

PART 4H – LAND & PROPERTY TRANSACTION RULES

FINAL DRAFT 16.06.2025

This section was approved by Council 3rd July 2025

Section 4 Land Transactions

1 Application

- 1.1 This Procedure Rule applies where there is a land transaction.
- 1.2 The handling of Formal Tenders and Informal Tenders for Land Transactions is governed by the principles contained in the document entitled “Formal Tenders and Informal Tenders in Land Transactions”, attached as Schedule 1 to these Rules.
- 1.3 The disposal of land is governed by the principles contained in a document entitled “The Framework for the Disposal of Property” originally approved at Cabinet on 13 October 2003. It is not proposed to repeat the principles as individual Rules within these Land Transaction Rules and Officers should refer to the document attached as Schedule 2 directly for Guidance.
- 1.4 The handling of late and/or unsolicited offers in connection with Property disposals is governed by the principles contained in the document “A Protocol for responding to Late and/or unsolicited offers in connection with Property Disposals” attached at Schedule 3 to these Rules.
- 1.5 With the exception of Contracts Procedure Rule 1, none of the Council’s other Contracts Procedure Rules apply to Land Transactions, unless otherwise stated in this Procedure Rule.

2 Maintenance of Land and Property Records etc.

- 2.1 The Director of Housing is responsible for:
 - (a) Maintaining records of all dwellings and buildings erected or acquired under the Housing Acts;
 - (b) Maintaining records of tenancies in respect of premises managed by the Housing Service.
- 2.2 The Director of Estates and Building Services is responsible for maintaining records of all other land and properties owned by the Council (on whatever tenure), and all interests in land granted.
- 2.3 The City Barrister is responsible for the secure custody of all title deeds, land certificates, contracts and agreements associated with the ownership and letting of properties; except that the Director of Housing shall have custody of agreements relating to the tenancy of HRA dwellings.
- 2.4 Other than the sale of HRA dwellings, no land or property shall be disposed of except by the Director of Estates and Building Services. No land or property shall be disposed of without prior valuation by a suitably qualified person.

- 2.5 The City Barrister and Head of Standards shall be responsible for executing legal documents for the acquisition of land and property, and in liaison with instructing departments arrange for the completion of acquisitions on behalf of the Council in accordance with the requirements of the constitution.



Schedule 1: Dealing with Formal Tenders and Informal Offers in Land Transactions

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<u>1</u>	<u>Dealing with Formal Tenders and Informal Offers in Land Transactions</u>
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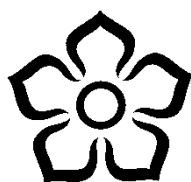
SCHEDULE 1

1. **Dealing with Formal Tenders and Informal Offers in Land Transactions**

- 1.1 When the deadline is set for receipt of Tenders (including a time limit for electronic submission as specified in the Tender), the Estates & Building Services Officer should arrange a date and time for the tenders to be opened in the presence of the appropriate Finance Officer and such other officer as may be required, either by accessing the virtual Tenders (if submitted via a digital vault) or by way of a meeting. The Council's Asset Strategy Manager must be given notice of the receipt of Tenders.
- 1.2 Interested parties must be informed of the address for delivery of Tenders, which should usually be the Council's principal place of business, for the attention of the Director of Estates and Building Services, stating the contact name of the officer issuing the Tender, or to be submitted via a specific email address or digital vault as stated in the Tender documents.
- 1.3 Documentation supplied to the Tenderer must state the following Tender requirements:
 - 1.3.1 The closing date and time for the receipt of Tenders.
 - 1.3.2 That the Tender envelope/package or virtual submission to be submitted is only to be labelled using the official address label supplied with the Tender documents, the relevant email address or digital vault access.
 - 1.3.3 That the Tender submission must bear no indication of the identification of the Tenderer. Consequently, the Tenderer must ensure that, for example, if the Tender submission is returned by recorded delivery or courier, that the name and address of the sender is not stated on the recorded delivery/courier's label, usually attached to the envelope/package or in respect of any electronic submission.
 - 1.3.4 If the Tender envelope/package is delivered by hand, the person delivering it must obtain an official receipt from the Council.
 - 1.3.5 Any late Tenders and Tenders delivered by post, courier or personally to the wrong location, even if it is another City Council office, may be deemed void and may be opened (to identify the sender) and returned to the sender with an explanation in writing of the reason for its rejection. Notwithstanding this Rule, when dealing with a Late and/or Unsolicited Offers in connection with Property Disposals Officers should have regard to the Protocol entitled "A Protocol for Responding to Late and/or Unsolicited Offers in Connection with Property Disposals", attached at Schedule 3 to these Rules.
 - 1.3.6 That it is the Tenderer's responsibility to deliver the Tender to the location on the official address label of electronically before the closing

date and time and the City Council does not accept any liability for non-delivery, late delivery or delivery to the wrong location or incorrect email address or other method of electronic submission, by any company or other organisation or person charged by the Tenderer for its delivery.

- 1.3.7 That the tendered bid must not be calculable by reference to another bid, document or formula and must be exclusive of VAT.
- 1.3.8 That the Council does not bind itself to accept the highest or any Tender.
- 1.3.9 That Tenderers must accept full responsibility for ensuring compliance with the above requirements and that failure to do so may render the Tender liable for disqualification.
- 1.4 All Tenders must be delivered in accordance with the foregoing paragraphs of this procedure. On receipt of each Tender, details are to be recorded and each submission referenced by EBS. No Tenders should be accepted other than via the specified procedure.
- 1.5 Before opening the Tenders, reference numbers for each Tender is cross-referenced accepted as correct on the date specified for opening and each Tender recorded and signed or recorded electronically by the officers attending the opening.
- 1.6 After opening, all documentation is to be retained by the officer in Estates and kept secure. in order to provide a complete audit trail.

