

Asset Disposal Policy

Estates, Valuation and Facilities

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1. Introduction

- 1.1 This policy sets out the core principles to be applied when considering land or property for disposal. Whilst the primary focus of this document is to provide key policy guidance for officers, elected members, businesses and the general public, it is important to note that each individual case will be assessed on its own merits and nothing in this document binds the Council into any particular course of action when dealing with the portfolio. Alternative methods of disposal, not specifically mentioned in this policy, may be used where appropriate and subject to obtaining proper authority.
- 1.2 The disposal or relinquishment of surplus or underperforming council land and property assets is a key part of New Forest District Council's ("the council") strategy to meet the aims outlined in its Corporate Plan 2024-2028 and also forms a key part of the Strategic Asset Management Plan (SAMP) which identifies how the use of assets will feed into the Corporate Plan.
- 1.3 A definition of an asset disposal for the purposes of this Policy includes the sale of a freehold interest, an assignment or grant of a lease for more than 7 years, and the granting of easements and options. Leases of less than 7 years or an assignment of a term with less than 7 years to run which are exempt from the statutory requirement to obtain best consideration, are outside of this policy, although in such cases there will be a general presumption that Officers will follow the policy's principles.
- 1.4 The policy document will ensure that a common, robust disposal and governance process is adopted in order to support effective property disposal decision making within the council and to ensure that requests to purchase council-owned assets are dealt with in a fair and consistent manner.
- 1.5 The policy is not intended to apply to leases where a tenant has a statutory right of renewal, or statutory easements and wayleaves granted to utility companies unless there is clear public interest in which case the Portfolio Holder for Corporate Resources will be consulted.
- 1.6 The aims of this policy are:
 - a) To set out procedures that council officers will follow when dealing with disposals, to ensure they are dealt with in a consistent and transparent way. There will be exceptional circumstances when officers may need to depart from the procedures set out in the Policy depending upon the circumstances of a disposal.
 - b) All actions recommended within this disposal policy document will strive to promote the disposal of assets in a way that positively supports the delivery of the council's Corporate Plan 2024-2028.

- c) To enable actual and latent capital value tied up in potentially surplus assets to be realised.
- d) To eliminate / minimising future liabilities through the disposal of non core assets.
- e) To maximise the proceeds or land use benefit from disposals for the benefit of the council and its community.

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2. The Legislative and regulatory context

- 2.1 A Local Authority may dispose of land it owns as it wishes; however, any disposal is subject to compliance with certain statutory provisions. Section 123 Local Government Act 1972 ('s123') imposes the overriding duty to obtain the best consideration that can reasonably be obtained for relevant disposals of land.
- 2.2 For the purposes of Section 123, a disposal includes the sale of a freehold, granting a lease, assigning any unexpired term of a lease and the grant of an easement. It may also extend to the grant of an option to purchase a freehold or to take a lease. Section 123 does not apply to the grant of a short-term tenancy of less than 7 years or an assignment of an existing term with no more than 7 years to run.
- 2.3 The Local Government Act 1972 general disposal consent (England) 2003 provides a mechanism for Local Authorities to proceed with disposals at an undervalue, without the need for specific consent from the Secretary of State, subject to conditions. Examples may include those where the local authority considers that such disposal will help to secure the promotion or improvement of the economic, social or environmental well-being of its area; although this should not be considered an overriding factor.
- 2.4 The general consent is subject to a condition that the undervalue does not exceed £2 million. The undervalue is calculated by assessing the difference between the market value of the land or property (known as the unrestricted value) and the actual consideration received. If the under-value exceeds £2 million or the authority considers for any other reason that the general consent cannot be applied to the disposal, then specific consent from the Secretary of State must be obtained for the disposal to proceed.
- 2.5 Open Space: Section 10 of the Open Spaces Act 1906 states: "A local authority who have acquired any estate or interest or control over any open space or burial ground under this Act shall, subject to any conditions under which the estate, interest or control was acquired:
 - (a) hold and administer the open space or burial ground in trust to allow, and with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act and under proper control and regulation and for no other purpose; and
 - (b) maintain and keep the open space or burial ground in a good and decent state..."
- 2.6 The provisions regarding the disposal of Common Land require consent from the Secretary of State and replacement land to be made available where the area of land to be sold exceeds 200m².

- 2.7 European Commission Communication on State Aid elements in sales of land and buildings by public authorities (97/C 209/03) – also known as the 'State Aid Rules'.
- 2.8 RICS Valuation – Professional Standards 2019 UK VPGA 17 – Local authority disposal for less than best consideration. (updated Jan 2019)
- 2.9 Crichton Rules - In 2015 the Department for Communities and Local Government updated a circular entitled "Compulsory Purchase and the Crichton Down Rules" which prescribed the way in which all Government departments and executive agencies that are subject to a power of direction from a Minister must manage the disposal of land previously acquired by the use of compulsory powers. Local authorities, which are not subject to a ministerial power of direction, are not subject to such a prescription but are still recommended to also follow the rules.
- 2.10 In particular the General Rule of these guidelines states that "where a department wishes to dispose of land to which the Rules apply, former owners will, as a general rule, be given the first opportunity to repurchase the land previously in their ownership, provided that its character has not materially changed since acquisition." Disposals to former owners under these arrangements will be at current market value.

