
Acquisition and Disposal of Land and Property



Council of the
ISLES OF SCILLY

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VERSION HISTORY – FOR FURTHER DETAIL SEE CHANGE LOG

Date	Version	Author role	Purpose of change <i>[eg scheduled review; administrative change; change in legislation; change following feedback]</i>
22/11/23	1	Interim Head of Asset Management and Development	Policy review (2014 version updated following Member feedback)
27/11/23	2	Interim Head of Asset Management and Development	Final version

EQUALITY IMPACT ASSESSMENT (EQIA) RECORD

Date	Is this an existing, revised or new/proposed policy?	Type of assessment conducted	Summary of actions taken & decisions made	Approved by	EqIA review date
27/11/2023	Existing policy - updated	Screening	No further action required.		

DOCUMENT RETENTION

Document retention period	Until superseded
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Acquisition and Disposal Policy for Land and Property

PURPOSE

The purpose of the Acquisition and Disposal policy document is to set out the principles and procedures upon which the Council will acquire and dispose of land and premises. This document forms an integral component of the Strategic Asset Management Plan (SAMP) to secure and enhance the value of the Council's assets. The aim is to ensure we retain a "fit for purpose" estate and only acquire new premises or sites that fulfil a specific purpose and dispose of assets in order to make the best use of Council resources.

OBJECTIVES

This document ensures that the acquisition and disposal of assets are consistent, legal and transparent with decisions properly but expeditiously considered. The document also aims to optimise the disposal value of surplus property and to guard against any onerous terms in any transaction (for example sale/purchase leases, restrictive covenants and the host of other issues that may exist, including maintenance and running cost, structural problems and contamination).

ASSET OWNERSHIP PRINCIPLES

It is imperative to outline the principles under which the Council will invest and retain assets. A clear distinction should be made between Corporate and Commercial land and property. For the purposes of this policy, the Council's Housing stock is excluded as it is subject to separate national regulatory and statutory requirements.

Corporate assets are those from which the Council services are delivered where:

- There is an identified viable service requirement which ensures that the building will be fully utilised; and
- Services cannot reasonably be provided from any other facility/facilities both within the Council estate or those of its public sector partners or within the Commercial market at a lower cost.

Both conditions should be met for a corporate asset to be retained. A cost comparison should be completed and must include an assessment of all the costs relating to the occupation and use of the asset, so including rent (and imputed rent

for owned assets), rates, property maintenance, facilities management services and utility costs.

It is also recognised that the Council may still have a need to acquire other assets, particularly where there is nothing in the portfolio that can meet a particular need or an existing asset has reached the end of its life and needs to be replaced. In this instance, a case should be made in line with the Acquisitions process outlined within this policy.

In contrast, existing **commercial assets** are held for strategic and financial reasons and the Council should only invest in and retain these assets if they meet at least one of the conditions outlined within Section 9.7 of this policy.

Financial Regulations

The Council's Financial Regulations should be considered alongside this policy when exploring, progressing and completing any potential Acquisition or Disposal.

In line with the Financial Regulations, **Rule D2.3** The purchase and disposal of land and property shall have due regard to:

- (i) Any appropriate extant professional advice.
- (ii) Appropriate professional and government circulars.
- (iii) The powers of The Council of the Isles of Scilly and the duty to achieve best consideration.
- (iv) The Code of Practice for Land and Property Transactions. To be developed if is not yet available.

ACQUISITION OF LAND AND PROPERTY

1. Options for acquiring land and property

1.1 The Council can choose to acquire land or property in any of the following forms:

- Freehold
- Leasehold (more than 7 years)
- Short tenancy (less than 7 years).

1.2 A strategic approach to land and property acquisitions must be taken. The reason for acquiring land or property should be in relation to any of the following:

- Maintenance or improvements to service delivery including asset replacement at end of life

- Strategic acquisition to secure future development or redevelopment opportunities in line with Council priorities and objectives, including sites to facilitate land assembly.

1.3 Generally, only properties or land whose income generating capacity meets or exceeds the annual maintenance liabilities should be acquired and retained by the Council following the preparation of a business case and valuation process.

1.4 However, there will be cases where the acquisition of land or property is required to facilitate the development of a site or provide a community facility where a need has been approved and identified. In such cases and wherever possible, such acquisition should be guided by the following principles:

- the asset value can be realised immediately (taking into account the Capital Receipts Regulations); or
- the property (or at least the maintenance liability) can either be transferred immediately to a third party or there is an assured source of revenue funding to cover running costs, including maintenance; or
- the acquisition of the property would release capital or revenue grants that would not be available (or at least not to the same level of funding) to another organisation; or
- where maintenance costs are manageable and the strategic or longer term benefits outweigh the liabilities of the acquisition or where the private sector is unlikely to acquire and make beneficial use of the property; or
- the acquisition is required to facilitate the development of a site, including for example land assembly purposes.

1.5 Prior to the purchase of any land or premises, an options appraisal should be carried out to justify that the acquisition is required to deliver the desired outcome or objective. All option appraisals should, where appropriate and relevant, take into account the on-going cost of ownership of the property over its lifetime and ensure that any decision to acquire land is informed by both the capital and revenue implications of ownership and the risks associated.

2. Acquisition of land or property for service delivery

2.1 Land or property may be acquired for the purpose of maintaining or improving service delivery subject to the following criteria:

2.2 Authority from the Council confirming that the level of service delivery is required, or the acquisition is required to replace an asset at the end of its life;

2.3 An option appraisal has been carried and identifies the requirement for the land or property to meet or improve service delivery; and

2.4A business plan has been prepared indicating that the on-going revenue costs can be contained within an identified budget.

