by the Executive through the capital monitoring reporting process. Any such amendments will be subject to the principle

that total spending on this scheme will never exceed actual income to the Council secured from capital receipts and grants and contributions from third parties.

- 2.8.4. Agree that any interest accrued by the Council from the capital receipt for the Housing Sites is also used for the regeneration of the Park, with interest calculated at General Treasury Management rates, and the approved capital programme updated accordingly
- 2.9. Agree that the spend to date of £1.185m returned to the Council will be used as the match funding required for grant applications effectively recycling the investment to date.
- 2.10. Delegate authority to the Director of Housing, Planning, Property and Regeneration to settle agree and negotiate the commercial terms in respect of the proposed disposal of the Housing Sites and disposal by way of a grant of a lease to the CPPT of the Park
- 2.11. Note that the lease is to be granted on the basis of a long lease and on terms which are appropriate given the long-term nature of the interest to be granted by the Council. The Council shall obtain an independent valuation of the terms of the disposal of the Housing Sites and of the grant of lease in order to comply with the best value considerations pursuant to s.123 of the Local Government Act 1972, and relevant statute governing subsidy control.
- 2.12. Delegate authority to vary the existing Environmental Services contracts in relation to CPP on or before 1 October 2022 so that, as such arrangements apply to CPP, the idverde Parks Management and Grounds Maintenance contract and the Veolia Parks Security contract shall come to an end on 31<sup>st</sup> March 2023, with the CPPT arranging new and equivalent contractual arrangements commencing on or before 1<sup>st</sup> April 2023. This authority will be given subject to the CPPT having sufficiently progressed tenders for replacement management and maintenance, and security contract(s) before 1 October 2022, to the satisfaction of the Director of Environmental and Community Services in agreement with the Director of Corporate Services and Governance.
- 2.13. Approve that the endowment fund to be met from the housing enabling receipt will be provided to CPPT as soon as sufficient funds are available to meet the target value of £4.3m, provided that at such time the Trust has already entered into a long lease for the Park. For avoidance of doubt, the amount provided for the endowment fund will be limited to the excess of the capital receipt from the enabling disposal that is not required to fund the Italian Terraces and Tidal Lakes, up to a maximum of £4.3m.
- 2.14. Approve that, as detailed in para 3.22, subject to the CPPT lease commencing on 1<sup>st</sup> April 2023, the Council will in addition to the provision of the endowment fund, provide a grant to the Trust of £125k per annum to assist in the costs of management of CPP, noting that the payment of this grant will be reviewed every ten years and that the value of the grant shall increase annually in line with the Consumer Price Index from 1<sup>st</sup> April 2024 (capped at a maximum of 3% per annum), subject to the term of the lease.
- 2.15. To approve an additional project resource of £113k a year from 1 April 2023 for Culture and Regeneration for overseeing the restoration works through to completion in as set out in para 3.26. This will fund one dedicated post and the costs of external specialist advice to deliver this complex scheme.
- 2.16. To make necessary adjustments to revenue budgets to reflect the termination of current contract arrangements relating to management, maintenance and security services within Environment & Community Services from 1<sup>st</sup> April 2023 and the loss of existing lease rental income from CPP to Property and Culture & Regeneration from 1<sup>st</sup> April 2023, as set out in section 6, and Part 2 of the same report.

- 2.17. Approve the placing of advertisements of the intention to dispose of the remainder of the Park by way of a long lease to the Crystal Palace Park Trust pursuant to section 123(2A) of the Local Government Act 1972 and the preparation of a further report in respect of any representations received.
- 2.18. Delegate authority to the Director of Corporate Services in conjunction with and in consultation with the Portfolio Holder for Renewal, Recreation and Housing, to take all of the necessary steps to appropriate for planning purposes the relevant site and to manage the implications arising therefrom and to deal with any compensation issues.
- 2.19. Delegate all matters relating to the legalities of the recommendations to the Director of Corporate Services and Governance in agreement with the Director of Housing, Planning, Property & Regeneration.

## Impact on Vulnerable Adults and Children

1. Summary of Impact: The park is visited by 1.4m visitors per annum. The majority of these visitors are from the communities that surround the park, some of which are within the 10% most deprived in the UK.
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## Transformation Policy

1. Policy Status: Not Applicable
  2. Making Bromley Even Better Priority:
    - (1) For children and young People to grow up, thrive and have the best life chances in families who flourish and are happy to call Bromley home.
    - (2) For adults and older people to enjoy fulfilled and successful lives in Bromley, ageing well, retaining independence and making choices.
    - (3) For people to make their homes in Bromley and for business, enterprise and the third sector to prosper.
    - (4) For residents to live responsibly and prosper in a safe, clean and green environment great for today and a sustainable future.
    - (5) To manage our resources well, providing value for money, and efficient and effective services for Bromley's residents.
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## Financial

1. Cost of proposal: Estimated Cost £4.5m
  2. Ongoing costs: Recurring Cost Full year revenue budget saving of £113k from 2034/35
  3. Budget head/performance centre: Crystal Palace Park Regeneration
  4. Total current budget for this head: £n/a
  5. Source of funding: capital receipts and grants
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## Personnel

1. Number of staff (current and additional): 1 FTE to be recruited
  2. If from existing staff resources, number of staff hours: 1.5FTE currently utilised
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## Legal

1. Legal Requirement: Non-Statutory - Government Guidance
  2. Call-in: Applicable
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## Procurement

1. Summary of Procurement Implications:
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## Property

1. Summary of Property Implications:
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## Carbon Reduction and Social Value

1. Summary of Carbon Reduction/Sustainability Implications:

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### Customer Impact

1. Estimated number of users or customers (current and projected): The park receives 1.4m visits each year.

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### Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes
2. Summary of Ward Councillors comments: It is understood that ward councillors support the regeneration of the park.