3. Definitions

- 3.1 **Common Land:** is land subject to rights enjoyed by one or more persons to take or use part of a piece of land or of the produce of a piece of land which is owned by someone else – these rights are referred to as 'rights of common'. Those entitled to exercise such rights were called commoners.
- 3.2 **Community Asset Transfer:** The transfer of an interest in property and or land from the council to a community group, or Town or Parish Council to secure community benefits.
- 3.3 **Disposal:** For the purposes of this policy, a disposal of property is considered to be a disposal if it consists of the transfer of the freehold interest or the surrender, assignment of a leasehold interest held by the council.
- 3.4 **Freehold:** means to own a property, including the land it's built on, with no fixed time limit.
- 3.5 **Leasehold:** is a property that you own for a fixed length of time. The land that the property sits on is usually owned by the freeholder.
- 3.6 **One Public Estate (OPE):** is a national programme that supports locally-led partnerships of public sector bodies to collaborate around their public service delivery strategies and estate needs. The programme is jointly managed by Cabinet Office and the Local Government Association. The aim of the programme is to help partners to repurpose surplus public estate for housing, regeneration, and other locally determined uses.
- 3.7 **Open Space:** is defined in the Town and Country Planning Act 1990 as any land 'laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground'. It is generally considered to be a valuable community resource, to be enjoyed by the wider community and there will be a general presumption against the disposal of these assets.
- 3.8 **Royal Institute of Chartered Surveyors (RICS):** Is the official body of property professionals that issues and monitor the standards of a chartered surveyor. All RICS accredited surveyors must pass a thorough process before they receive their chartered status.
- 3.9 **Strategic Asset Management Plan (SAMP):** is a documented statement of intent and planning tool. It specifies how the Council's objectives are to be converted into asset management objectives and describes the approach for achieving those objectives.

4. Main body

4.1 Overview

4.1.1 The council owns many properties ranging in type and size with a portfolio including offices, shops, and leisure and community centres as well as parcels of land such as parks and amenity space.

4.1.2 The council utilises its property in several ways, including:

- Operational accommodation for corporate use.
- The provision of residents' health and wellbeing facilities through managed leisure centres and swimming pools, outdoor sports pitches and parkland and nature reserve facilities.
- Encouragement of economic development in the district through the provision of commercial property to let, resulting in subsequent income generation.
- Car parks provided to ensure a joined-up approach to traffic management, strategic planning, and economic development.
- The provision of community space for community events and club meetings, exercise classes, children's parties, and community meetings.
- The holding of property as an investment to produce an income.

4.1.3 As part of its SAMP, the Council will ongoingly review the purpose, value and condition of its assets and consider whether a business case for disposing of an asset should be explored. The decision-making process will be informed by its Asset Challenge Framework (**Appendix 1**) that will enable officers to consider the relative value of assets within its portfolio, considering financial value alongside operational, environmental, social, economic and community values. The process may include assets that are no longer needed by the Council, are unaffordable to repair, or that are unlikely to be required for any future use. Alternatively, the Council may consider assets that provide a benefit that is disproportionate to the opportunity cost of capital tied up in the asset.

4.1.4 The Disposal policy is a key enabler as part of the Council's Strategic Asset Management Plan (SAMP), ensuring property assets held by the council will be appraised and considered for disposal and potentially surplus to requirements. Furthermore, assets may be deemed surplus to the Council's requirement following the policy principles.

- The asset no longer makes a positive contribution to delivery of council services
- The revenue and capital demands to maintain far outweigh any income, financial or policy benefits

- Has no potential for future strategic regeneration and/or redevelopment purposes
- An alternative site can provide a more cost effective and efficient service
- No adopted and resourced Council plan/policy/ strategy, that could bring the asset into use in foreseeable future
- No potential advantageous shared use with partners (One Public estate/CAT)
- The asset does not contribute towards the Council's commitment to delivering and maintaining a zero-carbon, energy efficient estate.
- The property or land is surplus to operational requirements and if sold would therefore contribute to the Council's financial sustainability

4.1.5 It should be noted that some land or property assets which meet the 'surplus' or 'underperforming' criteria may still be held by the council with the aim of enabling long term development or future infrastructure projects, as part of wider strategic regeneration or place shaping. Further, some property disposals may be compulsory transfers driven by statute rather than the identification of surplus or underperforming assets.

4.1.6 Once confirmed as surplus and a prospect for disposal via the Asset Challenge Framework, the property should be logged on the council's surplus land register.

4.1.7 The Estates team also receives a number of requests to purchase small parcels of land for use either as an example, gardens or for parking purposes the process for dealing with these is set out in **Appendix 2**.

4.2 Definition of A Disposal

4.2.1 For the purposes of this policy, a disposal of property is considered to be a disposal if it consists of the transfer of the freehold interest or the surrender, assignment of a leasehold interest held by the council.

