

Report To: **STRATEGIC PLANNING AND CAPITAL MONITORING PANEL**

Date: 10 July 2017

Reporting Officer: Damien Bourke – Assistant Executive Director (Development, Growth & Investment)

Subject: **REVISED PROTOCOL RE: SALE OF LAND**

Report Summary: This report seeks approval for the revised protocol for the sale of council land. An Equality Impact Assessment (EIA) is attached to this report and should be read in conjunction with the report

Recommendations: That the revised Protocol for the sale of Land is approved.

Links to Community Strategy: The proposals contained in this report will support the delivery of the community strategy

Policy Implications: In line with current policy.

Financial Implications: Whilst there are no direct financial implications arising from the report at this stage, it is essential that the impact of all related implications on any land sale are clearly articulated, monitored and resourced (where applicable), alongside assumptions included within the Council's budget and medium term financial strategy.

(Authorised by the section 151 Officer)


Such financial implications can included the disposal receipt, associated expenditure relating to the disposal, a reduction to recurrent operational revenue expenditure, additional recurrent revenue either via annual business rates or council tax together with additional new homes bonus grant should this be applicable.

Legal Implications: It is good practice for the Council to have a policy on disposal of its land as this will help it to demonstrate that it is making its decisions lawfully and taking into account rational, reasonable and material considerations when doing so, in line with its policy. As well as being happy with the policy, members must read, understand and have regard to the Equalities Impact Assessment which attaches to it before they make their decision.

(Authorised by the Borough Solicitor)

Risk Management: The risk to the Council of not adopting a formal policy for the disposal of land is that it falls foul of compliance with statutory obligations and potentially not receiving best value for money from disposals. The revised Protocol clarifies the procedures.

Access to Information: The background papers can be obtained from the author of the report, David Absolon, Head of Estates, by:

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1. BACKGROUND

- 1.1 The Council owns a range of properties which are either, occupied by and in connection with the business of the Council (occupational properties) or by third parties (investment properties).
- 1.2 The Council periodically reviews both occupational and investments properties in order to ascertain whether they are required for the Council's purposes and in response to the need to significantly reduce expenditure in respect of operational buildings.
- 1.3 This is the first review following the Key Decision of March 2015 with particular reference to the procedure adopted in respect of the sale of land via Auction.
- 1.4 The Council also receives unsolicited applications from existing occupiers of investment properties and from unrelated third parties enquiring as to the availability of Council land and assets.
- 1.5 When land is deemed to be surplus to requirements or, if a third party makes an offer which is considered acceptable, the Council sells the land.
- 1.6 The process has been managed in accordance with the Key Decision taken 25 March 2015 and via the Strategic Planning and Capital Monitoring Panel.
- 1.7 Until now the process has been managed on an informal basis employing a number of different techniques, relying upon the skill and expertise of the officers and advisers engaged in the process and reporting planned disposals to the Strategic Planning and Capital Monitoring Panel. In addition, not all Applications to acquire land are made to the Corporate Landlord, with other services being approached initially, which means a consistent policy is not being implemented.
- 1.8 The disposal of Council land is closely regulated by law and it is this, together with a desire to ensure consistency and therefore fairness, that has highlighted the need for the Council to adopt a formal policy setting out how it will make decision on disposals of land in the future.

2. THE CORPORATE POLICY – DISPOSAL OF COUNCIL OWNED LAND

- 2.1 Attached at **Appendix 1** is the proposed Corporate Policy – Disposal of Council Owned Land. The policy sets out a formal application procedure for parties who are interesting in purchasing land off the Council and then, depending upon the category of property, prescribes the process for considering the application and ultimately disposing of the land.
- 2.2 The policy, if adopted will lead to a clear and consistent approach to the disposal of Surplus Land and also best value being achieved, however, the policy also takes account of:
- 2.3 **Special Purchasers**, a buyer who has a special reason for paying more than the market value, for instance if the land is adjoining their existing property or provides the only viable option to a buyer in relation to the project or scheme they are pursuing which requires them to acquire the Land;
- 2.4 **Disposal for Community Ownership** - for example, a community centre, hall, village hall, community or sports pavilion, sold for the benefit of the community aimed at bringing people from different backgrounds together;

