

Carmarthenshire County Council

Acquisition and Disposal of Property Policy

June 2018



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FOREWORD BY COUNCILLOR DAVID JENKINS, EXECUTIVE BOARD MEMBER FOR RESOURCES

The Council's existing property disposal policy was prepared in June 2005. This policy has served the Council well, but given the changes that have taken place in the global economy, cuts in public sector funding, rising demands for services and economic growth challenges, a review of the policy is timely.

The Council has an approved 5 year programme for the disposal of its surplus assets. Capital receipts achieved from the sale of surplus Council property are an important funding source for the Council's Capital Programme. Maximising capital receipts is not the only priority however. The outcome of the disposal process for every asset is a balance between contributing towards the priorities set for the Council as a whole (such as delivery of new housing or economic growth) or corporate requirements (such as achievement of capital receipt, reduction in property costs, supporting agile working and removal of liabilities) against the impact of the disposal of the asset at individual ward level (such as the closure or demolition of a building, or loss of open space).

The Council's top priority is regeneration that results in job creation. By improving the economic prospects of our county, we can have a direct impact on the prosperity of our families and communities. As part of this agenda it is vitally important that we consider how we can best use the Council's own landholdings and property assets, which, if managed appropriately, are a key economic driver. The Council has aligned the strategic property function with Regeneration and Policy Department to ensure that the Council's property assets play a significant role to generate economic growth and realise a contribution to the Council's financial needs. To provide some clarity on the processes to deliver these ends, now is the right time for the Council to refresh its property disposal policy to set out how we want to take forward the identification and disposal of our surplus land and property assets.

In addition to property disposals, the Council will look to purchase land and property, where the acquisition is required to support future development in line with Council priorities and objectives, particularly to support and facilitate strategic regeneration projects that will create jobs and economic growth within the County. I am pleased, therefore, that this revised strategy includes a property acquisition approach.

1. Introduction

The purpose of the Council's Acquisitions and Disposal policy is to set out the principles and procedures by which the Council will acquire and dispose of land and property. It is important that the Council's procedures are open and transparent. This document is intended for use by Council Officers and to inform purchasers, vendors, tenants and members of the public.

This policy deals with acquisitions and disposals of property in line with the Council's Scheme of Delegation. A copy of the scheme of delegation regarding property related matters is attached at Appendix A. Any acquisition or disposal that falls outside this policy would need to be reported on an individual basis to the Council's Executive Board for approval.

The Well-being of Future Generations Act (Wales) 2015 requires public bodies in Wales to think about the long-term impact of their decisions, to work better with people, communities and each other, and to prevent persistent problems. This policy is aligned to the 5 ways of working set out in the Act:

1. **Long term impact** – Short term needs in terms of capital receipts are balanced with a clear process for the sale of surplus assets that will continue to be utilised in the long term and for strategic acquisitions to facilitate jobs, new housing and economic growth in the county.
2. **Integration** - The disposal of property assets accords with the Council's corporate strategy, with a focus on two of the Council's seven high level priorities; Making better use of resources (Managing and making best use of the Council's property and assets with a focus on rationalising office accommodation and sharing with other partners as well as facilitating community ownership of assets for community benefit) and Carmarthenshire has a stronger and more prosperous economy.
3. **Involvement** – The Council will continue to work closely with partner public sector organisations, identifying opportunities where appropriate for the transfer of surplus/vacant land and property between publicly funded bodies in Wales via the Land Transfer Protocol process. Available assets will be flagged on the electronic property information and mapping service for the public sector (e-PIMS).
4. **Collaboration** – The Council's approach to Community Asset Transfer aims to align with the principles of the "Wellbeing of Future Generation (Wales) Act 2015, which looks to improve the social, economic, environmental and cultural well-being of Wales through sustainable development.
5. **Prevention** - Vacant and derelict properties have a negative effect on the locality and the longer they remain vacant the higher the risk of vandalism and safety issues arising. Disposal at the earliest opportunity mitigates this risk and brings the property back into use.

2. Acquisition of Land and Property

Local Authorities are generally free to acquire land and property without legal constraint. All land and property must, however, be purchased with a specific purpose in mind and consequently used for that purpose.

There is no one Statutory Power which provides for the Council to acquire land; Section 12 of the Local Government Act 2003 provides a general power to invest and can be used in most circumstances, but there are other applicable statutes e.g. Housing and Highways specific legislation.

It is important that each land and property acquisition is treated on its own merits and nothing in this document will bind the Council to a particular course of action in respect of an acquisition. Alternative methods of acquisition, not specifically mentioned in this policy may be used where appropriate, subject to obtaining proper authority.