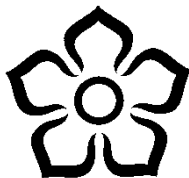


Leicester
City Council

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Leicester
City Council

SCHEDULE 2

THE FRAMEWORK FOR THE DISPOSAL OF PROPERTY

1 INTRODUCTION

- 1.1 The City Council is a major property owner in the City with land and buildings held for operational and non-operational purposes. The operational property includes administrative buildings, schools, libraries, museums, leisure centres, residential centres of various types, council housing stock, theatres and parks. The non-operational property is principally freehold and let by way of ground leases, leases, tenancies and licences. It includes a wide range of retail, commercial and industrial property held for economic development, regeneration and other strategic purposes.
- 1.2 With this large property holding, inevitably the City Council receives requests from a wide variety of individuals and organisations seeking to acquire particular properties. This disposals framework is intended to guide Members in relation to the legal position, the Council's current policy and to ensure that, as far as possible, consistent and equitable responses are given to these requests. Prospective purchasers reading this framework must not assume that they will secure a particular site or property if they consider they fall within one of the exceptions to open marketing of property.

2 METHODOLOGY TO DETERMINE WHETHER DISPOSAL IS APPROPRIATE

- 2.1 When considering the disposal of any property asset it is first necessary to determine:
- 2.1.1 Whether the Council still requires the property in order to deliver the function for which it is currently held and, if so, whether by:
- (a) Direct service provision by the Council.
- OR
- (b) Indirectly through third parties (by way of, for example, lease, partnership, management agreement).

2.1.2 Whether it is still required in order to fulfil another service/function of the authority.

2.1.3 Whether it should be disposed of to facilitate the exercise of any function of the authority (e.g. housing land for the provision of housing accommodation or the sale contributes to necessary council finances etc).

2.1.4 If it is identified as surplus, to dispose of the property to obtain a capital receipt or revenue equivalent in line with Council's own priorities or other directive i.e. a capital directive.

A 'gateway' assessment for each asset/property with potential for transfer should be conducted including consideration of the condition of the facility, alternative development/disposal scenarios, assessment of potentially competing provision from other centres and assessment of potential alternative transfer beneficiaries.

As part of its asset management planning the Council will review each asset it owns for alternative development and disposal. Where practical and feasible the Council will consider opportunities for the transfer of assets to appropriate community bodies under the CAT Policy, however, the Council will need to balance the competing interests of community groups with the Council's needs.

3 THE COUNCIL'S LEGAL REQUIREMENTS

1.1. The umbrella under which all local authorities operate in relation to the transfer/disposal of their assets is the Local Government Act 1972, in particular sections 120 -123. In addition, there is a general fiduciary duty placed on local authorities to act reasonably and in the interest of the taxpayers, and consistent with the effective, economic and efficient discharge of the authority's functions. In other words, the Council should not divest itself of a valuable asset at an undervalue unless it is satisfied that circumstances justify such action.

1.2. It is Section 123 of the Local Government Act 1972 that requires local authorities to dispose of land for the best price reasonably obtainable, unless either consent is obtained from the Secretary of State to the disposal or the disposal is a short-term one, (less than 7 years). Price can either be a sum of money or something that has a commercial or monetary value that is capable of being assessed. Further, local authorities must be able to evidence that best consideration has been obtained. In some cases, particularly development land, this requires a marketing exercise to be undertaken and can include business case evidence. Current good practice (for example the Local Authority Asset Management Programme issued by RICS), and guidance on disposal of Local Authority Assets issued by the Ministry of Housing, Communities and Local Government issued in March 2016, and earlier guidance indicates that third party valuations are not always sufficient evidence of best consideration. The Council therefore needs to ensure an open competitive marketing of property takes place in all but a few circumstances and thorough assessments are made.

- 1.3. Reference was made above to the consent of the Secretary of State. A specific application to the Secretary of State for consent may not be necessary in every case where the disposal is at less than best consideration, however there are stringent value parameters that have to be adhered to. The Local Government Act 1972: General Disposal Consent (England) 2003 gives local authorities consent to the disposal of land within specified circumstances i.e. where the Authority considers that the purpose for which the land is to be disposed of is likely to contribute to the achievement of any one or more of the following objectives in respect of the whole or in any part of its area, or of all or any persons resident or present in its area:

3.3.1 The promotion or improvement of economic well-being.

3.3.2 The promotion or improvement of social well-being.

3.3.3 The promotion or improvement of environmental well-being.

In each case it is a condition that the undervalue must not exceed £2 million. Further, the authority must remain aware of the need to fulfil its fiduciary duty in a way which is accountable to local people (this consent does not apply to land held under powers derived from certain Planning and Housing Acts nor does it enable the disposal of public open space without undertaking the advertising procedure set out in, for example, the Local Government Act 1972). An assessment will need to be made as to the option that will deliver most sustainable benefit to the local community. Where possible, potential beneficiaries can be brought together in a partnership, and this can result into a collective benefit to meet wider public purpose.

- 3.4 In addition, it should be noted that prior to the disposal of land constituting or forming public open space (whether or not it is designated as such), the land will need to be advertised in a local newspaper for two successive weeks in accordance with s.123(2)(A) of the Local Government Act 1972, and any objections to be considered by an appropriate decision maker.

4 EXISTING POLICY – THE GENERAL ASSUMPTION RE PROPERTY DISPOSALS

- 4.1 The general assumption is that the City Council's property is marketed on the open market in accordance with the established good practice procedures to obtain best consideration and therefore not requiring the Secretary of State's consent (or use of the General Consents).
- 4.2 In addition, however, a few specific exemptions have been agreed to address particular circumstances in order to seek to address the changing priorities and pressures, as explained in detail below.

5 THE FRAMEWORK

5.1 The General Assumption re Property Disposals

The general assumption is that the City Council's property is marketed on the open market in accordance with the established good practice procedures to obtain best consideration and therefore not requiring the Secretary of State's consent (or use of the General Consents).

