Rialtas na hÉireann
Government of Ireland

# Statutory Audit Report to the Members of Dún Laoghaire–Rathdown County Council for the Year Ended 31 December 2022

## Local Government Audit Service

Prepared by the Department of Housing, Local Government and Heritage
gov.ie/housing

G

Contents

# Auditor’s Report to the Members of Dún Laoghaire–Rathdown County Council

## 1 Introduction

I have audited the Annual Financial Statement (AFS) of Dún Laoghaire–Rathdown County Council (the Council) for the year ended 31 December 2022, which comprises the Statement of Accounting Policies, Statement of Comprehensive Income, Statement of Financial Position, Funds Flow Statement and notes to and forming part of the accounts. The financial reporting framework that has been applied in its preparation is the Code of Practice and Accounting Regulations for Local Authorities, as prescribed by the Minister for Housing, Local Government and Heritage.

My main statutory responsibility, following completion of the audit work, is to express my independent audit opinion on the AFS of the Council, as to whether it presents fairly the financial position at 31 December 2022 and its income and expenditure. My audit opinion, which is unmodified, is stated on page 4 of the AFS.

The Council is by law, responsible for the maintenance of all accounting records including the preparation of the AFS. It is my responsibility, based on my audit, to form an independent opinion on the statement and to report my opinion. I conducted my audit in accordance with the Code of Audit Practice. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the AFS. It also includes an assessment of the significant estimates and judgments made by the Council’s management in the preparation of the AFS, and of whether the accounting policies are appropriate to the Council's circumstances, consistently applied and adequately disclosed.

I planned and performed my audit so as to obtain all the information and explanations, which I considered necessary to provide sufficient evidence to give reasonable assurance that the financial statement is free from material misstatement, whether caused by fraud or error.

This report is prepared in accordance with Section 120(1) (c) of the Local Government Act, 2001 and should be read in conjunction with the audited AFS.

# 2 Code of Practice & Accounting Regulations - Derogation

## 2.1 Statement of Accounting Policies

The audited AFS includes a disclosure (see paragraph 3 of the Statement of Accounting Policies at page 5 to the AFS) that refers to the departure from the Code of Practice & Accounting Regulations - Local Authority Accounting in Ireland (the ACoP) with regard to the omission of an accrual at 31 December 2022.

The General Accounts Working Group of the Department of Housing, Local Government & Heritage (the Department) has provided a derogation, to the Council, in relation to this departure from the ACoP.

# 3 Financial Standing

## 3.1 Statement of Comprehensive Income

The Council recorded a surplus of €65,493 (2021: surplus of €69,274) for the year ended 31 December 2022 thereby increasing the accumulated surplus to €8.88m at that date. The surplus was achieved after taking into account transfers to the capital account (nett of transfers from reserves) that were approved by the elected members and which amounted to €9.46m for 2022 (2021: €13.5m).

The elected members, at the monthly meeting of the Council convened in May, 2023, also approved (by resolution in accordance with section 104(2) of the Local Government Act, 2001) the expenditure incurred in 2022 that was in excess of the adopted budget for that year.

## 3.2 Annual Budget Variances

Note 16 to the AFS summarises the divisional expenditure variances between the actual outturn and the adopted budget for the year.

The main areas of divergence with the adopted budget for 2022 were as follows;

- Development management division (€10m over budget) - refers mainly to the costs incurred by the Council in responding to the Ukrainian refugee crisis.
- Miscellaneous Services (€7m over budget) - refers mainly to the costs of the Rates COVID-19 waiver for 2022 of €2.7m (2021: €29.6m), which was funded by the Department; and additional specific capital

funding requirements for plant replacement costs (€2m), energy related projects (€1.2m), and reducing the legacy deficit on the Ballyogan Depot (€0.2m - see also paragraph 6.2).

## 3.3 Statement of Financial Position

The Council had net assets of €3.72bn at 31 December 2022 (2021: €3.64bn) with bank investments and cash balances again being the main contributor to the year-on-year increase, recording a total balance of €380m at the 2022 year-end (2021: €318m). The requirement to regularly review the need for holding such significant liquid funds has again been discussed with management. While I acknowledge that there remain detailed proposals in place for which these funds will be used, it is important that the schemes outlined in the current iteration of the Council's three-year capital report (covering the period 2023 - 2025) are advanced in a timely manner, to mitigate, as much as is possible, the current impacts of construction related inflation.

As outlined in the Council's capital programme report, the current cash balance is needed, but not limited, to fund the following;

- Amounts ring-fenced for specific purposes in compliance with the underlying provisions of the relevant legislation for which they were originally collected (such as Part V planning receipts, Rental Accommodation Scheme, planning securities and refundable deposits etc.).
- Government grants on hand at the 2022 year-end to fund specific capital works.
- Other amounts that were designated in previous years as sinking funds against liabilities that have yet to materialise.

## 3.4 Fixed Assets - Land and Property Registers

It has been reported at previous audits that reconciliations between the amounts recorded in the Agresso financial management system (FMS) and those contained in the land and property registers had not been completed.

While the process of reconciling the Council's land and property portfolios to the relevant registers is still not complete, I acknowledge that the Corporate Estates Management unit continues to contribute to some improved internal controls in this area, which was evidenced during the audit. I also noted the Council's active participation in the local authorities' national working group and the efforts being made within the local government sector to resolve this matter.

However, there remain some significant internal control weaknesses that were noted again during the current audit. These included the dispersed and arbitrary nature of maintaining contractual and financial records of some of the Council′s properties that are leased or rented to third parties.

**Harbour property leases – including general harbour income**

A review during the audit, of the property portfolio specific to harbour related activities, identified a number of management and financial control weaknesses in respect of lease and contractual agreements that were originally established by the former Dún Laoghaire Harbour company. The relevant properties and related leases became the responsibility of the Council following the dissolution of the former harbour company.