- 2.5 **State Aid** - an advantage given by the Council benefiting particular industrial sectors or individual undertakings and which may affect or distort competition.
- 2.6 **Disposal at Undervalue** - disposal at less than market value and where such disposal:
- secures the promotion or improvement of the economic, social or environmental well-being of Tameside Metropolitan Borough pursuant to the Council's "Well-Being Powers"; and
 - is subject to voluntary conditions which have a direct or indirect monetary value to the Council.
- 2.7 **Well Being Powers** - the powers given to Local Authorities pursuant to Section 2 subject to the restrictions contained in Section 3 of the Local Government Act 2000, to do anything the Council considers likely to promote the economic, social and environmental well-being of its area, unless explicitly prohibited elsewhere in legislation and may encompass cultural well-being and the promotion or improvement of the health of its residents and visitors.
- 2.8 The checklist below is proposed to be adopted as part of the policy:

Question		Response	
		Yes	No
1.	Is the Property held under the correct powers?	Proceed to 2	Discuss with Legal
2.	Does the transaction fall within General Consent exemptions?	Proceed to 4	Proceed to 3
3.	Does the transaction fall within General Consent exclusions?	Proceed to 4	Proceed to 4
4.	Are there any other special considerations?	Proceed to 5	Proceed to 6
5.	Have the provisions of the special considerations been complied with?	Proceed to 6	Comply with provisions and proceed to 6
6.	Does the Council have a valuation?	Proceed to 7	Obtain valuation then proceed to 7
7.	Is the transaction at an undervalue?	Proceed to 8	Proceed to 10
8.	Is the undervalue less than or equal to £2m?	Proceed to 10	Proceed to 9
9.	Has a Specific Disposal Consent been obtained?	Proceed to 10	Obtain Consent then proceed to 10
10.	Is the Council granting assistance, directly or through resources?	Proceed to 11	Proceed to 18
11.	Does the assistance give an advantage to one or more undertakings over others?	Proceed to 12	Proceed to 18
12.	Does the assistance distort or have the potential to distort competition?	Proceed to 13	Proceed to 18
13.	Does the assistance affect trade between Member States?	Proceed to 14	Proceed to 18
14.	Can the transaction be redesigned so that any of the elements in 10 to 13 do not apply?	Proceed to	Proceed to 15
15.	Is the assistance less than €200k over 3 years?	Following communication procedure and proceed to 18	Proceed to 16
16.	Does the assistance fit into the GBER exemptions?	Proceed to 18	Proceed to 17
17.	Has approval been obtained?	Proceed to 18	Obtain

				approval and proceed to 18
18.	Proceed with transaction			

3 FINANCIAL IMPLICATIONS

- 3.1 The Council has a responsibility to ensure that it complies with section 123 of the Local Government Act 1972, which gives the statutory duty to local authorities to achieve best value in the context of land disposals. Subject to compliance with the other obligations of a local authority it may dispose of land held by it providing it is not for a consideration less than the best that can reasonably be obtained unless the Secretary of State consents to the disposal.
- 3.2 Central government policy is that under-utilised publicly owned assets should be disposed of to reduce the level of revenue public spending on maintaining and operating surplus or unused assets and also so that they are capable of being used by others to support the economic regeneration of local areas.
- 3.3 Tameside Council's policy is also that assets and land operation and retention should be regularly reviewed to reduce operational revenue costs.
- 3.4 Disposal of land and assets to others often results in additional revenue to the Council in form of increased Business Rates, where developed or used for commercial activity and Council Tax and potentially New Homes Bonus if developed for housing.
- 3.5 The useable proportion of a Capital Receipt will be placed in the General Fund unless it has been otherwise agreed in advance.