The Council can choose to acquire property in any of the following forms:

- Freehold
- Leasehold (more than 7 years)
- Short tenancy (less than 7 years)

In some cases the Council might not be able to acquire property by agreement with the landowner. In these circumstances, and where the acquisition is in the public interest, the use of Compulsory Purchase Powers (CPO) will be considered. These powers are an important tool to use as a means of assembling the land needed to help deliver social, environmental and economic change. Used properly, they can contribute towards effective and efficient urban and rural regeneration, essential infrastructure, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life. The Council will use compulsory purchase powers where it is expedient to do so. However, a compulsory purchase order should only be made where there is a compelling case in the public interest.

The reasons for the Council to acquire land or property would be:

- Service delivery
- Investment
- Strategic acquisition for future development in line with Council priorities and objectives – particularly to support Economic Development and the strategic regeneration projects and the Council's long term regeneration plan for Carmarthenshire (2015-2030) and the Regional Regeneration Strategy, within which sit the Council's City Deal aspirations.. The County regeneration plan sets out six transformational projects for Carmarthenshire, which combined aims to create over 5,000 jobs over 15 years. The projects are:
 - Ammanford
 - Carmarthen
 - Carmarthenshire Coastal Belt
 - Cross Hands Growth Zone
 - Llanelli

- The Rural Economy
- Working through strong partnerships with other stakeholders from the public and private sector, through clever partnerships, joint ventures and other innovative delivery mechanisms, it is envisaged with targeted investment and strategic acquisitions that the transformational projects can be realised.
- This acquisitions and disposal strategy will align itself with the evolving Swansea Bay City Region ensuring the aspirations of the Council and the Region are achieved. Within Carmarthenshire we will support the delivery of the Life Science and Wellbeing Village in South Llanelli and Yr Egin in Carmarthen. Moving forward this strategy will assist in realising the aspirations of the City Region as the partnership matures.

2.1. The Process for Acquiring Assets

Subject to appropriate authorisation, and in accordance with the scheme of delegation to officers (Appendix A), all property acquisitions must be undertaken by officers of the Regeneration and Policy Division, or the Property Division within the Environment Department, who will negotiate purchase terms and conditions and draft the necessary legal instruction to formalise the acquisition. Instructions will include all necessary plans and details of any special arrangements necessary to ensure that vacant possession is obtained prior to completion.

In certain circumstances independent valuation advice may be sought from a fully qualified member of the Royal Institution of Chartered Surveyors with sufficient current local knowledge of the particular market, and the skills and understanding necessary to undertake/verify the valuation competently. In most circumstances the advice will be provided by the District Valuer, although the Council is free to seek private sector advice where appropriate.

Acquisitions will be carried out in accordance with rules laid down by the relevant professional bodies, Statute and Case Law. In addition, each element of the acquisition must be carried out in strict compliance with all relevant Public Sector and Local Government Legislation, Statutory Instruments, Government Circulars, and existing procedures, policies and Standing Orders.

Where the proposed acquisition falls outside the scope of the Council's scheme of Officer Delegation, Executive Board Member or Executive Board as appropriate shall determine whether to acquire the land after receiving a fully informed report from the Director of Regeneration and Policy and/or Director of Environment. The report should take into account the on-going cost of ownership of the property and ensure that any decision to acquire land is informed by both the capital and revenue implications of ownership and the risks associated.

Where Compulsory Purchase Powers are being considered legal services are to be consulted at the earliest opportunity and approval obtained by Executive Board/Council. These powers will be used where the owner or occupier of the land required is not willing to sell by agreement or where agreement cannot be achieved.

Where the acquisition is required to support service delivery, it will be the responsibility of the relevant Head of Service to ensure funding is in place to complete an acquisition and advise the acquisition case officer (Regeneration and Policy/Property Division within the Environment Department) of the budget available. Consideration should be given to all other Council owned property and its suitability prior to any acquisition. All option appraisals should take into account the cost(s) of ownership of the property and ensure that any decision to acquire land is informed by both the capital and revenue implications of ownership and the risks associated. The acquisition case officer will work closely with the service supporting the acquisition to consider service objectives.

Where appropriate, the case officer will carry out a pre-completion inspection of the property and if necessary seek instructions from the relevant service regarding the interim management of the property acquired pending development or occupation.

3. Disposal of Land and Property

The identification and disposal of surplus property is an important funding source for the Council's capital programme.

When property assets become surplus to requirements a number of options need to be considered such as;

- Effective and efficient management for their re-use within the Council;
- A relevant and sustainable use by the Community;
- A disposal to help facilitate the capital programme's aims whilst minimising any ongoing maintenance and revenue implications;
- Whether the asset can promote and support regeneration activity.