The issues identified, included the following;

- Copies of all harbour specific leases were requested for audit review. I was informed that some could not be located and consequently it was not possible to carry out the intended examination of these leases, during the current audit.
- One of the leases that was available for review and which refers to a main harbour business activity was originally established in 2000. It provides for the use of a property by the lessee and is subject to five yearly upward only rent reviews. I was advised that no such rental increases have been applied since 2000. The lease is scheduled to expire in 2030. The lessee's income, from which the Council's annual income is calculated under the provisions of this lease, is not independently verified. Consequently, I have recommended to management to request third party confirmation of the amounts payable to the Council. All matters concerning this lease should be immediately reviewed.
- The Council is now also the owner of a substantial commercial property, previously the asset of the former harbour company. The management of this property is currently outsourced to a third party. It was noted that the contract for managing this property expired in 2020 and has not yet been replaced. I was advised that the private property company collects the management service charges from the tenants and from which the maintenance costs are funded. The now expired contract included the requirement to provide an annual accountant's report of the maintenance and service expenditure incurred in the year. I was advised that the latest available accountant's report is for the year ended 31 December 2015. I have requested Council management to undertake a full review of all matters relating to the management of this property, to include the verification and transfer to the Council of all funds due.

Significant improvements in the internal controls are required to ensure there is adequate oversight of the relevant income sources within the harbour related areas. Immediate corrective action is needed to ensure that the Council′s full income entitlement, under all of the leasing and contractual arrangements, is both verified and collected.

As noted at previous audits, the recommendations contained in the Local Government Audit Service Value For Money report no. 30 Corporate Estate Management and Maintenance in Local Authorities (January 2017) should be implemented in full. The resources assigned to the Council's Corporate Estates Management Unit should be reviewed to determine the level of staff required to adequately implement the improvements required.

It is a requirement of the ACoP that assets registers should be maintained.

**Chief Executive's Response**

The Property Interest Register system is no longer supported and the review and testing of a replacement system that will greatly enhance security and management of the Council's property and estates portfolio is at an advanced stage.

The new system will greatly enhance control over contractual and financial records on Council owned buildings that are leased or licenced to third parties.

Approval has also been received to recruit a dedicated property & estates Solicitor to provide a level of legal expertise and knowledge to the department.

The Harbour Team will have additional staff resources in the coming weeks, which will enable a review of all internal controls, including Harbour leases and incomes due to the Council on foot of those leases. Third party verification will also be requested to validate figures as required.

The management of the commercial property is currently being reviewed, including the verification and transfer to the Council of all funds due. This building will transfer under the management of the Corporate Estates Management Unit in Quarter 1, 2024.

## 3.5 Work In Progress

Accumulated expenditure on the work in progress and preliminary expenses account amounted to €63.6m at 31 December 2022 (2021: €39.6m).

The 2022 year-end balance included the accumulated expenditure on the following main schemes that are currently being progressed:

| Work in Progress | Cumulative Spend at 31 December 2022 €m |
|---|---|
| Glenamuck distributor Road / Kilternan by-pass | 19.6 |
| Ballyogan Court housing development | 17.0 |
| Site at Shanganagh | 8.6 |
| Cherrywood Tully Park | 5.6 |
| Cherrywood N11 Junction & Druids Glen | 4.8 |

As reported at previous audits, a loan of €30m was drawn down in December 2019, secured from the Housing Finance Agency (HFA), to fund expenditure associated with the Glenamuck distributor road / Kilternan by-pass. The amended Glenamuck Distributor Roads Development Contribution Scheme (GDR DCS) was adopted by the Council in 2018 in accordance with section 49 of the Planning and Development Act, 2000 (as amended). The projected costs for this scheme are currently budgeted at approximately €84m (up from the previously reported budget scheme figure of €75m). The loan facility drawn down to date reflects management's estimates regarding the future availability of development contributions.

Repayments of the initial €30m loan facility commenced in 2021 and a partial release (€7.8m) from deferred income has been made to date to part fund the acquisitions of land and the payments of consultancy and minor contracts works that have been incurred by the Council. The remainder (€11.8m) of the accumulated costs incurred to 31 December 2022 have been funded from development contributions. The balance on the loan at the 2022 year-end was €27.2m.

There continues to be considerable risks associated with the funding mechanism for this large scheme. The total anticipated costs are expected to be funded from contributions to be derived from the GDR DCS. As the Council is availing of loan facilities to fund the upfront infrastructural works, in advance of developments that will attract DCS revenues, any slowdown in development activity may result in the loan repayments being funded from the Council's revenue budget with a consequential adverse impact on the delivery of Council services. Construction related inflation is also a tangible and considerable risk to delivering the scheme. Consequently, it is imperative that it is delivered in a timely manner.

However, I remain satisfied that management are aware of these risks and that a prudent approach continues to be adopted and implemented to both mitigate the known risks as well as only drawing down additional loan facilities when required. This prudent approach should continue to be reviewed to ensure that the risks to the Council are minimised.

**Chief Executive's Response**

The funding strategy for the capital programme is kept under on-going review having regard to expenditure and funding assumptions included in the funding strategy for the different categories of projects.

## 3.6 Development Contributions

Included in trade debtors and prepayments at 31 December 2022 was €30.1m (2021: €27.6m) in respect of development contributions owed to the Council (see note 5 to the AFS).

A review, undertaken as part of this audit, of the operational and financial controls within the planning directorate indicated a high level of compliance with the Council's own procedures.

A provision for bad debts of €7.5m (representing 25% of the development contributions debt book) has been made and is included in the overall 2022 year-end bad debts provision of €33.4m. I am satisfied that this provision fairly represents the collection status of the accounts currently in arrears.