3. Acquisition of land or property for investment purposes

3.1 Land or property may be acquired for the purpose of investment subject to the following criteria:

- i Guaranteed net return of at least 6% plus per annum
- ii An option appraisal and business plan have been prepared and identify that the property is capable of being reused, refurbished or redeveloped at reasonable cost and with a guaranteed net profit on any re-sale; and
- iii The on-going revenue costs are contained within an identified budget if the acquisition is to be retained.

3.2 If any of these criteria cannot be met, and the acquisition is still required, a special case must be made to Members for the investment (for example, housing acquisition in response to urgent housing need) and must align with the Council's Corporate priorities and provide wider social economic benefits to the Council or the islands.

4. Acquisition of land or property for strategic development

4.1 Land or property may be acquired for the purpose of future strategic development to benefit the community or economy of the islands subject to the following criteria:

- 4.2 An options appraisal has been carried out and identifies the land or premises as suitable for delivering benefits to the community or economy in line with an identified Corporate priority or objective
- 4.3 Any capital expenditure and on-going revenue costs in relation to the intended use of the acquisition are identified in a business plan and contained within an identified budget
- 4.4 VAT has been considered with any such implications assessed in the options appraisal.

5. Compulsory purchase

5.1 The Council may consider, where appropriate, the acquisition of premises or land through its compulsory purchase powers. Powers of Compulsory Purchase are conferred on public authorities by legislation. They enable authorities to compulsorily purchase land that is required to carry out a function that Parliament has decided is in the public interest. These powers will be used

where the owner or occupier of the land required is not willing to sell by agreement or where agreement cannot be achieved.

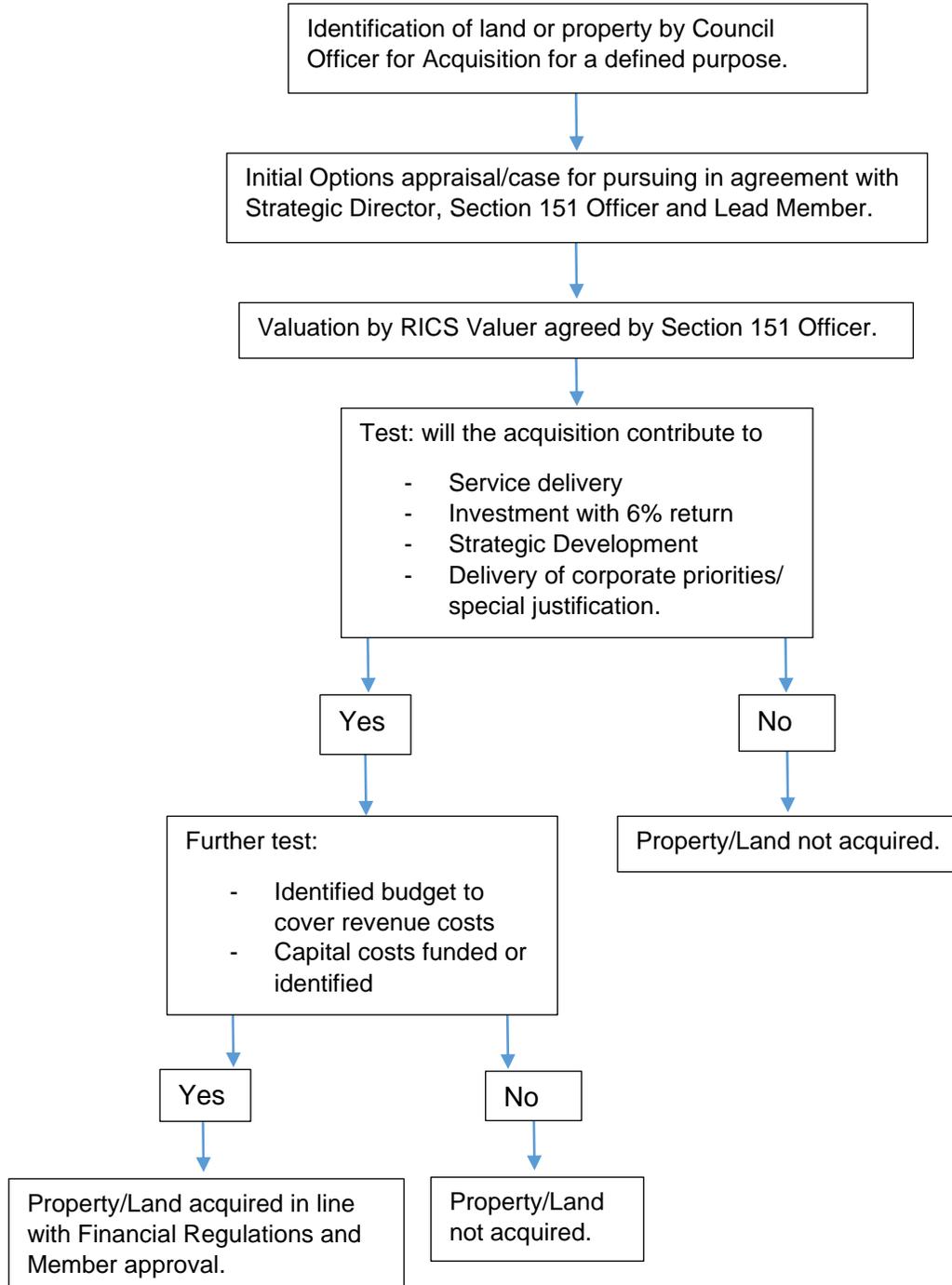
5.2 There are a number of stages in the Compulsory Purchase Procedure and the approval of the relevant Government Minister is required before such powers can be used. When deciding whether or not to exercise Compulsory Purchase powers the Council must take into account all relevant considerations (including, but not exclusively), the rights of the affected landowner(s) under the Human Rights Act 1998. Where Compulsory Purchase powers are used, the landowner or occupier is generally entitled to compensation following a valuation process.