It is important that each land disposal is treated on its own merits and nothing in this document will bind the Council to a particular course of action in respect of a land disposal.

Assets to be disposed will fall into two categories:

- **Non-Strategic Assets** - those that do not have a "major effect on the commercial activity of an area".
- **Strategic Assets** – those which "have a major effect on the commercial activity of an area" and have the ability to promote regeneration either on a standalone basis or in line with existing policies and regeneration strategies.

Depending on the nature of the transaction, disposals must follow either the Procedure for Sale of Council Owned Property (Appendix B), or Procedure for Lease of Council Owned Property (Appendix C). A full record of the checklist information, together with all supporting correspondence and negotiation detail, must be kept on file (either electronic or hard copy) readily available for inspection as required.

For the purposes of this policy, a disposal of land means land and/or building(s). A disposal is either a freehold disposal by sale or exchange of land in perpetuity, or by the granting of a lease for a period greater than 7 years. Leases of 7 years or less are not covered by this policy document, as they are exempt from the statutory requirement

to obtain best consideration. As a matter of good practice, all lease transaction should, however, follow the Appendix C procedure, regardless of the length of the lease.

3.1 Disposal Procedures

The following procedures relate to the disposal of land and/or property with a value in excess of £25,000:-

1. Service area confirms that asset is surplus to requirements.
2. Regeneration and Policy and/or Property case officer to circulate brief details of property together with plan to all heads of service to identify whether or not any other service areas have a use for the asset. Timescale for response – 10 working days.
3. If the asset is a school that has been deemed surplus as a result of the Authority's Modernising Education Provision Programme, relevant Town or Community Councils will be consulted. The process for disposal of surplus schools is attached at Appendix D.
4. If no appropriate alternative service use and/or community use (as appropriate) is identified, local member(s) will be consulted on the proposed disposal.
5. If no objection(s) received from local member(s) within 10 working days (a non-response will be deemed as consent), and the asset is classified as non-strategic, the sale of the asset may proceed.
6. If an objection(s) is received from local member(s) in relation to a non-strategic asset, the decision is referred to the Executive Board Member (EBM) for Resources. The EBM has authority to authorise sale having taken into account local member(s) concerns. If the matter is contentious, the EBM reserves the right to defer the decision to Executive board. A full report will be prepared by the case officer clearly outlining local Member(s) objections.
7. Disposal of strategic assets must be referred to Executive Board for decision with the local member(s) consultation representation included in the report.

Where the value of land and /or property does not exceed £25,000 consultation will only take place with the relevant service area and local member(s) and subject to relevant head of service/member approval, disposal may proceed without any further consultation and approvals.

3.2 Approach to Disposals

When a property is declared surplus to the service, officers will ensure that the asset is not appropriate for use by any other Council services/departments. Should this not be the case, appropriate options for the disposal of the asset will be considered, including:

- **Freehold Transfer** - Disposal of the freehold interest in land means the complete transfer of all rights and responsibilities of continuing to hold that property. Although the transfer may be subject to certain claw back, overage restrictions that seek to secure further payments in the event of excess development profits being secured, or specific covenants that either require some action to be taken and often involving

expenditure (positive covenant) or preventing something from being done (restrictive covenant – e.g. restricting the use of the land to a specific purpose(s)).

- **Leasehold Transfer** – The grant of a lease, the term of which is to be determined, where the Council wishes to retain control of a surplus asset or where the income stream is assessed to be of greater value than the foregone capital receipt that may be achieved through its sale.

- **Grant of Licence** - A licence is the grant of a right by the licensor to the licensee to use the subject land in a certain prescribed manner. A licence differs from a lease in that the freeholder retains paramount control of the land and that a licence may be revoked at short or immediate notice.

- **Grant of Easement** – An easement (also known as a Deed of Grant) provides similar access rights for installing and maintaining infrastructure equipment, but for a one off payment and it provides permanent access. An easement can also be registered at the Land Registry in order to ensure that future owners of the land adhere to it.

The grant of a licence will remain the preferred route when considering interim uses, so there is no conflict with longer term disposal plans.

The Council will usually use one of the following five means to dispose of land:

- **Private Sale/Lease** - a sale or lease of land/property negotiated with one or a small number of purchasers/tenants. The land/property may or may not have been marketed as available for sale/lease. A binding legal agreement is created on 'exchange of contracts/completion of lease between the Council and the purchaser/tenant.

- **Public Auction** - a sale of land by open auction available to anyone. The sale will be advertised in advance. A binding legal agreement is created upon the acceptance of a bid by the auctioneer.