### 3 COMMENTARY

- 3.1 Since the 1980s there have been numerous unsuccessful attempts to regenerate Crystal Palace Park, including the 2007 Masterplan developed by the then London Development Agency, which received planning permission in 2010 and was most recently valued in 2020 at £80m to deliver, but the costs for which will have increased due to inflation.
- 3.2 In March 2015 the Executive approved a new deliverable and sustainable approach to the regeneration of the park, a three-strand approach: capital scheme, park specific business model and a new form of governance for the park. These three strands are inextricably linked and rely on each other to provide the park with a self-sustaining future. For example, the capital scheme removes backlog maintenance works and creates infrastructure that enables income generation.
- 3.3 Business model: The business model was developed by Council appointed consultants Fourth Street and presented to the Executive in 2017 (Report No DRR17/029). The business model enables a charitable trust, outside of Council control, to manage and maintain the park on a full repairing and insuring lease, through income generated by: leases of parts of the park (such as Thames Water and the café), parking, events, and income from the Council, specifically interest from an endowment fund provided by the Council and a small annual grant. The business model has been appended to Part 2 of this report.
- 3.4 Governance: The Crystal Palace Park Trust was set up via an independent recruitment process through Community Links in 2016, and incorporated in 2018. The Trust has already demonstrated its success and has generated income through events in the park that has enabled them to recruit staff and begin investing in park improvements – they have recently announced that they will commit to spending up to £125k on the refurbishment of the park toilets by the Penge entrance. The Trust is ready to take the next step and lease the park from the Council, on the basis that the Council will over the next decade work to deliver the Regeneration Plan's capital scheme.
- 3.5 Capital scheme: The capital scheme is subject to an outline planning application. Development Control committee resolved to grant Outline Planning Permission in March 2021 subject to a referral to the Mayor of London. However, concerns arose as to whether the proposed phasing arrangements were deliverable and further discussions took place with the planning team leading to a revising phasing proposal for the enabling development. Enabling development allows housing to be built on land where it would not normally be acceptable in Planning terms for the benefit of the conservation of a heritage asset. This means that the capital receipt from the sale of the two pieces of housing site land (Rockhills and Sydenham Villas) will be used solely to deliver the capital scheme for the Park which is primarily focussed on its restoration. The revised phasing proposal is the subject of a further report to Development Control Committee in June 2022.

#### Taking forward the delivery of the capital scheme

- 3.6 At the Development Control Committee on 25<sup>th</sup> March 2021, the Local Planning Authority resolved to grant outline planning permission, subject to legal agreement, for the Crystal Palace Park Regeneration Plan (Application No. 20/00325/OUT) which was submitted to the Local Planning Authority in January 2020 (Report No. DRR20/018). Given the scale of the Planning Application, and the proposed development on Metropolitan Open Land, the Application is referable to the GLA for consideration. The GLA cannot consider this Application without appropriate legal documentation setting out how the Enabling Development will support the restoration of heritage assets in the park and how the Council will be accountable for this.
- 3.7 Whilst the proposed Heads of Terms for the shadow S106/ legal agreement were included in the report to the Development Control Committee, it has taken further negotiations and discussion with the Planning Authority and the legal teams to refine these into a final proposed shadow S106

planning agreement. A copy of the shadow section 106 agreement in substantially the form proposed (subject to further amendments and agreement between the parties) is attached at Appendix F. A key consideration is the proposed sale of the two sites earmarked for residential development in the Outline Planning Application (OPA) at 'Rockhill' and 'Sydenham Villas', which are expected to generate a capital receipt of circa £17.5m and how these proceeds will be protected to enable the conservation of the park. Given the Council's dual role, as the Planning Authority and as the regeneration 'developer' it is essential that there are clear milestones that the Council must achieve.