**Chief Executive's Response**

The Council will continue to closely monitor development contribution debtor balances and the adequacy of related provisions.

## 3.7 Loans Payable

The Council owed €132m at 31 December 2022 (2021: €141m) in the form of medium to long-term loans (see note 7 to the AFS).

| Category | 2022 €m | 2021 €m |
|---|---|---|
| Assets / Grants | 70.9 | 74.8 |
| Recoupable | 50.1 | 53.1 |
| Mortgages / S.O. Rented Equity | 11.3 | 12.9 |
| | **132.3** | **140.8** |

- Assets / Grants

The 2022 year-end balance included approximately €34.4m that was owed to the HFA on loans that were drawn down more than ten years ago to acquire land for housing developments that have not yet commenced, the details of which were as follows;

| Sites acquired for development | Balance of Loan at 31 December 2022 €m |
|---|---|
| Old Connaught Avenue | 19.1 |
| Ballyman Road | 9.7 |
| Lehaunstown, Cherrywood | 5.6 |

In December 2022, the Council received approximately €30.1m from the Department to part fund these loans. In accordance with the Department's instructions, this advance was treated as deferred income for 2022 to match the payment made by the Council to the HFA in January 2023. The receipt of this substantial additional funding from the Department provided for the elimination of the loans that were drawn down on Old Connaught Avenue and Ballyman Road. There remains a residual balance of €4.3m on the site at Lehaunstown, which I have been advised is expected to be funded from a future development that is to include an affordable housing element.

The loan drawn down for the upfront costs of funding the Glenamuck distributor road / Kilternan by-pass scheme (2022 year-end balance: €27.2m - see paragraph 3.5) is included under this loan category.

At the 2022 year-end there was also a balance of €9.2m outstanding on the Section 11 Domestic only wastewater loan drawn down in 2010.

- Recoupable

These loans refer to the Capital Loan & Subsidy Scheme that the Council drew down from the HFA in previous years on behalf of relevant Approved Housing Bodies. The Council is contracted with these housing bodies to provide funding for various housing schemes. The repayments are fully funded by the Department.

- Mortgage / Shared Ownership Rented Equity

The Council drew down these loans from the HFA to finance home loans and equity to individual borrowers. The difference between the amount repayable by the Council (2022: €11.3m) and the amount payable by the individual home borrowers (2022: €12.4m) is shown at Note 12 to the AFS.

## 3.8 Refundable Deposits

The amounts held by the Council as refundable deposits at 31 December 2022 totalled approximately €45m (2021: €43m) and are outlined at Note 8 to the AFS.

Previous audit reports have highlighted the inadequacy of the supporting documentation being held for refundable deposits. I acknowledge that the required improvements have now been addressed with new procedures adopted and implemented.

I have advised divisional management that the extent and quality of records currently available, and particularly in respect of legacy files, should be maintained to ensure that appropriate decisions on prospective refunds can be made, when required in the future.

**Chief Executive's Response**

A categorised record of refundable deposits on hand will continue to be maintained and refunds made in accordance with the processes in place.

# 4 Income Collection

## 4.1 Major revenue income collections

A summary of the collection performances showing the 31 December 2022 arrears position in respect of the main income categories with comparative figures for the previous year is as follows:

| Income Source | Yield % | | Debtors €m | |
|---|---|---|---|---|
| | 2022 | 2021 | 2022 | 2021 |
| Rates | 79 | 76 | 25.3 | 21.4 |
| Rents & Annuities | 76 | 77 | 5.4 | 5.0 |
| Housing Loans | 61 | 60 | 0.8 | 0.8 |

The above income categories are summarised in more detail at Appendix 7 to the AFS.

The total amount collected (across the three major collection accounts) increased significantly to approximately €101m for 2022 (2021: €77m) and reflects the reduced impact, compared to the previous two years, that the COVID-19 pandemic had on the Council's ability to collect outstanding accounts.

However, a review of procedures and resources is required with a view to reducing arrears for all three income streams outlined in the above table.

## 4.2 Rates

Despite collections increasing significantly in 2022 to €82.9m (2021: €59.3m), arrears also increased year-on-year to €25.3m (2021: 21.4m).

Appendix 7 to the AFS records a Rates collection return for the year of 79% (2021: 76%), a year-on-year increase of 3%.

An analysis of the 2022 year-end arrears can be categorised as follows:

| Category | Amount owed €m | % of total arrears |
|---|---|---|
| Legal proceedings commenced | 3.0 | 12% |
| Accounts in an agreed payment plan | 3.2 | 12% |
| Vacant property applications awaited | 7.8 | 31% |
| Accounts that are actively being pursued – nett of credits | 9.9 | 39% |
| Customers in liquidations, receivership and / or administration | 0.5 | 2% |
| Other (including bankruptcy, occupier vacated property and whereabouts unknown) | 0.9 | 4% |

The relevant individual accounts should continue to be regularly examined with a view to further increasing receipts and reducing arrears.

**Chief Executive's Response**

Enforcement action was strengthened during 2022 and resulted in an increase in the number of ratepayers regularising their accounts and / or signing up to pay monthly instalments by direct debit.

## 4.3 Housing Rents and Annuities

The 2022 annual collection yield for Housing Rents was 76%, a marginal year-on-year decrease of 1%, with arrears increasing to €5.4m by the year-end.

A reconciliation between the income recorded in the Council's housing system (Ohms) and the FMS was not performed prior to the preparation of the AFS. The reconciliation completed during the audit highlighted some differences between the two systems. While not material, a reconciliation is required to be completed prior to the preparation of the draft AFS to further enhance the accuracy of the financial records.