- **Informal/Negotiated Tender** - a sale of land after the Council has invited informal offers or bids that meet a given specification or set of objectives. The Council may accept the highest offer or negotiate further or more detailed terms if appropriate with one or more individuals submitting the most advantageous bid or bids. A binding legal agreement is not created until the exchange of contracts between the authority and the chosen bidder. It should be made clear at the outset whether the informal or negotiated process is to be adopted to give clarity to bidders (Appendix F)

- **Formal Tender** - a sale of land by a set process and tenders submitted by a given date in accordance with a strict procedure.

- **Exchange of Land** - a transaction involving the exchange of Council owned land with another land owner. The land acquired by the Council will meet at least one of its corporate objectives and will be 'equal' in value to the land exchanged or there can be an equality payment made by either party.

For further details in respect of any of the above please see Appendix E and for specific additional information on the Council's Informal Tender Procedure please refer to Appendix F.

3.3 Development Agreements/Joint ventures

In some instances it may be appropriate to use a different form of contract or arrangement. For example, where there may be financial or development benefit to be derived from working with or through another party (such as and adjacent landowner, developer of land promoter) to dispose of the asset. This could include collaboration agreements, development agreements or land promotion agreements. Alternatively, the Council might not be able to realise the full potential value of the asset through an outright sale. Special participation or profit sharing arrangements might yield a better return. Where appropriate the Council will use joint ventures (JV) to work with a partner organisation with suitable skills, expertise and financial standing to promote and deliver a development on Council land. Joint venture arrangements will allow the Council to share the profit arising from a successful development. The details of a JV arrangement are likely to differ from scheme to scheme but will broadly involve sharing the cost, risk and return from the project. The Council's contribution to the joint venture could be the value of the land with the JV partner providing the capital investment to develop the land. JV's are likely to be viable options for larger redevelopment projects only and will need to be approved by the Council's Executive Board.

3.4 Best Consideration

The Council's actions in disposing of land are subject to statutory provisions, in particular to the overriding duty on the Council under section 123 of the Local Government Act 1972 to obtain the best consideration that can be reasonably obtained for the disposal of land. This duty is subject to certain exceptions that are set out in a government document, referred to in this policy as 'the General Disposal Consent'.

The General Disposal Consent (Wales) 2003 makes provision for the Council to dispose of land at less than full market value, known as an 'under-value'. Specified circumstances must apply as follows:-

- a. The Council considers that the purpose for which the disposal is being made is likely to contribute to the promotion or improvement of the economic, social or environmental wellbeing of the whole or part of its area, or any person resident or present in its area.
- b. The difference between the unrestricted or market value of the land to be disposed of and the consideration for the disposal does not exceed £2 million.

In certain circumstances, the level of capital receipt needs to be balanced with the economic and community benefits that will arise from reuse and/or development of the surplus asset. The Council may wish to sell at undervalue if it can be seen that the disposal will support regeneration priorities in terms of generating job opportunities and economic growth, and/or affordable housing. Where these situations arise a report will be presented to Executive Board making the case for a sale at undervalue where such a sale would give rise to economic, social or environmental wellbeing benefits.

For example, land may be sold at an under-value for only affordable housing rather than all residential types, as long as the difference between the consideration obtained

for development for affordable housing and the land's unrestricted value for all residential types is less than £2 million.

The Council must still comply with its duty to obtain best consideration for the restricted value. So, using the above example, the Council must ensure that it achieves the best consideration that may be reasonably obtained for land restricted to development for only affordable housing.

The Council must also comply with normal and prudent commercial practices including obtaining the view of an independent professionally qualified valuer as to the value with voluntary restrictions imposed. If the Council wishes to dispose of land for less than best consideration, and is not covered by the General Disposal Consent, the Council can resolve to do so, but will require the formal consent of the Welsh Ministers. Such disposals can also be subject to a challenge that the Council is needlessly foregoing receipts and it is therefore essential that such disposals only take place in clear furtherance of Council priorities.

In certain instances it might be appropriate for the Council to forgo a capital receipt on the basis that the land value is used as match funding to attract grant funding and/or private investment. In these instances the Council will still need to be able to demonstrate that it is achieving best value from the transaction.

3.5 Community Asset Transfers

The Council has separate procedures relating to Community Asset Transfers, which are not covered by this Acquisition and Disposal Policy. These procedures are managed by the Property Division within Environment.

If it is considered that an asset is used for social, community and public purposes and the benefits of that service are deemed to outweigh the value of continuing ownership by the County Council on behalf of all Council Tax payers, then the Council may consider the transfer of the asset to other organisations. Any such transfer should be in accordance with the Council's Community Asset Transfer Procedures (2013 – 2016), which cover those assets which are being used for current service delivery and could be managed more effectively by local groups.