6. Internal and external audit

6.1 Audit trails of all acquisitions will need to be maintained to verify actions/values and how the authority made the decision to acquire a particular asset. Any appointment of a third-party consultant must include a right of access to their records in relation to the transaction. This will need to be dealt with by way of appropriate contract conditions.

7. Acquisitions process

All acquisitions must be in line with the current Financial Regulations¹ for the Council in terms of the process of approval and referral to Full Council where necessary and at the appropriate time within the below process.



¹ Financial Regulations: <https://committees.scilly.gov.uk/mgCommitteeDetails.aspx?ID=271>

DISPOSAL OF LAND AND PROPERTY

8. Options for the disposal of land and property

- 8.1 This part of the policy sets out the procedure to be adopted in disposing of land or property. For the purpose of this document, a disposal of land means any freehold disposal, by sale or exchange, and any disposal by the granting of a license or lease.
- 8.2 As each land disposal should be treated on its own merits, nothing in this document binds the Council to a particular course of action in respect of the disposal of land. The Council's actions in disposing of land are subject to statutory provisions detailed at Annex 1; in summary, the overriding duty under section 123 of the Local Government Act 1972 is to obtain the best consideration that can be reasonably obtained for the disposal of land. This duty is subject to certain exceptions that are set out in the 'Local Government Act 1972: General Disposal Consent (England) 2003'.
- 8.3 Following the assessment of whether the property meets the criteria for retention outlined for Corporate and Commercial assets within the Asset Ownership Principles of this policy and agreement to explore the disposal, the following procedure and principles should be followed.
- 8.4 The Council should seek, for all disposals, to achieve the best financial consideration available and the most agreeable terms. However, the Council has the power within the Local Government Act 1972: General Disposal Consent (England) 2003 to dispose of any asset at less than best consideration, without the requirement for approval from the Secretary of State, at up to £2 million below open market value. However, the Council must justify any undervalue by reason of non-financial considerations, such as the economic, environmental or social benefits arising from a disposal.
- 8.5 Valuations for the land or property should be carried out by an independent valuer appointed by the Council and the valuation must be carried out in accordance with the Local Government Act 1972: General Disposal Consent (England) 2003. This requires valuations of the restricted sale value (allowing for all the conditions which the Council has placed on the sale and including non-financial benefits) and an unrestricted sale value.
- 8.6 The valuation of premises or sites will generally be undertaken by the District Valuer. Where a disposal is in respect of a major or contentious site or premises, additional independent valuation advice may also be sought to provide a safeguard for the propriety of the Council's transaction, particularly if a situation arises where there has not been an open, competitive process - for example transacting with a special purchaser. Advice may also be required to assist in the negotiations with the prospective purchaser.

- 8.7 Disposal under the Local Government Act 1972 deals with all types of disposals and relates to freehold, leasehold and short tenancy agreements. Disposal of land and property can therefore be progressed in a number of ways:
- 8.8 Freehold disposal - sale with or without covenants to restrict or protect future use
- 8.9 Permanent grant of rights over land – i.e., to allow a right of way/passage
- 8.10 Leasehold disposal – leasehold interest can be agreed for any time period. A leasehold interest of 7 or more years has to be registered as an interest in land with the Land Registry. All leasehold disposals outside the security provisions contained in the Landlord and Tenant Act 1954 will exclude business protection, unless the property is categorised as an investment. In such cases, terms will be agreed based on advice from an independent valuer to seek best consideration for the lease. Any leasehold disposal transfers all liabilities to the tenant
- 8.11 Non-permanent grant of rights over land – i.e., access licence, way leave etc
- 8.12 Short tenancy – tenancy for a term of less than 7 years or the assignment of a term which at the date of the assignment has not more than 7 years to run. All short tenancy disposals will be agreed outside the Landlord and Tenant Act 1954 to exclude business protection.

9. Surplus property and sites

- 9.1 A schedule of assets will need to be established and regularly reviewed to ensure a dynamic approach is taken to disposing of assets. Such reviews will determine if a potential site or premises is considered to be surplus to requirements for either disposal or redevelopment. This review will also take place if any request to purchase is received by an existing tenant to the relevant land or property.
- 9.2 As outlined in the Asset Ownership Principles, a clear distinction must be made between Corporate and Commercial land and property.
- 9.3 For Corporate property to be considered surplus and disposal considered, at least one of the following criteria cannot be met:
- 9.4 There is an identified viable service requirement which ensures that the building will be fully utilised; and
- 9.5 Services cannot reasonably be provided from any other facility/facilities both within the Council estate or those of its public sector partners or within the Commercial market at a lower cost.
- 9.6 A cost comparison should be completed and must include an assessment of all the costs relating to the occupation and use of the asset, so including rent (and imputed rent for owned assets), rates, property maintenance, facilities management services and utility costs.