4 RISK

- 4.1 The risk to the Council of not adopting a formal policy for the disposal of land is that it falls foul of any or all of the following statutory obligations:
- a. It is the responsibility of the Council to satisfy itself that the land is held under powers which permit it to be disposed of under the terms of the 1972 Act and, if not, to take action to appropriate it (for example, under section 122 of the 1972 Act). In this regard, authorities are reminded that the terms of the general consent to dispose of land do not extend to proposals to dispose of land under section 233 of the 1990 Act, for which specific consent is still required. Nor does the general consent to dispose of land apply to the disposal of land held under powers derived from the Housing Act 1985, upon which authorities should seek advice from the Housing Directorate.
 - b. It is the responsibility of the Council to undertake any further procedures which may be necessary to enable it to dispose of any particular area of land. For example, sections 123(2A) and 127(3) of the Local Government Act 1972 and section 233(4) of the Town and Country Planning Act 1990 ("the 1990 Act") require a local authority wishing to dispose of open space under those powers to advertise its intentions in a local newspaper for two consecutive weeks and to consider objections. Authorities should carry out these procedures before making any final decisions about disposal as the public response to the notices may be material to any such decision. It could also be an important factor in any determination by the Secretary of State of an application for specific consent.
 - c. It is the responsibility of the Council to ensure that it complies with section 123 of the Local Government Act 1972 which enshrines the statutory duty on local authorities to

achieve best value in the context of land disposals. Subject to compliance with the other obligations of a local authority it may dispose of land held by it providing it is not for a consideration less than the best that can reasonably be obtained unless the Secretary of State consents to the disposal.

4.2 There is a general duty on local authorities to act reasonably in the exercise of their powers.

4.3 Some property transactions might amount to State Aid. It is unlawful to give assistance which distorts competition in a way that is harmful to the citizens and companies in the EU.

5 CONCLUSION

5.1 This report sets out why the Council should consider updating the existing formal policy.

5.2 The risks of falling foul of legal requirements both in terms of prescribed rules and the duty to act reasonably mean that a formal policy is both necessary and desirable.

6 RECOMMENDATION

6.1 As set out at the front of the report.

APPENDIX 1

CORPORATE POLICY

Disposal of Council Owned Land

1 INTERPRETATION

“Applicant”	a party who has directly or indirectly (via an agent) expressed an interest whether formally or informally in purchasing Land.
“Application”	An application by an Applicant for the Disposal of Surplus Land which must include a plan showing the area which is subject to the request and details of the proposed use of the Land together with any other information considered appropriate to enable a fully informed decision to be made by the Council. The request may be rejected if insufficient information has been given and the Applicant may be asked to resubmit their Application with the relevant information.
“Community Asset”	a community centre, hall, village hall, community or sports pavilion.
“Community Organisation”	(a) a party that is independent of the Council and whose governing board or committee includes a majority of community representatives of people living in the Borough; or (b) one or more of the Council’s public sector or voluntary sector partners whose objective is to provide a social or community benefit.
“Community Ownership”	a Community Asset owned or managed for the benefit of the community aimed at bringing people from different backgrounds together.
“Disposal”	to sell either the Council’s freehold interest in Land; or to grant at a premium a leasehold interest to a buyer with the Council retaining its freehold interest in the land; or to enter into an agreement to give effect to this (including granting an option or right of pre-emption).
“Formal Tender”	offers that are invited giving a firm closing date. Offers received are to be submitted in sealed envelopes and not opened but opened together at a published date and time.
“Informal Tender”	a process whereby offers are invited without necessarily giving a firm closing date. As offers are received they are opened as they are received. Bidders may be invited to increase their bids, possibly having been informed that a higher bid has been received following a closing date for initial bids. The invitation to submit further bids shall be subject to a final bid closing date. Should a higher bid be received after the final bid closing date the Council makes its position clear that in this event any higher offer being received before completion of the sale, the Council may be obliged to consider it.
“Land”	land owned by the Council, which may or may not have any building or buildings or other structures erected on it.
“Private Treaty”	negotiations that are carried out between the Council (or its agents) and the prospective buyer (or their agents) privately, normally without a limit on the time within which they must complete the negotiations.
“Public Auction”	a process whereby a sale is conducted in public through an appropriate auction house with the sale proceeding to the highest bidder.