3.6 Planning Land Use Considerations

Where in the opinion of the Director of Regeneration and Policy and/or Director of Environment, land has potential for redevelopment which will enhance its disposal value, outline planning permission for such development may be obtained, where appropriate, prior to disposal. Prior to any application, the case officer will consult with the appropriate planning and transport officers, as necessary, to assess the likely success of any such application.

Where the form of development which will maximise value cannot readily be identified it may be appropriate to market the land with bids invited subject to grant of planning permission for a specified form of development.

Contracts for the sale of land may include a restrictive covenant limiting development of the land to that specified in the outline planning permission or the form of development proposed in any bid made subject to the grant of planning permission.

Should any revised planning permission be obtained subsequent to a disposal which increases the value of the property sold, the County Council will not agree to waive or vary any covenant restricting the form of development without receipt of best consideration reflecting the increase in land value accruing. This uplift in land value maybe by an “overage” provision or a mechanism for “claw back”.

3.7 Late bids

The Guidance from the Local Government Ombudsman recognises the problem caused to local authorities by 'late bids'. The Guidance says that difficulties are less likely if Councils ensure that exchange of contracts take place as quickly as possible after the decision to sell (or lease) is made. It suggests that local authorities should be allowed to sell/lease at an agreed price within a reasonable period of reaching a 'subject to contract' agreement.

In the context of the methods of land disposal dealt with in this document, a late bid may occur:

- a) In the case of a private sale/lease, after a sale or lease has been agreed, but before exchange of contracts/lease completion.
- b) In the case of a public auction, after the auction has been closed, but the reserved price not having been met.
- c) In the case of a formal tender, after the closing date for tenders, but before acceptance by the Council of the successful tender.
- d) In the case of an informal or negotiated tender, after receipt of bids, but before exchange of contracts or signing of a development agreement.
- e) In the case of disposal by exchange, after a sale or lease has been agreed, but before exchange of contracts/lease completion.

Each 'late bid' must be considered in the context of the individual circumstances at the time. The Council's approach to 'late bids' will vary depending upon the method of land disposal used. In each case, its overriding duty will be to obtain the best consideration that it can reasonably obtain (subject to any exceptions in the General Disposal Consent). The Council's approach to late bids is as follows:

- a) The Council discourages the submission of late bids in all cases when it is disposing of land. It will attempt to minimise problems by aiming for early exchange of contracts.
- b) Where land is being disposed of by way of a formal tender, bids received after the deadline for tenders, will be recorded as late, together with the time and date of receipt. Where appropriate the Executive Board Member for Resources should decide whether to consider late bids after taking advice from the Director of Regeneration and Policy and/or the Director of Environment. Should the asset, however, fall into the category of a “strategic asset”, the decision shall be reserved to the Executive Board.
- c) Except as provided in “ b” above, until the Council has entered a legally binding contract or agreement with another person it will consider late bids unless there are good commercial reasons for not doing so. This should be explained to any purchaser when a disposal of land by private sale or negotiated/informal tender is agreed.

d) Consideration of a late bid does not mean that it will necessarily be accepted even if it is the 'highest' bid. The Council will take into account the likelihood of the late bid proceeding to completion in a timely manner and the possibility of late bids being used as a spoiling or delaying tactic.

e) Subject to the above, the Council may, in appropriate circumstances, ask both the late bidder and other interested parties, to submit their best and final bids in a sealed envelope by a set deadline.

f) A decision on whether to accept a late bid for a private sale, informal tender or by exchange are to be made either by the Executive Member for Resources, the Director of Regeneration and Policy, or the Director of Corporate Services. Should the asset, however, fall into the category of a "strategic asset", the decision shall be reserved to the Executive Board.

g) Offering the preferred bidder a period of exclusivity can enable the purchaser to confidently proceed with the sale, through the removal of the threat of another purchaser making a late bid and this option should be considered where appropriate to avoid late bid situations.

A last minute bid may be rejected for sound commercial reasons. For example, if there is no real certainty of it leading speedily to a contract or is suspected as a spoiling bid. The Council will at all times bear in mind that the overriding duty, unless a specific decision has been made to take advantage of certain exceptions as mentioned in the General Disposal Consent in order to further corporate objectives, is to obtain best consideration.

3.8 Conditional Offers

In private treaty or tender sales, and where land is being sold for development purposes, offers may be received, or sometimes even be invited under the marketing campaign, where all, or part, of the receipts will depend on the outcome of the purchaser's scheme. Conditional offers on this basis will usually involve some sort of deferred completion.

