

PART 4H –

LAND & PROPERTY TRANSACTION RULES

This section was approved by Council on 19/09/13.

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”(frameworkproperty) as approved at Cabinet on 13 October 2003. It is not proposed to repeat the principles as individual Rules within these Contract Procedure Rules and Officers should refer to the document attached as Schedule 2 to these CPRs 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.



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

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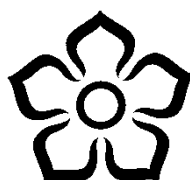
SCHEDULE 1

1 Dealing with Formal Tenders and Informal Offers in Land Transactions

- 1.1 When the deadline is set for receipt of Tenders, arrange meeting with the relevant Finance Officer to be held within 1 hour of that time (eg deadline Tuesday 2.30pm – meeting arranged for Tuesday 3.00pm). Property Services (the Head of Property) must be given notice of the receipt of Tenders, this notice to be either at least 6 weeks or before the first advertisement appears in the press, whichever is the earlier. Property Services will arrange for a private area to be available in which to open the Tenders (confirm the availability with Property Services a few days prior to the opening time).
- 1.2 Address labels supplied to interested parties must state the delivery address as Head of Property, Property Services, Leicester City Council, preferably with a contact name.
- 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 submitted is only to be labelled using the official address label supplied with the Tender documents.
 - 1.3.3 That the Tender envelope/package must bear no indication of the identification of the Tenderer. Consequently, the Tenderer must ensure that, for example, if the Tender envelope/package 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.
 - 1.3.4 That delivery must be to the location on the official address label ie Property Services. If the Tender envelope/package is delivered by hand, the person delivering it must obtain an official receipt from Property Services.
 - 1.3.5 Any late Tenders and Tenders delivered 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 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, by any company or other organisation or person charged by the Tenderer for its delivery (also make reference to the office hours when Tenders can be delivered prior to the closing date).
- 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.
- 1.3.10 Although not required under the Council's Constitution, Tenderers are likely to find it helpful if the Tender documentation indicated when it was anticipated that the successful Tenderer would be notified (remember to take into account the Member challenge period following a Cabinet decision, and the consequent delay if a challenge is received).
- 1.4 All Tenders must be delivered to Property Services directly. On receipt of each Tender, details are to be entered into a fixed leaf register and a reference number from the register is to be written on the envelope. The register is to be kept and administered by Property Services.
- 1.5 Under no circumstances must other staff accept Tenders on behalf of the Council. Anyone trying to hand one in elsewhere must be redirected to Property Services.
- 1.6 All Tenders delivered by hand must be entered into the register and the person delivering the Tender must be given an official receipt by Property Services with the date, time and receipt number being written on the Tender envelope/package. Any spoilt receipt(s) must be logged in the register as spoilt and the spoilt receipt(s) placed with the Tenders in the safe.
- 1.7 When Tenders are received in the Post Room they will be logged (as current practice) and hand delivered on their next round (at about 2.00pm, as they are usually second post). On the day of the deadline, the Property Officer is to contact the Post Room after the second post has been delivered (at about 11.00am) and check if any Tenders have arrived. If they have, the Property Officer must immediately pick them up and take them to Property Services to be entered into the register and stored with the others.
- 1.8 All the Tenders are to be stored in the strong room in Property Services until opening time.

- 1.9 Before opening the Tenders, reference numbers on the envelopes are to be checked against the register to ensure none are missing or misplaced within the safe. The register is to be signed and dated as correct, below the last entry for that Tender, by the Finance Officer and Property Officer when all Tenders have been accounted for.
- 1.10 The Standard form is to be used when opening Tenders to record relevant information for cross-referencing and signed by both Officers at the end of opening and recording.
- 1.11 After opening, all documentation is to be retained by the Property Officer and kept in a secure file, including envelopes, the standard opening form, any spoilt receipts and a copy of the relevant page in the register, to provide a complete audit trail.
- 1.12 Receipt books will be issued by the Head of Property, who shall be responsible for their safe custody and accountable for all receipts therein.