“Special purchaser”	a buyer who has a special reason for paying more than the market value, for instance if the land is adjoining their existing property or provides the only viable option to a buyer in relation to the project or scheme they are pursuing which requires them to acquire the Land.
“State Aid”	an advantage given by the Council benefiting particular industrial sectors or individual undertakings and which may affect or distort competition.
“Surplus Land”	Land which falls into any of the following categories: (a) retention of the Land would not meet the Council’s corporate aims and objectives; (b) there is no justification for retaining the Land; (c) the Land is surplus to the Council’s requirements; or (d) management of the Land is suitable for community ownership.
“Undervalue”	disposal at less than market value and where such disposal: (a) secures the promotion or improvement of the economic, social or environmental well-being of Tameside Metropolitan Borough pursuant to the Council’s “Well-Being Powers”; and (b) is subject to voluntary conditions which have a direct or indirect monetary value to the Council.
“Valuer”	a suitably qualified Surveyor acting on behalf of the Council.
“Well-Being Powers”	the powers given to Local Authorities pursuant to Section 2 subject to the restrictions contained in Section 3 of the Local Government Act 2000 to do anything the Council considers likely to promote the economic, social and environmental well-being of its area unless explicitly prohibited elsewhere in legislation and may encompass cultural well-being and the promotion or improvement of the health of its residents and visitors.

2 GENERAL

- 2.1 The Council shall continuously review the sufficiency, suitability, condition and cost of retaining Land.
- 2.2 The Council may dispose of Surplus Land.
- 2.3 Where the Council disposes of Surplus Land it will normally seek to achieve the best price.
- 2.4 Surplus Land shall be referred to Members for a determination as to whether to dispose of or retain the Surplus Land where:
 - a) it has significant development potential;
 - b) the Executive Director of Place considers that its disposal should be determined by Members;
 - c) the Applicant is a Member; or
 - d) it is intended for Community Ownership.
- 2.5 A decision to dispose of Surplus Land that does not fall within paragraph 2.4 above may be made by the Assistant Executive Director, Asset & Investment Partnership Management.
- 2.6 Surplus Land shall not be disposed of at an undervalue, unless in accordance with the guidance set out in Circular 06/03 Local Government Act 1972: General Disposal Consent

(England) 2003 and with this Policy.

- 2.7 An Application from a member of the public which will result in a Community Asset, shall at first instance be considered by the Assistant Executive Director, Place.
- 2.8 A Disposal to a Special Purchaser shall be at the best price the Council can achieve
- 2.9 The Council shall as part of its decision making process consider whether a Disposal will cause or have an impact upon a minority group or individuals who currently benefit from the Land that cannot be accommodated elsewhere.
- 2.10 The Council has an obligation to fulfil their fiduciary duty in a way which is accountable to local people and in doing this needs to ensure that if there is a Disposal at an Undervalue the Disposal secures the wellbeing of the Borough pursuant to the Council's "Well Being Powers", and having regard to the priorities identified in the Council's corporate aims and objectives.