Typical conditions attached to an offer include – subject to site investigations, subject to vacant possession, subject to planning permission, subject to affordable housing requirements etc. Usually the offer is made on a gross basis and then deductions are requested for instance where the site investigations have proved unsatisfactory, or a higher level of affordable housing than budgeted for is required as part of the planning permission. This approach is standard practice and any deductions are open to scrutiny and review. The alternative would be to request net bids with no further deductions allowed, which will almost always be less than the gross bid plus costed deductions and this alternative is, therefore, not recommended.

In such cases, it is essential to consider the way changes in the market prior to completion may affect the receipts and to weigh this and any other inherent risks against other offers or ways of disposing of the property. The contract should provide express time limits for actions which are the intending purchasers' responsibility for example applying for planning permission. It should also have provisions which prevent Indefinite or lengthy delays in completion. The use of staged payments of the consideration monies may be helpful in off-setting these risks, but other possible approaches such as option agreements may also be feasible.

3.9 Option Agreements

A developer and a landowner can enter into an Option Agreement, which gives the developer the option to purchase the land (usually at an agreed sum, or at market price less pre-agreed deductions) and the ability to obtain planning, without the risk that they will be compelled to acquire a parcel of land without the benefit of planning. An option gives its holder the right but not an obligation to buy. Entering into an Option Agreement can also benefit landowners as they can realise a higher price for their land without having to put forward their own funds in obtaining planning. The key distinction, as compared with a conditional purchase, is that the developer is not committed to purchasing the land, even if planning permission is obtained. Under an “option agreement”, the developer might be required to pay an initial, non-refundable, lump sum in order to secure the right to buy the land at some point in the future and will then proceed to apply for planning permission and assess the suitability of the land for development. One disadvantage with option agreements is that the development potential of the asset is sterilised for the period of the option agreement, with no guarantee that the option will be exercised.

3.10 Checking Financial Credentials

In sales by tender and private treaty the credit-worthiness of the bidder(s)/consortia should be examined before acceptance of an offer. This will include review and interrogation of financial information, such as business plans and funding streams, supplied by the bidder. The effort devoted to this examination should always be proportionate to the value of the property.

Where a disposal or a letting is proposed at an undervalue, by way of a direct reduction in the market value (disposal) or a grant provided towards the market rent, then the Council should make sure that the recipient of the benefit has robust and deliverable business plans including good governance, robust financial planning and all the necessary policies, procedures expected.

Consideration should also be given towards the use of bonds, rent deposits, and guarantors as part of any disposal to protect the ability of the Council to achieve the stated rent or capital receipt in future.

Any third party support provided to bidders/prospective tenants in terms of guarantees etc. will also be subject to appropriate due diligence checks.

3.11 Land Banking

To ensure that a purchaser does not hold the property purely for speculative purposes, a freehold disposal can be preceded by the grant of a Building Licence or lease, which would include building covenants, although this may cause funding difficulties in certain circumstances. An informed view must be taken in each case and appropriate legal documentation entered into to prevent as far as possible land banking situations arising.

4.0 Welsh Language

Where property and land is disposed of by way of a lease, there will be a requirement that all written signs that are placed on a building, or on land, in the ownership of the Council be fully bilingual, and verified by the Council's Translation Unit.

4.1 Other Considerations

Due consideration and regard, throughout the disposal process, should be given to relevant legislation and Welsh Government Guidance, including, but not limited to:

Allotment Acts - 1908 to 1950 - For disposal of land held under these Acts, the Council must obtain the consent of the Welsh Ministers for disposal other than for use as allotments.

Charities Act 2011 - In situations where the Council is trustee of charitable land and property originally gifted to it under the terms of a trust deed, the Council has additional responsibilities which arise from its role as trustee and will be subject to the more onerous disposal requirements set out in the Charities Act 2011.

Housing Act 1985 (as amended) - Section 32 of the Housing Act 1985 gives a local authority power to dispose of land held by it for the purpose of Part II of the Housing Act 1985 (i.e. provision of housing accommodation). The consent of the Welsh Ministers is required for the use of this power unless the disposal is for the letting of land under a secure tenancy or an introductory tenancy.

Public Open Space - The Council is required by law to advertise the disposal of land designated as 'public open space' in a local newspaper for two consecutive weeks and to consider any objections received. No final decision about the disposal will be made until any objections have been considered by Cabinet, as the response may be material to the decision. Public response may also be an important factor in any determination by the Secretary of State of an application by the Council for specific consent to the disposal.

Public Procurement - A straightforward disposal of land/property for a market value price will not be caught by the Public Contracts Regulations 2006 rules. However, when disposing of land the Council is involved in determining the scope of the future development of its land and its intention is to impose on the purchaser certain obligations as to the nature of the development and also perhaps the standards to which the works must be constructed (usually through a development agreement or grant of a lease associated with the disposal), then where the values involved trigger the EU threshold, it is likely that such an arrangement may be construed as a public works contract triggering the need for an EU tendering.