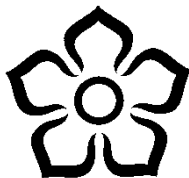


Leicester
City Council

Schedule 2: The Framework for the Disposal of Property (as approved by Cabinet)

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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 City Council.
- OR
- (b) Indirectly through third parties (by way of, for example, lease, partnership, management agreement).
- 2.1.2 Whether it is still required to fulfil another function of the authority.

2.1.3 Whether it should be disposed of to facilitate the exercise of any function of the authority (eg housing land for the provision of housing accommodation).

2.1.4 Whether, if it is identified as surplus, to dispose of the property to obtain the capital receipt or revenue equivalent.

3 THE COUNCIL'S LEGAL REQUIREMENTS

3.1 The umbrella under which all local authorities operate in relation to the transfer/ disposal of their assets is the Local Government Act 1972. In addition, there is a general fiduciary duty placed on local authorities to act reasonably and in the interest of the tax payers, and consistent with the effective, economic and efficient discharge of the authorities 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.

3.2 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. Established good practice and a previous public interest report produced by the District Auditor's Office indicates that third party valuations are not adequate evidence of best consideration. The Council therefore needs to ensure an open competitive marketing of property takes place in all but a few circumstances.

3.3 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. The Local Government Act 1972: General Disposal Consent (England) 2003 gives local authorities consent to the disposal of land within specified circumstances ie 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).

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 circumstance, such as the disposal of land to facilitate the building of the National Space Science Centre.
- 4.3 In recognition of this, and in order to seek to address the changing priorities and pressures, it has been decided to review the policy and seek approval to the inclusion of some specific exceptions, rather than dealing with cases on a one off basis.

5 THE FRAMEWORK AND PROPOSED POLICY

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 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 within the area of Prospect Leicestershire Ltd where the City Council and the Prospect Leicestershire are in agreement 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 Development Alliance, or involve a disposal of property to enable the relocation of displaced occupiers from sites.

A Development Alliance is 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. The financial policy set out in the appendix shall apply to these Development Alliances.

Relocation property would only be made available exclusively to a displaced occupier where it was agreed between the City Council and Prospect Leicestershire that it was appropriate in the circumstances.

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 Community Plan and Budget and Policy Framework 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 to a Charity, Community Association or similar where the terms of the disposal require the use of the land for a major project of regional or national importance and where major social, economic or environmental benefits and levered in funding 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 able 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) within the Leicester Neighbourhood Renewal Strategy and is a Priority within the Community Plan.
 - (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 to enable acquisition of the property at open the market value. (An Agreement to Lease is likely to be required by the prospective lessee to enable a period of time for funding to be applied for and secured [together with securing any other consents] 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 (ie 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 tenants bid'.

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, eg 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 £1,500, 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.

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 (restrictive covenants could be imposed but enforcement can be problematic).
- 6.2 Leasehold disposals allow greater control and are appropriate where disposals are seeking particular outputs (eg 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 agreed to 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).

(Note: Development Alliances will always require 'best consideration', (see Appendix).

- 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 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.
- 6.6 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 sort of 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 eg default by the previously identified prospective purchaser).

APPENDIX 1

FINANCIAL POLICY TO BE ADOPTED FOR DEVELOPMENT ALLIANCES

- 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 provision).
- 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

POLICY FOR TRANSFER OF ASSETS FOR COMMUNITY GOVERNANCE

Policy for Transfer of Assets for Community Governance

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1. Purpose

- 1.1 This paper outlines Leicester City Councils policy on the transfer of Council assets to Community Organisations.
- 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.
- 1.4 The Localism Act 2011 sought to further empower communities to self-manage and reducing funding is requiring Councils to consider different ways of delivering community services. With these factors in mind, the policy has been reviewed to reflect these changing circumstances. Transfer of assets is 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 www.leicester.gov.uk/propertyshop/.

2. Definition

- 2.1 Transfer of 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.
- 2.2 Transfer may be at market value, in some cases at less than best consideration or give community led organisations 'first refusal' on a commercially based disposal.
- 2.3 The decision on which type of transfer is the best option will be decided on a case by case basis. It will be informed by an assessment of the business case and which option is best suited to meeting the objectives of the transfer. It is considered that in most cases the Councils long term interests will be best served by long lease disposals rather than freehold although there will be particular circumstances in some cases which will require freehold sale.
- 2.4 A community led group is defined as being a formally constituted group based within and delivering or capable of delivering services or functions of benefit to a local community, be this area based, around a particular social group or other particular community interest.