- 3.8 The Regeneration Plan capital scheme delivery cost has increased recently due to inflation and is now estimated at £52m. In addition, the value of the housing land has reduced to an anticipated £17.5m mainly due to increased construction costs. As shown in Appendix A approximately a third of the funding is expected to come from the sale of the housing land (enabling development), with the remaining generated through grants. This approach was previously approved in 2017 (Report No. DRR17/029). Initially the Planning Authority requested that heritage works up to the value of the enabling development capital receipt were completed before the residential works commenced, and therefore the capital receipt for the housing land was received. However, given that this would effectively prevent delivery, an agreement has been reached with the Planning Authority that protects both parties' interests, with key milestones defined for the heritage restoration works before residential works can commence on either Rockhill's or Sydenham Villa sites.
- 3.9 Before a developer can commence the residential development on either site, the Council is required to have:
- Awarded the contract for all the stonework restoration on the Italian terraces and completed 20% of the work.
  - Either awarded the contract for all the Tidal Lakes landscaping works and completed 20% of the work; or awarded the contract for the restoration of all the prehistorical animals and restored at least three prehistoric animals.
  - Restored at least four of the statues including the Paxton Bust.
- 3.10 It is a Planning requirement that the capital receipt from the sale of the housing enabling sites is ringfenced into a separate Council budget that can only be used for restoration works as set out in the Regeneration Plan. Additionally, any interest accrued on this money must similarly be ringfenced and used for the park's restoration.
- 3.11 In normal circumstances, where the Planning Authority approve an enabling development, there is a clear financial penalty to the 'developer' if the agreed restoration works funded by the enabling development are not delivered. This situation is more complex given the Council's dual role, alongside the requirement to ensure fair and transparent accountability. It is therefore a requirement that should the Council not expend the capital receipts obtained through the disposal of the housing land on heritage assets in the park, within ten years of the capital receipt entering the Council's bank account, the Council will be required to consider a report as to the reasons for the delay and be required to pay interest of 2% of any remaining funds to the Crystal Palace Park Trust. The Trust will then be required to use these monies for the benefit of the historic park. For example, if the housing land capital receipt is £17.5m and the Council only spends £15m within ten years of receiving these monies, the Council will have to pay £50k to the Trust (this is 2% of the remaining £3.5m). This will be an annual cost until all monies are spent.
- 3.12 The purpose of this is not to penalise the Council for the benefit of the park, indeed the assumption is that no penalty will ever be required as the monies will be fully spent within ten years. The purpose is to stop the Council benefiting from the capital receipts from land that only has Planning



permission because it is enabling development, and to ensure the Council uses the capital receipt for its approved purposes in a timely manner.

- 3.13 It is anticipated that as the housing sites already have Outline Planning Permission, subject to the referral to the Mayor of London, they will be sold unconditionally. This means that there will be no long delays to receiving payment for the land. To gain best value the receipt will then be received in stages over a period of two years. The land will be marketed after the GLA referral process is completed and, in the meantime, it is important that the Council progresses the works outlined in para 3.9 to demonstrate progress and attract the highest offers. As the indicative programme in Appendix B demonstrates it is expected that the sale of the housing sites will be complete by autumn 2023 and that the restoration works will commence spring 2024. To get to the point of commencing the restoration works significant work needs to be progressed to deal with reserved matters, procurement, and site clearance. Therefore by the time the Council commences wider restoration works, the full capital receipt of the land sale will have been realised.
- 3.14 Therefore, to progress the works outlined in para 3.9 the budget for the Crystal Palace Park Regeneration Plan needs to be increased in the capital programme. To achieve the milestones of 20% stonework at the Italian Terraces, 20% of the tidal lakes (dinosaur) landscape and four statues it is estimated that the cost will be up to £4.5m. Therefore, the Council is requesting that £4.5m is added to the capital programme now, with the remaining added once the capital receipt is received. This means that if circa £17.5m is received for the housing land that once it enters the Council's bank account the capital programme budget will be increased by a further £13m.
- 3.15 The shadow S106 agreement with the Planning Authority, which requires that the whole works contract for the Tidal Lakes and Italian Terrace is awarded, is fairly low risk to the Council, as even if no further grant income is secured, to fully complete the Italian Terraces, Tidal Lakes and statue restoration works will cost in the region of £17.2m. The main risk is to the Trust's endowment which is also to be funded by the housing receipt and relies on grant income being achieved to make housing monies available for its purpose. The whole approach to the regeneration of the park is that the Council only spend budget that is secure. Therefore, if no additional grant funding is secured, the housing monies will be used for the Italian Terraces, Tidal Lakes, and statue restoration, and as much of the £4.3m endowment will be paid to the Trust as is available depending on the capital receipt.
- 3.16 Whilst the Planning Permission enabling requirement means that in theory the Council could just deliver the restoration works detailed in para 3.9 as well as additional works to ensure the full spend of the capital receipt from the housing sites, the aim is to deliver the full Regeneration Plan capital scheme. This is important as the three strands of the Regeneration Plan, including the implementation of the capital scheme, rely on each other to provide the park with a sustainable future. This is illustrated in Appendix C. To deliver the full scheme it is estimated that an additional c£32m is required based on current projected costs prepared by AECOM. Officers are submitting a bid to the Levelling Up Fund for £20m and are currently working on further bids to the National Lottery Heritage Fund and Historic England.
- 3.17 It must be noted that the costs of developing the Regeneration Plan to date at £1.185m will also be taken from the housing monies and paid back to the Council. This is set out in the cost plan submitted as per the Planning Application. However, as agreed in previous reports, to enable the Council to receive further grants, e.g. from the National Lottery Heritage Fund, the Council will subsequently provide match funding from its own budget. Therefore, whilst the cost plan reflects that the Council's expenditure of £1.185m will be reimbursed, £1m will then effectively be recycled and used as match funding for further grants.
- 3.18 Further information regarding works currently being undertaken by the Council in relation to the development and disposal of the residential land, has been outlined within Section 2 of this Report.

