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<b>Subject:</b>	<b>HOUSING MANAGEMENT OPTIONS APPRAISAL – OUTCOME OF FORMAL CONSULTATION</b>
<b>Meeting and Date:</b>	<b>Special Cabinet – 20 February 2020</b>
<b>Report of:</b>	<b>Mike Davis, Strategic Director (Corporate Resources)</b>
<b>Portfolio Holder:</b>	<b>Councillor Derek Murphy, Portfolio Holder for Housing and Health</b>
<b>Decision Type:</b>	<b>Key</b>
<b>Classification:</b>	<b>Unrestricted</b>

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**Purpose of the report:** To remove the management of DDC's housing stock from East Kent Housing Limited (EKH) and to bring it back in-house.

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**Recommendation:** It is recommended that Cabinet:

1. Receives and notes the report.
2. Having noted the results of the tenant and leaseholder consultation, the cost/benefit analysis and the risk analysis, agrees that the management of the Council's housing stock be brought back in-house.
3. Delegates to the Strategic Director (Corporate Resources), in consultation with the Portfolio Holder for Housing and Health, the authority to take such decisions as may be necessary to facilitate the process of bringing the housing service in-house.
4. Authorises the Strategic Director (Corporate Resources), in consultation with the Portfolio Holder for Housing and Health, to terminate the whole or part of the services provided by EKH under the management agreement and to terminate the management agreement with EKH as soon as practicable.
5. Delegates to the Strategic Director (Corporate Resources), in consultation with the Portfolio Holder for Housing and Health, authority to transfer from the HRA reserves into the 2020/21 HRA revenue budget in order to meet the potential costs of service transfer.
6. Delegates to the Strategic Director (Corporate Resources) authority to discharge the powers and functions of the Council in relation to housing management set out in the management agreement.

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## 1. Summary

- 1.1 East Kent Housing manage the housing stock of DDC under the terms of a management agreement dated 1 April 2011, and also the housing stock of Canterbury City Council, Folkestone & Hythe District Council and Thanet District Council.

- 1.2 Concerns have arisen over the performance of EKH, mainly in relation to compliance<sup>1</sup>, procurement, contract management and delivery of the capital programme. An options appraisal was completed in October 2019, reviewing the delivery of housing management services provided by East Kent Housing (EKH) on behalf of Canterbury City Council, Dover District Council, Folkestone and Hythe District Council and Thanet District Council.
- 1.3 The four councils agreed that tenants should be consulted on whether housing management should become an in-house service. This report sets out the outcomes from the formal consultation exercise undertaken with EKH tenants and leaseholders. It proposes that officers from across the four councils be instructed to negotiate ending the agreement with EKH and to make preparations for the housing management service to be brought in-house.
- 1.4 Each of the four councils will be presenting reports to their decision-making groups recommending the return of housing management functions to their respective councils.

## **2. Introduction and Background**

- 2.1 The four councils of Canterbury City Council, Dover District Council, Folkestone and Hythe District Council and Thanet District Council are neighbouring district councils located in East Kent.
- 2.2 In January 2011, the councils established EKH and with effect from 1 April 2011 under section 27 of the Housing Act 1985, delegating the management of its housing stock of approximately 17,000 homes. EKH is an Arms-Length Management Organisation (ALMO), jointly owned, in equal share, by the four councils. EKH was managed by an independent board up until 12 December 2019, when it was replaced by a new board consisting of the Chief Executives of the four councils.
- 2.3 In early 2019, the four client councils raised concerns about a number of key areas of the services provided by EKH in relation to asset management, procurement and delivery of the capital programme, which were further exacerbated by serious health and safety compliance issues by EKH in relation to a number of areas including fire safety, electrical safety, lift safety, legionella testing and gas safety.
- 2.4 The four councils agreed to self-refer to the Regulator for Social Housing (RSH), confirming that the councils, through EKH, had failed to meet statutory health and safety requirements across a range of areas. In September 2019, the RSH's investigation concluded that the four councils (under their statutory landlord responsibilities) were non-compliant, resulting in a Regulatory Notice being issued. The notice remains 'live' for 12 months or until full compliance is achieved.
- 2.5 As a result of the above, the four councils have continued to present reports to their various governance groups explaining why they have concerns about the way in which EKH has been managing council owned homes.
- 2.6 On 1 July 2019, DDC's Cabinet endorsed a review of the potential future options for the management of the housing stock. On 2 September DDC's Cabinet approved a report regarding the performance of EKH and the arrangements for consultation with the district's tenants and leaseholders regarding future housing management arrangements. The following recommendations were agreed:

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<sup>1</sup> This is tenant health and safety relating to fire safety, electrical, gas, water, asbestos and other testing and maintenance.