9.7 For Commercial property to be considered surplus and disposal considered, none of the following criteria are able to be met:

- i. The asset is currently generating a net yield Council (annual revenue less costs/market value) that is at least higher than the Council's target net yield and that position is likely to remain for at least the next three years. The Council's target net yield is currently assumed to be the cost of capital hurdle rate of 6%, but CIOS may decide to amend this at any time. Consideration should also be given to other financial factors, such as the impact on VAT partial exemption calculation, Treasury rules on commercial yield holdings and any other factors that may be relevant.
- ii. If the asset is not expected to deliver the target net yield over the next three years, then there are robust plans to make changes or to re-let the asset so that the net yield will be achieved within that period
- iii. The asset has tangible development potential or will unlock an adjacent development that will deliver greater financial or local economic benefits to CIOS within the next ten years compared to an immediate disposal; or
- iv. The asset has a strategic value or Economic Development use that can be clearly defined by CIOS and that the costs of continuing to hold the asset are confirmed as acceptable by the Council on a regular annual basis.

9.8 If the asset is being retained only for commercial and financial reasons, the Council may choose to look to dispose of this at an appropriate time.

9.9 Once a site or premises has been determined as surplus to requirements, prior to any disposal consideration will need to be given as to whether the Council redevelops the site or premises for investment purposes or community and /or economic benefit, or whether the asset will be disposed of with development potential, with or without planning permission. To determine the most appropriate means of disposal, once a potential site or premises has been identified an options appraisal should be carried out that assesses:

- i. the costs and benefits of disposal of the site or premises (including where appropriate a planning consent for its development)
- ii. the capital and revenue implications of disposing of any asset, includes the impact of the current economic conditions (e.g. should the asset be retained until market conditions improve) and the VAT implications
- iii. any constraint on the site or premises should be investigated e.g. contamination, structural issues, restrictive covenants and requirements to repay grants.

9.10 Prior to final disposal, any short-term intermediate use shall be secured through a short tenancy with a term of less than 7 years, with a landlord break clause at no more than 6 months' notice. This will ensure that disposal can be progressed when viable.

10. Existing tenancies

10.1 Before any potential disposal can be explored, any existing tenancies and/or leasehold interest within the land or property must be considered.

10.2 Where an existing tenancy or leasehold interest is present on commercial property or land identified for disposal, the current tenant will be offered first refusal for purchase of the property or land.

10.3 In the instance where the current tenant chooses not to exercise their right of first refusal to purchase, the property or land shall be disposed of with consideration of the existing tenancy in place. Legal advice should be sought on the mechanisms that may or may not be included within the lease to enable disposal in this way.

10.4 If no tenancy is in place, the property or land shall be sold with vacant possession.

10.5 Leasehold interest – where an existing tenant with a leasehold interest requests the purchase of the property or land's freehold interest, the Council should follow the same process for disposals, where an existing tenant wishes to exercise their right to first refusal, including the case for whether or not to dispose of the land or property

10.6 When an existing tenant has requested the purchase of the land or property to which their tenancy relates, sufficient information including guide price, should be shared to enable the tenant to make an informed offer for the purchase of the land or property. This means that the Council is able to share the target disposal price with the tenant or their agent, under confidential terms. This will ensure that best consideration for the land or property can be achieved.

10.7 Where an offer is received by the tenant that meets or exceeds that which the Council has deemed sufficient, through independent valuation, the Council will be able to proceed with the disposal, subject to approval via Full Council.

10.8 Where an offer is received by the tenant that is deemed undervalue and therefore less than best consideration, the circumstances where an undervalue would be accepted must be considered and determined by Full Council, such as the economic, social and environmental benefits. The tenant may be asked to provide justification for the under offer to support any other considerations.

- 10.9 The Local Government Act 1972: General Disposal Consent (England) 2003 gives consent to disposal of land otherwise than by way of a short tenancy by a local authority in England for less than best consideration subject to specified circumstances. The Council can therefore sell at an under value without the requirement for approval from the Secretary of State in line with the following specified circumstances:
- 10.9.1 The local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area:
- i. The promotion or improvement of economic well-being
 - ii. The promotion or improvement of social well-being
 - iii. The promotion or improvement of environmental well-being; and
- 10.9.2 The difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2 million pounds.
- 10.10 Where it is deemed necessary to reject the under offer received by the tenant, they should be advised of the reasoning and next steps. Where the under offer was received as a result of a request to purchase and not following an estate review, the tenant may wish to continue will the existing tenancy arrangements.
- 10.11 Where the under offer was received as a result of an estate review and the asset was deemed surplus to requirements and agreed for disposal, the land or property should be disposed of with consideration of the existing tenancy in place, as per paragraph 30 of this policy.

11. Marketing

- 11.1 It will be the responsibility of the Council to ensure that any site or premises is properly marketed to maximise competition and ensure that the best price is obtained, with the exception of land or property with existing tenancies exercising their right to first refusal. Where appropriate, all disposals will be marketed either in-house or more commonly through appointed agents. All costs, including legal, marketing and the use of consultants etc. associated with any potential disposal of an asset will be offset against the Capital Receipt where appropriate. The Council will require the purchaser to pay its Legal and Surveyor's costs incurred in any transaction.
- 11.2 Any for sale details prepared as an aid to marketing any land or property must be in accordance with the Property Misdescriptions Act 1991.
- 11.3 The timing of any marketing/disposals will be considered against the background of the Council's budgetary requirements and the prevailing state of the property market. In addition, before recommending that a disposal is to proceed, the potential for the site value to increase in the future should also be

considered, including an assessment of whether or not planning permission could be obtained to increase certainty and value.

12. Method of Disposal

12.1 The method for the disposal of assets will be assessed and determined on a case-by case basis by reviewing all of the options following completion of an appraisal. Generally, open market will be the preferred method of disposal.