## Taking forward the governance and business model

- 3.19 The Crystal Palace Park Trust (CPPT) has been operating successfully for several years, has employed staff and generated income, and is now in a position to take over full responsibility of the park, namely its maintenance and management from 1 April 2023.
- 3.20 CPPT received charitable status in January 2021 and their charitable objectives are purely linked to the park with no wider aspirations. The Trust has successfully recruited a Chief Executive officer, with experience of managing significant park programmes, as well as a Head of Events, and is currently recruiting for a Park Manager who will be responsible for day to day operations and the management of their new maintenance contract. The Trust has already secured significant revenue through commencing the implementation of the new business model, and obtained permits for music events in the park, the first of which were held in 2021. The Trust has already begun investing in the park with its commercial revenue through free community programming and a recently announced renovation of the park's toilet block. In addition, significant capital improvements to the park's Concert Platform will begin in June 2022 following a successful crowdfunding campaign. This has demonstrated the success of the Trust, and its ability to drive revenue which is entirely ringfenced for the benefit of the park, through its charitable objectives.
- 3.21 Therefore, officers consider the Trust ready to take on a long lease of the park commencing 1<sup>st</sup> April 2023. The park demise is shown in Appendix D, although the demise to be agreed with the CPPT will exclude the residential sites. The demise includes the Concert Platform in the Park which the Trust already have an agreement to lease and are investing funds to restore which will bring new income generating as well as community events to the park. The lease demise also includes a number of what will become sub-leases, for example to the café and Thames Water reservoir. The income of these sub-leases will therefore from the 1<sup>st</sup> April 2023 go to the CPPT rather than the Council.
- 3.22 The grant agreement with the Trust will be increased annually via CPI, but capped at 3%, and will include conditions. The primary condition will be that the Trust will not be allowed to expand its remit to take responsibility for other green spaces or buildings and places, and so there is no risk of diluting the income obtained through the park for the future benefit of the park and its assets.
- 3.23 Currently the Council's parks management and grounds maintenance contractor, *idverde* provide a fully managed service including park events, whilst parks security is provided by Veolia UK, and arboricultural services by Glendale. When the Council tendered for these services in January 2018 it was made clear as part of this tender, that Crystal Palace Park would during the life of the contract be removed, in the knowledge of the future plans to transfer the park to CPPT. Whilst there are financial implications of doing this set out in the part 2 report, these are being fully mitigated, and the longer-term benefits to the Park heavily outweigh these costs. The Council has a requirement to give 6 months' notice to these service providers under the terms of the contract, and it is therefore proposed that as long as the Trust has progressed the tender process to the satisfaction of the Directors with delegated authority for their own maintenance contract by October 2022 and have a management structure in place, that the Council will evoke its right to vary the *idverde* management and maintenance contract, and the Veolia parks security contract at Crystal Palace Park on or before 1 October 2022. Arboricultural services will also be removed, however this does not require a notice of variation.
- 3.24 At this stage the Heads of Terms for the Lease have not been fully negotiated. It is therefore recommended that the Executive delegate authority and approval to negotiate, agree and enter into a lease with CPPT on the basis that CPPT are responsible for all insurance, and that as the capital works are completed, they take responsibility for all future repairs and maintenance. The Heads of Terms will minimise risk and potential cost to the Council by ensuring that the Council's

liability is minimised as far as possible and its remit is focussed on the delivery of the funded Regeneration Plan.

- 3.25 It should be noted that the Council will deliver the capital scheme rather than the Trust as the Council has the expertise to deliver a scheme of this size whereas the Trust does not. Additionally, the Council has a contract with AECOM to take the scheme through to completion. Officers have taken professional advice on the VAT implications of this and have determined that as long as the Council does not receive lease rental income from the Trust the Council can carry out works at 0% VAT. However, the Trust cannot contribute financially to these works. The Trust however can undertake works separately themselves as long as the Council does not contribute financially to these. There must be no cross subsidy.
- 3.26 In order to undertake the Capital works, the Council will utilise the savings initially being made from the parks contracts to resource additional staffing in Regeneration and to procure specialist advice as required, this is set out in the Finance section. The individual capital works themselves, such as the restoration of the Italian Terrace will be subject to reports to the Executive in relation to procurement and contract award.

#### **4 IMPACT ON VULNERABLE ADULTS AND CHILDREN**

- 4.1 The Regeneration Plan will have a positive impact on vulnerable adults and children. The park is an unrestricted public space and leisure facility which is easily accessible by public transport and car.
- 4.2 The Park is designed for public enjoyment and education and includes the popular dinosaurs which are a unique London attraction. The Regeneration Plan will improve access and public enjoyment, and will increase the amount of high quality, freely accessible public land within the park. The Park provides green space for many local families who do not have access to gardens of their own.

#### **5 TRANSFORMATION IMPLICATIONS**

- 5.1 The Regeneration Plan has been a long term strategic solution for the Park which has a significant conservation deficit. Progressing this scheme will ultimately lead to a restored and sustainable park as well as eventual revenue savings.