- a) That the commencement of engagement (in the form set out at paragraph 4.10 of the report) with tenants (and leaseholders as required) on withdrawal from East Kent Housing be approved.
  - b) That Cabinet delegates to the Strategic Director (Corporate Resources), in consultation with the Portfolio Holder for Housing and Health, the details and basis of the engagement and also of any subsequent formal consultation.
  - c) That Cabinet delegates to the Strategic Director (Corporate Resources) authority to approve additional management fee payments to East Kent Housing, in consultation with the Portfolio Holders for Finance & Governance and Housing & Health, providing that this remains within overall Housing Revenue Account resources for 2019/20 and the Budget and Policy Framework.
- 2.7 Pennington Choices housing consultancy service was appointed by the four councils to investigate the circumstances leading to the compliance failures, the main underlying causes, the effectiveness of the recovery action plans put in place and to make recommendations to ensure that the identified compliance failures do not happen again. The final report was published on the Dover District Council website on 13 December 2019. Each council endorsed the production of an 'action plan' to implement the recommendations outlined in Pennington's report. The action plan, which is being compiled by Pennington Choices, will seek to bring improvements in the operation and performance of EKH, such that the Regulator of Social Housing (RSH) is in a position to remove the Regulatory Notices served on the four councils.

### 3. Tenant and Leaseholder Consultation

- 3.1 All four councils provided their formal endorsement of the preferred option to withdraw from EKH and return housing management services back in-house under direct management of each council, subject to consultation with all EKH tenants and leaseholders to satisfy the requirements of Section 105 of the Housing Act 1985.
- 3.2 The consultation exercise was administered by Canterbury City Council, running for 8 weeks from Tuesday 22 October to Friday 20 December 2019 and sought a test of opinion, rather than a formal ballot, in order to achieve consistency with the process used prior to the formation of EKH.
- 3.3 A programme of consultation was implemented across the four councils. All EKH tenants and leaseholders were written to by letter on 22 October 2019, informing them of the consultation survey and provided with a Frequently Asked Questions information sheet. Tenants and leaseholders were given the option to complete the consultation survey online or by post (using a pre-paid envelope).
- 3.4 Consultation drop-in sessions were organised and hosted in Canterbury, Dover, Folkestone & Hythe and Thanet between October to December 2019. The sessions were staffed and attended by council members and officers. All EKH tenants and leaseholders, including sheltered schemes, were invited and attendance was as follows:

<b>Local authority</b>	<b>No. of attendees (tenants and leaseholders)</b>
Canterbury City Council	167
Dover District Council	77
Folkestone & Hythe District Council	50
Thanet District Council	11

- 3.5 The Corporate Consultation Manager at Canterbury City Council dealt with 45 tenant and leaseholder enquiries across the four council areas during the consultation,

providing help and support, for example if someone needed information in a different format or additional information regarding the consultation. Other enquiries included tenancy, leaseholder, performance and repairs issues.

- 3.6 Considerable efforts were made during the consultation to consult harder to reach groups. Of note, consultation meetings were held in the council's sheltered schemes and responses to the consultation could be provided online, by telephone or by post. Therefore, we can be confident that all council tenants and leaseholders were given the opportunity to participate in the consultation.
- 3.7 People on low incomes, older people and more vulnerable households are all over-represented among council tenants. Therefore, any changes to the service which will deliver efficiencies and improvements will benefit these people and households with these protected characteristics. A copy of our equality impact assessment is attached as Appendix 10.

#### **4. Result of the Test of Opinion**

- 4.1 The purpose of the consultation was to gauge opinions and gather feedback from tenants and leaseholders, evaluate their attitudes towards the proposal and identify any concerns they might have. This is usually referred to as a test of opinion.
- 4.2 The test of opinion consultation closed on 20<sup>th</sup> December 2019. Tenants and leaseholders were asked to provide their level of agreement with the proposal to bring the service back in house. The consultation documents are attached as Appendix 4.
- 4.3 At the close of the consultation, across the four districts, 17,201 questionnaires were issued and 2,603 completed and returned. 332 of these were submitted online and 2,271 were paper copies.