Methods of disposal are:

- i Open Market disposal
- ii Private Treaty disposal
- iii Joint Development

12.2 Unless a “special purchaser” has been identified i.e. where an existing tenant wishes to exercise their right to first refusal, all potential purchasers are to be given an opportunity to tender/submit an offer, according to the method of disposal recommended. All issues relating to the land or property, including social, environmental and economic benefit and legal issues and agreements, will need to be taken into account when determining the method of disposal. In principle the Council will choose the method of disposal that provides best consideration, which may be more than just financial and include social, environmental and economic considerations (i.e. the method that best secures the desired objectives/ outcomes for the land and/ or property).

12.3 The Council’s Financial Regulation 10 states that Value for money and Best Value (including Social Value) must be sought in all activities, including the procurement and commissioning of goods and services and best consideration must be achieved in the acquisition and disposal of assets, in accordance with the Council’s Contract Procedure Rules, Social Value Policy and Code of Practice for Land and Property Transactions (to be developed).

12.4 Where an existing tenancy resides and wishes to exercise their right to first refusal or has formally expressed an interest in the land or property to which their tenancy relates; the tenant should be advised that offers should be at or in excess of the value determined by the RICS Valuer. Any offer received must be taken before Full Council for a decision on the acceptance based on the justification of Social value.

12.5 The Council will usually use one of five options to dispose of property or land (more detail of each method of disposal is contained in Annex 3). The options for disposing of assets are set out below:

- i **Private sale** – a sale of land negotiated with one or a small number of purchasers. A binding legal agreement is created on ‘exchange of contracts’ between the Council and the purchaser. This method of disposal will be most relevant where existing tenants exercise their right to first refusal.

- ii **Public auction** – a sale of land by open auction available to anyone. The sale will be publicly advertised in advance. The auctioneer creates a binding legal agreement upon the acceptance of a bid.
- iii **Formal tender** – a sale of land by a process of public advertisement and submission of tenders by a given date in accordance with a strict procedure. The Council creates a binding legal agreement upon the acceptance of a tender, although a contract will also be required at the point of exchange.
- iv **Exchange of land** – a transaction involving the exchange of Council owned land with another landowner. The land acquired by the Council will meet at least one of its corporate objectives and will be at least 'equal' to the land exchanged.
- v **Informal negotiated tender** – a sale of land after a public advertisement that requests informal offers or bids that meet a given specification of set of objectives. The Council may then negotiate further or more detailed terms with one or more individual that submits the most advantageous bid or bids. A binding legal agreement is not created until the exchange of contracts between the authority and the chosen bidder.

13. Open Market Disposal

- 13.1 For freehold disposal and leasehold interests over 7 years, the asset will be advertised and bids invited in the form of sealed bids by an agreed date or through open auction. Except in the case of existing tenancies or leasehold interest and an exercised right to first refusal.
- 13.2 The Council will advertise any disposals widely on its website and other appropriate channels. Advice must be sought on appropriate terms, including rent, from an independent agents/ Valuer and, where necessary, will be appointed to make recommendations on which they consider to be the best consideration taking into account both financial and non-financial benefits.
- 13.3 Generally, independent agents will be appointed to manage the advertisement and the disposal of the land or property and advise the Council on the value of the bids received and recommend what they consider to be the best consideration, taking into account both financial and non-financial benefits.
- 13.4 For short tenancies of less than 7 years, where appropriate, independent agents/ valuers will be appointed to recommend appropriate terms including rent. The property will be advertised by the Council directly via its website and in most cases by an independent agent. The Council will enter into a

tenancy with the first tenant that is willing to agree terms and has acceptable covenant strength and/ or rent deposit acceptable to the Council.

13.5 All proposed tenants must be subject to a financial health check carried out by Financial Services.

13.6 There may be other benefits to the Council in a disposal including the enhancement of its other assets; the opportunity to deliver Council objectives including the implementation of specific proposals identified in the Local Plan or other strategies; promoting economic benefits; securing improvements to essential infrastructure; or the disposal of a liability. Any such factors should be recorded and evaluated as part of the case for disposal presented to Members.

13.7 Where there is a prospect of future planning status or development generating additional site value but where a valuation cannot define this “hope value” at the time of sale, claw-back conditions should be considered in the terms of the sale. Any claw-back conditions should be listed in the Asset Register.

14. Joint Disposal

14.1 Where a redevelopment proposal includes Council land or property and adjoining land, the Council may choose to pursue a joint development with the adjoining landowner, developer or a social housing provider subject to an appropriate agreement being entered into between all parties. The details of a joint development arrangement are likely to differ from scheme to scheme but will broadly involve sharing the cost, risk and return from the project.

14.2 The benefits and risks of pursuing this method of disposal would require a detailed assessment as part of the appraisal for the development and is likely to be a viable option for large redevelopment projects only. This option may result in procurement legislation becoming applicable.

14.3 Audit trails of all disposals will need to be maintained and accessible for audit purposes to verify actions/values and how the authority made the decision to dispose. The retention of information should be maintained in accordance the authority’s document retention policy. Any appointment of a third-party consultant must reserve the right of access to their records in relation to the transaction, both during and following termination of any agreement.

15. Community Asset Transfer

15.1 The purpose of community asset transfer is to enable the transfer of underused land and buildings from the public sector to community

ownership and management - helping organisations to develop those assets and deliver long-term social, economic and environmental benefits which may not otherwise be achieved.