3 POLICY

- 3.1 The Council shall consider all genuine Applications.
- 3.2 If the Land has development potential or community amenity value the Application may be declined and the Applicant will be informed in writing.
- 3.3 Land having development potential may still be disposed of but the development potential must be reflected in the sale price.
- 3.4 Disposal of Land for Community Ownership shall be considered by the Council as part of its strategic approach to asset management and may be disposed of at an Undervalue subject to the procedure set out in paragraph 4.3 below.
- 3.5 The Council shall impose such conditions, covenants or restrictions upon a Disposal as it considers necessary and appropriate to protect the public purse and/or amenity of the area.
- 3.6 Upon receipt of an Application the Council may appoint a valuer to value the land the cost of which may be met by the Applicant whether or not the transaction proceeds to completion.
- 3.7 A Disposal which does not exceed £10,000 or is to a Special Purchaser and is intended to be used by the buyer:
 - i. as an extension to their garden; or
 - ii. for the erection of a separate building associated with their existing property; or
 - iii. extension associated with their existing property;
shall be by Private Treaty.
- 3.8 A Disposal which is to a Special Purchaser who is the lessee of the Land subject to the Disposal shall be by Private Treaty.
- 3.9 A Disposal which is expected not to exceed £100,000 and the provisions of paragraph 3.7 do not apply shall be disposed of by Public Auction, Private Treaty or Informal Tender as determined under paragraph 4.2.5 below.
- 3.10 A Disposal which is expected to exceed £100,000 shall be disposed of by Public Auction,

Informal Tender or Formal Tender as determined under paragraph 4.2.5 below.

- 3.11 A Disposal shall follow the procedure set out in paragraph 4 below.
- 3.12 Where there is a Disposal for less than the best price the Council can achieve it will only do so in accordance with the guidance set out in Circular 06/03 Local Government Act 1972: General Disposal Consent (England) 2003 (as amended or superseded).
- 3.13 Where there is a Disposal for less than the best price the Council can achieve or where the disposal is subsidised by the Council the Executive Director of Place must consider in consultation with the Borough Solicitor and section 151 Officer whether such disposal amounts to State Aid.
- 3.14 Where the Disposal forms part of a mixed transaction involving the procurement of public “works”, “supply” or “services”, the Executive Director of Place must consider in consultation with the Borough Solicitor and section 151 Officer whether the disposal amounts to procurement rather than a simple land transaction in which case the Council’s Contract Procedure Rules and EU Procurement Regulations may apply.
- 3.15 Disposals shall only take place upon such terms and conditions as considered appropriate by the Borough Solicitor.
- 3.16 The Borough Solicitor shall negotiate the most advantageous legal terms and conditions to the Council with the Applicant and is authorised to enter into a Contract with the Applicant on behalf of the Council.

4 PROCEDURE

- 4.1 Following a genuine Application the Assistant Executive Director, Place, shall consider the Council’s Asset Management Plan and a review carried out as to the sufficiency, suitability, condition and cost of retaining the Land in the light of the Council’s corporate aims and objectives and service provision to determine whether the Land is Surplus Land.
- 4.2 If the Land does not meet the criteria for retaining the Land and is deemed Surplus Land:
 - a) The views of the Local Planning Authority as to any development potential of the Land shall be sought if appropriate and the Local Planning Authority’s views taken into consideration in reaching a decision as to whether or not to dispose of Land.
 - b) The Assistant Executive Director, Asset & Investment Partnership Management shall liaise with the Borough Solicitor and the Executive Member for Finance and Performance, consider the Council’s title deeds to ascertain any restrictive covenants or obligations on the Council which may affect the value or disposal of the e.g. if the land was compulsorily purchased and whether it has to be offered back to the original seller.
 - c) A valuation of the Land shall be sought from the Council’s valuer where appropriate to ascertain the market value of the land.
 - d) The Section 151 Officer may carry out a financial appraisal as to whether or not the Disposal would be financially viable for the Council. The details of such financial appraisal shall remain confidential to the S151 Officer or their duly appointed representative until such time as evaluation of all applicable Applications has been undertaken.