A bad debts provision of €376k has been calculated and included in the overall bad debts provision at the 2022 year-end (see note 5 to the AFS). This provision is not adequate, as there were 140 customer accounts with arrears in excess of €10k at 31 December 2022 and it should be re-examined.

The amounts owing to the Council remain significant and should continue to be pursued.

**Chief Executive's Response**

In May / June 2022, the housing department migrated to a new housing system, NEC. An issue subsequently arose with the provider with regard to control reports from the legacy and the new system.

The housing department is undertaking a full reconciliation of both systems for 2022 and is confident Housing Rents will be fully reconciled for that year. Additionally, the housing department have re-designed and simplified the reconciliation process to ensure the problems encountered in 2022 are not repeated in future years. The new reconciliation's process includes improved governance procedures and mitigations.

With regard to arrears, the housing department is actively pursuing arrears. A number of performance indicators are being established such that progress can be more readily demonstrated.

The bad debt provision will be reviewed for AFS 2023 to ensure its adequacy.

## 4.4 Housing Loans

The 2022 percentage collection yield for Housing Loans recorded a marginal increase of 1% to 61% for the year.

Similar to Housing Rents, a reconciliation between the income recorded in the Housing Loans system (Cygnus) and the FMS was not performed prior to the preparation of the AFS. The reconciliation completed during the audit highlighted some differences between the two systems. While not material, a reconciliation is required to be completed prior to the preparation of the draft AFS to further enhance the accuracy of the financial records.

The current resources assigned to this area should be reviewed with a view to improving the annual yield performance.

**Chief Executive's Response**

The existing Housing Loans management system has presented difficulties for the Council in recent years as it has become out-dated. The completion of a reconciliation was one such difficulty. Similar to the Housing Rents, a full reconciliation of Housing Loans for 2022 and 2023 will be achieved. The reconciliation process has been improved in 2023 with additional governance and mitigation principles applied.

Additionally, a project has commenced to migrate Housing Loans away from Cygnus and into the FMS with an expected completion date of Quarter 1, 2024. The project will negate the need for Cygnus / FMS reconciliation from 2024 onwards and will reduce the resources required for the management of Housing Loans and lessen the administrative burden across several departments.

# 5 Payroll and Pensions

## 5.1 Payments of staff overtime

Previous audit reports have highlighted some significant weaknesses in the administration of staff overtime payments and the related internal control procedures. At the conclusion to the 2021 statutory audit, I reported that the improvements noted at the 2020 audit had not been sustained during 2021. During the course of the previous audit, I met with Council management in relation to this ongoing matter and I again received assurances that all of the identified weaknesses would be fully resolved. I recommended at that time, that the internal audit unit should incorporate, as part of its annual work programme, a review of overtime payments that were processed in 2022. Both Council management and the audit committee accepted this request, with management committing to ensuring that regular compliance checks of a sample of overtime claims would continue to be undertaken.

Internal audit completed its fieldwork review of overtime payments prior to the completion of the 2022 statutory audit and I received a copy of the draft findings, as the final report had not yet issued by the completion of this audit. Because of the emerging findings, I requested a copy of the working papers and arranged for a review of a small sample of the claims that were examined by internal audit. I also met with the head of internal audit to discuss the draft findings in detail.

The relevant findings have highlighted that a high proportion of overtime claims were approved and processed for payment despite not fully complying with the Council's formal internal procedures that govern the claiming of the additional hours worked.

The adverse findings by internal audit are similar to those reported in my previous audit reports.

The main areas that still need attention are as follows;

- Divisional management should again emphasise to staff that submit claims for overtime and to their supervisors, who approve the claims, that only fully complete and procedurally compliant forms should be accepted and processed for payment.
- A small number of claims were signed and certified by the same employee - such claims should not be accepted under any circumstances and the relevant claims should not be processed for payment.
- Inaccurately computed claims were accepted and processed for payment - all claims should be adequately reviewed prior to processing.
- While a comprehensive list of procedures and protocols governing the overtime regime is now in place, it is evident that some areas are already in need of further review and amendment. This needs management's immediate attention to ensure that the required revisions to the procedures are agreed and implemented immediately thereafter.

The payment of overtime has been subject to external audit review for some years now. It has been a feature of this statutory annual report for the past six years. It is disappointing to have to again highlight the continuing weaknesses in this area. I have again met with relevant management and the Chief Executive and requested that where claims are not complete, inaccurate or do not conform to the Council's procedures, they should not be accepted, should not be paid and should be returned to the relevant division for examination.

The claims that have been identified by internal audit as being inaccurately computed should now be returned to senior management of the relevant directorate for correction and re-submission.

There remain several and recurring instances where the prescribed internal controls, which are comprehensive, clear and unambiguous, continue to be circumvented by some sections, resulting in overtime claims being processed for payment, which should not have been accepted.

The continuing inability of front line staff, their supervisors and the relevant divisional managers to adequately implement the prescribed internal procedures for this standard control process remains a significant audit concern.

**Chief Executive’s Response**

The recommendations contained in the Internal Audit report are currently under consideration with a view to strengthening controls to eliminate these recurring issues.

## 5.2 Acting up allowances

The Council continues to pay unsanctioned acting up allowances to some staff.

However, management's attempts to obtain formal approvals to permit permanent appointments is again acknowledged. Notwithstanding these efforts, there remain some staff that continue to receive acting up pay allowances for periods in excess of four months.

In accordance with national protocols, acting up pay allowances for periods in excess of four months require Departmental approval to permit their continuing payment. This matter needs further attention from the relevant divisional management to ensure that the Council complies with the Department’s requirements.

**Chief Executive’s Response**

While efforts continue on an ongoing basis to regularise acting up appointments they remain necessary for the effective management of the organisation. These appointments exist in order to manage workload challenges resulting from a combination of vacancies and consequential acting positions, maternity leave and shorter working year arrangements.