#### **6 FINANCIAL IMPLICATIONS**

##### **CAPITAL**

- 6.1 This report seeks approval to increase the Capital Programme by £4.5m in respect of the Regeneration of Crystal Palace Park, for progressing restoration works required as part of the planning obligation and shadow S106 agreement as set out in 3.9. That agreement stipulates that before a developer can commence any residential development, the conditions set out in section 3.9 must be fulfilled. The value of those works that need to be completed is up to £4.5m.
- 6.2 The total latest estimate for the full regeneration scheme is now £52m, including costs of £1.185m that have so far been incurred in respect of the existing Crystal Palace Park – Alternative Management Options scheme, which this scheme now supersedes. As previously agreed by the Executive this expenditure will be used to demonstrate Council match funding to enable successful grant bids that will be necessary to complete the wider scheme.
- 6.3 The capital receipt that would be generated is now estimated at £17.5m. As set out in section 3.15, the total cost of completing the works required by the planning agreement is estimated at £17.2m, including the initial expenditure of £4.5m. This does not include the £4.3m endowment payment to

the Trust proposed in the business model. If paid in full, this would increase estimated capital costs to c£21.5m. Assuming a receipt of £17.5m is achieved, this would result in a funding deficit of £4m.

- 6.4 However, as previously directed by the Executive, the scheme can only be progressed on the basis that scheme costs will be fully funded from the enabling capital receipt on disposal of the housing land plus any grants that the Council secures, for example from the National Lottery and Historic England. Therefore, section 3.15 above states that only as much of the £4.3m endowment will be paid to the Trust as is available depending on the actual housing capital receipt and grants being secured.
- 6.5 Exchange of contracts on the housing land is expected in 2023/24, with the first stage of the capital receipt (50%) expected in 2023/24 50% in 2023/24, and a further 50% in 2024/25 assuming completion in January 2025.
- 6.6 Procurement of the restoration works contracts is planned to commence in spring 2023 and contracts begin to be awarded from summer 2023. The procurement and contract award process will be subject to the Council's usual gateway process, and approval from the Executive will therefore be required to commence procurement and then award contracts. This will therefore ensure that the Council only enters into commitments for which funding, i.e., the capital receipts plus any grant funding, has been secured.
- 6.7 Members are to note that the planning agreement requires the capital receipt from the enabling development to be ringfenced solely for the regeneration scheme in Crystal Palace Park and spent within 10 years of receipt. In the event that funds have not been spent within this timeframe, the Council will receive a report as to why the funds have not been spent and be liable to pay 2% per annum of the remaining funds to the Crystal Palace Park Trust for the purpose of the park's restoration.
- 6.8 Additionally, any interest accrued on this money must similarly be ringfenced and used for the park's restoration. Interest will be calculated annually at the general treasury management rate on the unapplied balance of the capital receipt.
- 6.9 Paras 8.23-8.29 also sets out a review of third-party rights indicates that there is a risk of injunction from those third parties whose rights may be injured however third parties may seek damages. To mitigate any financial loss the Council is in discussion with its insurers regarding appropriate cover and its cost, which will need to be met from the overall project budget.

## **REVENUE**

- 6.10 See Part 2

## **7 PERSONNEL IMPLICATIONS**

- 7.1 There will be a requirement to fund a post in the Regeneration team as well as specialist advice and it is recommended that this is funded through the £113k pa saving being made on the Parks maintenance contracts until the Regeneration works are complete.

## **8 LEGAL IMPLICATIONS**

- 8.1 The Council has the legal power to undertake the regeneration of the CPP as envisaged by this report and to make the various decisions necessary to further the Project as set out in the recommendations to this report
- 8.2 The Council has a fiduciary duty owed to its taxpayers to ensure that the resources under its control are prudently used and in the interest of its taxpayers.
- 8.3 In taking its decisions the Council is under a legal duty to take into account all relevant considerations and disregard all those that are irrelevant. Together with the proper adherence to the law at all times, when weighing up all relevant considerations, the Council must ensure it reaches a rational decision.
- 8.4 Accordingly in making the various decisions required by the recommendations to this report, the Council will need to be satisfied that the Project is viable and can be achieved, having particular regard to the Financial and Business data and plans concerning the operation of the CPP by the Trust and any alternatives.
- 8.5 Where a decision is to be made, which is characterised as an executive key decision within the meaning of the law and the Council's Constitution, the decision maker, whether it is the Executive, a member or a delegated officer, must follow the key decision-making procedures and record - making. Under the Council's Constitution and the law, approval of such capital expenditure must be approved by the Executive and Full Council.
- 8.6 The content of this report would appear to support the view that the proposed disposal of the Park under a long lease will not fall within the Public Contracts Regulations 2015. This must be kept under review as the commercial terms are developed and agreed.
- 8.7 The content of this report would appear to support the view that the restoration/heritage works would fall to be undertaken by the Council as 'landlord works' and as such will need to comply with the Council's Contract Procedure Rules and the Public Contracts Regulations 2015. This must be kept under review as the commercial terms are developed and agreed.
- 8.8 It would appear from the content of this report that the subsidy control regime will be engaged for further consideration, depending on the final shape of the commercial arrangements. In particular the report is recommending payment of a grant and an endowment to the Trust and there may also be potential 'undervalue' considerations depending on the section 123 valuation exercise undertaken of the lease to the Trust. In general terms should a subsidy be identified then the Council will need to undertake an exercise to ensure that the 7 Principles as required under the Subsidy Control Act 2022 have been met, in order for the subsidy to be a compliant subsidy. One essential Principle is that the recipient of the subsidy must not be the beneficiary of over-compensation.
- 8.9 It would appear from the content of this report and certain recommendations surrounding the partial termination of the Council's management and maintenance Contract with Idverde that this requires further agreement (to be delegated to officers), in particular agreement as to the cost and impact of the partial termination. The implementation of this aspect of the Plan is likely to include the transfer and retention of certain assets and other service contracts together with the TUPE of staff. The report explains that the Trust will be obliged to have started a procurement exercise for these services. Until this contract is in place and in operation to commence on the 1<sup>st</sup> of April 2023, there is at present a risk to the Council and the Trust as to the operation of the Park. The Council will need to ensure that all agreements reached between the Council and Idverde are recorded in writing as a variation and/or evidenced by way of Change of Control if considered appropriate
- 8.10 Under section 149 of the Equality Act 2010 the Council must have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The protected characteristics are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