4.2.2 In respect of the grant of new leases these will not be considered to be a disposal (but they will be de-recognised from the council's fixed assets and added to long-term debtors in the balance sheet) where the following applies: -

- The grant of leases to community groups charities or other organisations where the primary objective is the provision of a service to the community.
- In respect of properties held at least partially for investment purposes unless it is for an unbroken lease term in excess of 25 years

4.3 Governance

4.3.1 The Council recognises that good governance is a key component of this policy. The below table details the various stages, actions required and responsible person(s). Note these can also run concurrently.

Stage	Action	Responsible Person(s)	Informed	Decision Point
Stage 1	Asset Challenge Framework	Head of Estates and FM Estates Manager	Strategic Director Corporate Resources & Transformation	
Stage 2	Internal Review	Legal	Service Manager Transformation Board Portfolio Holder Ward Member	
Stage 3	Preparation for Disposal – Capital Receipt	Estates	Ward Member	Transformation Board
Stage 4	Approval to proceed with disposal	Strategic Director Corporate Resources & Transformation	Estates Ward Member	Transformation Board / Council
Stage 5	Property Disposal	Estates		
Stage 6	Evaluation and Council Consultation	Estates Strategic Director Corporate Resources & Transformation		Transformation Board
Stage 7	Practical completion	Legal		

4.4 Internal Review

- 4.4.1 Once confirmed on the surplus land register the asset should then be internally reviewed and shared with the Transformation Board.
- 4.4.2 The council's Legal department should be engaged at an early stage to produce a report on title for the asset to be disposed of, to include any rights or obligations which might affect it. Consideration should also be given as to whether there is an obligation to offer the land back to a former owner under the Crichel Down Rules (see **Appendix 4 – Crichel Down Rules**) or whether the property has been the subject of funding in the past, which requires the repayment of grant monies.
- 4.4.3 The title report may highlight any restrictions in relation to future use or disposal routes for the asset. These will need to be considered and evaluated prior to proceeding further with any disposal.
- 4.4.4 Reasons to consider disposal of an asset via Community Asset Transfer may include:
- Supporting the third-party organisation to continue delivery of a key activity for residents when the transfer will allow the organisation to bid for and secure funds and/or to support a more sustainable business model.
 - Supporting the third-party organisation to deliver a specific service in line with the council's objectives where the service can best be provided through a council-owned asset.
 - Protecting a heritage or otherwise important council asset that may fall into disrepair if stewardship is not provided by a third sector organisation.
 - When a Town Parish/Council or third-party organisation is considered to be best placed to provide an alternative delivery model for an existing council service from an existing council-owned asset.
- 4.4.5 If the asset is suitable for Community Asset Transfer, then the Community Asset process should be considered.
- 4.4.6 Estates should seek to inspect the site in order to assess any development potential and any matter, such as on-site physical constraints, that is likely to materially affect the disposal. In addition, and where relevant, building condition surveys, health and safety certification and Environmental Performance Certificates should be collated (through Facilities Management/Property helpdesk) and the VAT position should be established (through Finance).

4.5 Preparation for Disposal

- 4.5.1 Before deciding whether to formally dispose of land or property, a business case decision paper setting out all relevant information should be produced.

- 4.5.2 An internal or external valuation should be completed by a RICS registered valuer early within the process. Where an asset is likely to be valued at more than £100,000 two valuations will be required one of which will be external. There may be some instances where an offer may be accepted conditional on a satisfactory valuation being obtained.
- 4.5.3 Where development potential has been identified, engagement with the council's Planning department should be made in order to establish the authorised use of the property and what potential alternative uses might be considered in order to assess the means by which maximum sale proceeds can be generated.
- 4.5.4 Where the council wishes to ensure a desired use of the property to achieve its policy objectives, it will be necessary to introduce absolute user clauses (in leases) and restrictive covenants (for sales) where appropriate. Overage and clawback provisions might also be considered, in order that the council might share in the benefits of any future increase in value due to a more alternative planning consent being secured by the purchaser of any property.
- 4.5.5 There is a need for continual liaison/communication with all stakeholders between a property being declared surplus and the completion of a disposal. In particular, the party responsible for the day-to-day management of the property is to be kept regularly informed of developments to an agreed timescale.
- 4.5.6 The council should, in most cases, seek to obtain the best consideration by the most appropriate method of disposal. To protect the council's interest in the event of subsequent (onward) sales, it should include where appropriate, the right for the council to have a 'first call' on the property in the event of a proposed subsequent sale (to be based on the council paying no more than the original transfer amount). As well as the clawback or overage clauses and restrictive covenants mentioned earlier, ransom strip retention or user rights may also be introduced where relevant.
- 4.5.7 Where a property is deemed unsuitable or unviable for use by either a partner organisation or the local community, then the council should proceed to market disposal following the due authority process.