At December 2022, 56 staff were acting for more than four months. Of this number, 22 acting up positions have since ceased.

Acting arrangements in relation to outdoor based staff are controlled by the relevant operational department.

## 5.3 Superannuation scheme for the employees of the former Dún Laoghaire Harbour company

As reported at previous audits, the Council was required to take over responsibility for the management of the superannuation scheme of the former employees of the now dissolved Dún Laoghaire Harbour company. While this superannuation’s scheme rules were established under irrevocable trusts in 1997, I was advised that it was never formally regularised. The review of the status of the scheme that was recommended at the previous audit should be completed as soon as is practicable.

Because of the risks inherent in the administration of this additional superannuation scheme, I have again recommended to management that the adopted approach to funding it should be kept under regular review, particularly with regard to the liability that this underfunded scheme imposes on the Council.

**Chief Executive's Response**

The Council has engaged a consultant to advise in relation to the proposal to transfer from the current funded arrangement for the Dun Laoghaire Harbour Company Superannuation Scheme to an unfunded basis.

Precedent has emerged, in more recent times, for transferring on this basis without the requirement of additional legislation and this option is being examined. The Council is in the process of securing legal advice in relation to the proposal.

The transfer would be subject to the agreement of the Trustees of the fund.

## 5.4 Pay and conditions of the employees of the former Dún Laoghaire Harbour Company

It is again noted that, while the pay and conditions of the indoor-based staff of the former harbour company have now been successfully integrated to the Council's pay structures, efforts are still ongoing in relation to aligning the pay and conditions of some of the outdoor-based staff. This matter, involving the remaining small number of staff, should be resolved and regularised as soon as is practicable.

I acknowledge that the process to achieve alignment of all staff is complicated.

**Chief Executive's Response**

All staff have been successfully integrated to the Council's structures with the exception of a remaining small number of staff.

Draft contracts are currently with the relevant staff for consideration, and it is hoped to regularise their situation as quickly as possible.

# 6 Capital Account

## 6.1 Capital Account Overview

The capital account recorded a net credit balance of approximately €280m at 31 December 2022 (2021: €227m), a year-on-year increase of €53m. The increase is mainly attributable to further annual increases in development contributions (€30m), when compared to 2021.

The oversight of capital projects continues to be managed by the Project Governance Board (PGB) whose main tasks include the initial evaluation of proposals for new capital schemes and the subsequent on-going monitoring of approved project expenditure against agreed budgets. From 2022, project specific management boards have also been established for key schemes, which is a welcome development.

To further strengthen project management and to enhance the governance of the Council's capital programme, I have recommended that budget variance reporting be introduced at project level to form part of the project management boards' agendas and where relevant for discussion at the PGB meetings. Significant project budget increases should be more regularly brought to the PGB meetings for approval (see paragraph 6.3).

The latest iteration of the capital programme, for the three-year period 2023-25, anticipates expenditure of €719m. I note that some projects do not yet have their funding status confirmed.

The schemes currently being progressed include the following;

- Cherrywood SDZ Common Infrastructure - budgeted scheme (DLR Council element only) expenditure of €150m (see paragraph 6.4);
- Shanganagh housing development – budgeted scheme expenditure of €127m (see paragraph 6.2);
- Glenamuck distributor road / Kilternan by-pass - budgeted scheme expenditure of €84m (see paragraph 3.5).

The budgeted figures, for all three of the schemes referenced above, have increased since the issue of the previous iteration of the capital account programme (covering the period 2022 - 24). I have been advised that the impacts of construction related inflation is the major contributing factor for these budget increases.

It is critically important, given the significant impacts of construction related inflation and the breadth of projects being progressed, together with the related quantum and diverse range of funding required, that the level of resources currently assigned to the oversight of capital works is both maintained and strengthened further where considered necessary, to ensure their timely and cost effective delivery.

## 6.2 Deficit Balances

Notwithstanding the overall credit balance on the capital account at 31 December 2022, there still remained some large deficits on individual schemes that require a funding source, the more material of which are stated below:

| Scheme | Balance at 31 December 2022 €m |
|---|---|
| Site at Shanganagh Castle | 6.5 |
| Ballyogan Depot | 2.4 |

I have been advised that the current deficit on the main Cherrywood scheme (see paragraph 6.4) and other associated costs are expected to be funded from Cherrywood specific development contributions.

The deficit of €6.5m on the site at Shanganagh (significantly reduced from the deficit position reported for the previous year of €12.2m) is due to a combination of legacy site costs (the Council acquired the site in 2004) and current consultancy and planning related costs. I note that the Council was successful in securing further grants, as partial offsets against the costs incurred to date.

In 2020, An Bord Pleanála approved planning permission for the site that provides for the construction of 597 housing units comprising 306 cost rental, 200 social and 91 affordable purchase homes.

The Council is in partnership with the Land Development Agency (LDA) to deliver the homes. Under the current funding model, the LDA will be responsible for financing and managing the cost rental elements of the development. This portion of the site was formally approved for disposal by the elected members in 2020. The LDA is managing the construction phase for the entire site.

The current iteration of the capital programme report estimates that the Council's element of the site will cost €127m (the previously reported budget costs was €119m), which will be funded primarily from Department grants for the social units and proceeds from the sales of the affordable units.

The land acquisition costs (€9m) incurred by the Council have been funded to date from funds received from the LDA (€4.2m) in relation to the cost rental units and grants from the Department (€2.9m) for the social units. The remaining funding gap (€1.9m) is expected to be funded from the proceeds of future sales of the affordable units.

In addition to the deficits on the schemes identified in the above table, there are a number of other schemes with current deficit balances of less than €1m, on which funding is still to be secured. A review of these schemes is also required to establish if any external funding is available to help reduce or eliminate the individual deficits arising. Otherwise, the Council will need to self-fund these amounts.

