

# Land Transaction Procedure Rules TRACKED CHANGES

## This statement sets out the procedure to be adopted for the disposal of surplus / underused land

### 1. Definition of Surplus/Under-used Land

1.1 In these Procedure Rules "Land" shall mean all and any interest in land (including buildings), or any right in, on, over or under land.

1.2 Land is deemed to be surplus to the Council's requirements if either:

- a) It makes no contribution to the delivery of; the Council's service, strategic financial or corporate objective; or
- b) An alternative site has been identified which would be more cost effective in delivering; Council's service, strategic financial or corporate objectives; or
- c) It has no potential for strategic or regeneration/redevelopment purposes in the near future; or
- d) It will not contribute to the provision of a sustainable pattern of development.

1.3 Land is deemed to be under-used if either:

- a) Part of the land is vacant and is likely to remain vacant for the foreseeable future; or
- b) The income being generated from the land is consistently below that which could be achieved from:
  - i) Disposing of the land and investing the income;
  - ii) An alternative use;
  - iii) Intensifying the existing use; or
- c) Only part of the land is used for service delivery and this could be delivered from an alternative site.

1.4 All land is held corporately, however, the decision taken by a Head of Service to declare an operational asset surplus will be via their delegated authority in relation to operational responsibilities in conjunction with the Chief Operating Officer or his nominee.

### 2. Land Identification

2.1 Land for possible disposal may be identified in the following ways:

- a) Through the Asset review activity undertaken by the Chief Operating Officer, or his nominee;
- b) Through a structured corporate property portfolio or area review;
- c) Through Service Units declaring specific sites as being surplus to requirements;
- d) Through direct property enquiries to the Council;

e) Where an under-used asset is generating an income, a cost/benefit analysis has been carried out to establish whether it is in the Council's best interests to dispose of the site.

2.2 Once potential land has been identified as surplus or under used the Chief Operating Officer or his nominee will undertake an initial feasibility test to establish if the land could be disposed of to generate a capital receipt for the general fund/HRA.

2.3 If the initial feasibility test indicates it is possible then there will be further consultation with Planning and Highways colleagues and with Legal Services to generate a Report on Title to establish if there are any legal constraints, including but not limited to Title restrictions and legislative restrictions e.g. disposal of public open space and school playing fields.

2.4 Subject to these investigations and if the land has been declared surplus for operational purposes by a service department, then there will be discussion between the appropriate Head of Service and the Chief Operating Officer, or his nominee, for an appropriate handover for all relevant premises budgets to enable the ongoing management of the asset up to disposal and then the appropriate saving being returned to the Corporate Centre. At that time, the Chief Operating Officer or his nominee will also discuss with the Head of Legal, Democratic Services and Procurement whether a formal appropriation is required or desirable prior to disposal.

### 3. Method of Disposal

#### 3.1 Best Consideration Value

3.1.1 Section 123 of the Local Government Act 1972 provides for the disposal of land by Councils and provides as follows:

Disposal of land by principal councils

a) ~~(1)~~—Subject to the following provisions of this section, [and to those of the Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure 2010,] a principal council may dispose of land held by them in any manner they wish.;

b) ~~(2)~~—Except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.

3.2 ~~1.2~~ — Except where provided below, these Rules shall apply when dealing with all acquisitions and disposals of land. For the avoidance of doubt, this includes freehold, leasehold, or the grant of tenancy. However, in situations where a request is made for a lease of less than 7 years at a concessionary rental level the policy as contained in Appendix 1 shall apply.

~~3.1.3~~ There is a legal obligation as noted in Paragraph ~~3.1~~.1 above placed upon officers to achieve best consideration reasonably obtainable for land. Best consideration does not necessarily mean the highest financial premium and other matters can be taken into account when assessing best value but caution will need to be exercised and a full review of relevant case law will need to be undertaken. An alternative may be to utilise the General Disposal Consent which does permit Local Authorities to dispose of ~~land~~Land at below market value subject to certain conditions e.g. utilising the ~~wellbeing~~well-being powers and approval from the Authority's external Auditors. It is also possible to seek approval from Welsh GovernmentWG to a particular transaction. ~~The issue of State Aid may also need to be taken into account.~~

3.4 All disposals need to comply with the European Commission's State aid rules. The Commission's Communication on State aid elements in sales of land and buildings by public authorities (97/C 209/03) provides general guidance on this issue. When disposing of land at less than best consideration the Council is providing a subsidy to the owner, developer and/or the occupier of the land and property, depending on the nature of the development. Where this occurs, the Council must ensure that the nature and amount of subsidy complies with the State aid rules, particularly if there is no element of competition in the sale process. Failure to comply with the rules means that the aid is unlawful, and may result in the benefit being recovered with interest from the recipient.