- e) The Assistant Executive Director, Place, and the Executive Member for Finance and Performance shall identify, after seeking appropriate professional advice, the appropriate method of sale suitable for the land, whether it be by Private Treaty, Informal Tender, Formal Tender or Public Auction, such decision being made in the best interests of the Council and in accordance with this Policy.
- f) The Assistant Executive Director, Place, shall prepare a written report incorporating, if appropriate, the observations of the S151 Officer, Borough Solicitor and Executive Director of Place and the Executive Member of Finance and Performance to enable a fully informed decision to be made as to whether or not to dispose of the Land.
- g) Where appropriate the Council will advertise its intention to dispose of land for two consecutive weeks in a local newspaper and then consider any objections received
- h) A Disposal may be subject to the buyer being responsible for the Council's Surveyors fees, Legal Costs and Advertising Costs (if any) and also subject to such other terms and conditions as the Borough Solicitor considers appropriate. The expectation is that each party bears their own costs.
- i) Negotiations between an Applicant and the Council shall take place either orally or in writing or at a venue to be agreed between the Council and the Applicant by the Council to attend any meeting and such negotiations shall be recorded in writing.
- j) Following determination, if Land is to be disposed of the matter will be passed to the Borough Solicitor for processing.
- k) Following completion of a Disposal any unsuccessful Applicants may, if appropriate, be informed in writing of completion of the disposal.

4.2 Procedure for selling via Auction:

- (a) Potential surplus sites that are being considered for sale via Auction are presented to the Executive Member for Finance and Performance, the Executive Director Place and the Assistant Executive Director Place for approval
- (b) Once approval is received and, if appropriate, the intention to sell is advertised for two consecutive weeks in the local press in accordance with the requirements of s123 of the Local Government Act 1972.
- (c) Any objections received are logged and considered by the Executive Member for Finance and Performance, the Executive Director Place and the Assistant Executive Director Place. Objectors are notified of the decision reached.
- (d) If a sale is approved each site is placed for sale via a reputable Auction House

4.3 A Disposal for Community Ownership shall follow the following procedure:

4.3.1 The Community Organisation shall prepare a business plan setting out the benefits to the community and evidence of how it intends to manage and operate the Land for the benefit of the community which plan should include by way of example:

- (a) use of the Land for community groups benefiting local people and organisations as a "community anchor";
- (b) providing social and economic support to minority groups in the community; or
- (c) promoting start up enterprises and fostering innovation and entrepreneurship through social enterprise.

4.3.2 The Assistant Executive Director, Place, shall liaise with the Borough Solicitor and consider the Council's title deeds to ascertain any restrictive covenants or obligations on the Council which may affect the value or disposal of the e.g. if the land was compulsorily purchased and whether it has to be offered back to the original seller.

4.3.3 A valuation of the land shall be sought from the Council's valuer where appropriate to ascertain the market value of the land and any potential undervalue.

4.3.4 The S151 Officer may carry out a financial appraisal as to whether based upon the business plan the Disposal is acceptable to the Council.

4.3.5 The Executive Director of Place:

- (a) Identify any risks involved in the Land to the Community Organisation from the business plan and other;
- (b) How these risks may be mitigated and managed;
- (c) Identify the benefits of Community Management and ownership and whether the benefits and opportunity costs outweigh the risks;
- (d) Seek any further information necessary from the Community Organisation to enable the Council to make a fully informed decision.

4.3.6 The Executive Director of Place shall identify any ongoing resource implications to the Council as a result of the Disposal including lifecycle costs.

4.3.7 The Assistant Executive Director, Place, shall, if appropriate, prepare a written report incorporating the observations of the Council's Section 151 Officer, Borough Solicitor and the Executive Member for Finance and Performance and Executive Director of Place to enable a fully informed decision to be made as to whether or not to dispose of the land.

4.3.8 Following consideration of the report Members shall determine whether or not to approve in principle for the Disposal upon such terms and conditions the Borough Solicitor considers appropriate.

4.3.9 Following a decision in principle by Member to approve a Disposal negotiations between an Community Organisation and the Council shall take place either orally or in writing or at a venue to be agreed between the Council and the Community Organisation but two Council officers shall be appointed by the Council to attend any meeting and such negotiations shall be recorded in writing and shall include:

- (a) benefits to the community;
- (b) market value and proposed Undervalue;
- (c) risks and management and mitigation of those risks; and
- (d) ongoing future partnership working between the Council and the Community Organisation and monitoring of the benefits to the community as a result of the disposal.