**Chief Executive's Response**

Focus will be maintained on progressing plans to identify funding for all deficit balances including legacy balances.

## 6.3 Dún Laoghaire Baths

This scheme rgefers to the refurbishment of the site located at the former Dún Laoghaire Baths. Following the publication of a tender notice in the Official Journal of the European Union (OJEU), a contract sum of €8.7m (VAT exclusive) was agreed and signed between the Council and the joint venture consortium to undertake the main contracts works.

Scheme costs are funded mainly from Section 48 development contributions. The Council has also secured a grant of €1.1m from the European Regional Development Fund (ERDF) South & East regional programme 2014-20 to part fund costs. Because of the significant increases in costs (see below), the Council has also now made use of available capital reserves as an additional element of scheme funding.

The first phase of the development was officially opened in December 2022 and I have been advised that the pavilion building at the site is to open shortly. A design team has been appointed, which is currently developing and tendering the Part 8 approved accessible ramp link between the mid and lower levels.

Due to the large number of claims that were submitted by the consortium contractor, the Council agreed to enter into a formal conciliation process, as provided for in the contract. I have been advised that the expert opinion received as part of this process was necessary in reaching consensus on some of the more complex claims submitted by the main contractor.

Following conciliation, the final agreed amount had escalated to €18.2m, an increase of €9.5m (109%) over the original contract price.

The significant increase is mainly attributable to unforeseen ground conditions at the site, issues that emerged with the structure of the retaining walls at the Queens Road embankment, impact of the COVID-19 pandemic and inflation related construction costs increases.

While I am satisfied that management reacted in a timely manner in attempting to control the increasing costs by seeking legal advice, the following control weaknesses were identified:

- Management has accepted that a more defined and comprehensive design and planning project brief, as required by the Public Spending Code (PSC), could have highlighted, at an earlier stage, the need for a full site investigation, which could have subsequently identified the unforeseen costs that arose on this scheme.

- While the PGB approved the stage 5 mid-project budget increase in 2021, there is no evidence that the board formally approved the final agreement for the main contract that was confirmed in 2022. However, I was advised that before signing the final settlement agreement (as recommended by the conciliator and the relevant Director of Service), the Chief Executive consulted with the other members of the PGB, who subsequently approved it. I have recommended that budget variance reporting should be a standing agenda item at all meetings of the PGB. As this complex scheme is largely funded from development contributions, any increase over the agreed budget will have direct impacts on the availability of funding for other schemes to be delivered by the Council.
- With regard to the Council's obligations to comply with European Union procurement rules and regulations, a formal protocol is needed to be established, with input from the PGB and the procurement unit, on whether modification reports are required to be published in the OJEU for the costs overruns on this and any other relevant schemes where significant increases over the contract sums have occurred.

**Chief Executive’s Response**

Governance arrangements pertaining to capital projects have been strengthened considerably since the commencement of the Baths project.

In relation to the lessons learned from this difficult and complex project, given the issues that arose in relation to stability of the foundations of the old baths pavilion and the subsequent underpinning required to support the old building foundations and public road structure, more comprehensive site surveys and investigation could have informed a better design and project planning brief and associated costs. The requirement for more informative pre-construction surveys will be a condition requested by the PGB for future projects of this complexity brought before the board seeking approval.

In terms of the interaction and role of the PGB, the appointment of a conciliator to assist with negotiation of the final settlement agreement would have been decided and agreed by the PGB at the time, as it became clear that an expert opinion would be required to reach agreement on some of the more complex claims and increased costs. This process was put in place by the PGB to avoid a potential lengthy and expensive arbitration process, which could have resulted otherwise.

Budget variance reporting to the PGB is currently a requirement of all schemes on the capital programme that are required to seek approval for any increases or variations to the approved project budget.

In relation to adhering to European Union procurement rules and regulations, a formal protocol will be looked at by the PGB with assistance from the procurement unit.

## 6.4 Cherrywood Strategic Development Zone

Statutory Instrument no. 535 of 2010 designated Cherrywood, Co. Dublin as a Strategic Development Zone (SDZ) with the Council being the specified Development Agency as provided for under section 165 of the Planning and Development Act, 2000.

In recognition of the size and complexity of the scheme, Council management established a dedicated development agency project team, comprising staff with a multi-disciplinary range of experience and expertise. In addition, a steering group has also been established that is chaired by the Chief Executive and comprises members of the senior management team. The resources that continue to be assigned to this development is acknowledged.

The current iteration of the capital programme report outlines the background and funding mechanism put in place to construct the "common infrastructure" element of the wider Cherrywood development, the total costs of which are estimated at approximately €261.5m (an increase of approximately €50m on the amount reported at the previous audit). It is currently anticipated that the Cherrywood specific development contributions (the Cherrywood Planning Scheme DCS 2017-20 refers), as provided for under section 48 of the Planning and Development Act, 2000 (as amended) will secure development contributions of approximately €79m.

To date, the Council has been successful in securing approximately €87m of Government grants to part fund some of the common infrastructural developments that are being progressed. I have been advised that there remains a deficit of approximately €8.7m in respect of those projects that are being delivered by the Council and for which there is currently no funding mechanism currently identified. The adopted "Planning Scheme" for this strategic development provided for the Council examining alternative means of funding. This was availed of and has resulted in significant additional Government supports being secured to date to ensure that the scheme continues to progress to completion.

Management has further advised me that there is also a funding deficit (currently estimated at approximately €51m) in respect of the projects that are the responsibility of the Cherrywood landowners to deliver.