~~3.5.1.4~~ It is the Chief Operating Officer or his nominee who will be providing the best ~~consideration~~value certification but if there are situations where officers wish to consider a lower financial bid in terms of overall best consideration, the Head of Legal, Democratic Services and Procurement~~Monitoring Officer~~ or his nominee must be consulted and the appropriate legal implications advice given.

~~3.1.5~~ — In these Procedure Rules “Land” shall mean all and any interest in land (including buildings), or any right in, on, over or under land.

~~1.6~~ These Procedure Rules do not apply:

- a)        To disposals under the Leasehold Reform Act 1967, Leasehold Reform Housing and Urban Development ~~Act~~ 1993, Commonhold and Leasehold Reform Act 2002 or under “Right to Buy” legislation;
- b)        To the renewal of an existing lease or tenancy;
- c)        Where Cabinet decides they will not apply;

Note: S.123 LGA 1972 is a strict statutory duty and must always be taken into account.

- 3+7 In any dealings with land, proper regard will be had to professional advice from the Chief Operating Officer or his nominee and/or the Head of Legal, Democratic Services and Procurement (as appropriate) at all relevant stages during the process.
- 3+8 No disposal shall progress except in consultation with the Chief Operating Officer or his nominee.
- 3+9 Procedures will be followed precisely so that probity and accountability can be demonstrated and value for money achieved. Further and in order to provide for transparency and a proper audit trail, every procedure step or decision taken under these rules must be recorded in writing and be available for inspection at any time.

#### 42. **Invitation ~~of~~ Offers – Disposal of Land and Premises**

4.1 The Chief Operating Officer or his nominee will determine a marketing strategy where appropriate, either in-house or through an appropriate agent. Where possible, costs (both surveyors and legal) will be recovered from the eventual purchaser.

4.2 The timing of any marketing/disposals will need to be considered against the background of the Council's budgetary requirements, together with the current state of the market. Before recommending that a disposal is to proceed, the following factors are to be taken into consideration.

- a) Current market conditions;
- b) Potential for the site value to increase in the future;
- c) Current and proposed Development Plans;
- d) Any legal constraints or factors.

4.3 In any disposals or acquisitions of land which do not fall within the delegated authority of Responsible Officers (as defined in this Constitution) and have to be reported to Cabinet, the Responsible Officers shall consult with the relevant Electoral Division Members and any responses received from Electoral Divisions Members shall be reported to Cabinet. On any proposed disposals or acquisitions falling within the delegated authority of the Responsible Officers, the officers shall consult with Electoral Division Members where the proposal under consideration would involve a change of use in the land requiring planning consent. Any consultation required to be carried out under this paragraph shall be in writing (letter, e-mail or fax) and any Members consulted shall be given 10 working days in which to respond. If there is no response within this timescale it shall be assumed that the member has no comments to make. Responsible

officers shall take any consultation responses received into account in making their decision.

4.42.1 No offers for the disposal of land will be invited except with the prior approval of the Chief Operating Officer or his nominee.

4.5 ~~2.2~~ — The Chief Operating Officer or his nominee will determine ~~in writing~~ whether disposals will be made by way of a sealed offer, private treaty or auction and such determination will be made so as to achieve the best price reasonably obtainable.

4.6 ~~2.3~~ — If there has been no marketing of the Land or only one person has indicated an interest to purchase there can be no such disposal of Land ~~except~~ where it is determined by the Chief Operating Officer or his nominee that there is only one party who could acquire the interest because, for example:

- a) The physical, legal or other characteristics of the land so dictate; or
- b) There is only one response following reasonable marketing of the land or ~~and~~;
- c) ~~e)~~ — In all the circumstances, it is prudent and appropriate to sell by private treaty (taking into account all considerations including State Aid).