5.2 Exceptions to Open Marketing

A number of exceptions have been identified where requests or proposals to purchase property from the City Council, negotiated on a 'one-to-one' basis and to the exclusion of other potential purchasers, would be appropriate. Disposals on this basis are likely to require the consent of the Secretary of State (unless either covered by the General Disposal Consent or where there is adequate comparable evidence to support the valuation of the property).

These exceptions are as follows:

5.2.1 Regeneration.

5.2.2 Service Delivery.

5.2.3 Major Projects of Regional or National Significance.

5.2.4 Special Purchasers.

5.2.5 De minimus.

5.2.6 Delivery of Council priorities.

Considering each in turn:

5.2.1 Regeneration

The disposal to any person or body where the terms of the disposal are to facilitate regeneration that, for reasons of either site assembly, preferred developer status, or preferred scheme, it is necessary to treat with that person or body to the exclusion of others, but nonetheless on reasonably commercial terms. Such a disposal may involve a disposal of property to enable the relocation of displaced occupiers from other strategic development sites.

An agreement for the disposal of land for the purposes of development or redevelopment where any consideration is, in whole or in part, deferred and is calculable in whole or in part by reference to the profit or value of the development or redevelopment to be undertaken subject to a full assessment of the anticipated outputs and policies for such

arrangements (including financial policies), which shall be on an open basis and to ensure an appropriate rate of return for the Council.

5.2.2 Service Delivery

A disposal to a person or body where the terms of the disposal are to facilitate the exercise of the Council's functions, subject to the Council's budget, policy framework, and objectives and where there are:

- (a) Significant returns or benefits to the Council commensurate with the level of service or function that would otherwise have been provided by the Council, or
- (b) Where the services are of a high priority, but the Council is not delivering the service direct.

However, in both cases, where there is a market for similar service provision this category shall not apply.

5.2.3 Major Projects of Regional or National Significance

Disposals where the terms of the disposal require the use of the land for a major project of regional or national importance or where major social, economic or environmental benefits are anticipated to the local community or Leicester as a whole. Also, disposals to other organisations that have broad based community support and which generate significant economic benefits to the City.

In such cases in order to maintain transparency, appropriate criteria are required to provide an "audit trail" of the decision as to why one interested party was selected without undertaking a marketing exercise. It is suggested that the following are considered:

- (a) Other Potential Purchasers
 - (i) Likelihood of alternative uses.
 - (ii) Likelihood of alternative bodies who may have the potential to deliver the project outputs.
- (b) Location
 - (i) The proposal complements existing regeneration priorities.
 - (ii) The site is situated within a ward ranking in the 10% of the most deprived wards nationally.
 - (iii) The geographic location of the property is effectively limited by the nature of the constitution of the purchasing organisation.

(c) Strategy

- (i) The proposed use and outputs relate to a key action(s) in accordance with the Council's wider strategic policies and objectives.
- (ii) Is community-based and "not for profit".
- (iii) The disposal is on a leasehold basis only.

(d) Funding

- (i) The prospective lessee has secured sufficient external funding (and has demonstrated the existence that such funding is available without any further conditions) to enable acquisition of the property at open the market value. A prospective lessee may be given a reasonable period of time to secure necessary funding (for example by way of an Agreement to Lease) and also to evidence to funders the availability of the property to the applicants.
- (ii) An appropriately approved Business Plan and Project Appraisal are in place.

5.2.4 Special Purchaser

It is recognised that consent may not be required in the case of special purchasers where the valuation advice is that the method of disposal, even if that is to deal with a particular party without seeking to ascertain what others may be willing to pay (i.e. on a one to one basis), will secure, and does secure, the best consideration reasonably obtainable. These circumstances will be limited; examples are ransom strips and 'the tenant's bid'. Appropriate valuation advice should be obtained in all circumstances to ensure the Council is obtaining the best consideration and necessary value in these disposals.

5.2.5 De minimus

Disposals to a person or body for the purposes of, and on the terms that, they become responsible for keeping the land and buildings erected, or to be erected, e.g. garages or garden sheds, in good condition and repair where any marketing exercise would merely involve abortive expense and where the land has a capital value of less than £2,500, or where it would be to the mutual advantage of the Council and an adjoining owner to make minor adjustments in boundaries by undertaking an exchange of lands.

5.2.6 Delivery of Council Priorities

Disposal to a partner for a purpose which helps the Council deliver its priorities.

Disposal to support the Council's own financial priorities and needs, including any central government capital directive.

6 THE TERMS OF THESE "EXCEPTIONAL DISPOSALS"

Freehold or Leasehold

- 6.1 Whether the disposal is on a freehold or leasehold basis will depend on the particular circumstances in each case. Freehold disposals maximise the capital receipt but result in a loss of future control of the property though restrictive covenants could be imposed though it is noted that at times enforcement can be problematic, particularly when the use or changes in the locality may have rendered the covenant obsolete or of no further practical effect.
- 6.2 Leasehold disposals allow greater control and are appropriate where disposals are seeking particular outputs (e.g. service delivery) on an annual basis.

Best Consideration

- 6.3 The general assumption with regard to these 'Exceptional Disposals' is that the property will be disposed of at 'the best consideration reasonably obtainable'. The exceptions to this assumption will be either:
 - 6.3.1 The Council has considered the benefits, advantages and disadvantages of a disposal at less than best consideration,
 - OR
 - 6.3.2 The consideration payable under the disposal cannot be evidenced as best consideration (see 3.2 above).
- 6.4 In both these exceptions the disposal will be subject to the consent of the Secretary of State (unless covered by the General Disposal Consent (England) 2003) and also having regard to the City Council's general fiduciary duty (see 3.1 above).
- 6.5 In those cases where 'best consideration' is not required then, before arriving at this decision, it is suggested that the following factors are considered:
 - 6.5.1 The ability of the purchaser/lessee to pay the full value.