4.3.10 Following determination, if Land is to be disposed of the matter will be passed to the Borough Solicitor for processing.

4.4 When processing an application all officers will ensure that they consider and comply with the Disposal Checklist attached at **Appendix 2**.

APPENDIX 2

DISPOSAL CHECKLIST

Question		Response	
		Yes	No
18.	Is the Property held under the correct powers?	Proceed to 2	Discuss with Legal
19.	Does the transaction fall within General Consent exemptions?	Proceed to 4	Proceed to 3
20.	Does the transaction fall within General Consent exclusions?	Proceed to 4	Proceed to 4
21.	Are there any other special considerations?	Proceed to 5	Proceed to 6
22.	Have the provisions of the special considerations been complied with?	Proceed to 6	Comply with provisions and proceed to 6
23.	Does the Council have a valuation?	Proceed to 7	Obtain valuation then proceed to 7
24.	Is the transaction at an undervalue?	Proceed to 8	Proceed to 10
25.	Is the undervalue less than or equal to £2m?	Proceed to 10	Proceed to 9
26.	Has a Specific Disposal Consent been obtained?	Proceed to 10	Obtain Consent then proceed to 10
27.	Is the Council granting assistance, directly or through resources?	Proceed to 11	Proceed to 18
28.	Does the assistance give an advantage to one or more undertakings over others?	Proceed to 12	Proceed to 18
29.	Does the assistance distort or have the potential to distort competition?	Proceed to 13	Proceed to 18
30.	Does the assistance affect trade between Member States?	Proceed to 14	Proceed to 18
31.	Can the transaction be redesigned so that any of the elements in 10 to 13 do not apply?	Proceed to	Proceed to 15
32.	Is the assistance less than €200k over 3 years?	Following communication procedure and proceed to 18	Proceed to 16
33.	Does the assistance fit into the GBER exemptions?	Proceed to 18	Proceed to 17
34.	Has approval been obtained?	Proceed to 18	Obtain approval and proceed to 18
18.	Proceed with transaction		

See next page for guidance.

1 Is the Property held under the correct powers?

It is the responsibility of the authority to satisfy itself that the land is held under powers which permit it to be disposed of under the terms of the 1972 Act and, if not, to take action to appropriate it (for example, under section 122 of the 1972 Act). In this regard, authorities are reminded that the terms of the Consent do not extend to proposals to dispose of land under section 233 of the 1990 Act, for which specific consent is still required. Nor does the Consent apply to the disposal of land held under powers derived from the Housing Act 1985, upon which authorities should seek advice from LAH 5 Division in the Housing Directorate, ODPM, Zone 2/D2, Eland House, Bressenden Place, London, SW1E 5DU.

2 Does the transaction fall within General Consent exemptions?

The grant of a tenancy for a term not exceeding seven years or the assignment of a term which, at the date of assignment, has less than seven years to run is exempt and can be granted at an undervalue.

3 Does the transaction fall within General Consent exclusions?

Consent may not be required in the following circumstances:

3.1 The local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area:

3.1.1 the promotion or improvement of economic well-being;

3.1.2 the promotion or improvement of social well-being;

3.1.3 the promotion or improvement of environmental well-being; and

3.2 The difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).

4 Are there any other General Consent special considerations?

It is the responsibility of the authority to undertake any further procedures which may be necessary to enable it to dispose of any particular area of land. For example, sections 123(2A) and 127(3) of the Local Government Act 1972 and section 233(4) of the Town and Country Planning Act 1990 ("the 1990 Act") require a local authority wishing to dispose of open space under those powers to advertise its intentions in a local newspaper for two consecutive weeks and to consider objections. Authorities should carry out these procedures before making any final decisions about disposal as the public response to the notices may be material to any such decision. It could also be an important factor in any determination by the Secretary of State of an application for specific consent.

5 Have the provisions of the special considerations been complied with?

Having considered question 4 the Council must ensure that any special considerations are complied with before finalising any transaction.