- 15.2 Any request for an asset transfer to a community organisation will be considered where it can provide a financially viable and robust business case and where the transfer would meet the Council's priorities and objectives. The Council will seek best consideration for the transfer unless social, environmental or economic benefits are provided. It may, where appropriate, agree covenants or overage clauses to deal with any additional development.

16. Late bids and other considerations

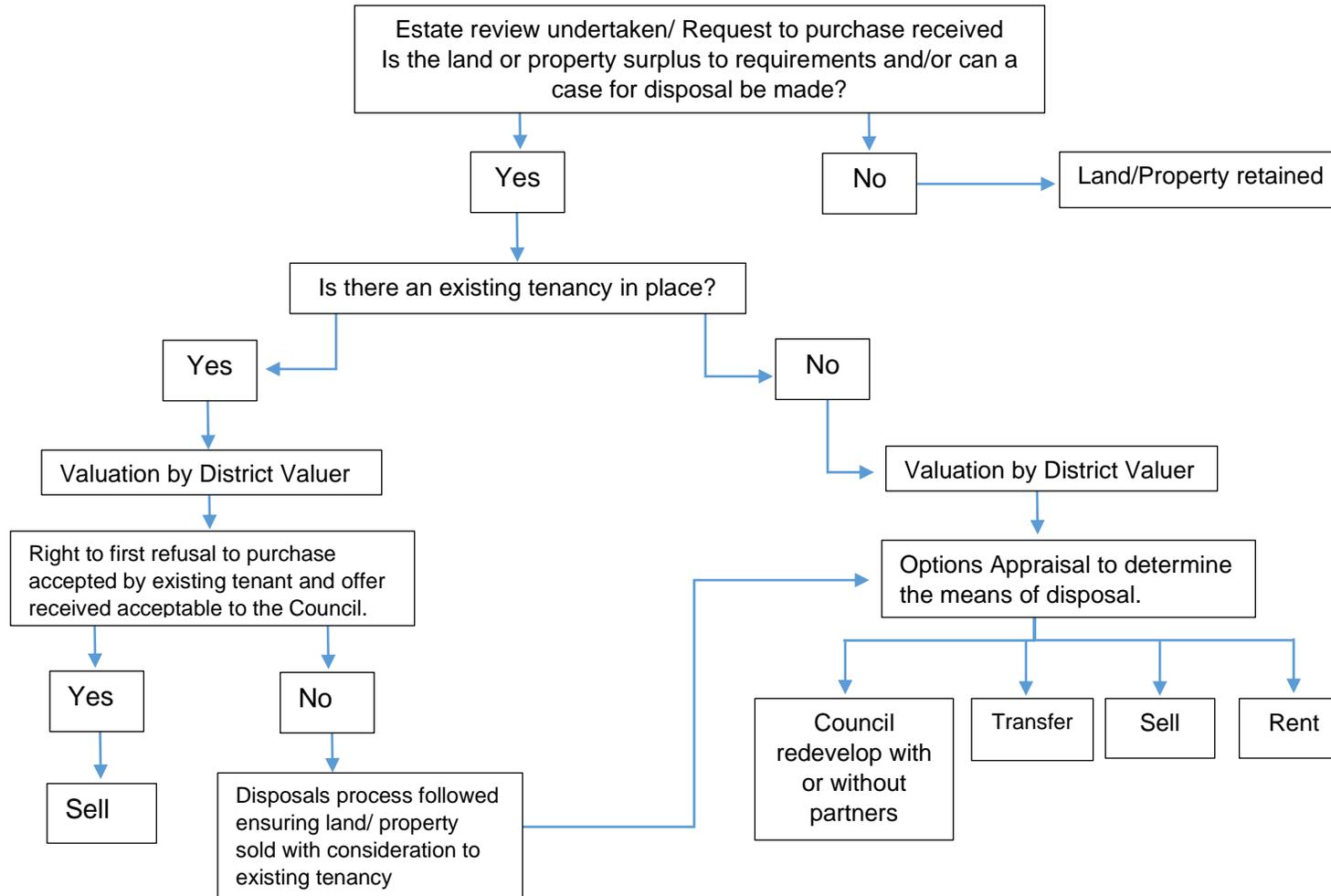
- 16.1 Guidance from the Local Government Ombudsman recognises the problem caused to local authorities by 'late bids'. The Guidance states that difficulties are less likely if Councils ensure that exchange of contracts take place as soon as possible after the decision to sell (or lease) is made. It suggests that local authorities should be allowed to sell at an agreed price within a reasonable period of reaching a 'subject to contract' agreement.
- 16.2 In the context of the methods of land disposal dealt with in this document, a late bid may occur:
- i in the case of a private sale, after a sale or lease has been agreed, but before exchange of contracts;
 - ii in the case of a public auction, after the auction has been closed, but the reserved price not having been met;
 - iii in the case of a formal tender, after the closing date for tenders, but before selection of the successful tender;
 - iv in the case of an informal or negotiated tender, after receipt of bids, but before exchange of contracts or signing of any agreement.
- 16.3 'Late bid' must be considered in the context of the individual circumstances at the time and based on the method of land disposal used. In each case, the general overriding duty will be to obtain best consideration that can be reasonably obtained. The Council's approach to late bids is as follows:
- i The Council discourages the submission of late bids in all cases when it is disposing of land. It will attempt to minimise problems by aiming for early exchange of contracts;
 - ii Where land is being disposed of by way of formal tender, bids received after the deadline for tenders, will not be considered;
 - iii Late bids cannot be considered where land is being disposed of by public auction after a successful bid has been accepted;

- iv Except as provided herein, until the Council has entered a legally binding contract or agreement with another person it will consider late bids unless there are good commercial reasons for not doing so. This should be explained to any purchaser when a disposal of land by private sale or negotiated/informal tender is agreed;
- v Consideration of a late bid does not automatically mean that it will be accepted even if it is the 'highest' bid. The Council will take into account the likelihood of the late bid proceeding to completion in a timely manner and the possibility of late bids used as a spoiling or delaying tactic;
- vi Subject to the above, the Council may, in appropriate circumstances, request the late bidder and the person to whom the land was previously to have been sold, invite both parties to submit their last and final bids in a sealed envelope by a set deadline;
- vii A decision on whether to accept a late bid for a private sale, informal tender or by exchange are to be made either by the Executive or delegated powers.