The previous audit report outlined that one of the Cherrywood landowners commenced legal proceedings in the Commercial High Court against the Council, regarding inter alia, the landowner's entitlements to offset costs against development contributions due on foot of planning permissions. In 2022, the Council, acting on Senior Counsel advice and recommendations, accepted the terms of the settlement agreement that provided for the matter to be settled and the case to be struck out.

The construction of the common infrastructure is required to unlock and support the sites currently under construction as well as other developments that have yet to be advanced. While the Council continues to engage with the relevant landowners to secure agreement on this common infrastructural aspect within the overall Cherrywood developments, I have again been advised that no such agreements have been possible to date.

The continuing inability to reach agreement on the common infrastructure element of this strategically important development significantly increases the Council's risks with the possible negative impacts on scheme costs, funding, and the timely delivery of the new homes planned for Cherrywood. Failure in securing the expected level of development contributions will also adversely affect the already significant funding deficits.

Management has informed me that the Council has commenced the statutory process of the review of the current Cherrywood Planning Scheme Development Contribution Scheme 2017 – 2020 with a view to resolving the residual funding gap as outlined above.

There remain significant and complex issues to be resolved. The current level of governance and oversight of this development should remain in place in order to mitigate, as much as is possible, the significant risks arising.

**Chief Executive's Response**

Governance and funding arrangements pertaining to Cherrywood remain a priority for the Council.

# 7 Non Pay Expenditure

## 7.1 Purchasing and invoice payments

The timely raising of purchase orders to record and register, on the FMS, the Council's commitment to acquire goods and services is one of the corner stones of an organisation's budgetary and internal control systems.

The system compliance improvements noted at previous audits have been sustained during 2022. A review of the purchasing and payments procedures carried out during the current audit has again indicated that the important internal control of raising purchase orders at the appropriate time (to formally register the commitment to acquire the relevant goods and services) are generally being applied by all sections of the Council.

**Chief Executive's Response**

Controls regarding the acquisition of goods and services will continue to be reviewed and strengthened where required and reminders will issue to staff in relation to compliance with the Council's purchasing procedures.

## 7.2 Procurement requirement compliances

The Council has a centralised procurement unit comprising of two staff currently. The unit is responsible for co-ordinating and overseeing strategic and operational procurement activities across the organisation.

A review of compliance with national procurement guidelines and regulations was completed during the current audit, with generally good results noted. The procurement unit's own compliance testing appears to be contributing to the improvements reported for 2022. The current level of oversight, which includes the reporting of results to the senior management team meetings, should remain in place and improved on, where considered appropriate.

A review, commissioned by the internal audit unit with the subsequent report being issued in December 2022, identified a number of high priority rated findings and recommendations. The recommendations in the report should be implemented as soon as is practicable. I have further requested that the lapsed procurement steering committee be re-established to further strengthen procurement compliance across the organisation.

I have also recommended, to assist the decision making process of the PGB, that the head of procurement be requested to provide advice on procurement best practice, such as clarifying the Council's obligations in circumstances where projects significantly exceed approved budgets (see also paragraph 6.3)

As a public organisation, the Council is required to comply, in all respects, with both the national and where relevant, the EU procurement regulations and directives.

**Chief Executive's Response**

The recommendations from Internal Audit continue to be implemented with 19 of the 25 recommendations complete, three in progress and three outstanding.  Of the three outstanding items, these will be covered under the Procurement Steering Committee / Procurement Contacts Group. Terms of reference have been drawn up to re-instate this group with effect from November 2023.

It has been agreed that the Procurement Officer will sit on the Project Governance Board Sub-Committee to offer guidance on European and National procurement Directives, to ensure the highest possible level of compliance.

## 7.3 Public Spending Code

In compliance with the requirements of the PSC, the Council's internal audit unit recently completed a report on its review of the activity and the 2022 financial transactions incurred in the following areas of the Council's activities:

- Capital Account: Blackglen Road Improvement Scheme
- Revenue Account: Heritage and Biodiversity

The findings and recommendations contained in the PSC report were taken into account as part of this audit. No significant adverse findings were reported in either review.

# 8 Local Authority Companies

## 8.1 AFS Appendix 8 Disclosures

The Council has an interest in a number of connected companies, the details of which, including the relevant 2022 trading results, are disclosed at Appendix 8 to the AFS.

All of the companies, listed therein, are audited by private firms of auditors having been appointed by the respective board of directors to undertake the annual audits. The companies' boards of directors, whose primary function under the Companies Act, 2014 is to manage the businesses on behalf of the shareholders, include representatives of the elected members and the Council's senior management who act in ex-officio capacities.

The Council is the sole shareholder of DLR Properties Limited.

## 8.2 DLR Properties Limited

As outlined in the DLR Properties Limited (DLRP) Directors' report to the 2022 audited AFS, this company is involved in acquiring, developing, holding, managing, leasing and disposing of land and buildings of all kinds located at Cherrywood, Co. Dublin.

All of the company's issued shares remain in the beneficial ownership of the Council.

The company's audited accounts for the year ended 31 December 2022 recorded a loss for the year of €1.2m (2021: profit of €3.6m). The loss incurred in 2022 was recorded following the charging of the reductions in both the value of inventories (€1.9m) and the fair value of investment properties (€2m), to the Profit and Loss Account.

The Council's interest in the company was valued, on 31 December 2022, at €13.1m (2021: €14.3m). This calculation was based on the company's net assets valuation at the balance sheet date. The year-on-year reduction reflects the operating loss incurred by the company in 2022.

Following the annual professional valuation organised by the company, the total property portfolio (comprising both investment and development properties) was valued at approximately €75m at 31 December 2022. The market value of the properties remains in excess of the cash value of the loans (€69m) that were advanced by the Council to the company. As outlined in previous audit reports, the loans comprise of term loan facilities that are subject to a 13-month repayment notice period and were issued to fund the company's acquisition of its rights, interests and entitlements over the land and properties at Cherrywood.