4.6 Disposal Business Case

- 5.6.1 The Council recognises that good governance is a key component of this Policy, so it is essential that all decisions to dispose of an asset must be subject to a full business case report that will include a minimum set of requirements, including:

- The financial case for a disposal - this must show holding costs and potential savings and any loss in rental income.
- Proposed timing of the disposal - likely marketing and due diligence/legal work prior to exchange. Any conditional sales should include estimated timelines and longstop dates for planning etc.
- Method of disposal – this will be chosen to reflect the nature of the property and consider the best way to maximise value and minimise holding costs.
- Impact[s] risks of the disposal – financial, reputational, political, operational, etc.
- Evidence of an independent valuation to show that best consideration is guaranteed. This must be obtained from an RICS qualified Registered Valuer. On occasion this may be provided by a suitably qualified internal surveyor but will normally be provided externally.
- A market assessment by a suitably qualified agent.
- Options Appraisal – which covers all options considered.
- Estimated cost of sales and any budgetary approval required. This will include any legal, agents and cost of specialist reports, marketing material etc.
- Confirmation of deliverability of sale – where required. For example, if staff, public or other consultations are required, and the likely timescales.

4.7 Approval To Proceed with Disposal

- 4.7.1 Dependant on set criteria the delegated authority to approve the business case and disposal will be assessed on a case-by-case basis
- 4.7.2 A copy of the Key Decision Scorecard (**Appendix 5**) should completed and be included in any disposal business case. This will determine the delegated authority route for the approval of disposal.

Minor Disposal

- 4.7.3 A minor disposal will include land parcels and value of less than £10,000
- 4.7.4 A minor disposal can be authorised by the Strategic Director Corporate Resources & Transformation

General Disposal

- 4.7.5 This covers asset value between £10,000 and £149,999 and covers 1 ward.
- 4.7.6 A General disposal can be authorised by

Key Decision Disposal

4.7.7 A key decision will be required if the following criteria is met

- The value of the asset is greater than £150k
- The asset covers more than one ward

4.7.8 A key decision will be authorised by

4.8 Methods of Disposal

4.8.1 A key consideration when seeking the appropriate authority to dispose of an asset is its method of disposal. The methods of sale generally adopted are set out below but these are not exhaustive, and alternative methods which are not listed below may be used to deal with unusual disposals.

4.8.2 All land and property assets which are released for disposal will be fully marketed except for disposals to nominated and special purchasers (see below), which will be sold by private treaty negotiation.

BASIS	METHOD	When to adopt
Open market	Private Treaty	Limited interest and narrow valuation band. The most common form of concluding a sale and one used for all types of properties mainly as it affords the seller the greatest degree of flexibility and time. Can have a closing date and by progress by the way of informal tender where considerable interest is shown during marketing
	Auction	Wide interest anticipated, no obvious purchaser and easy to allocate a reserve. Speed and best price can be demonstrated. Effectively promotes an immediate sale. Often appropriate for residential assets not suitable for third party lending, land sales where there is limited prospect of development or alternative use and commercial property investments. Requires 'up front' authority to allow setting of appropriate reserve and may result in no sale if reserve is not met.
	Formal Tender	Wide interest, land ownership not complex, no uncertainties regarding the grant of planning consent and any obligations that are to be placed on a purchaser are clear and capable of specification in advance.

		Not commonly used due to its complex nature and the rigid structure of the formal tender process.
	Informal Tender	To identify a preferred bidder and enable further detailed terms or proposals for development to be negotiated. Appropriate for sales where there are uncertainties (particularly planning) and for large or complex development or regeneration sites and where the proposal may need to be developed in co-operation with the council to achieve best consideration. Allows for the use of conditional contracts, including clauses which allow for further sums to become payable (clawback) upon the grant of planning in the future or improvement in market conditions (overage).
Special purchaser		Sale to adjoining owner where special circumstances prevail. Typical examples include a conditional disposal where the council is selling for a particular purpose (i.e., to a developer for regeneration or to a nominated housing association for social housing development) or where there is a small area in size and value and the adjoining or locally located landowner is the only potential or likely purchaser (e.g., for garden extension).
		Sale to former owners under the Crichel Down Rules. See Appendix 4 – Crichel Down Rules.

- 4.8.3 Until a legally binding contract has been entered into, the council has a duty to consider any late offers or bids. This should be made clear to any prospective purchaser when disposing of land by private sale or negotiated/informal tender. In considering late bids, the council should take into account the likelihood of the late bid proceeding to completion in a timely manner and the possibility of it being used as a spoiling or delaying tactic, and the council may reject bids for sound commercial reasons such as these. In cases where the council does not wish to exercise any control over the future use of the property, other than through the planning process, then the disposal of the freehold will obtain the best price. However, where the council wants to exercise some control of the future use of the land, a leasehold disposal for a term necessary to ensure the satisfactory completion of the scheme is usually required.
- 4.8.4 In the case of the latter, these are often highly complex agreements and a development agreement will usually be entered into before a formal disposal is concluded – plus, in many instances, a Section 106 Agreement (setting out conditions and contributions to the community through the planning system). Major regeneration disposals are now more commonly negotiated by dedicated teams of valuation, finance and legal professionals representing local authorities, it is recommended that the property disposal and S106 Agreement are negotiated in tandem by appropriate private sector specialists for these types of disposals, in order to maximise the benefits to the council.