- 8.11 Subsequent reports from officers and decisions must ensure compliance with the public sector equalities duty under to the Equality Act 2010.
- 8.12 Best Value Duty Guidance and case law under the Local Government Act 1999 is applicable where authorities are reviewing service provision and making arrangements to secure continuous improvement in the way its functions are exercised, an authority must regard to economy, efficiency and effectiveness in considering overall value, including economic, environmental and social value.
- 8.13 It is recommended that the application of the Best Value Duty is taken at the point where an authority is selecting the option in principle and establishing its approach, before significant expenditure on implementing the established approach is to be incurred. Although entirely dependent on the nature of each project, as a general rule, for the purpose of deciding how to fulfil the duty, an authority is obliged to consult certain relevant groups of persons in a way that is fit for its particular purpose.
- 8.14 External solicitors have been engaged the Council to oversee and provide all legal advice and agreements as may be required to implement this significant Council project. Officers should ensure that the advice is sought, and legal work taken in a timeously manner given the complexity and timeframe of this project.

### **Appropriation for Planning Purposes**

- 8.15 The Council will commission a valuation for the site and their values. This should reflect the market value for the previous use of the site, i.e., prior to proposed re-development for regeneration.
- 8.16 The Appropriation will be made on the full value of the property asset. The Council's Finance Officers have confirmed that the Business Plan can finance the Appropriation.
- 8.17 It should be noted that the Appropriation of the site for planning purposes will generate substantial public benefits which will far outweigh any injuries to the private rights of third parties.
- 8.18 Furthermore it should be further noted that if the Appropriation for planning purposes is not carried out it may cause significant delays to the delivery programme, resulting in additional project costs and diminish the commercial and market attractiveness of the project.

### **Reasons for seeking Appropriation**

- 8.19 The purpose of the Appropriation is to ensure that the redevelopment of the Council's land forming the development site may benefit from the power in section 203 of the Housing and Planning Act 2016 to override all third-party rights including covenants and easements. Parties with interests and rights which are infringed as a result of the development following appropriation will

not have a right to seek an injunction to prevent the development from being implemented, however they may be entitled to claim compensation for any injuries caused.

8.20 Section 203 of the Housing and Planning Act 2016 provides that subject to exceptions (for example the rights of statutory undertakers and communication code operators), any building works or change of use that land that is Appropriated for planning purposes notwithstanding that such buildings or use might constitute an interference or disturbance with an easement or a breach of restrictive covenant.

8.21 Appropriation of the land for planning purposes would prevent any injunctions being sought by a party whose right may be interfered with and thereby preventing and delaying the proposed development. It will also ensure that the commercial and market attractiveness of the scheme is not diminished by the existence of injunctive rights which can frustrate the development.

8.22 The land forming the site for which the authority to appropriate is sought is currently General Fund land. The land following Appropriation will be transferred to and administered from the General Fund Account to be administered under the Housing Revenue Account ("HRA"). Once the development has been completed the land will be appropriated as housing land. The Council will not however lose the protection over whatever is built whilst the land was appropriated for planning purposes, as such the newly built development would not be subject to an injunction (i.e. third parties whose rights have been injured as a result of the development will not be able to halt the development). The affected parties may however be able to seek compensation.

### **Third Party Rights at the Site**

8.23 The Council in developing its proposals has given due consideration to the third-party rights that are likely to be affected or injured as a result of the proposed redevelopment.

8.24 The Council's legal advisers and consultants will review the rights of adjoining owners.

8.25 This review of third-party rights should highlighted in particular potential rights of light injuries being caused as a result of the redevelopment.

8.26 The redevelopment proposal will have to rigorously test for its impact on the sunlight and daylight levels in the surrounding properties as is required by planning policies.

8.27 The development will have to pay due regard to privacy, overlooking and impact on live-ability and quality of life of the surrounding residents as is required by planning policies.

8.28 Overall, the redevelopment is considered to have no detrimental impact on the surrounding residents. The re-development will regenerate the site with a significant need for investment and the upgrade will start to address some of the long-standing socio-economic problems faced by the surrounding local area and will significantly enhance the quality of the build environment of the surrounding area and will provide much needed housing both [ affordable and private ] and as a result improve the life chances of the area's current and future residents.

8.29 Accordingly, it is considered that the public interest benefits generated by the redevelopment and regeneration far outweighs the potential infringement the scheme will cause to the private rights of third parties.