3. Aims of community asset transfer

- 3.1 The Council's built assets include land, buildings and other structures used for a variety of different social, community and public purposes as well as for the Councils own operations. For some of these assets community management and ownership could deliver improved:
 - benefits to the local community
 - benefits to the Council and other public sector service providers
 - benefits for the organisation taking ownership
- 3.2 To be a tool in the flexible management of the Council's assets to maximise their contribution towards achieving the Council's priorities.
- 3.3 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 Community Organisation.
- 3.4 Changing ownership or management of an asset can offer opportunities to extend the use of a building or piece of land and increase its value in relation to the numbers of people that benefit and the range of opportunities it offers. Community-led ownership offers additional opportunities to secure resources within a local area and to empower local citizens and communities.
- 3.5 The Council will proactively seek the transfer of appropriate assets to community groups in order to promote the widest public value that can be achieved in relation to, for example:

- Facilitate inward investment
- Community empowerment and greater control over services
- Area-wide benefits
- Building the capacity of the community and encouraging sustainable community organisations by building partnerships
- Economic development and social enterprise
- Improvements to local services
- Value for money

A property specific plan will be put together for each property identified as suitable for asset transfer outlining a communications plan and criteria to be adopted for selection.

- 3.6 The Council will consider the disposal of groups of properties on the same basis as individual properties.

4. Scope

- 4.1 The policy will cover all built assets, land and property in the freehold ownership of the Council excluding the schools estate with decisions on individual assets being made on a case by case basis.

5. Key Principles for Asset Transfer

- ❖ **Engagement and empowerment of community groups and social enterprise support.**

Under this strategy the core principle must be for the Council to support the engagement and empowerment of community groups to develop their capacity to deliver local solutions to meet identified needs. These are likely to vary from training opportunities to support services and must support the aims and priorities of the Council.

- ❖ **Only potential assets and not liabilities should be transferred.**

The transfer of assets that will contribute towards maximising the prospects of developing sustainable community groups and enterprises will be a key consideration. For the Council, assets in their present circumstances may be liabilities but a careful transfer can potentially provide community groups with financially viable assets. This may be the case where for instance where community bodies can access grants to improve facilities and provide services that the Council cannot access.

- ❖ **A 'gateway assessment for each 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 community asset it owns for alternative development and disposal. Where practical and feasible the Council will prioritise opportunities for the transfer of assets to appropriate community bodies. The Council will need to balance the competing interests of community groups and 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.

- ❖ **A community wide perspective should be adopted involving close working with other public and voluntary sector partners. The policy on community asset disposal is part of a long term programme of support to, and partnership with, community organisations.**

The Council will involve all relevant partners in developing asset transfer proposals to ensure there is no conflict with other initiatives involving public and voluntary sector partners. The opportunity to identify potential benefits of wider partnership working will also be taken into account particularly where this assists with the sustainability of a transfer. This can bring additional resources by way of staff support and funding opportunities.

- ❖ **Community groups/enterprises should have robust and sustainable business plans for asset transfer seen as part of their wider development plans.**

For a successful asset transfer a robust and sustainable business plan will be required. It should form the basis for clear development plans which set out what the community group or enterprise intends to deliver through management of the asset over the short, medium and long term.

Financial considerations should be included within the business plan in order to demonstrate a sound approach to managing and running the facility. The need for any on-going financial support will be carefully considered by the Council to establish a sustainable operation.

- ❖ **The tenure offered will be dependent upon the governance capabilities of the community organisation**

The disposal may be based upon a management agreement, meanwhile use agreement, licence, lease or freehold sale and this will be dependent upon the circumstances of the property and the governance capability of the organisation. It is anticipated that the security of tenure to the applicant would be subject to improvement over time in accordance with the success of the project and the growing strength of the applicant in terms of community governance capability. The general principle will be against freehold sale unless the particular circumstances of a case require.