- 6.5.2 The value of non-monetary benefits.
- 6.5.3 The value of any other conditions imposed by the City Council.
- 6.5.4 The planning position.
- 6.5.5 The Council's general fiduciary duty.
- 6.5.6 The possibility of the disposal setting a precedent.
- 6.5.7 Additional wider community benefit that would not otherwise be realised.
- 6.5.8 Whether the disposal will lever in external funding.
- 6.5.9 Whether the disposal contributes to the achievement of the promotion or improvement of economic, social or environmental well-being.
- 6.5.10 To balance the requirements of the Council to maximise the monetary value of disposal of assets against the added value of asset transfer to a charity or community organisation.

- 6.6 In those cases where the consideration cannot be evidenced then, in order to seek the Secretary of States consent, it will be necessary to identify at least a modest undervalue in order to obtain the consent and protect the City Council from challenge. The circumstances must nonetheless justify such action and the factors mentioned in 6.7 are again relevant. An independent valuation will be obtained in these instances to support the application to the Secretary of State or the use of the General Disposal Consent.

7 REVOCATION OF PREVIOUS POLICIES

- 7.1 This 'Framework for Disposals' revokes all previous policies relating to disposal of property directly to individuals, companies, organisations and any other bodies without undertaking a full marketing exercise. Those decisions taken prior to the introduction of this policy will not be affected (unless the need to review any decision arises from a change in circumstances e.g. default by the previously identified prospective purchaser).

APPENDIX 1 – Financial Policy to be Adopted for joint development projects

- 1 The following principles shall always apply:
 - (a) Obtaining value for money in all transactions.
 - (b) That all functions are discharged economically, effectively and efficiently. All valuations shall be fair and current and to relevant and appropriate professional standards.
- 2 Processes shall be transparent and consistent, and all financial dealings and commitments shall be subject to proper bookkeeping and capable of disclosing an adequate audit trail.
- 3 Land disposals shall be compliant with Section 123 of the Local Government Act 1972 (or any equivalent provision) and also provide a reasonable return to the Council. There shall be sufficient evidence to ensure and demonstrate compliance with this principle.
- 4 Due consideration shall be given to the VAT position and the efficiency of opting to tax to ensure the best return from the project, subject always to the protection of the Council's VAT shelter.
- 5 Arrangements and transactions shall be above board and provision shall be set out in particular to deal with situations of actual or apparent conflict of interest and the prevention of the making of improper inducements.
- 6 Any special purpose vehicle shall avoid being subject to regulation, regulated, controlled or influenced under Part V of the Local Government & Housing Act 1989 (or any equivalent provisions succeeding this Act).
- 7 Proper provision shall be made to cover insurance and risk management.
- 8 Provision shall be made for the proper treatment of income and expenditure in relation to project property during the project.
- 9 Any financial plan shall be of a robust standard, in particular having regard to proper practices of audit and account and prudent forecasting.
- 10 There should be no commitment to the resources of the Council above that which has been specifically agreed by the Council.

APPENDIX 2 – Community Asset Transfer Policy

Community Asset Transfer Policy

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1. Introduction

- 1.1 This section outlines the history of Leicester City Council's Community Asset Transfer Policy.
- 1.2 The Local Government White paper "Strong & Prosperous Communities" set out a new relationship between local government and its communities based on a devolution of power by giving residents greater say over local services. The City Council therefore adopted its "Policy for transfer of assets for community governance" as an addition to the "Framework for Disposal of Property" in 2008.
- 1.3 In 2011 it was agreed to offer community groups who had been stable, long-term tenants in council properties the opportunity to buy their premises at market value less a 20% discount. This provision is now superseded by the below.
- 1.4 The Localism Act 2011 sought to further empower communities to self-manage and reducing funding required Councils to consider different ways of delivering community services. With these factors in mind, the policy was reviewed to reflect these changing circumstances.

The Community Asset Transfer (CAT) Policy is a voluntary process entered into proactively by public bodies.

The Community Asset Transfer Policy is only one way in which groups and organisations can acquire assets. Other ways include the Community Right to Bid, more information on which can be found at Understanding the Community Right to Bid - MyCommunity here: [LOCALITY BID_UNDERSTANDING](#)

- 1.5 As an outcome of the Council's service transformation plans and part of its commitment to localism and community initiatives the Council produced a Policy for Council Assets of Community Governance in 2014 (revised in 2022) which detailed how surplus assets can be made available for use by community/voluntary organisations, either through a grant of a lease or possibly a freehold transfer.

Changes in the Local Authority landscape have meant this policy needs updating and therefore this document sets out the current policy (as amended in 2025).

- 1.6 An asset is defined as buildings and/or land owned by the Council.
- 1.7 This policy is only applicable to assets that are not subject to an existing lease from the Council (other than existing Community Asset Transfer leases). All existing leasehold interests will remain in place until the contractual end date or are ended by other appropriate legal means.

At this time (if the lease does not allow for automatic renewal) then procedures under the Land Transaction Rules will be reviewed prior to the application of the Community Asset Transfer Policy which will be referred to and act as a guide when the future use of the asset is being considered, i.e. if the property is still surplus to the Council's requirements then a new business case shall be required to be submitted in accordance with the policy.

That any pre-CAT Policy equivalent transfers, whether that be a lease/license lease on renewal or earlier if a trigger event applies is brought forward under the latest CAT Policy or are simply transferred to regularised leases (if relevant).

- 1.8 This Community Asset Transfer (CAT) policy will enable use of assets by community/voluntary organisations that are not-for-profit and are registered e.g. a registered charity, community interest company, etc. The Council will advise if an organisation has any doubt in relation to eligibility. Please see 'A Guide to Community Asset Transfer' on our website: www.leicester.gov.uk.