4.7 ~~2.4~~ — The Chief Operating Officer or his nominee will advertise any proposed disposal as he thinks appropriate. ~~This rule will not apply if it can be demonstrated to the satisfaction of the Chief Operating Officer or his nominee that the nature of the land is such that to do so would serve no useful purpose.~~

4.82.5 Any advert will, generally (but with a general discretion in favour of the Chief Operating Officer or his nominee), set out:

- a) A description of the land;<sup>17</sup>
- b) The terms and conditions upon which offers are to be submitted;<sup>17</sup>
- c) Whether further particulars may be obtained;<sup>17</sup>
- d) The last date and time when offers will be received.

4.92.6 In the case of disposals by sealed offers, offerors will be provided with a form of offer based upon a model prepared by the Chief Operating Officer or his nominee and the Head of Legal, Democratic Services and Procurement and with the official pre-addressed envelope bearing the word “Offer” followed by the subject to which the offer relates and preaddressed ~~pre-addressed~~ to the:

**Head of Legal, Democratic Services and Procurement**

**Civic Centre,  
Swansea,  
SA1 3SN.**

**4.10**~~2.7~~ Confidentiality of the identity of offerors will be maintained until an offer has been accepted.

**4.11**~~2.8~~ No offeror or prospective purchaser (e.g. in case of sale by private treaty or auction) will be given any information that is not available to others. All information to be provided should be made available to all parties at the same time.

**4.12**~~2.7~~ Every person submitting an offer (including those private treaty- or by Auction) must not fix the amount of any offer in accordance with a price fixing arrangement; and the Chief Operating Officer or his nominee will inform every prospective purchaser of such rule.

### **5.3. Receipt, Custody and Opening of Sealed Offers**

**5.3.1** It will be a condition of every invitation that each offer must be sent in the official envelope provided, which must be sealed. ~~All offers must be delivered to the address shown on the official envelope or delivered by hand to Main Reception at Civic Centre.~~

**5.3.2** Delivery by hand will be acceptable only if evidenced by an official receipt. The receipt will clearly record the time and date of delivery.

**5.3.3** All offers will be kept in safe custody until the appointed time of opening when they will be opened consecutively during the same session.

**5.4** ~~3.4~~ — All offers will be opened by two employees designated for the purpose by the Chief Operating Officer or his nominee and Head of Legal, Democratic Service and Procurement, at least one of whom will have had no involvement in the invitation of the offers. ~~When opened, all offers will be recorded in a register and initialled and dated by the designated employees at the time.~~

**5.3.5** No offer received after the time and date specified in the invitation will be considered unless there are exceptional circumstances and acceptance is agreed by the Head of Legal, Democratic Services and Procurement.

### **6.4. Examination of Offers**

**6.1** ~~4.1~~ — If, after the offers have been opened and examined, an error in computation of an offer is detected the offeror will be given details of the error and the opportunity of confirming the total offer sum or other details of the offer or withdrawing his offer. The Chief Operating Officer or his nominee must be informed of such error and details of such error must be recorded in the appropriate file.

**6.4.2** An offeror who submits a qualified offer will be given generally the opportunity to:

- a) Withdraw the qualification without amendment to his offer and if he does so it will be considered and
- b) ~~b)~~ Explain any financial or planning qualification as appropriate which will fall to be assessed by the Chief Operating Officer or his nominee.

**6.3.4.2.1** If the offeror fails to proceed with either a) or b) above his offer will be rejected. All correspondence, discussions and telephone calls with the offeror in respect of these matters must be fully recorded in the appropriate file and reported to the Chief Operating Officer or his nominee.

**6.4.3** No post offer negotiations will take place with an offeror unless the scope and principles of the negotiations have been approved in writing by the Chief Operating Officer or his nominee;

**6.5.4.4** All post offer negotiations shall be in compliance with the principles set out in the Contract Procedure Rules.

## **7.5. Evaluation and Acceptance of Offers**

**7.5.1** The final offer that represents the best consideration obtainable by the Council will be accepted (save for any utilisation of any relevant general disposal consent or reference to Welsh Government in respect of any proposed disposal at an under value) this principle will apply to all disposals of land by whatever method except for any disposal falling within the terms of the Council's Concessionary Lettings Policy from time to time the current Policy is attached as **Appendix 1**.