Where there is a transfer of service provision, a community asset transfer may be accompanied by a Service Level Agreement identifying the benefits and how these will be monitored and measured, together with the remedies available to both parties if the Service Level Agreement is not met. This SLA will be in effect a contract for provision of services and will need to be compliant with procurement and state aid requirements.

- ❖ **Support for the community group or enterprise from the Council should be on-going at an appropriate level which is required to support the group's development plan over a realistic time period.**

Whilst the Council will aim to provide support during, and for a reasonable period beyond any transfer the Council has limited resources. Discussions need to take place to agree how, and over what period the support will be provided by the Council. It is likely that on-going support may in some cases be better provided via other organisations and the Council can help to bring in such support.

- ❖ **The Council will include terms and conditions in disposal documents to safeguard the position should the community asset transfer fail to deliver the anticipated benefits.**

The Council will reserve the right to include conditions on any transfer to protect the future community use of the property. It is recognised that the imposition of such conditions could impact on asset value or the ability of groups to raise funds and each case will therefore be considered on its merits and conditions will be considered during the assessment process.

To safeguard the Councils long term position long lease will generally be preferred to freehold sale as it better protects the Councils position in the case of failure.

6. Benefits of community asset transfer

Benefits can be measured in terms of the economic, social or environmental well being of the community. Not all benefits have to be financial – they can be about better community outcomes. The business case will need to articulate these benefits and how they will be measured. The potential benefits of asset transfer can include:

For Community Organisations

- Physical assets can provide sustainable wealth;
- Can strengthen the Organisation's community ties;
- Can strengthen the Organisation's ability to raise money. There may be access to funding to refurbish the building or to support staff training and development;
- Greater financial sustainability can help the organisation to escape short term grant-dependency;
- Community organisations can alter or modify a building to better suit their needs.

For the Council

- Transfer can help to solve building management problems ;
- The Community Organisation has "reach" into the community a transferred building can therefore provide a more accessible and responsive base from which to deliver services;
- Can strengthen 'community anchors';
- Can restore 'iconic' buildings;
- Can deliver social, economic, environmental benefits;
- Can provide a catalyst for inward investment and local multipliers through local purchasing and employment;
- Provide a source of rental income;
- Can lower ongoing costs;

- Can help to progress neighbourhood regeneration plans;
- Can provide opportunities for long-term working between sectors;

7. Risks of community asset transfer

The transfer of assets does have risks attached and each assessment will need to consider risks such as the following:

- Potential to disadvantage particular individuals or impact negatively on the local community;
- Potential for a negative impact on community cohesion;
- Potential loss of existing community services;
- Uncertainty around capacity of recipient to manage asset;
- Potential for the asset to become a financial liability for recipient;
- Capacity of recipient to deliver promised services/outcomes;
- Capture of asset by unrepresentative minority;
- Transfer contravenes State Aid and procurement rules;
- Conflict with other legal, regulatory constraints;
- Potential for ongoing Council liability;
- Lack of value for money;
- Conflict with other funders;
- Potential unfair advantage for one group over another.
- The risks associated with property ownership will pass in whole or in part from the Council to the Community Organisation.
- Perception of a loss of the use of a Community facility by certain sectors of the Community.

Before any transfer takes place a risk assessment and management plan will be undertaken so that all parties are aware of the potential issues a transfer may create.

8. Expectations

Because every transfer project will be unique in its own way, it is vital to outline clear expectations and responsibilities of stakeholders involved. This is to ensure that a common platform is established that satisfies the overall outcome.

The Leicester City Council's expectations of the interested Community Organisation are:

- A project team is set up to overlook the entire project with a distinct point of contact.
- To provide relevant documentation requested within the CAT Application Form in order to comply with requirements of the transfer.
- A Business Plan demonstrating the viability of acquiring and improving the asset and also focusing on its viability and sustainability. A Risk Assessment within the Business Plan identifying potential risks and impact and how these will be dealt with.