State Aid - All land/property disposals need to comply with the European Commission's State Aid rules¹³. When disposing of land 'at less than best consideration', depending on the nature of the transaction, the Council may be 'subsidising' the purchaser. 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 disposal process.

Appropriation - S122 of the Local Government Act 1972 permits Councils to appropriate any land which they hold for any purpose for which they may acquire land by agreement. There may be occasions when the Council would wish to appropriate land that it owns, particularly to a specific planning purpose, to engage the power in

s237 of the Town and Country Planning Act 1990 to override easements and other rights that might otherwise impede the ability to develop the relevant land. It is important that any decision by the Council to appropriate land for any purpose is properly reasoned and documented.

Appendix A

SCHEME OF DELEGATION TO OFFICERS

The Director of Regeneration and Policy and Director of Environment, have delegated power in relation to the following property disposal and acquisition related functions:

Valuations

Head of Property or Property and Major Projects Manager certified valuation is accepted for all property transactions subject to Council policy as to whether an individual asset is to be disposed, acquired or leased.

Acquisitions

To acquire land for any purpose, subject to the policy of the property requirement being in place and to instruct the Head of Administration and Law to prepare appropriate documentation in relation to any agreement.

Authorised in consultation with the Corporate Management Team and the appropriate Executive Board Member(s) to purchase small areas of derelict land or derelict buildings which have the potential to become saleable assets in the future (or to be used by the council), or where ownership of the land will enable clearance work to be carried out to improve the environment. (In accordance with the terms of reference of the Derelict Land Fund).

Legal Agreements

To complete Wayleave Easement and tenancy agreements, where it falls within a category of transaction agreed with the Head of Administration and Law as being appropriate for signing, rather than execution under the Council's common seal.

Planning Applications

To submit planning applications in respect of land, to assess its development potential prior to sale, or to carry out a development on behalf of the Authority.

Appropriation of Land

To appropriate land for any purpose under the provisions of Section 122 of the Local Government Act 1972, subject to any statutory limitations and to the written agreement of the relevant Director or Head of Service who has responsibility for the land prior to its appropriation. 20 Revised as at Council 14/06/2012.

Disposals

To dispose of land and buildings no longer required for Council functions, save that decisions relating to the disposal of Strategic land and buildings which will have a major effect on the commercial activity of an area shall be reserved to the Executive Board. In both cases there shall be a requirement to consult with local members.

To dispose of freehold reversions of residential dwellings as required.

To agree reserve / asking prices and the most appropriate method of property marketing / disposal.

To instruct the Head of Administration and Law to prepare appropriate documentation in relation to any agreement.

Lettings

To approve requests for the assignment of leases and the underletting and sub-letting of property where consent for such requests cannot reasonably be withheld and to instruct the Head of Administration & Law to prepare the appropriate documentation in relation to any such consents.

To let property (lettings to include seasonal licenses and concessions), such property to include commercial, industrial and provisions markets, surplus or non-operational property etc. and to sign such letting agreements where it falls within a category of transaction agreed with the Head of Administration and Law as being appropriate for signing, rather than execution under the Council's common seal.

To instruct the Head of Administration and Law to terminate, repossess and recover property and any monies due.

To accept surrender of existing interest and re-grant of longer letting periods at revised terms.

To negotiate and agree appropriate tenant's improvements.

Appendix B

Procedure for Sale of Council Owned Property Checklist

PROCEDURE FOR SALE OF COUNCIL OWNED PROPERTY

CHECKLIST APPLICABLE TO ALL TRANSACTIONS

	Task	Date	Initial
1.	Lead officer to ensure that appropriate authority is in place to proceed with the sale.		
2.	Request Legal Services to confirm property owned by Council and to provide a report on title, identifying any covenants/restrictions affecting the property. (Other actions can proceed whilst title investigations being undertaken).		
3.	Consult Heads of Service on proposed sale.		
4.	Where disposal relates to former school property check that appropriate consultation has taken place with relevant organisations including Town or Community Council.		
4.	Consult Local Members on proposed sale		
5.	Consult Local Planning Authority on authorised planning use and potential higher value alternative uses.		
6.	Inspect and value property and identify any potential estate management issues that could arise from a sale.		
7.	Consider any other relevant factors, e.g. whether property is in open space, allotments land, village green etc.		
8.	Consider opportunities to maximise value such as demolition of building(s), applying for planning consent etc.		
9.	Ensure that property is in a secure and safe condition with services disconnected/drained as appropriate.		
10.	Determine and proceed with most appropriate method of sale ensuring the property is marketed as widely as possible.		
11.	Negotiate sale of property ensuring compliance with Local Government Act 1972 best consideration requirements.		
12.	Where appropriate carry out due diligence checks to ensure that prospective purchaser has the financial ability to complete the proposed transaction.		
13.	Instruct Legal Services to proceed with sale by way of signed V-form, which can be in electronic format.		
14.	V-form to be copied to Property Records Team (Environment Department) and Debtors (Finance Department) so that records can be updated when sale completed.		