**7.2** ~~5.2~~ Offers may only be accepted and recorded in accordance with the Scheme of Delegation and on the basis of best consideration. If there is to be a sale by auction, a designated employee may be authorised under the Scheme of Delegation for that particular sale. This authorisation will extend to making a decision on reserve price and to sign a contract at the auction providing that this accords with the general principles of these Procedures Rules.

**7.5.3** Nothing in these rules binds the Council to accept any offer.

**7.5.4** Once an offer has been accepted the unsuccessful offerors will be informed that their offers are no longer being considered.

## **8.6. Completion of Contracts**

8.1 All contracts and transactions for disposals of Land (and for the avoidance of doubt this shall include any letting licence lease or hire agreement notwithstanding that such disposal is to a charitable organisation or one in which the Council has a close working relationship) ~~6.1~~ ~~Contracts and transfers~~ will be in writing and executed in accordance with Article 14 of the Constitution and as may be required in law to give effect to the transaction.

8.2 Only the Chief Operating Officer or his nominee may issue instructions to the Head of Legal, Democratic Services and Procurement for the preparation and completion of documentation in respect of any transaction in land.

8.3 Every contract will comply with relevant UK, EU, Welsh Government Law, Directives and any appropriate guidance.

~~8.4.4 All Disposals of Land (and for the avoidance of doubt this shall include any letting licence lease or hire agreement notwithstanding that such disposal is to a charitable organisation or one in which the Council has a close working relationship) must comply with paragraph 5.1 of these Rules.~~

6.5 The Chief Operating Officer or his nominee in conjunction where necessary with the Head of Legal, Democratic Services and Procurement shall determine whether such Disposals are subject to the provisions of paragraph 8.1 of these Rules. If the disposal is not subject to 8.1 the Chief Operating Officer or his nominee shall determine the consideration properly payable and the terms of any ~~such~~ letting if necessary in conjunction with the Head of Legal, Democratic Services and Procurement and the Head of Financial Services.

## 9.7. **Retention of Documents**

9.7.1 Deeds, title documents, leases, charges on land, guarantees and documents of a similar nature may only be destroyed with the consent of the Head of Legal, Democratic Services and Procurement.

9.7.2 Details of all offers will be retained for a period of six years.

## 10.8. **Acquisition of Property**

10.8.1 On each occasion that the Council wishes to acquire Land the relevant Responsible Officer will instruct the Chief Operating Officer or his nominee to negotiate, settle or confirm the terms of such acquisition after taking into account any relevant statutory provisions or guidance and any advice from the Head of Legal, ~~and~~ Democratic Services and Procurement.

10.8.2 Once terms are finalised, the Chief Operating Officer or his nominee will instruct the Head of Legal, Democratic Services and Procurement



in writing to proceed with an acquisition of the Land including for avoidance of doubt the utilisation of compulsory purchase powers.

| 108.3 The terms of such acquisition will be in accordance with the market value of the interest to be acquired and the body of statute and case law together known as the “compensation code” and in accordance with the principles of best value.

| 108.4 The terms of acquisition may only be approved in writing by the Chief Operating Officer or his nominee save for acquisition by auction or sealed offer wherein a designated employee may be authorised in writing by the Chief Operating Officer or his nominee for that particular acquisition to make an offer that accords with the general principles of these Procedure Rules.

| **119. Miscellaneous**

| 119.1 In considering and determining all matters under these Rules the Chief Operating Officer or his nominee shall have regard to taxation law and practice and in particular to VAT; further the Chief Operating Officer or his nominee will be expected to seek the advice of the Head of Legal, Democratic Services and Procurement and/or the Head of Financial Services (as appropriate) and shall have a duty to so consult prior to any disposal.

| 119.2 In the absence for whatever reason of the Chief Operating Officer or his nominee these Rules shall be read in conjunction with the Scheme of Delegation set out in Part 3 of the Constitution.

