Response to LPS Consultation on the Decapitalisation Rate for the 2023 valuation List – Note for Belfast City Council

The main purpose of a revaluation is to adjust the liability of properties relative to others within the non-domestic rates tax-base. This ensures the rate liability is spread fairly between ratepayers and is based on up-to-date rental values. At each revaluation, all properties are assigned a new rateable value. Preparations are underway for new rating lists to be introduced in Northern Ireland from 1 April 2023. Land and Property Services are responsible for compiling and publishing the new rating lists and will ensure all non-domestic properties are assigned a new rateable value based upon its estimated annual rental value as at the Antecedent Valuation Date (AVD) of 1st October 2021.

This consultation seeks views on the parameters and methodology to enable the prescription of the decapitalisation rate/s to be applied when determining the net annual value of any hereditament by reference to the contractor's principle for the purposes of any NAV list coming into force on or after 1st April 2023. The contractor's principle is the method of ascertaining the net annual value of a hereditament by reference to its actual or notional cost of construction or provision or to its capital value.

The decapitalisation rates for the current valuation list are 2.67% in the case of a church hereditament, educational hereditament or healthcare hereditament and 4% in any other case. These rates were prescribed in the Valuation for Rating (Decapitalisation Rates) Regulations (Northern Ireland) 2020 and took effect for the 2020 non-domestic revaluation.

The corresponding decapitalisation rates for the purposes of the valuation list which came into force on 1st April 2003 were 3.67% and 5.5% respectively and provision is made for those rates to continue to have effect in relation to that list.

The suggested answers to the specific questions are as follows

Question 1

Do you agree the Department should continue to prescribe the decapitalisation rates used in the Contractor's Basis of Valuation?

Yes, provided that the rates are reached by transparent means the Department should continue to prescribe decapitalisation rates used in the Contractor's Basis of Valuation.

Prescribing rates is the only way to overcome the valuation of properties where rents and receipts and expenditure details are lacking. If the rate applied is lowered this will have an adverse impact on those who are valued by a rental or receipts and expenditure approach. A large number of public buildings would be valued using a

prescribed rate and a low or lower rate would see a fall in value for these properties and result in a higher liability for other ratepayers.

Ending prescribed rates would bring significant uncertainty to local government rates income; and this is particularly significant for local authorities as they struggling to cope with the financial impact of the pandemic.

Question 2

Do you agree that the Department should continue to prescribe two decapitalisation rates in Northern Ireland i.e. a standard rate and a lower rate?

There is an argument to consider three prescribed rates. The categories of hereditament to which these should be applied must vary according to the nature, mode or category of each actual occupation; but as ability to pay has been held to be a factor in determining the measure of liability in each contractor's test case, it would seem to be appropriate that:

- the **highest rate** should apply to hereditaments where the mode or category of use is one in which, commercially, there would be likely to be funds available to pay for the cost of construction and the land.
- Where access to funds is restricted, but the actual occupier can expect to gain some financial benefit from its occupation, then the **middle rate** should be considered. This group would seem to be perhaps the widest, including hereditaments created with public or philanthropic funding
- In a case where the occupier has no realistic hope of any tangible benefit for its occupation, then the **lowest rate** would apply.

Question 3

Do you have any views on the methods for setting the decapitalisation rates (including any suggestions for alternative methods), on the range of values generated by each method, or on the merits or otherwise of each method?

The courts have held that the hypothetical tenant will not be prepared to pay a rent which exceeds the annual equivalent of the cost of replacing the property.

It is submitted that this risk can be eliminated, or at least mitigated, by the use of a range of decapitalisation rates rather than by adoption of a "one size fits all" approach. In the event of a dispute as to value, the argument would focus, not on economics, or on the identity of the occupier, but on the nature of the occupation itself, which is what falls to be valued, for rating.

Clearly, even when prescribed, interest rates to be applied must be such as to reflect the principles of valuation for rating, and it is vital therefore that affordability is suitably reflected in the decapitalisation rate adopted. We wish to reinforce the point that a low or lower decapitalisation rate would put additional pressure / cost on those whose properties are valued by reference to rental or receipts and expenditure approaches,

as a lower decapitalisation rate will lower the rateable value and ultimately result in there having to be a higher multiplier.

Question 4

Do you agree with the proposed approach for setting decapitalisation rates in Northern Ireland?

The methodology employed should be transparent and subject to open consultation in the interest of fairness and to seek to avoid litigation. We suggest that the evidence available must be seen to be complete as at the antecedent valuation date; and we therefore take the view that, while an early consultation is always welcome, in this case the evidence-gathering exercise prior to the publication of the proposals, is likely to be incomplete. Notwithstanding these comments we would agree with the proposed approach.