##### **4.4 Dover District Council**

In total, 4,694 consultation surveys were issued. Of these, 731 were returned (16%). In terms of who has responded:

- 707 tenants and leaseholders
- 13 other individuals
- 11 respondents did not say in what capacity they were responding.

##### **4.5 Canterbury City Council**

In total, 5,510 consultation surveys were issued. Of these, 843 were returned (15%). In terms of who has responded:

- 821 tenants and leaseholders
- 4 other individuals
- 18 respondents did not say in what capacity they were responding.

##### **4.6 Folkestone & Hythe District Council**

In total, 3,575 consultation surveys were issued. Of these, 602 were returned (17%). In terms of who has responded:

- 588 tenants and leaseholders
- 4 other individuals
- 1 Shepway Tenants and Leaseholder Board
- 1 Age UK Hythe and Lyminge
- 1 shared ownership resident
- 7 respondents did not say in what capacity they were responding.

#### 4.7 Thanet District Council

In total, 3,422 consultation surveys were issued. Of these, 427 were returned (12%). In terms of who has responded:

- 403 tenants and leaseholders
- 17 other individuals
- 1 Addington Street Community Group
- 1 Newington Community Association
- 1 shared ownership resident
- 1 former tenant
- 3 respondents did not say in what capacity they were responding.

4.8 Across the four councils, the majority of respondents strongly agree or tend to agree with the proposal to bring the housing service back in house. In Dover 81% of respondents agree to some extent to the proposal, Canterbury 81%, Folkestone & Hythe 74% and Thanet 81%. The breakdown of responses is detailed below.

#### 4.9 Dover District Council

	<b>All respondents</b>	<b>Tenants and leaseholders</b>
Strongly agree	62% (445)	62% (433)
Tend to agree	19% (138)	19% (135)
Neither agree nor disagree	12% (84)	12% (82)
Tend to disagree	3% (20)	3% (20)
Strongly disagree	5% (36)	5% (33)

#### 4.10 Canterbury City Council

	<b>All respondents</b>	<b>Tenants and leaseholders</b>
Strongly agree	60% (492)	60% (487)
Tend to agree	21% (171)	21% (167)
Neither agree nor disagree	12% (96)	11% (92)
Tend to disagree	4% (30)	4% (30)
Strongly disagree	4% (37)	4% (37)

#### 4.11 Folkestone & Hythe District Council

	<b>All respondents</b>	<b>Tenants and leaseholders</b>
Strongly agree	54% (323)	54% (316)
Tend to agree	20% (120)	20% (119)
Neither agree nor disagree	13% (76)	13% (75)
Tend to disagree	4% (21)	4% (21)
Strongly disagree	9% (53)	9% (51)

#### 4.12 Thanet District Council

	<b>All respondents</b>	<b>Tenants and leaseholders</b>
Strongly agree	60% (257)	60% (243)
Tend to agree	21% (91)	22% (88)
Neither agree nor disagree	9% (37)	9% (35)

Tend to disagree	3% (12)	3% (11)
Strongly disagree	7% (28)	6% (25)

4.13 The DDC full consultation report is attached as Appendix 6. However, a snapshot of comments made by respondents who strongly agree or tend to agree with the proposal is below:

- Lack of action by East Kent Housing to deal with repair and maintenance issues;
- The council would be more responsive in dealing with issues;
- The council would be more accountable than East Kent Housing;
- The service provided by East Kent Housing has deteriorated in the last few years;
- Lack of communication from East Kent Housing;
- The council ran the service well before East Kent Housing was created;
- Unhappy with the general standard of service provided by East Kent Housing;
- Bringing the service back under council control would be more cost effective;
- The council could build stronger relationships with its tenants.