The Community Organisation can expect the following from the Leicester City Council:

- Be assured LCC has adopted a CAT policy, to support communities in Leicester.
- The LCC has in place robust processes and procedures to ensure that all cases for CAT are considered in an equal, transparent and unbiased manner.
- Clear guidance and information on the process for CAT.
- Support and clarification on CAT process and procedures.
- Support and guidance on assessment criteria and application form.
- Communication in a timely manner throughout the process with an agreed timetable to be followed suitable for the specific characteristics of the particular disposal. Referral to Executive Lead should the group consider the application is not being progressed as agreed.
- Continued communication and dialogue to maintain and further develop the relationship between the Community organisation and LCC.
- Support and guidance on asset related matters.
- Support and guidance to ensure asset transfer remains stable and sustainable.

9 Application Procedure

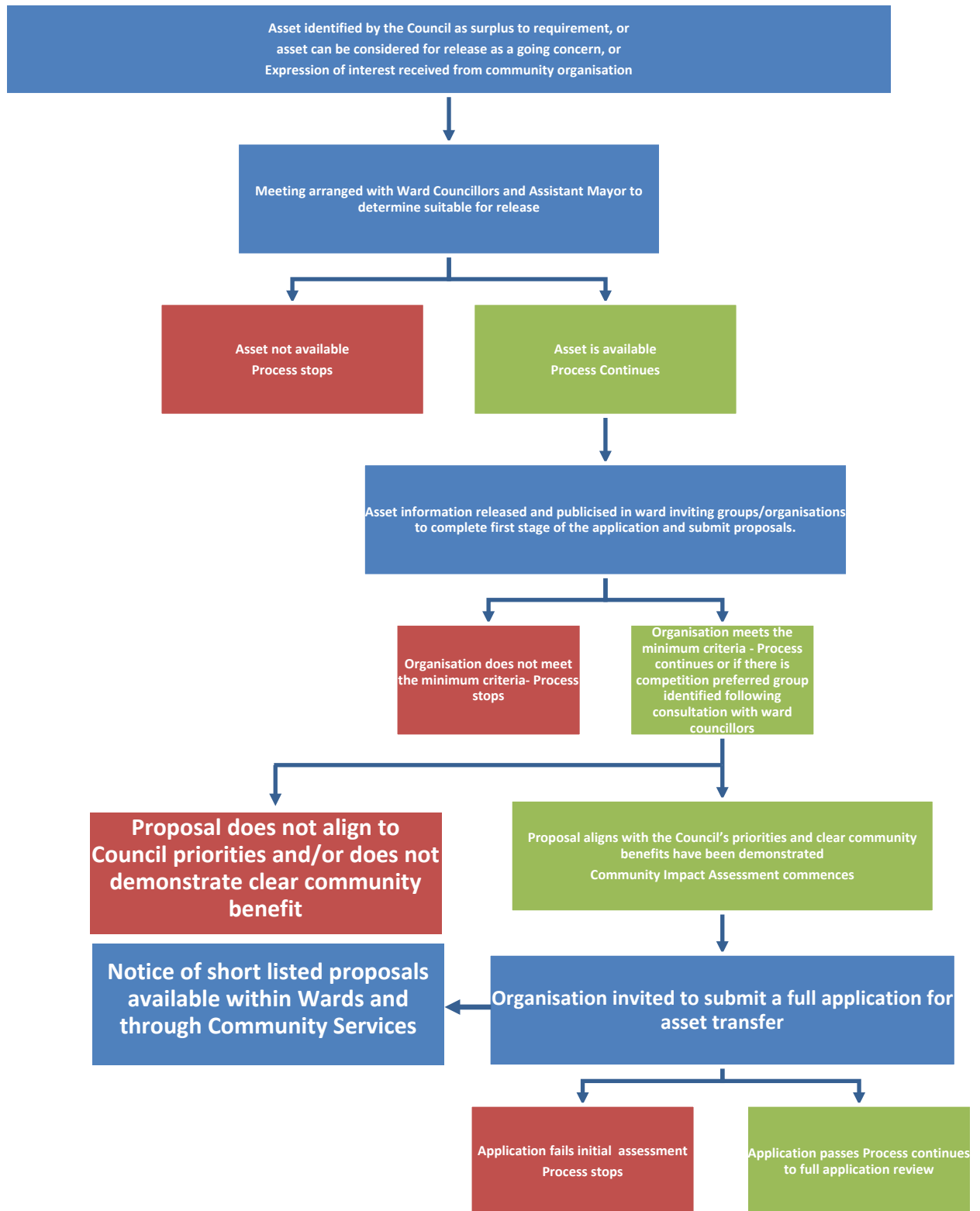
Any Community Organisation interested in applying for an asset transfer will be provided with the following documentation:

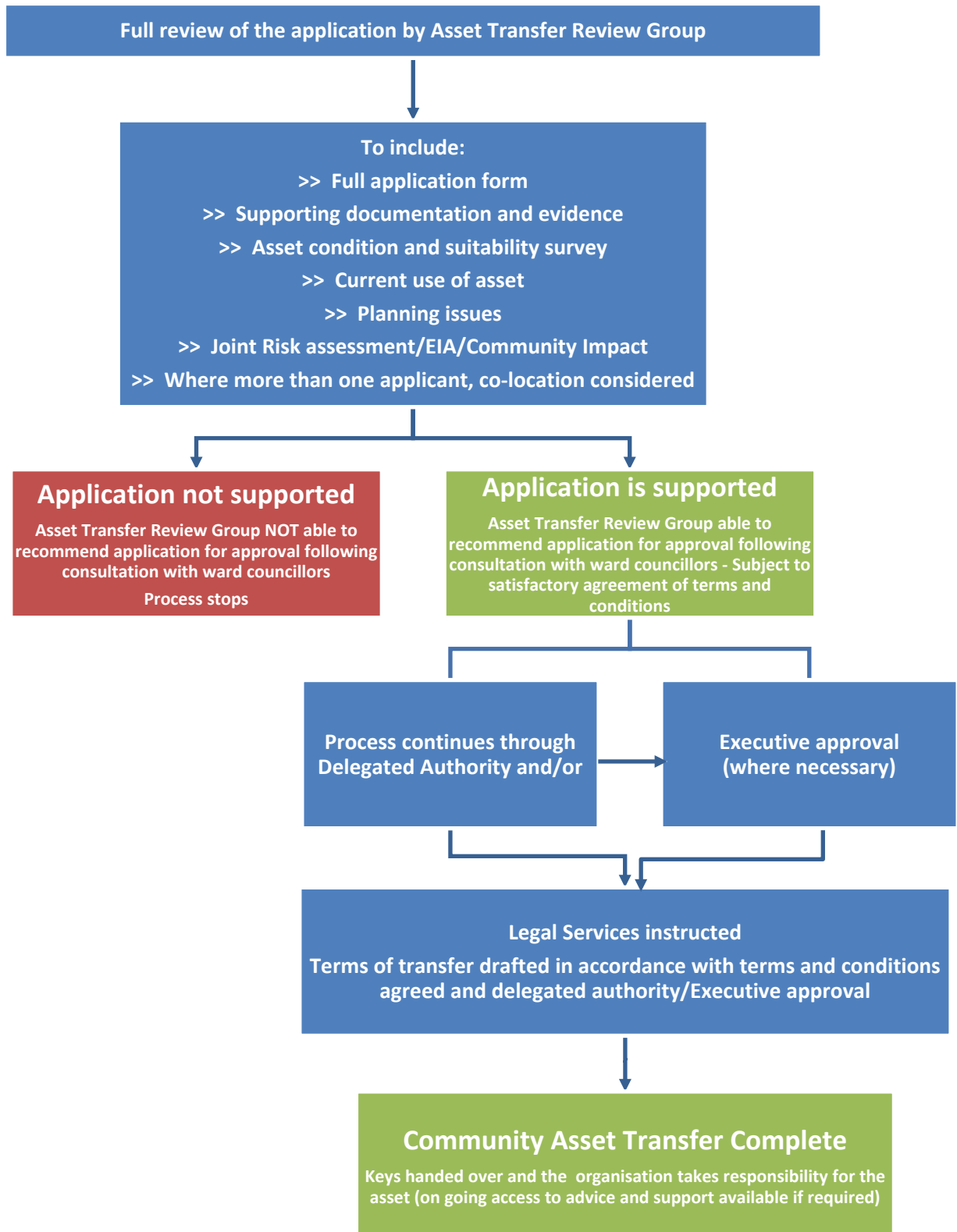
- A copy of Guide to Community Asset Transfer.
- A copy of CAT Application Form and CAT Guidance Notes-Application Form.
- A copy of 'CAT Assessment Criteria'
- Any relevant information on the property that the Council hold.