4.9 Consultation

4.9.1 The following consultation will be required during the Disposal process

Consult With	Comment	Length of Time
Ward Members	<ul style="list-style-type: none"> During the disposal preparation stages. This is to gauge feedback for the disposal. This feedback will be included in the disposal business case Before disposing of surplus land or property and the release or variation of restrictive covenants As part of the process for advertising the disposal of 'public open space' Before submitting planning applications on Council owned land Before a report goes to Cabinet or Cabinet Committee / Transformation Board – Assets on land and property within their Ward 	20 days
Portfolio Holder	<ul style="list-style-type: none"> During the preparation and disposal stages. This is to gauge feedback for the disposal. This feedback will be included in the disposal business case 	
Community	<ul style="list-style-type: none"> If the asset is registered as an asset of community value. The Community has the right to raise finance, develop a plan and make a bid to acquire the asset 	6 months

General Public	<ul style="list-style-type: none"> If the asset is available for open market. This needs advertising 	4 weeks

4.10 Property Disposal

5.10.1 An appropriate marketing strategy will be developed for use by either the inhouse Estates team or external agents undertaking the disposal, with all costs (legal, consultants, marketing, and agency fees) being charged against the receipt.

5.10.2 Marketing materials will be produced in draft form whether inhouse or by the appointed disposal agent the latter for approval by the Estates Manager and arrangements made for the erection of a 'For Sale' board where appropriate.

5.10.3 Where formal sales particulars are prepared these will be forwarded, as a minimum, to:

- Relevant ward members
- Be posted on the council website page
- Any relevant potential buyers whose interest is registered on the 'Disposal Enquiries Register'
- The relevant town or parish council clerk.

5.10.4 This list is not exhaustive, and the relevant member of the Estates team will determine other appropriate recipients on a case-by-case basis to ensure as broad exposure as possible.

5.10.5 Consideration should be given to advertising the availability of the property on social media and the local press/property websites.

5.10.6 All negotiations for disposal should be conducted by a suitably qualified property professional, preferably a member of the Royal Institution of Chartered Surveyors.

5.10.8 If appropriate, for example a community group together with a developer submit a bid to acquire the asset and assessment of potential purchasers will be conducted by way of an appropriate weighted scoring matrix (this will ensure compliance with S123 requirements), like the one attached as **Appendix 6.**

5.10.9 Once a purchaser is found, following confirmation in respect of proof of funding and ability to proceed then Heads of Terms (subject to contract) are to be agreed. The necessary authority to dispose will be sought at this point in accordance with the approved governance.

5.10.10 Websites/marketing boards should be updated to reflect the property sale

5.10.11 The Legal team should be instructed by the relevant Property surveyor to prepare the relevant legal documentation.

4.11 Public Open Space and Common land

- 4.11.1 Disposal of land which is, or forms part of an area of Public Open Space or Common Land (excludes amenity land), is subject to special rules and procedures. **(see Appendix 3)** Before disposing of such areas, the Council is obliged to publish the intention to dispose and consider any representations which are subsequently received. Publication is to be considered for a 2 week period via the local press
- 4.11.2 The provisions regarding the disposal of Common Land require consent from the Secretary of State and replacement land to be made available where the area of land to be sold exceeds 200m².

4.12 Best Consideration

- 4.12.1 Best consideration is not necessarily the highest financial offer available, it can also reflect the substance and strength of any supporting information submitted with an offer including the financial security of a bidder and the commitment of the bidder to a proposed scheme (except in the case of an auction).
- 4.12.2 The Council will comply with normal and prudent commercial practices including obtaining the view of a professionally qualified valuer as to the likely financial consideration that can be expected for any disposal and the most appropriate method of disposal to encourage bidders to offer the best consideration; where time and available budgets allow, two valuations is considered best practice to demonstrate best value.
- 4.12.3 The Council must test whether an offer is the best that can reasonably be obtained having regards to any restrictions or the effect on value of any conditions placed on the use of the land, including whether the offer under consideration is reliable, advice on possible changes to the price that may flow from changes to the planning position etc. The Valuer should also consider the most appropriate pricing structure. It may be appropriate to use an overage arrangement, whereby the Council receives future payments representing any uplift in value of the land/property once it has been developed / sold on.
- 4.12.4 Overage provisions negotiations can be complex, so it would be sensible to discuss the preferred structure with the legal adviser and valuer prior to agreeing terms of the disposal. A calculation of the overage that the Council is likely to receive and the likelihood of that sum being correct given changing market conditions will be essential to assessing the business case for disposal of surplus property.
- 4.12.5 In determining whether or not to dispose of land for less than best consideration, the Council will ensure that it complies with normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer as to the likely amount of the undervalue. Any decision to sell at an undervalue will be made by the Portfolio Holder.