2. Eligibility for a Community Asset Transfer

- 2.1 When considering the disposal of any property asset the Council must first determine whether it still requires the asset (land or property) in order to deliver the function for which it is currently held and, if so, whether by:
- (a) Direct service provision by the Council.
- OR
- (b) Indirectly through third parties (by way of, for example, lease, partnership, management agreement).
- 2.2 Whether it is still required in order to fulfil another service/function of the Authority.
- 2.3 Whether it should be disposed of to facilitate the exercise of any function of the Authority (e.g. housing land for the provision of housing accommodation or the sale contributes to necessary council finances etc.).
- 2.4 If the asset is identified as surplus, to dispose of the property to obtain a capital receipt or revenue equivalent in line with Council's own priorities or other directive i.e. a capital directive.

3. Exclusions to the Policy

- 3.1 Once the decision at 2.1 above has been made, and the property asset is suitable for disposal, the asset will be made available for Community Asset Transfer unless one of the following exclusions applies where:
- a) The asset is leased by the Council as a tenant but the property is now surplus to requirements and consideration has been given as to whether the Council should surrender or end the lease.
 - b) The property has already been identified for utilisation under One Public Estate.
 - c) Grant conditions for capital expenditure on the property prevent the property being transferred or prevent a change of use within a specified timescale.
 - d) The proposed use and terms of the transfer would result in a liability upon the Council to repay grant monies.

e) The condition of the asset is not deemed fit for purpose or does not meet the current Minimum Energy Efficiency Standards (MEES) legislation.

f) The proposed use is not compatible with the existing or intended use of the subject asset or adjacent LCC retained land/buildings.

g) A CAT and all its community functions must demonstrate inclusivity to a wide range of citizens and users. Therefore, an intended use that envisages a narrow activity (such as primarily/principally as a place of worship) is unlikely to be consistent with this aim.

4. The Policy

- 4.1 The Council's preference is to grant a short-term lease of an asset but will consider proposals for purchasing the freehold or grant a long lease of an asset if there is a strong and justified business case to do so with the assurance that the community use will be a long-term provision.

The Council will consider each proposal on a case-by-case basis and the terms and conditions agreed will reflect the individual proposal and include such covenants/restrictions upon use as may be appropriate to protect the Council's long-term interests. This will not set a precedent for other asset transfer arrangements.

- 4.2 If an asset receives interest from several parties, then the Council will encourage collaboration to put forward a joint bid, but if this isn't achievable then each proposal will be evaluated against the same set of criteria to determine the successful bid.

4.3 General Terms for an Asset Transfer Lease

- 4.3.1 The Council will charge a market rent/value for the property, which takes account of any restriction for community use and is comparable to rental/value for alternative premises. In some cases, transfer will be assessed at less than best consideration, provided that the asset to be transferred is likely to contribute to the promotion or improvement of the social, economic or environmental wellbeing of the area, that this has been established through the business case, and that the provisions of the Land Transaction rules are satisfied.
- 4.3.2 A length of term over 7 years is classified as a disposal in law, which requires compliance with the provisions of the Local Government Act (1972) General Disposal Consent 2003¹ and State Aid rules (Subsidy rules)².
- 4.3.3 Leases over 5 years will be subject to a rent review clause.
- 4.3.4 The Council will grant leases which are contracted out of the Landlord & Tenant Act 1954 Part II which will not provide the tenant with automatic rights to renew the lease at the end of the term. However, the Council may consider granting a new lease on expiry if the property is still surplus to the Council's requirements, but a new business case may be required to be submitted in accordance with the Council's Asset Transfer Policy applicable at that time.

- 4.3.5 The permitted use within any lease will be limited to a use which is for the benefit of the wider local community.
- 4.3.6 The Council will define the responsibility of the repairs and maintenance liability within the lease by evaluating each premises on an individual basis.
- 4.3.7 The Council will expect to retain its building insurance cover over the building to ensure it is adequately covered. The lease will contain a provision for the tenant to reimburse the Council for the cost of the building insurance cover. The tenant will be responsible for insuring the contents of the building.
- 4.3.8 The tenant will be responsible for all statutory compliance and good practice (e.g. in relation to health and safety).
- 4.3.9 The Asset is to be returned at lease expiry in good tenantable repair in accordance with the lease terms and all tenants alterations removed (unless the landlord states otherwise) and any damage made good.
- 4.3.10 Assignment (transfer of the lease to another legal entity via a Deed of Assignment) may be permitted subject to Landlord's consent and compliance with the Community Asset Transfer Policy.
- 4.3.11 Sub-letting is permitted subject to Landlord's prior written consent and the rent must not exceed the passing rent based on a proportionate £/sq m basis. However, where the proposal is to charge the sub tenant a rental which is higher than the passing rent under the Head Lease on part or all of the premises, LCC will consider Landlord's consent to this subject to reserving the right to review the rent and outgoings under the Head Lease or require a share of any profit rent received, dependent on circumstances.
- 4.3.12 The tenant will be permitted to hire out space on an ad hoc basis within the asset to other community groups as long as the use reflects the permitted user clause, and use is regulated under an ad hoc hiring agreement and does not result in the creation of a landlord and tenant relationship. The tenant will be required to provide a summary of income relating to hiring charges each year, if so requested.
- 4.3.13 The Council would expect the tenant to ensure that any hiring process and agreement has regard to general safeguarding responsibilities including ensuring that the asset is not being used to disseminate extremist views as per the Counter Terrorism and Security Act 2015. The tenant will be provided with the Council's standard hiring agreement as a basis for their own use if requested.
- 4.3.14 See Appendix 1 for an example of typical lease Heads of Terms.

4.4 General Terms for an Asset Transfer Purchase

- 4.4.1 In general the Council is required to achieve the 'best consideration reasonably obtainable' when it is disposing of land or buildings. If it seeks to dispose of land or buildings below the market value, it will need to comply with

the provisions of the Local Government Act (1972) General Disposal Consent 2003¹ and State Aid rules (Subsidy rules)².