It is essential that every applicant has completed the Application Form and provided all the relevant documentation particularly a viable Business Plan demonstrating the capability of sustaining the asset.

Once the above documentation has been submitted, the steps outlined below will then be followed.

- Every application will be dealt with fairly and equally and guidance will be provided as outlined above.
- Applicants are likely to benefit from carrying out research on asset transfers and demonstrating this. Some useful sources include www.communitymatters.org.uk

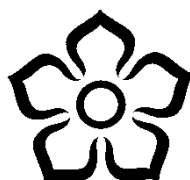




ASSESSMENT CRITERIA SUMMARY

	POTENTIAL FOR COMMUNITY ASSET TRANSFER	CONDITIONAL COMMUNITY ASSET TRANSFER – Demonstrates significant community benefit	NOT SUITABLE FOR COMMUNITY ASSET TRANSFER
Asset Value	Less than £200,000 (small)	£200,000 to £1,000,000 (medium)	Greater than £1,000,000 (large) may still be suitable but to be judged on merits
Length of occupation	20+ years	5-20 years	Less than 5 years
Asset holding	Operational	Operational	Non Operational
Community Impact	Minimal Impact	Manageable Impact	Significant Impact
Sustainability/Stability	Demonstrated ability to manage service, property and plan for future, history of stability and capability	Demonstrated ability to manage service, property and plan for future, history of stability and capability	Inability to demonstrate or record of failure
Governance	Settled legal entity with proven ability to manage change	Settled legal entity with proven ability to manage change	No record or poor history
Legal Structure	Constituted Group Registered Charity Registered Company Or seeking formalisation	Constituted Group Registered Charity Registered Company Or seeking formalisation	No form of structure; No identifiable accountability
Financial Standing	Established record of financial probity Including ability to meet running costs, long term planning – business plan	Established record of financial probity Including ability to meet running costs, long term planning – business plan	No record or poor financial history, business modelling or financial planning
Community Benefit	Established record of community benefit, Identifiable and measureable community benefits can be addressed	Established record of community benefit, Identifiable and measureable community benefits can be addressed	No record or poor outputs, community benefits not identified
Benefits of CAT	Strong business case to evidence anticipated benefit from CAT	Strong business case to evidence anticipated benefit from CAT	No evidence
Maintenance	Proven record of managing	Proven record of managing	No record or poor history – unable to

	maintenance issues.		maintenance issues, evidence of ability to manage on-going maintenance of building	demonstrate ability	
Commitment	Agreement to restrict use to community activities in line with stated intent and guaranteed by covenant		Agreement to restrict use to community activities in line with stated intent and guaranteed by covenant	No agreement	



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.

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 ie when offers are required before a fixed date and time (the Closing Date).
- 3.2 Late Tenders ie received after the Closing Date, or Tenders delivered prior to the Closing Date but to the wrong location and subsequently received late.
- 3.3 Offers received outside the Tender process (ie without the official Tender label) after the Closing Date but before consideration by Cabinet (or the Chief Operating Officer 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 (ie received from one of the parties who submitted Tenders before the Closing Date) effectively the second highest bid, should be reported to Cabinet (disposals at less than best consideration are reserved to Cabinet). In the event that Cabinet 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 Cabinet 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 (ie 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 (eg where agreement of Cabinet 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 Director of Legal Services 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 Cabinet (or the Chief Operating Officer exercising delegated authority).
- (a) As 1.2 above.
- 4.3 Offers received after the Cabinet 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 Cabinet are considered on the private agenda.
- 6 The Cabinet 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 ie 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 March 2005) 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).