4.13 Disposal Terms

4.13.1 Wherever possible, the Council will endeavor to keep land and property disposals simple and cost effective for both parties. For certain types of disposals, it may be necessary for the Council to impose terms which are considered necessary to protect the Council's interests. Such terms may include:

4.13.2 **Development Obligations** – The Council generally will only dispose of strategic development land for identified development proposals. Where appropriate, the Council will impose obligations to commence and complete the proposed development within a reasonable timescale backed up with an option for the Council to re purchase the land.

4.13.3 **Development Option Agreements** – Development agreements will be used for the disposal of strategic development sites where the principal aim of the disposal is to facilitate regeneration benefits from a particular scheme.

4.13.4 **Overage and claw back** – Where appropriate, disposals will include provisions for securing a share of future enhanced values through the use of overage and claw back clauses.

4.14 Fee Recovery

4.14.1 Where appropriate, the Council will seek to recover from third parties, its reasonable legal, surveying and administrative costs incurred in dealing with all matters involving the non-operational portfolio. The fee recovery will be determined on a case by case basis.

4.15 Other Considerations

4.15.1 In most cases, disposals of land will fall outside the scope of the Public Contracts Regulations 2015. However, if as part of the disposal the Council is involved in determining the scope of future development of its land and its intention is to impose on the purchaser certain obligations as to the nature of the development, possibly including certain standards to which the works must be constructed then the result may be that procurement rules will apply.

4.15.2 The Estates Team must consider the possibility of public procurement rules applying to any disposal and in all such cases must refer the matter to Legal and Procurement for comment before proceeding further with the proposed disposal.

Appendices

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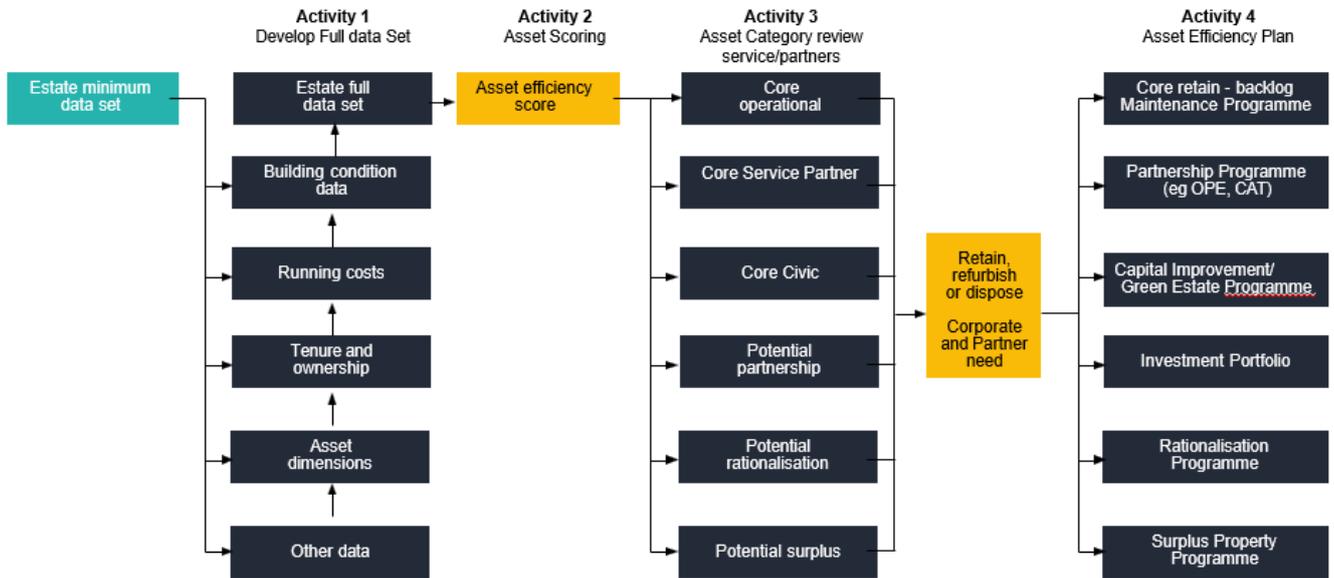
APPENDIX 1

Identify Surplus Assets through the Asset Challenge Framework

1.0 Background

- 1.1 The process of estate optimisation aims to identify and prioritise those sub-portfolios that have the greatest potential to release savings. Core data for each building within the NFDC’s portfolio including running costs, value, condition and backlog maintenance, suitability assessments and future need ratings will be reviewed.
- 1.2 Using this process, those portfolios with high revenue spend and/or those portfolios subject to significant business change can be identified and subjected to a more detailed analysis and opportunity assessment.
- 1.3 The process to undertake the estate optimisation as outlined in the diagram below. The outcome of this review will include:
 - Financial analysis of the estate
 - Potential revenue impact and capital generation opportunities
 - Ranked by the potential impact (low/medium/high) and ease of implementation (quick/medium/long term)
 - Quick wins which would help release existing liabilities
 - Longer term initiatives which may substantially change the way the estate is managed
 - Recommendations and next steps for how the opportunities could be delivered
- 1.4 Following identification of assets that are suitable for potential disposal the Corporate Asset Disposal Policy process will then be followed.