16.4 A last-minute bid may be rejected for sound commercial reasons. For example, if there is no real certainty of it leading speedily to a contract or is suspected as a spoiling bid.

17. Disposals Flowchart

All disposals must be in line with the current Financial Regulations² for the Council in terms of the process of approval and referral to Full Council where necessary and at the appropriate time within the below process.



² Financial Regulations: <https://committees.scilly.gov.uk/mgCommitteeDetails.aspx?ID=271>

INTERNAL AND EXTERNAL AUDIT

Audit trails of all acquisitions and disposals will need to be maintained and accessible by Internal/External Audit to verify actions/values and how the authority made the decision to acquire/dispose. Each acquisition or disposal will need to have an electronic audit file to include an options appraisal, business plan, legal documentation and valuations etc.

Any appointment of a third-party consultant must reserve the right of access to their records in relation to the transaction, both during and after the completion of any agreement. This will need to be dealt with by way of appropriate contract conditions.

Finance must be provided with copies of valuation documents and details of the following values when a property is disposed of by freehold sale:

- i Unrestricted value
- ii Restricted value (if relevant)
- iii Actual disposal value

POLICY MANAGEMENT

The policy owner may undertake amendments of an administrative nature as necessary, or to secure continuing compliance with the law, in consultation with the Lead Member for Housing and Corporate Estate. Any amendments will be communicated to members through the Service Plan published annually and where appropriate brought to Full Council for ratification. Dissemination will be by publication on the Open Data page of the council website following guidance for access to information requirements, and where appropriate via additional distribution using the council's policy dissemination tool. The final, current Word document will be copied to the Active Policies folder of the network Shared Resources>Policies>Active policy documents – WORD.

POLICY REVIEW AND EVALUATION

This Policy will be reviewed by the Asset Management and Development service in line with any updates to relevant legislation, policy or Financial Regulations. This review will take place every 3 years, unless relevant guidance requires this sooner. Any reviews will consider the effectiveness of the policy's implementation in consultation with relevant Officers and external parties, as necessary.

We want to ensure that your needs are met.

If you would like this information in an audio format, Braille, large print, any other format or interpreted in a language other than English, please contact:

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ANNEX 1

Legislation relating to Acquisitions and Disposal

Legislation relating to Acquisitions

The Local Government Act 1972 section 120 empowers a principal council to acquire by agreement any land inside or outside its area:

- (1) For the purposes of:
 - (a) any of their functions under any enactment; or
 - (b) the benefit, improvement or development of the area.

- (2) A principal council may acquire by agreement any land for any purpose for which they are authorised by this or any other enactment to acquire land, notwithstanding that the land is not immediately required for that purpose; and, until it is required for the purpose for which it was acquired, any land acquired under this subsection may be used for the purpose of any of the council's functions.

Local Government Act 2003 section 12 gives local authorities' power to invest. It provides that a local authority may invest:

- (a) for any purpose relevant to its functions under any enactment; or (b) for the purposes of the prudent management of its financial affairs.

Legislation relating to Disposal

The Local Government Act 1972 section 123(1) gives the council the power to dispose of land and property. It states that 'a principal council may dispose of land held by them in any manner they wish' subject to a number of provisions, which are as follows:

- 1) 123(2) except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained. The Council shall not dispose of land under this.

However, The Local Government Act 1972: General Disposal Consent (England) 2003 gives consent to disposal of land otherwise than by way of a short tenancy by a local authority in England for less than best consideration subject to specified

circumstances. The Council can therefore sell at an under value without the requirement for approval from the Secretary of State in line with the following specified circumstances:

- a) The local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;
 - (i) The promotion or improvement of economic well-being;
 - (ii) The promotion or improvement of social well-being;
 - (iii) The promotion or improvement of environmental well-being; and

- b) The difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2 million pounds.

See section 8 of this policy relating to disposal of land at less than best consideration.

123 (2A) A principal council may not dispose under subsection (1) above of any land consisting or forming part of an open space unless before disposing of the land they cause notice of their intention to do so, specifying the land in question to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed disposal which may be made to them.

123 (2B) Whereby virtue of subsection (2A) above a council dispose of land which is held –

- (a) for the purpose of section 164 of the Public Health Act 1875 (pleasure grounds); or
- (b) in accordance with section 10 of the Open Spaces Act 1906 (duty of local authority to maintain open spaces and burial grounds).

The land shall by virtue of the disposal be freed from any trust arising solely by virtue of its being land held in trust for enjoyment by the public in accordance with the said section 164 or, as the case may be, the said section 10.

123 (7) For the purposes of this section a disposal of land is a disposal by way of a short tenancy if it consists –

- (a) of the grant of a term not exceeding seven years, or
- (b) of the assignment of a term which at the date of the assignment has not more than seven years to run

and in this section “public trust land” has the meaning assigned to it by section 122 (6) above.