In accordance with the loan agreements, interest was charged in 2022 on a portion of the total loan book. Total interest paid to the Council in respect of 2022 was €0.9m. This income has been transferred as general internal capital receipts to fund future capital works that have yet to be determined.

Council management has again advised me that it is not anticipated that the company will be required to commence repaying the principal element of the loans in the near future.

There are also two management companies, incorporated as Artoka CLG and Glenleah CLG that are related to DLRP. These two companies share common directors and secretary with DLRP and are audited by the same firm. The principal activities of the two management companies, as outlined in their respective directors' reports to the 2022 AFS', is the management (on a fee income basis) of the buildings owned by DLRP.

I noted that the 2022 audit reports for the three companies together with the related audit letter did not contain any significant matters of concern following the completion of the annual audit processes.

As reported at previous audits, DLRP is contracted with another property development company to dispose of a 13.9 acre site known as TC3. Under the terms of the agreement, the company will exchange the site for a yet to be constructed 145,000 sq. ft. Grade A commercial building.

Council management has advised me that because of the impacts of various matters arising, the construction commencement date has not yet been confirmed. I have also been advised that the company intends to use this property as part of its expanded rental property portfolio.

As the current plans will significantly increase the company's commercial property portfolio, I have recommended to Council management that they maintain a prudent approach in respect of the long-term strategy to ensure that the significant public funds invested in the company continue to be safeguarded.

### 8.3 Dún Laoghaire-Rathdown Leisure Services CLG

This company oversees the day-to-day management of the municipal golf course located at Stepaside and the four leisure centres located at Meadowbrook, Monkstown, Loughlinstown and Ballyogan and other ancillary activities. It is a company limited by guarantee and not having a share capital. Its board of directors include representatives of senior officials of the Council and the elected members.

The Company's audited AFS for the year ended 31 December 2022 recorded a profit for the year of €406k (2021: profit of €421k) thereby increasing total funds at that date to approximately €3.86m. The company continues to carry significant cash reserves.

### 8.4 The Pavilion Theatre CLG

This company oversees the day-to-day management of the Pavilion Theatre. It is a company limited by guarantee and not having a share capital. Its board of directors include representatives of the Council's senior management team and the elected members.

The company's audited AFS for the year ended 31 December 2022 recorded a surplus of €91k (2021: deficit of €14k) thereby decreasing total funds at that date to approximately €1m.

## 9 Governance and Propriety

### 9.1 Governance Overview

Corporate governance comprises the systems and procedures by which enterprises are directed and controlled. The Chief Executive, his management team and the Council′s elected members all have a role in ensuring there are sound systems of financial management and internal controls in place.

## 9.2 Risk Management

An effective risk management framework provides the executive management and the elected members with assurances that the major organisational risks are identified, appropriately managed and mitigated where possible.

I acknowledge the continuing application of good internal procedures to ensure that the departmental registers are adequately reviewed on a regular basis.

Because of the increasingly diverse and expanding nature of the Council's responsibilities, the registers need to be continually reviewed and updated, where necessary, to ensure that all risks are adequately identified, controlled and mitigated, where possible.

**Chief Executive's Response**

Regular reviews of the corporate risk register are undertaken to ensure new and emerging risks are identified and incorporated. Any such risks are then included in the departmental risk registers as appropriate.

Quarterly reviews of departmental risk registers are undertaken by risk owners and approvers to determine if the risk assessments remain appropriate.

## 9.3 Internal Audit

The Council's internal audit unit continues to make a positive contribution to improving the internal control environment across many areas of the Council's activities. I acknowledge the additional staff resource recently assigned to this unit.

It is a critical element of good corporate governance that the internal audit function of an organisation the size and complexity of the Council is adequately resourced.

## 9.4 Audit Committee

The Council's Audit Committee met on 5 occasions during 2022 and issued its annual report for that year in March 2023. The work of the committee, which is continuing to make significant contributions to the independent oversight of corporate governance within the Council, is acknowledged.

## 9.5 Annual Declarations of Interest

Part 15 of the Local Government Act, 2001 (as amended) imposes obligations, on all Council members and staff of a certain grade or assigned certain duties, to make annual declarations to the Council's designated Ethics Registrar.

A review of the returns submitted in respect of the year ended 28 February 2023 was undertaken during the current audit and significant compliance improvements were noted. I acknowledge the efforts made by Council staff in addressing the weaknesses identified at the previous audit.

## 9.6 Local Government (Expenses of Local Authority Members) Regulation 2021

Under Directions issued under Regulation 17 of the Local Government (Expenses of Local Authority Members) Regulation 2021 (Statutory Instrument No. 313 of 2021), elected members must submit relevant documentation for all expenditure claimed under the Local Representative Allowance by 31 January of the year following the period that the expenditure was incurred.

Despite repeated requests from Council officials, I have been informed that five elected members had not, by the date of audit enquiry (July 2023), submitted the required complete documentation in respect of 2022.

Consequently, I was not able to audit the 2022 expenditure claimed by these members, as provided for under the 2021 Regulations.

I have requested management to write to the five elected members notifying them again of their statutory obligations in this matter and to inform them that I had also requested the relevant documentation for audit review.

**Chief Executive’s Response**

Letters issued to the five elected members regarding the outstanding documentation for expenditure claimed under the Local Representative Allowance. To date, two of the elected members have responded with further information. Another letter will issue in October 2023 to the five elected members reminding them of their statutory obligations in this matter.

## Acknowledgement

I wish to record my appreciation for the courtesy and co-operation extended to audit by the management and staff of the Council.

Eamonn Daly

Local Government Auditor

12 October 2023

**gov.ie/housing**

Department of Housing, Local Government and Heritage

Rialtas na hÉireann
Government of Ireland