#### 4.14 What the Council should focus on for housing services

Respondents across the four council areas were asked what they feel are the three most important things for the council to focus on for housing services from the following list:

- Dealing with repairs and maintenance
- Dealing with anti-social behaviour
- Providing value for money for your rent and service charges
- Building new council homes
- Estate services (such as grass cutting, cleaning communal areas etc)
- Dealing with customer enquiries and complaints
- Involving and listening to residents

Other:

- Maintain reasonable rent charges
- Improve efficiency
- Improve consultation with residents
- Improve dialogue with disabled residents
- Dealing with communal repairs

At the close of the consultation, respondents highlighted the three most important areas of focus for Dover, Canterbury and Thanet as (in order of priority):

1. Dealing with repairs and maintenance
2. Dealing with anti-social behaviour
3. Providing value for money for your rent and service charges

In Folkestone & Hythe, respondents highlighted the three most important areas of focus as (in order of priority):

1. Dealing with repairs and maintenance
2. Dealing with anti-social behaviour
3. Dealing with customer enquiries and complaints

#### 4.15 Government Guidance on ALMO Consultation

Government issued guidance in 2011 to Local Authorities (see Appendix 1) considering the future of their ALMO housing management services. Councils are asked to undertake cost-benefit and risk analysis exercises before reaching a final decision. These exercises have been completed and the results are given in Appendix 2 (Cost/Benefit Analysis) and Appendix 3 (Risk Analysis). Cabinet is invited to consider the two documents before reaching decision on the report's recommendations.

## **5. Proposed Implementation Process**

- 5.1 The Secretary of State is not required to consent to the transfer of landlord functions from the EKH ALMO to the Council.
- 5.2 It is intended that the four councils will mutually agree a termination of the contract with the EKH Board. This does not have to be a once and for all termination of the contract, the management services provided by EKH can be withdrawn from EKH and taken back in-house service by service. It is proposed that an in-house service be established through a two-stage process, as follows:
  - Taking the minimum legal and administrative action needed to wind up EKH and pass responsibility to each council. This will involve transferring the housing management service from EKH to each council without significant change.
  - Drawing up proposals for the future housing service, which will cover new governance arrangements, organisational structures, integration with existing council services (e.g. call handling, property and grounds maintenance, community safety, communications) and the priorities and plans of the new service.
- 5.3 The management agreement currently authorises EKH to discharge the housing management functions of the council which are set out in it. When the management agreement was entered into, the delegations to council officers to exercise these functions was withdrawn. As the services are brought back in house it will once again be necessary for officers to discharge those housing management functions. It is therefore recommended that authority to discharge these functions be delegated to the Strategic Director (Corporate Resources) in accordance with recommendation 6, This will not remove the authority of EKH to discharge the functions whilst it remains responsible for delivering the housing management services. Rather, the authority of EKH to discharge those functions will be withdrawn as the services associated with them are taken back in house by the Council.
- 5.4 Officers from the four councils will establish a board to co-ordinate the overall East Kent Housing project. It is anticipated that officers within each council will also establish a corporate project management group to oversee the legal, financial, human resources and IT work necessary to wind up EKH and to create a new in-house service.
- 5.5 A communications strategy will be of critical importance. The corporate project management group in each council will have responsibility for overseeing the communications necessary with tenants, leaseholders, staff, elected members and other stakeholders. There are many tenants and leaseholders who have expressed their views strongly at many of the consultation meetings, and it will be important to address the concerns that they raised at those meetings.
- 5.6 It will be necessary to look at how effective resident engagement will be addressed, and support for existing local tenant and leaseholder representative groups will need to continue pending the outcome of a full review of the service. Opportunities for tenants and leaseholders to help shape future service delivery arrangements need to be explored and wider opportunities to be involved considered. This may overcome the loss of the EKH Board under the in-house option.

## 6. **Issues Needing Further Decision**

6.1 The transition process set out above will give rise to the need for decisions on a number of key issues:

- a) How to ensure we protect the health and safety of tenants and leaseholders and maintain continuity of services.
- b) The name or branding to be used for the new in-house service (if required).
- c) The transfer/recruitment of staff.
- d) Arrangements for leadership and management of housing (both strategic and housing management) through the transition and beyond.
- e) Decisions on the potential for the integration of EKH and council services which are currently provided separately.
- f) The establishment of new Tenant and Leaseholder engagement opportunities as quickly as possible to sustain resident involvement in key housing management decisions.
- g) Decisions about the winding up of East Kent Housing Limited, as a separate company once the contract transfer has occurred (as required).
- h) Decisions about the novation of any contracts currently held by EKH to the council, such as ICT contracts

6.2 These issues are discussed further in Appendix 2, the Cost/Benefit analysis.

6.3 These decisions will either be taken by officers in consultation with the Portfolio Holder or reported to Cabinet for decision as appropriate.