<i>Strategic Purpose</i>	<i>Opportunities and Risks</i>	<i>Performance Appraisal</i>	<i>Options Appraisal</i>	<i>Pre-Implementation Consultation</i>	<i>Outcome</i>
<ul style="list-style-type: none"> • Why do we have the asset? • What is its strategic purpose? • Who is accountable for performance of it? • What do we expect of it? • Is this financial, non-financial or both? • How do we measure its performance against purpose? 	<ul style="list-style-type: none"> • Are there any opportunities that could be developed? • Are there any blockages to exploiting these opportunities? • Any there any risks to overcome? 	<ul style="list-style-type: none"> • What is the financial performance being delivered? • Can non-financial benefits be quantified? • What are the management costs? • Are there any invisible costs? 	<ul style="list-style-type: none"> • Balance of performance opportunities and risks? • What options are available? • What are the relative costs and benefits of these options? • Do any options present increased risks? 	<ul style="list-style-type: none"> • Internal stakeholders • External stakeholders and partners 	<ul style="list-style-type: none"> • Retained • Repurposed/Recycled • Disposed (Asset Transfer or Open Market)



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APPENDIX 2

ENQUIRIES FOR MINOR LAND DISPOSALS

1.0 Background

- 1.1 The Estates team receives a number of requests to purchase land for use either as gardens or for parking purposes. The challenges facing the council are to respond to enquiries in a timely way and to achieve a balanced and consistent approach to applications so as to ensure that disposals if they do occur do not have unintended consequences for adjacent occupiers and landowners.
- 1.2 This sets out how disposals of small parcels of land, which typically may be council-owned amenity land, can be agreed/progressed.
- 1.3 The attached procedure for disposing of parcels of council-owned land strikes a balance by setting out a transparent process for assessing applications and a fee and charges process so that the costs of considering an application are met.

2.0 Procedure

- 2.1 In cases where an enquiry is made to the council for the sale of a piece of land by a neighbouring owner and the land is surplus to requirements, 9 Asset Challenge Framework) is unlikely to have any developable or open market opportunity for sale and has a market value of less than £10,000, it is permissible in these instances with the agreement of the Strategic Director Corporate Resources & Transformation to adopt 'confined negotiations' with the adjacent or neighbouring owner to achieve the most advantageous financial result or for reasons of good estate management (e.g. if the land is 'landlocked' or is difficult or expensive to maintain).
- 2.2 Furthermore, it is likely that the sale of such parcels of land will be considered where:
 - There is a broader community benefit to the disposal e.g. rationalisation of small parcels of 'backland' open space, either rarely used or often misused.
 - There are management/financial issues for the council e.g. that the land is costly to maintain.
 - The enquiring party has extenuating circumstances e.g. there are health grounds in relation to the application and/or progressing the sale of the land would improve the quality of life and would not adversely affect the quality of life of others in the neighbourhood.
- 2.3 These owners are considered 'special purchasers' as these particular assets have special value to those owners only – the advantages arising from the ownership of a particular piece of land would unlikely be available to other buyers in a market. It may also be in the council's interest to initiate and/or

pursue these minor disposals in order to reduce the ongoing maintenance liabilities and obligations associated with holding these (sometimes isolated) pockets of land.

2.4 Each request should be dealt with on a case-by-case basis, but the following should be considered in every request:

- A requirement to get obtain the 'best price' for the parcel of land
- Whether any pre-emption rights exist
- Whether market testing has or should take place
- How the land is accessed (can the enquiring party gain access without going over other council-owned property)?
- What the land is required for
- Environmental impact following any disposal
- Whether the land is a ransom-strip
- Whether a disposal of the land would have a negative or positive impact on council operations or services, including maintenance
- Would the disposal have a detrimental impact on the remaining land, where only a proportion has been requested
- Is there any relevant historical background to the land?
- Should any restrictive covenants or special conditions be attached to the disposal?
- Is the land to be disposed of a revenue generating asset?

APPENDIX 3

PUBLIC OPEN SPACE DISPOSALS

1.0 Background

- 1.1 Section 10 of the Open Spaces Act 1906 states: "A local authority who have acquired any estate or interest or control over any open space or burial ground under this Act shall, subject to any conditions under which the estate, interest or control was acquired:
 - (a) hold and administer the open space or burial ground in trust to allow, and with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act and under proper control and regulation and for no other purpose; and
 - (b) maintain and keep the open space or burial ground in a good and decent state..."
- 1.2 The case of *Muir v Wandsworth Borough Council* [2017] EWHC 1947 (Admin) (28 July 2017) provided guidance to local authorities on the scope of the restrictions that apply to disposals of open spaces.
- 1.3 Further, open space is defined in the Town and Country Planning Act 1990 as any land 'laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground'. It is generally considered to be a valuable community resource, to be enjoyed by the wider community and there will be a general presumption against the disposal of these assets.
- 1.4 The council will not normally dispose of any core recreational open spaces by way of freehold transfers, but may consider applications for the disposal of 'incidental' open space and areas of landscaping, particularly where it will improve the management of land benefitting the wider public or where a disposal would remedy the anomalies of past land sales, acquisitions and transfers.
- 1.5 It is anticipated that potential disposals of this 'incidental' land to enquiring parties will generally follow the principles outlined in Appendix 2 (Enquiries for Minor Land Disposals) with the requirement that any proposed disposal of public open space be adequately advertised.