Property Misdescriptions Act 1991 and The Property Misdescriptions (Specified Matters) Order 1992.

This Act makes it an offence for estate agents or property developers to make false or misleading statements in the course of their business about a number of property related matters (including, amongst other things: the location or address of the property; its aspect; accommodation; measurements and sizes; physical or structural characteristics; availability of services; proximity of services; etc.).

Whilst compliance with this Act will primarily be the concern of the selling agent appointed by the Council, the practical effect of this is that any information supplied by the Council must be accurate and must not be misleading. Furthermore, all reasonable steps should be taken to check the accuracy of information before it is disclosed.

ANNEX 2

Land and Property Disposal Options

Disposal by Private Treaty Sale

A disposal by Private Treaty Sale may take place after a period during which the land is put on the market including advertising and generally making known that it is available for sale. In this case, the Council will be able to consider the highest bid as representing the best consideration that can be reasonably obtained.

If land is to be sold by Private Treaty Sale without being marketed, then the reasons justifying a private sale must be recorded in writing. In some circumstances the Council may seek an additional independent valuation to verify that 'best consideration' is being obtained in the current market. Negotiations are to be fully documented.

A private sale without the land being marketed may be justified where: (a) the land to be disposed of is relatively small in size and an adjoining or closely located landowner is the only potential or likely purchaser.

(b) the nature of the Council's land ownership and that of the surrounding land ownership is such that the land must be sold to adjoining or surrounding landowners if best consideration is to be obtained.

(c) the Council's land is part of a larger area of land that is proposed for development, redevelopment or regeneration where the nature and complexity of the proposed development of the overall site is such that the Council's corporate objectives and best consideration can only be achieved by a sale to a purchaser with an existing interest in land in the area.

A legally binding agreement will not be reached until either contracts for the lease or sale of land are exchanged or a development agreement is signed.

Where a number of parties have expressed interest it may be appropriate to invite "best and final offers". Where it is used, all of the parties should be invited to submit their "best bid" within a certain timeframe (subject to contract). This procedure may carry risks in that some parties may not wish to proceed on this basis and withdraw.

Disposal by Public Auction

Sale by public auction may be appropriate where there is no obvious potential purchaser and where speed and the best price can be obtained by auction.

The authority must record in writing:

- (a) the reasons justifying a sale by public auction;
- (b) the reserve price, if any, for the auction;
- (c) the authority for a Council officer to attend the auction and to act on behalf of the Council on the sale.

The contract for sale or lease must be ready for exchange at the auction. A binding contract will be made on the acceptance of the highest bid providing it has reached the reserve price. Contracts for the sale or lease will immediately be signed on behalf of the Council and exchanged with the purchaser.

Disposal by Formal Tender

A sale of land by formal tender may be appropriate where the land ownership is not complex and the Council is seeking obligations to be placed on the successful tenderer which are clear and capable of specification in advance. In such instances, a process of formal tender may be appropriate in gaining best consideration.

Formal tenders will not be appropriate where the land ownership position is complex or the development proposals for the land are insufficiently identified or otherwise incapable of detailed specification at the pretender stage.

The nature of the formal tender process is that a legally binding relationship is formed when the Council accepts a tender in writing. It is essential therefore, that every aspect of the disposal is specified in the tender documents. The tender documents should include a contract for sale or lease which should be completed with the tenderer's details, the tender price and be signed by the tenderer. It will be released unconditionally to the Council on submission of the tender.

Sale of land by formal tender will require a detailed specification to be drawn up. This will specify the land to be sold, any requirements to be met by the tenderer and any obligations that must be met.

The Council will place a public advertisement seeking expressions of interest and publicise the selection criteria by which it will assess tenders. Those individuals selected will then be invited to submit their tender bids.

Disposal by Exchange of Land

Disposal by exchange of land will be appropriate when it is advantageous to the Council and other parties to exchange land in their ownerships and will achieve best consideration for the Authority. A binding legal agreement will be created

when a contract is exchanged for the exchange. The exchange will usually be equal in value. However, an inequality in land value may be compensated for by other means where appropriate. For example, where the Council in exchange for a larger piece of land receives a smaller piece of land but the recipient of the larger plot agrees to build industrial units on the Council's smaller area to equalise the consideration. In such circumstances the Council may seek an independent valuation to verify that 'best consideration' will be obtained.

Disposal by Informal/Negotiated Tender

A disposal by informal/negotiated tender differs from a formal tender in that neither the Council nor the successful bidder is legally obliged to enter into a contract for the disposal of the land. The informal/negotiated tender process allows the Council to identify one preferred bidder with whom it may then negotiate further detailed terms or proposals for the development of the land concerned.

The Council uses a public advertisement to request informal development proposals for land that meet a given specification. This process is particularly useful for large or complex development or regeneration sites requiring development and where the proposals may need to be developed in cooperation with the preferred bidder to meet the Council's corporate objectives and to achieve the best consideration that can be reasonably obtained.

The Council's rules for tender offers contained in the Contract Procedure Rules will be followed in respect of the receipt of tenders. Any exceptions to that process must be authorised and recorded in accordance with these Rules. A binding legal agreement is not created until the exchange of contracts for sale or lease or the signing of a development agreement.

Exceptions

Other methods of disposal may be used where circumstances warrant them.

Change log

DATE	COMMENTS	NAME, ROLE
DATE	COMMENTS	NAME, ROLE
DATE	COMMENTS	NAME, ROLE
DATE	COMMENTS	NAME, ROLE