- 4.4.2 The Council will determine the market value on the basis of the potential use of the asset. This will consider both the “existing use value”, and “alternative use value” if there is clearly potential for future uplift in value having regard to planning and development potential of the asset.
- 4.4.3 Where the transfer is on the basis of providing specific community services, this commitment may be secured by a restrictive covenant as to use (supplemented by a restriction on title).
- 4.4.4 Provision will be included within the transfer for the Council to recoup an appropriate proportion of any uplift in value secured through each subsequent change of use and/or enhancement in value arising from the grant of planning permission.

1 The Local Government Act 1972 imposes a legal obligation not to dispose of assets at less than best consideration (excludes tenancies of less than 7 years) unless approved by the Secretary of State. The General Disposal Consent 2003 allows Local Authorities to transfer at less than market value provided the undervalue is no more than £2million established according to the technical annex attached to the consent **and** the purpose for which the asset is to be transferred is likely to contribute to the 'promotion or improvement' of the economic, social or environmental well-being of the area. A disposal of a surplus asset at less than best consideration also requires an Executive Decision.

2 Subsidy rules refers to the forms of assistance from a public authority, which has the potential to distort competition and trade in the Subsidy rules and can apply to disposals to charities and other public bodies as it is the relevant activity undertaken by the recipient not the latter's identity.

5 Additional Conditions

- 5.1 Any transfer will **include** fixtures and fittings unless there is a Council requirement for the items at an alternative location.
- 5.2 Any transfer will **exclude** IT infrastructure.
- 5.3 Where there is a need for planning permission to be secured in order to enable a proposal to be taken forward this will be the responsibility of the prospective tenant. A decision on the part of the Council to transfer an asset does not guarantee that planning permission will be granted.
- 5.4 Each party to bear their own legal and agents fees.
- 5.5 Any exception to this Policy must be approved by the relevant Director of Estates and Building Services in conjunction with the Council's City Barrister and in consultation with the City Mayor.

6 The Process for Applications

- 6.1 Once it has been decided that a property asset can be made available, The Council will consider the transfer of the asset on terms to be agreed. This will be by leasehold, or, exceptionally, by freehold disposal.

Interested parties must firstly apply to the Council setting out their Expression of Interest (Eoi). A decision will be made once all Eois are received to accept or reject an Eoi and not take it forward to the next full application stage.

All Eols received will need to demonstrate the following:

- a) The proposal makes good use of the property asset in terms of opening hours, accessibility to all residents, service delivery, wider community aims etc.
- b) The proposal represents good community value, taking into account the expected social, economic, and environmental wellbeing benefits.
- c) The proposal supports the Council's Strategic Objectives.
- d) There is evidenced need and demand for the proposal and it has local support.
- e) The proposal is financially viable and sustainable. Financial viability pressures will not be addressed through reducing property maintenance costs that are required to be borne by the transferee.

Transfer of property assets for community governance is the legal transfer of property (via a management agreement, a meanwhile use agreement, licensing, letting or sale) by the Council to community-led organisations for them to manage and operate to provide community benefits in accordance with the Council's priorities and strategies.

- 6.2 The Council will use this Eol information provided to initially assess the proposal against the Policy. If it meets the criteria, the Council will then require the full submission of a detailed Business Case (BC) to support the proposal. (See 7.1) A Business Case template form will be sent to all successful Eol applicants.
- 6.3 The Council will provide suitable third party support to help all those organisations who will be preparing a Business Case.

The Council will test the final Business Case submitted against the key principles of this policy but also expect the Business Case to provide in detail:

- a) A statement of clear purpose and outcomes that would be delivered by the community use of the asset, including consideration of the extent to which the proposal meets identified local needs as well as broader policy priorities.
- b) The proposed arrangements for the management body, including accountable governance arrangements.
- c) How the organisation will achieve full sustainability, e.g. income generation/ funding sources.
- d) Experience/capability to deliver the services in accordance with any associated legislation.
- e) The capabilities to manage the regular ongoing maintenance of the asset including compliance with all statutory requirements.
- f) Details of financial viability of the bidder and any proposed lump-sum capital investment and how this is envisaged to be expended.

The Business Case is used to demonstrate any Social, Economic or Environmental wellbeing and benefits.

7 The Decision Process

- 7.1 All proposals for Community Asset Transfer will be carefully considered and evaluated by a panel made up of members of the Council's Estates & Building Services – Strategic Property Team and Neighbourhoods and Environmental Services – Neighbourhood's Team. Additionally, all decision-making will be reported via the Council's Scheme of Delegation governance process and within the context as provided by this Policy.
- 7.2 The Council will advise the community organisation of its decision, outlining the reasons for any refusal. If the proposal has been successful, notification will follow, with instructions for the legal formalities to be completed.

8 School Sites

- 8.1 If the asset is not required for educational/curriculum purposes and it can be separated to enable a transfer (via leasehold or freehold) the asset will be subject to this Policy once the site has been deemed surplus to educational requirements and SOS consent has been obtained for an internal appropriation to an alternative portfolio. Where the site cannot be separated, there may be the need for additional safeguarding requirements. The costs of this would need to be reviewed on a case by case basis.
- 8.2 If the school is interested in taking over the running of the service then their bid will be assessed alongside any other community interest. In such circumstances where the school is funded by the Council, equivalent charges will be applied, generally through a Memorandum of Understanding as opposed to a formal lease.

9 Help and Advice

- 9.1 Community/voluntary organisations are encouraged to seek advice from the Council at the earliest possible opportunity before making a formal application. There is guidance and help available through a number of sources including:
- a. The Community Asset Transfer page on the Council's web site.
 - b. The Government portal website for community information and grant programmes mycommunityrights.org.uk
- 9.2 The Council will provide specific information to communities to develop their proposal, including:
- Site Plan.
 - Measured notional building floor plan where available.
 - Guidance on the rental value and/or on the valuation of the asset.