### **Human Rights Act**

8.30 The Human Rights Act 1998 in Article 1 of Part II- The First Protocol states:

- 8.30.1 That the Council must believe that there is a compelling case in the public interest for the land to be appropriated”
- 8.30.2 The Act places an obligation on public bodies such as the Council to demonstrate that the use of powers such as appropriation is in the public interest and is proportionate to the end being pursued.
- 8.31 It is accepted that appropriating the land for planning purposes will infringe private rights, however, the Council considers this wholly justified on grounds of public interest and promotion of economic ,social and environmental well-being ,and that in any event any injured party will have the right to claim appropriate compensation for their injuries.
- 8.32 Promoting the redevelopment which has the highest levels of need for physical regeneration which delivers high quality affordable housing and environmental design is considered to be consistent with the principles of good public administration.
- 8.33 Local authorities have powers under s.123 of the Local Government Act 1972 to dispose of land for best consideration that can reasonably be obtained (usually based on open market value). S.123 of the Local Government Act 1982 confers powers to the Secretary of State to give general consent for the purposes of land disposals by local authorities carried out under their powers in Part 7 of the 1972 Act.
- 8.34 The Local Government Act 1972: General Disposal Consent 2003 removes the requirement to seek specific consent from the Secretary for any disposal of land where the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the well-being criteria in the Local Government Act 2000:
- 8.34.1 the promotion of improvement of economic well-being;
  - 8.34.2 the promotion of improvement of social well-being;
  - 8.34.3 the promotion of improvement of environmental well-being; and the “under-value” (i.e. the difference between the unrestricted value of the interest to be disposed of and the consideration accepted) is £2,000,000 or less
- 8.35 Applications for specific consent if appropriate, should be sent to the Secretary of State and include the following information:
- 8.35.1 Written description of the land and buildings, the location
  - 8.35.2 Written description of how the land is currently held by the Council
  - 8.35.3 Details of any leases, encumbrances such as easements
  - 8.35.4 Summary of the proposed disposal/transaction
  - 8.35.5 Detailed valuation report signed by a qualified member of RICS. Ideally valuation should be done no earlier than 6 months before application for consent.
  - 8.35.6 This only applies to land held as general fund land. It does not apply to land sold under 2.233 TCPA 1990.

### **Disposal of Land Considered as Open Space**

- 8.36 Section 123 (2A) states that on any disposal of land considered as open space (and land, enclosed or not, on which there are no buildings, and the whole of the remainder which is laid out as garden or is used for recreational purposes or lies waste and unoccupied) requires the local



authority to give notice of its intention to dispose of the land for two consecutive weeks in a newspaper circulating in the area in which the land is situated, and they must consider any objections to the proposed disposal which may be made to them.

### **Appropriation for Planning Purposes**

- 8.37 In order for section 237 of The Town and Country Planning Act 1990 as amended by Section 203 of the Housing and Planning Act 2016 to apply to all of the land to be appropriated, all of the Council's interests must be held for planning purposes. It is therefore necessary to appropriate the freehold interest the subject of the proposed appropriation for planning purposes under section 122 of the Local Government Act 1972 as amended.

### **Human Rights**

- 8.38 The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights ("The Convention"). Specific rights protected by the convention include, amongst others:
- 8.39 The right of everyone to the peaceful enjoyment of their possessions which can only be impinged upon in the public interest and subject to relevant national and international laws.
- 8.40 The right to a private and family life, home and correspondence, which can only be impinged upon in accordance with the law and where such encroachment is necessary in the interests of national security, public safety or economic well-being of the country.
- 8.41 The above rights would be affected by the use of appropriation for planning purposes. However, the European Court has recognised that "regard must be had to the fair balance that has to be struck between competing interests of the individual and of the community as a whole. Any interference with a Convention right must be necessary and proportionate.
- 8.42 In light of the significant public benefit which would arise from the implementation of the proposed regeneration dealt with in this report and the fact that owners and occupiers within the sites have been contacted or will be contacted regarding the regeneration and will, should the land to be appropriated, qualify for compensation in terms of the general law, the Council has concluded that it would be proportionate to resolve to appropriate the land for planning purposes.
- 8.43 The Council is of the view that there is a compelling case in the public interest that the regeneration should outweigh the private interests held by third-party affected by the proposed appropriation. It is also believed that the use of the appropriation for planning purposes powers to achieve the Council's regenerative objectives are proportionate to interfere with any possible third-party rights that may be affected in terms of human rights.

### **Overriding of Existing Rights**

- 8.44 Section 237 of the 1990 Act as amended authorises the erection, construction or maintenance of any building or work on land which has been acquired or appropriated by a local authority for planning purposes if it is done in accordance with planning permission, even if it involves interference with an interest or right such as an easement or a right of light.
- 8.45 The effect of this section is to ensure that where land is owned by a local authority and held for planning purposes then existing rights, which could prevent the development of that land from proceeding, can be overridden. The powers contained in section 237, as amended, do not remove any legitimate rights of owners or occupiers to compensation which may arise from the loss of such rights but does remove the potential for injunctive action.