6 Does the Council have a valuation?

The Council should obtain a valuation in instances where it believes a transactions might be at an undervalue – it is advised that valuations are obtained in any event. *Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003 disposal of land for*

less than the best consideration that can reasonably be obtained contains requirements which must be satisfied in any valuation.

7 Is the transaction at an undervalue?

If the consideration for a transaction is less than the best value of the land in question then there is an undervalue.

8 Is the undervalue less than or equal to £2m?

The General Consent permits disposals at an undervalue provided the difference between the best value and the actual consideration is £2m or less. Only if the difference is more than £2m will the matter need to be referred to the Secretary of State.

9 Has a Specific Disposal Consent been obtained?

If the difference between best value and actual consideration is more than £2m then the Council will need to apply to the Secretary of State for approval. The Circular (referred to at 5 above contains guidance on making such applications).

10 Is the Council granting assistance, directly or through resources?

State resources is broad, including tax exemptions, Lottery funding and the EU Structural Funds over which the state has significant control are all included.

11 Does the assistance give an advantage to one or more undertakings over others?

11.1 An “undertaking” is any organisation engaged in economic activity.

11.2 This is about activity rather than legal form, so non-profit organisations, charities and public bodies can all be undertakings, depending on the activities they are involved in.

11.3 Support to an organisation engaged in a non-economic activity isn't state aid, e.g. support to individuals through the social security system is not state aid.

11.4 This can also include operators and ‘middlemen’ if they benefit from the funding

11.5 “Economic activity” means putting goods or services on a market. It is not necessary to make a profit to be engaged in economic activity: if others in the market offer the same good or service, it is an economic activity.

11.6 An “advantage” can take many forms: not just a grant

11.7 Grant, loan or tax break, but also use of a state asset for free or at less than market price. Essentially, it is something an undertaking could not get in the normal course of business.

12 Does the assistance distort or have the potential to distort competition?

If the assistance strengthens the recipient relative to its competitors then the answer is likely to be “yes”. The “potential to distort competition” does not have to be substantial or significant: may include relatively small amounts of financial support and firms with modest market share.

13 Does the assistance affect trade between Member States?

The interpretation of this is broad: it is enough that a product or service is tradeable between Member States, even if the recipient does not itself export to other EU markets.

14 Can the transaction be redesigned so that any of the elements in 10 to 13 do not apply?

Complying with the state aid rules can add time to your project and mean that you are limited in the size of award you can make. Can you use other mechanisms to achieve your goal?

15 Is the assistance less than €200k over 3 years?

15.1 A useful approved EU mechanism for state aid is the de minimis regulation, based on the Commission's view that small amounts of aid are unlikely to distort competition.

15.2 The De Minimis Regulation allows small amounts of aid – less than €200,000 over 3 fiscal years – to be given to an undertaking for a wide range of purposes.

15.3 If you use this mechanism, you don't need to notify or get approval, but records of aid granted must be kept and all the rules of the de minimis regulation must be followed.

15.4 The State Aid Manual gives more detail and standard text for communications.

16 Does the assistance fit into the GBER exemptions?

16.1 The General Block Exemption Regulation ("GBER") is a useful mechanism. It provides a simple way of providing assistance for a range of aid measures considered not to unduly distort competition.

16.2 If you use this mechanism, you don't need prior approval, but you must notify the Commission using the online system (SANI) within 20 working days of giving the aid.

16.3 It is important to meet the terms and maximum aid amounts set out in the regulation.

16.4 These are different for each of the 26 areas it covers. The most relevant areas are:

16.4.1 Aid for Environmental Protection

16.4.2 Aid for Research, Development and Innovation

16.4.3 Aid to Disadvantaged and Disabled Workers

16.4.4 Regional Aid

16.4.5 Risk Capital Aid

16.4.6 SME Aid

16.4.7 Training and Employment Aid

17 Has approval been obtained?

Follow regulations for obtaining approval.

18 Proceed with transaction

Proceed with transaction but keep under review.