- Guidance on current running costs (estimated where actuals are not available).
- Other available relevant information.

10 Leased Property Inspection

- 10.1 Once a CAT has taken place, a property inspection will take place every 12 months in order to ensure that the organisation is continuing to meet its stated business case aims and objectives; and, to ensure the asset is being maintained to the agreed level of compliance and condition. An annual fee is chargeable for this inspection.

The inspection will be arranged at a mutually agreed date and time, conducted by a member of the Directorate responsible for the achievement of service objectives and the Senior Estates Valuation Surveyor responsible for asset compliance and landlord's inspection. Where necessary, the Senior Estates Valuation Surveyor will be supported by a qualified Building Surveyor.

- 10.2 A post-inspection report will be provided to the tenant with any necessary rectification notices and re-inspection dates.
- 10.3 Any breach of terms of the lease (incorporating the approved business case) will result in legal action.

11 Scope

- 11.1 The policy will cover all built property assets, land and buildings in the freehold ownership of the Council (subject to the exclusions referred above).
- 11.2 The Council will consider the disposal of groups of properties on the same basis as individual properties.

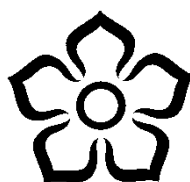
Appendix 1

Example of Standard Heads of Terms for Community Asset Transfer via a Lease of 5 Years Duration or Less

Landlord	Leicester City Council
Tenant	Likely to be a management committee/Board of Trustees/charity <i>(to be encouraged to be a Charitable Incorporated Organisation – see Charity commission website).</i>
Property	Asset name 'x'
Demise	Area to be leased.
Term – no	'X' years; contracted out of Landlord and Tenant Act 1954 Part II automatic right to renew.
Break	Mutual break option on 6 months prior written notice.
User	The premises shall not be used other than for the provision of 'xxxx' services and associated activities.
Forfeiture	Landlord can end the lease for material breach of lease covenant, including breach of the user clause.
Rent	£x per annum; (rent reviews every 5 years if negotiated term is longer than 5 years).
Premises Costs	Tenant to pay all rates, utility costs and other running costs.
Inspection Costs	Tenant to pay all annual inspection costs fixed at £X,XXX pa.
Building Insurance	Tenant to insure contents. Landlord to insure building (costs recharged).
Insurance	Tenant must hold third party liability to a total of £5M in any one claim.
Repair	Full Repairing and Insuring
Alterations	Tenant permitted to make non-structural alterations with Landlord's consent in writing, not to be unreasonably withheld.
Alienation	Tenant is not permitted to assign or sublet part of the premises without prior agreement from the Landlord. Tenant permitted to assign or sublet whole of the premises provided no premium is payable and otherwise with Landlord's consent, not to be unreasonably withheld. Any sub-lease must not be at a rate higher than the passing rent based on the £ per sq ft/sq m.
Ad Hoc Hiring	Sharing occupation with other parties under the existing permitted user without Landlord's consent is permitted if the

occupation is through reference to a hiring agreement and does not create a landlord and tenant relationship.

Yielding Up	At the end of the term the Tenant will yield up the premises in the repair and condition prescribed in the lease and in accordance with the photographic schedule of condition.
Compliance	Tenant must adhere to all current statutory obligations and Health and Safety requirements in relation to the premises and its use.
Costs	Each party to bear their own costs.



Leicester
City Council

Schedule 3: A Protocol for Responding to Late and/or Unsolicited Offers in Connection with Property Disposals

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SCHEDULE 3

A PROTOCOL FOR RESPONDING TO LATE AND/OR UNSOLICITED OFFERS IN CONNECTION WITH PROPERTY DISPOSALS

1 INTRODUCTION

The receipt of late and/or unsolicited offers cannot be avoided when property disposals are being undertaken. Further, local authorities' property dealings are conducted within a fairly inflexible legal framework and must have regard to the Council's general fiduciary duty to act reasonably and in the interests of the tax payers and consistent with the effective, economic and efficient discharge of the authorities' functions. It is therefore necessary to have in place a protocol to guide the response to the unsolicited offer together with precautionary measures to reduce the likelihood of late offers arising. This guidance covers the most likely scenarios but exceptional circumstances may arise which may require separate consideration. The Council's Constitution refers to tendering procedure, but this relates to Tenders for the supply of works, services and goods rather than land. Nevertheless, the relevant principles are followed within this Protocol.

2 APPLICATION OF THE PROTOCOL

This protocol applies to unsolicited offers received during a property disposal exercise and the response to the offer will be dependent upon:

- 1 At which stage in the disposal process the offer is received.
- 2 The basis upon which the property has been marketed.

3 THE PROTOCOL

- 3.1 In relation to disposals by way of formal or informal Tender i.e. when offers are required before a fixed date and time (the Closing Date).
- 3.2 Late Tenders i.e. received after the Closing Date, or Tenders delivered or submitted prior to the Closing Date but to the wrong location or electronically following the closing date for the receipt of Tenders and subsequently received late.
- 3.3 Offers received outside the Tender process (i.e. without the official Tender label) after the Closing Date but before consideration by The City Mayor, an Assistant City Mayor (as may be appropriate) or the Chief Operating Officer and Head of Paid Service exercising delegated authority).
 - 3.3.1 All offers must be considered.
 - 3.3.2 If the late offer is higher and obviously not spurious or otherwise considered unsustainable, the parties that have already submitted offers

be invited to make “full and final” offers by a specified date. In considering the sustainability of the late offer regard will be had as to whether the offer is compliant with the requirements of the Tender process (other than meeting the time limit).