### Concessionary Lettings Policy

#### 1. Background

- 1.1 The Council has in the past, leased land and buildings at less than full market value. Often these disposals have been to the trustees of leisure, recreational or sports clubs and societies who have limited resources. In addition to rent reviews and lease renewals which occur with such previous lettings, a number of new requests are received from similar organisations for disposals at less than market value. The land disposal rules set out the guidance / rules which the Chief Operating Officer or his nominee~~Head of Corporate Property~~ should normally follow.
- 1.2 In addition to the Land Disposal Rules the Local Government Act 1972 (Section 123) provides that a Council should not dispose of land other than at the best consideration reasonably obtainable~~market value~~ without the specific consent of the Welsh Government or the application~~Secretary of State (WAG)~~ of the General Disposal Consent. This applies to leases exceeding 7 years in duration.~~Subject to the position described it is recognised that existing tenants of more than two years may be considered prior to general marketing.~~
- 1.3 The ~~authority for disposal from the Welsh Assembly Government is the~~ General Disposal Consent (Wales) 2003 Order ~~which~~ came into force on 31 December 2003. This Order removed the former requirement for the Council to seek a specific consent for a disposal at an undervalue where the Council considers that the disposal is in the interests of the economic, social or environmental well being of the whole or part of its area, or any or all persons resident or present in its area **and** the undervalue is £2,000,000 or less.
- 1.4 Under the Council's Constitution a Responsible Officer has delegated authority to exercise functions for which he or she has budgetary, managerial, operational or statutory authority provided that the Cabinet does not itself make a decision in a particular case. At present, the exercise of the executive functions by an Officer in relation to estate management on the disposal of a freehold or leasehold interest is limited up to £500~~250~~,000.
- 1.5 The Audit Commissions Report on Local Authority Property Management highlighted the need for any such concessionary disposals to be identified and the amount of the concession to be quantified. There is also a practical need for all such disposals to be identified and recorded in this way, if consistency between the amounts of concessions granted is to be maintained. In view of the current financial pressures faced by the Council it is appropriate to consider this financial burden on the Authority and in addition a periodic review of these allowances should be undertaken as a matter of good management practice.

## 2. Application of Policy

2.1 It is recommended that the following approach is adopted as a consistent basis for implementing the policy framework described above subject to the Land Disposal Rules that:

- i) \_\_\_\_\_ The full market value of the interest to be leased should be assessed. This could occur at a rent review, at a lease renewal or at the proposed granting of a new tenancy. ~~The, the~~ market rent would be assessed in the usual way taking account of the nature of the property, its current state, the interest which is to be created with the obligations to be carried out by both parties and any other relevant factors.:-
- ii) \_\_\_\_\_ The tenant who is seeking a reduction from that market value should be asked to identify all the relevant circumstances in support of his case, including alignment with the Council's corporate objectives, accounts and financial evidence relating to the activity to be undertaken either on or relating to the premises. -This would also require a declaration of any grant or assistance which has been obtained from Council or any other party.:-
- iii) \_\_\_\_\_ The Council shall allow a rent concession only when it can be clearly demonstrated that such grant is necessary for the organisation to continue to deliver its service. -There shall be an expectation that grant recipients will develop a financial strategy steadily to diminish the level of grant required. This strategy must be demonstrated as part of the grant application.:-
- iv) \_\_\_\_\_ The level of rent grant should be the minimum necessary to ensure continuity of the operation and in any event should ~~not shall never~~ exceed 75% of the rental value of the premises. The precise level shall be determined by careful analysis of the current financial position and financial strategy of the organisation.:-
- v) \_\_\_\_\_ Each payment of rent grant shall be given explicitly.- The mechanism for this will be to charge the full rental value for the premises and separately make an explicit grant payment to that organisation.:-

vi) Decisions whether to grant rent concessions for leases of less than 7 years and, if so, at what level, will be undertaken by the relevant operational Head of Service and the Chief Operating Officer or his nominee~~Head of Corporate Property~~, after due discussion and democratic debate with Cabinet or Council Members. Ultimately however under the land disposal Rules it is the responsibility of the Chief Operating Officer or his nominee~~Head of Corporate Property~~ to determine whether a concession should be granted.

(i) ~~Rent concessions shall be granted only in explicit and transparent fashion and in accordance with the strategy described above.~~