- 8.46 “Appropriation” is the formal process by which the Council changes the designated purpose for which a piece of land is held, from one statutory purpose to another.
- 8.47 Appropriation cannot be achieved informally by looking at how a Council deals with a piece of land either as a matter of practicality or by implication.
- 8.48 It is a precondition that any land to be appropriated for planning purposes must be no longer required for the purpose it was held prior to that appropriation. Whether this is the case is properly a matter for the Council’s decision-making in weighing up alternative demands on resources in each circumstance but is a question that must be formally considered and in the words of the Constitution “declared surplus” even if in regeneration projects however this condition is almost always self-evidently satisfied.
- 8.49 Section 122 of the Local Government Act 1972 permits appropriation of Council land which is no longer required for the purpose for which it is held to another statutory purpose (i.e. for which the Council could acquire land).
- 8.50 If any of land the subject of appropriation consist of or form part of open space the Council cannot do so unless it has advertised its intention to do for two consecutive weeks in a local newspaper and specifically considered any objections received pursuant to Section 122 (2A) of the Local Government Act

## **9 PROCUREMENT IMPLICATIONS**

- 9.1. This report seeks approval for £4.5M in capital funds to progress various regeneration projects in Crystal Palace Park. Each of these proposed procurements will be subject to the Public Contracts Regulations 2015 and the Council’s Contract Procedure Rules. A compliant procurement route must be identified for each project.
- 9.2. The report indicates that each of these projects will be subject to a detailed proposal in due course for approval to proceed to procurement with decision making to be determined based on the estimated value of each project. Specific procurement consideration and advice will be provided for each individual project as it progresses.
- 9.3. The report indicates that the regeneration works will be delivered by the Council after the granting (subject to approval) of a long lease to the Crystal Palace Park Trust. When formulating the lease, suitable legal advice should be sought to ensure there are provisions within the lease to allow the Council to undertake the proposed works.
- 9.4. The report proposes to grant a long lease to the Crystal Palace Park Trust under best consideration duties under s.123 of the Local Government Act 1972. Prior to confirming the granting of a lease, all due diligence and suitable legal advice should be taken to ensure that the proposed arrangement is not subject to the Public Contracts Regulations 2015 or similar Concession Contracts Regulations.
- 9.5. In order to progress the granting of the lease, it is indicated that six months’ notice will be given to the current contractor for parks management and maintenance to vary the current contract to remove Crystal Palace Park from the scope of the contract. The contract was tendered and constructed to allow for this eventuality, however the Council will be liable for breakage costs as set out elsewhere in the report.
- 9.6. When considering the issuing of notice for the variation to the contract, particular care must be taken to consider the timing of such action and that, as far as is reasonable, assurances are in place that suitable parks management and maintenance arrangements will be in place via the Crystal Palace Park Trust lease arrangements at the point at which the variation is enacted.

## 10. PROPERTY IMPLICATIONS

- 10.1. Recommendations 2.4-2.5 are predicated on advice received by the Council's Regeneration team from Savills as to current market values which indicate a potential disposal receipt of circa £17.5m – however, this figure cannot be verified until market tested, and Members will be aware of Construction Inflation and a potential slow-down in disposal rates which could impact this figure.
- 10.2. The further CPP works required in addition to the £4.5m can be potentially met to the sum received for the value of the disposal receipt on the assumption that an approved (by Executive) purchaser contracts to purchase on the terms required to meet the S106 Requirements detailed at 3.9-3.10 and an assumed unconditional basis.
- 10.3. This presents a risk to the Council as it is considered that the market may not respond favourably to such a condition being placed on it – and therefore it may preclude purchasers from making offers and therefore there is a degree of risk that the advice received by Savills as to value could be diminished or not achievable on this basis. However, this will only be determined once market tested.
- 10.4. This could result in the site becoming encumbered – in that the S106 condition can only be satisfied by the Council or that offers received will be conditional on the Council undertaking the works prior to the Planning Consent lapsing. In essence this could result in the Council having to underwrite the works to comply with the S106 Agreement prior to a disposal.
- 10.5. Should Members agree to the recommendations contained within this report then Property will market the identified Property holdings through an appropriate Disposal Agent on the open market with the timings and marketing strategy to be determined and approved by the Director of Housing, Planning, Property and Regeneration. The results of any such marketing exercise will be reported to the Executive following analysis of offers received. Members should note that market fees for such an exercise will be circa 1.5% with additional allowance of 1.5% for legal and associated marketing fees.
- 10.6. The grant of a 250 Year Lease to CPPT is subject to the Council securing best consideration with regards to the provisions of S123 of The Local Government Act 1972. Legal comments 8.33-8.35 detail this requirement in more detail, the grant of the 250 Year Lease at a peppercorn or modern equivalent rent will need to satisfy these provisions. An independent valuation will need to be commissioned as part of this process to formally test and demonstrate the assumption that the Park has a minimal value to reflect a peppercorn or modern equivalent rent.
- 10.7. It should also be noted that the income referred to in Part 2 of the Report which is currently generated via the various tenancies within the Park will cease to be received by the Council and the rent roll will need to be adjusted accordingly.

## 10. CUSTOMER IMPACT

- 10.1. The Regeneration Plan will offer and improved customer experience on the Park as there will be significant more activities as well as increased revenue through the charitable trust that will be entirely reinvested back into the park.

## 11. WARD COUNCILLOR VIEWS

- 11.1. Ward Cllrs have been in support of the Regeneration Plans for Crystal Palace Park.

<b>Non-Applicable Headings:</b>	Section 9 (Carbon Management)
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Background Documents: (Access via Contact Officer)	Crystal Palace Park Regeneration Plan DPR15/020 & DRR17/029
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Appendix A – Revised Cost Plan

Appendix B – Indicative Programme

Appendix C – Illustrative Plan of Regeneration Scheme

Appendix D – Proposed Demise