- 3.3.3 In the event that the unsolicited/late offer remains the highest offer then this offer, together with the highest compliant offer from the second round of bids from the Tenderers (i.e. received from one of the parties who submitted Tenders before the Closing Date) effectively the second highest bid, should be reported to City Mayor or where appropriate an Assistant City Mayor (disposals at less than best consideration are reserved to the City Mayor). In the event that the City Mayor wishes to accept the second highest bid then the Secretary of State’s consent for a disposal at less than best consideration will be required (see below).

In deciding whether or not to accept the second highest bid, the Council must act reasonably and have due regard to:

- (a) Its general fiduciary duty (as referred to above).
- (b) Usual and prudent commercial practices.
- (c) Best practice.
- (d) Case law.

In the event that the second highest bid is accepted, reasons to support the decision must be recorded.

- 3.4 Offers received after the City Mayor’s or Assistant Mayor’s decision (or exercise of the Chief Operating Officer’s delegated authority) but before the exchange of contracts or before entering into conditional contract or lock out agreement

- (a) As 1.2 above.

- 3.5 Offers received after the exchange of contracts or entering into conditional contract or lock out agreement

- (a) Write to advise the party making the offer that the property has been sold or that conditional contract or lock out agreement entered into, thanking them for their interest (and offering similar property if currently available for disposal). Record this interest in the event that the contract is not completed and the property is remarketed.

- 4 Disposals by private treaty (i.e. following a marketing exercise without a Closing Date or a “one-to-one” disposal when no marketing has taken place).

- 4.1 Offers received during the period of the negotiation with the prospective purchaser/lessee.

- 4.1.1 If the negotiation arises from a marketing exercise without a Closing Date then each party should be invited to submit their full and final offers within a specified time period.
- 4.1.2 If the offer arises during an off-market “one-to-one” disposal (e.g. where the City Mayor’s agreement has been obtained to dispose of the property to secure a particular use or facility from one particular party) then the offer is rejected (but can be used as useful evidence in the negotiations). In these instances the City Barrister and Head of Standards must advise on the need to obtain the Secretary of State’s consent to a disposal at less than best consideration (see below).
- 4.2 Offers received before provisionally agreed terms are considered by the City Mayor/Assistant City Mayor (or the Chief Operating Officer exercising delegated authority).
- (a) As 1.2 above.
- 4.3 Offers received after the City Mayor’s/Assistant City Mayor’s decision (or the Chief Operating Officer exercising delegated authority) but before the exchange of contracts or entering into conditional contract or lock out agreement.
- (a) As 1.2 above.
- 4.4 Offers received after the exchange of contracts, entering into conditional contract or lock out agreement.
- (a) As 1.4 above.
- 5 Disposals by Auction
- 5.1 Offers received prior to the auction.
- (a) Refer the offer to the appointed auctioneers and agree whether or not to accept the offer. If the offer is recommended for acceptance then the acceptance must be subject to the purchaser exchanging contracts quickly (in accordance with the auction conditions of sale) before the date of the auction, ideally giving sufficient time to notify other parties who may have expressed an interest in the property of its withdrawal from the auction.
- (b) Offers received after the auction.
- If the property was sold under the hammer:
- (i) As 1.4 above.
- If the property failed to sell:

- (ii) As 3.1(a) above but within an appropriate short time period (ensuring the appropriate authority is in place for the auctioneer to accept such offers on behalf of the City Council).

PRECAUTIONARY MEASURES TO BE ADOPTED TO SUPPORT THIS PROTOCOL

In order to minimise the likelihood of unsolicited offers being received then the following good practice should be adopted when undertaking the marketing exercise:

- 1 Late offers must never be encouraged or in any way solicited.
- 2 Where the offer arises from a bidder who has already submitted a compliant bid within a tendering exercise, then consideration of the revised higher bid would only be undertaken provided there was clear justification for the second offer being made.
- 3 The market must be fully explored at an early stage in the marketing process so that every effort is made to identify all potentially interested parties.
- 4 Ensure that time periods between receipt of offers and an executive decision to accept and between acceptance and exchange of contracts (or entering into conditional contracts or lock out agreements) are kept to a minimum. The use of conditional contracts should be considered, with a strict time period by which it must be entered into by successful party, and when each element of conditionality has to be met.
- 5 Offers reported to the relevant decision maker are considered on the private agenda.
- 6 The public Minute contains no reference to the disposal price or the purchaser.
- 7 In those cases where reports refer to values of property, for example anticipated capital receipts, only totals are referred to, unless the transaction has been completed.
- 8 Ensuring that prospective purchasers are aware that their costs incurred prior to the exchange of contracts are at their own risk. (However, in the event that the City Council decides not to proceed, there may be a case for reimbursing the purchasers abortive costs. Each case would be considered on its merits).

CONSENT OF THE SECRETARY OF STATE TO DISPOSE AT “LESS THAN BEST CONSIDERATION”

Where a disposal at less than best consideration is proposed then this will require the consent of the Secretary of State. A specific application to the Secretary of State for consent may not be necessary in every case. The Local Government Act 1972: General Disposal Consent (England) 2003 gives local authorities consent to the disposal of land within specified circumstances i.e. where the authority considers that

the purpose for which the land is to be disposed of is likely to contribute to the achievement of any one or more of the following objectives in respect of the whole or in any part of its area, or of all or any persons resident or present in its area:

- 1 The promotion or improvement of economic well-being.
- 2 The promotion or improvement of social well-being.
- 3 The promotion or improvement of environmental well-being.

In each case it is a condition that the undervalue must not exceed £2 million. Further, the authority must remain aware of the need to fulfil its fiduciary duty in a way that is accountable to local people (this consent does not apply to land held under powers derived from certain Planning and Housing Acts (which is subject to its own consent regime, most recently revised in 2013) nor does it enable the disposal of public open space without undertaking the advertising procedure set out in s.123 (2A) the Local Government Act 1972).