2.0 Procedure

- 2.1 In the event that a disposal of 'incidental' public space is proposed (typically where the area in question does not provide a valued opportunity for sport, recreation or leisure), there is a legal requirement for the council to give notice of the intention to dispose by placing a notice in a local newspaper for two consecutive weeks and consider any objections that are received as a result.
- 2.2 All costs of advertising the proposed sale must be met by the (if applicable) by the enquiring party.

- 2.3 Any objections that are received must be adequately considered.
- 2.4 In agreeing to the disposal of such land, the council should consider whether the personal safety for users of any remaining nearby open space will be detrimentally affected (e.g., where a narrow alleyway is created). Furthermore, sales which lead to a loss or destruction of the visual quality of the surrounding area should not be contemplated unless there are covenants imposed on the sale to retain the open nature of the landscaped area and/or to require certain standards of new boundary fencing, walling or delineation are met.

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APPENDIX 4

CRICHEL DOWN RULES

1.0 Background

- 1.1 In 2015 the Department for Communities and Local Government updated a circular entitled “Compulsory Purchase and the Crichel Down Rules” which prescribed the way in which all Government departments and executive agencies that are subject to a power of direction from a Minister must manage the disposal of land previously acquired by the use of compulsory powers. Local authorities, which are not subject to a ministerial power of direction, are not subject to such a prescription but are still recommended to also follow the rules.
- 1.2 In particular the General Rule of these guidelines states that “where a department wishes to dispose of land to which the Rules apply, former owners will, as a general rule, be given the first opportunity to repurchase the land previously in their ownership, provided that its character has not materially changed since acquisition.” Disposals to former owners under these arrangements will be at current market value.
- 1.3 This principle was established in the 1954 Crichel Down case and has been used as a guideline ever since.
- 1.4 It is recommended that the council has regard to these rules when disposing of land that was formerly acquired by compulsory means subject to the following guidance.

2.0 Stage 1 Identification of land

- 2.1 Crichel Down rules relate to land that has been compulsorily acquired by the council and is no longer required, subject to the following exceptions:
 - Agricultural land acquired before the 1st April 1935.
 - Agricultural land acquired on or after the 30 October 1992 that becomes surplus to requirements more than 25 years after its acquisition.
 - Non-agricultural land that becomes surplus and available for disposal more than 25 years after its acquisition.
 - Land which has materially changed since acquisition.
 - Land where boundaries of agricultural land have been obliterated.
- 2.2 The date of acquisition is the date of the conveyance, transfer, or vesting declaration.

- 2.3 There is also an exception in relation to the disposal of small areas of land where the attempted identification of an absent former owner who has now disposed of his/her interest in land adjacent to the subject property would be out of proportion to the value of the land. Only where the current market value of the subject is likely to exceed the value of £25,000 will the council be obliged to take steps as specified within the Rules to identify a previous owner.
- 2.4 Despite these exceptions it is acknowledged it may still be appropriate to first offer to the adjacent landowner unless there are overriding local circumstances or best value may not be achieved.
- 2.5 Recent guidance indicates that the Rules will not apply where land is to be transferred to another body which is to take over some or all of the functions or obligations of the authority that currently owns the land. In this case the transfer itself does not constitute a “disposal” for the purpose of the Rules.
- 2.6 Disposals for the purposes of Private Finance Initiative/Private Public Partnership projects also do not fall within the Rules and the position of any land surplus once the project has been completed would be subject to the Private Finance Initiative/Private Public Partnership contract.

3.0 Stage 2 Consultation

- 3.1 Consultation shall take place with the Transformation Board.
- 3.2 Local Authorities as previously stated are not under a statutory obligation to comply with the Crichel Down rules. Therefore, any compliance with these rules will be at the discretion of Head of Development and Regeneration in consultation with the Head of Legal and Democratic.
- 3.3 For instance where it is concluded that there is an overriding local or community interest such as a disposal to a parish council, registered charity or other properly constituted body where best value may not be achieved, then upon the direction of the Strategic Director Corporate Resources & Transformation disposal may proceed to such a body even when it was not the former owner of the property.

APPENDIX 5

KEY DECISION SCORECARD

A copy of this completed scorecard should be included in any disposal business case. If the answer to any of these questions is YES, then a key decision requires to be made.

If the answer to statement 3 is YES. The asset maybe suitable for a Community Asset Transfer

Statement		Yes / No
1	Is the valuation of the asset greater than £150,00?	
2	Does the asset cover 2 or more wards?	
3	Is the asset predominantly used on a regular basis by the community or booked for community use and benefit?	
4	Is there potential for reduced community benefit post transfer?	

APPENDIX 6

BID BALANCED SCORECARD

Bidder	Price	Score (60)	Due Diligence	Score (15)	Community Value	Score (25)	Total

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