## 7. **Conclusion**

7.1 At the close of the tenant and leaseholder consultation, across the four districts 17,201 questionnaires were issued and 2,603 completed and returned. 332 of these were submitted online and 2,271 were paper copies. 2,037 (78%) respondents strongly or tend to agree with the proposal to bring the service back in house.

7.2 The level of responses to the consultation was very good and the considerably greater support amongst tenants and leaseholders for the preferred option to bring the service in-house is considered to be significant and decisive. However, independently of the consultation, joint work has already begun to improve the service now, plan for a more fundamental transformation of the service and a smooth period of transition if the four councils decide to formally adopt the preferred option in February 2020.

7.3 The EKH Board, consisting of the four council Chief Executives, retains accountability for the service, but additional measures have been put in place to advance joint working to improve the service now, and to plan for the future. It also ensures that there is a collaborative and inclusive approach and that we communicate a single message to tenants, leaseholders, EKH employees and council officers and members.

7.4 Bringing the service in-house provides each of the four councils with the opportunity to re-position the housing service with the aim of improving a broad range of outcomes for over 17,000 households. This is not necessarily the "lift and shift" of a self-contained housing service into each council's structure. This option provides the opportunity to engage the housing service with each councils' wider corporate agenda in order to secure improved outcomes for residents.

7.5 The four councils will each be able to redesign the corporate approach and consider afresh the opportunities that arise from having the housing management unit under

direct council control. There is a desire to progress an overarching plan for returning EKH in-house, which is being developed by council officers.

7.6 The Strategic Director (Corporate Resources), supported by a DDC delivery team, will oversee and plan for a smooth period of transition and a more fundamental transformation of the service, if the Cabinet decides to formally adopt its preferred option when it meets on 20 February 2020.

7.7 2020 would then be a transition year for EKH and the four councils. Establishing an in-house service, if agreed, is complex and will take time to set up, with an assumption that this would need to be completed and the new in-house service fully operational by 1 April 2021.

## 8. Identification of Options

8.1 Option 1 - Continue to allow EKH to manage Council owned housing stock.

8.2 Option 2 - Withdraw from EKH and return housing management functions to the District Council.

## 9. Evaluation of Options

9.1 Option 1 - The provision and management of housing management by EKH has deteriorated to such an extent that leaving the service with EKH would not be a responsible course of action.

9.2 EKH has experienced serious performance problems and health and safety non-compliance issues. Tenants and leaseholders have expressed their views clearly, that they would prefer their homes to be managed by the individual councils rather than retain the existing Arms-Length Management Organisation structure. For these reasons this is not the recommended option.

9.3 Option 2 - Tenants and leaseholders have expressed their views clearly, that they would prefer their homes to be managed by the individual councils rather than retain the existing Arms-Length Management Organisation structure.

9.4 The integration of the housing management service with each council's remaining housing services would provide a more transparent and accountable structure for the housing service. For these reasons this is the recommended option.

## 10. Resource Implications

10.1 This proposal will incur one-off transition costs to implement the changes. These will include staff resources (including existing DDC staff, backfilling of posts and additional roles), professional and technical advice and other areas as appropriate. The 2020/21 Budget papers forecast an HRA surplus of £1.9m in 2020/21 to be transferred to the Housing Initiatives Reserve. It is recommended that delegation is given to the Strategic Director (Corporate Resources), in consultation with the Portfolio Holder for Housing and Health, to transfer from this surplus into the 2020/21 HRA revenue budget in order to meet the potential costs of service transfer.

10.2 It is difficult to determine the level of transition costs at this stage. The requirements will be continually monitored throughout the process and will be reported to Members via the quarterly budget monitoring report as appropriate.

10.3 As required by guidance issued in December 2011 by the Government, a Cost/Benefit analysis has been prepared and is given as Appendix 2.

10.4 The HRA is a ring-fenced account used for the management and maintenance of the HRA stock and for the repayment of the HRA debt. The funding for each council to EKH is shown in the table below and includes the annual management fee, as well as

additional improvement plan and staffing costs identified by EKH and approved by the four councils.

	<b>2019/20</b>	<b>2020/21</b>
	<b>£000</b>	<b>(Provisional)</b>
		<b>£000</b>
Canterbury City Council	3,312	3,428
Dover District Council	2,580	2,717
Folkestone & Hythe District Council	2,384	2,480
Thanet District Council	1,734	1,896
<b>Total</b>	<b>10,010</b>	<b>10,521</b>

- 10.5 The annual cost of returning the service in-house is yet to be determined as part of the transition process will be to determine detailed organisational structures and associated requirements. These will lead to detailed forecasts being developed and incorporated into future budget processes.
- 10.6 EKH have initially assessed their one-off costs for transition to total c.£900k across the four councils. EKH have therefore requested an additional £900k funding for 2020/21 to cover these estimated costs, should the decision to be to bring the service back in house. No additional funding has been agreed at this stage, as:
- It is dependent upon the decision taken about the future of the service;
  - Not all the estimated costs would necessarily fall to EKH, some may be direct costs to the council;
  - Costs associated with service risks may not materialise.
- 10.7 The council section 151 officers have been collectively consulted on this and any additional payments required for EKH to support the transition will, if agreed, be funded from the HRA in line with the proposal above.
- 11. Corporate Implications**
- 11.1 Comment from the Director of Finance (linked to the MTFP): Finance have been consulted on this report and have no further comments to add. (HL)
- 11.2 Comment from the Solicitor to the Council: The Solicitor to the Council has been consulted in the preparation of this report and has no further comments to make.
- 11.3 Comment from the Equalities Officer: The report includes an equality impact assessment which refers to the consultation with tenants and concludes a positive impact for all the protected characteristic groups. Members are reminded that, in discharging their responsibilities they are required to comply with the public sector equality duty as set out in section 149 of the Equality Act 2010: <http://www.legislation.gov.uk/ukpga/2010/15/section/149>.
- 11.4 Comment from Human Resources (CG/PR) - A decision to bring the ALMO back in house may result in a TUPE transfer of staff from EKH to DDC. This will be the case where, at the point of transfer, there is an organised grouping of staff whose main purpose is the provision of the housing service to DDC residents. The main effect of TUPE is that staff employed or assigned to work in the areas of the relevant business transfer functions and services (e.g. all those employed or engaged at the point of transfer by EKH) will be covered under the Regulations. The TUPE regulations effectively provides that staff affected by relevant business transfers have their terms and conditions protected from change following the transfer.
- 11.5 In light of the above, the implications of TUPE for bringing EKH back in-house may be summarised in the following terms:

- All staff employed by EKH at the point of transfer may have a right to transfer under TUPE to the four council owners.
  - Staff who transfer to DDC under TUPE will have their EKH differential employment terms and conditions protected from harmonisation or standardisations that may be connected to the transfer of the service in-house.
  - It is essential that relevant staffing information is gathered in regard to current terms and conditions (all formal and informal contractual terms) of relevant staff so that an assessment can be made of likely costs in preparation for moving towards a new delivery model for the eventual in-house service.
- 11.6 Staff affected by TUPE will need to be determined. A HR work-stream will need to support the above to ensure that there is early identification of staff likely to be affected and appropriate consultation with all staff affected and trade unions.
- 11.7 Not all EKH staff are employed for the main purpose of providing services on behalf of a single council. Some staff are organised on a functional basis, providing services across all four councils. As a result, it is unlikely that TUPE will apply to all EKH staff. That said however, the councils will want to retain as many staff as possible with key specialist skills that will be required in the new in-house services and local arrangements to facilitate the transfer of staff not protected by TUPE will be needed.

## 12. **Appendices**

Appendix 1 – ALMO guidance note December 2012

Appendix 2 – Cost/Benefit analysis

Appendix 3 – Risk analysis

Appendix 4 – DDC consultation material

Appendix 5 – CCC consultation response

Appendix 6 – DDC consultation response

Appendix 7 – FHDC consultation response

Appendix 8 – TDC consultation response

Appendix 9 – Pennington Choices report

Appendix 10 – Equality impact assessment

## 13. **Background Papers**

Cabinet 1<sup>st</sup> July 2019 – Gas Safety Records

Cabinet 2<sup>nd</sup> September 2019 – Tenant Engagement on Withdrawal from East Kent Housing Arm's-Length Management Organisation

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