15.	Undertake any further negotiations required during sale process.		
16.	Post completion – once the disposal is complete: <ul style="list-style-type: none"> • Take final meter readings and cancel any existing contracts with utility companies. Raise final utilities invoices or pass on information to Debtors. • Ensure Property Records Team is advised that the property has been sold so that asset register record and mapping records can be updated. • Remove property from insurance schedule • Update records to ensure business rates are no longer paid. 		

A full record of the above information, together with all supporting correspondence and negotiation detail, must be kept on file (either electronic or hard copy) readily available for inspection as required.

Appendix C

Procedure for Lease of Council Owned Property Checklist

PROCEDURE FOR LEASE OF COUNCIL OWNED PROPERTY

CHECKLIST APPLICABLE TO ALL TRANSACTIONS

N.B Where the immediate previous use has been on a lease basis, and the principle of leasing out the property has been established, tasks 1 -4 of this procedure need not apply. Where there are standard lease templates, for example industrial estates / indoor markets, and there is delegated authority for Head of Property / Property and major Projects Manager to complete such agreements, task 13 below need not apply,

	Task	Date	Initial
1.	Lead officer to ensure that appropriate authority is in place to proceed with the lease disposal (only applicable if the lease term is to be 7 years or more).		
2.	Where appropriate and commensurate with the significance of the transaction, request Legal Services to confirm property owned by Council and to provide a report on title, identifying any covenants/restrictions affecting the property. (Other actions can proceed whilst title investigations being undertaken).		
3.	Consult Heads of Service on proposed lease disposal (only applicable if the lease term is to be 7 years or more).		
4.	Consult Local Members on proposed disposal (only applicable if the lease term is to be 7 years or more).		
5.	Consult Local Planning Authority on authorised planning use and potential higher value alternative uses where appropriate.		
6.	Inspect and value property and identify any potential estate management issues that could arise from a lease disposal.		
7.	Consider any other relevant factors, e.g. whether works are required to the property to make it more attractive to lease and/or to increase its rental value.		
8.	Consider opportunities to maximise value such as demolition of building(s) applying for planning consent etc.		
9.	Ensure that property is in a secure and safe condition with services disconnected/drained as appropriate.		
10.	Determine and proceed with offering the property for lease ensuring the property is marketed as widely as possible. Where the asset forms part of the Council's rural estate, industrial or markets portfolio, and waiting lists are in place, it might not be necessary to advertise the property.		
11.	Negotiate disposal of property ensuring compliance with Local Government Act 1972 best consideration requirements (only applicable if the lease term is to be 7 years or more). For shorter leases, decisions might be on good estate management grounds rather than solely based on financial return to ensure an appropriate tenant mix – e.g. indoor markets / industrial estates.		
12.	The prospective tenant should wherever possible provide a satisfactory bank reference and checks should be made to ascertain whether the prospective tenant owes any money		

	to the Authority. Some properties will require the provision of trade referees. The Authority will make any and all such financial checks, including where appropriate Companies House searches and request for trading accounts, as deemed necessary. In the absence of appropriate references and/or where some risk is identified consider whether rent bond or guarantee is appropriate.		
13.	Instruct Legal Services to proceed with disposal by way of signed v-form, which can be sent electronically.		
14.	V-form to be copied to Property Records Team and Debtors so that records can be updated when disposal completed.		
15.	Undertake any further negotiations required during disposal process.		
16.	Occupation of the property should not take place until the lease has been completed. Only in exceptional circumstances will early entry be allowed, subject to senior manager approval, with input from legal services where appropriate.		
17.	<p>Post completion – once the lease is complete:</p> <ul style="list-style-type: none"> • Release keys • Take final meter readings and cancel any existing contracts with utility companies. • Ensure Property Records Team is advised that the property has been sold/leased so that asset register records can be updated. • Ensure all relevant dates, e.g. rent review, decoration etc., are recorded so that action can be taken at appropriate time. • Remove property from insurance schedule, unless the lease arrangement is for the Council to insure. If insurance to be recharged to tenant ensure that this is appropriately recorded so that recharge is made annually. • Update records to ensure business rates are no longer paid by Council and tenant details are recorded. • Where additional charges arise, e.g. from utilities or insurances, invoices are raised or debtors section are provided with details. 		

A full record of the above information, together with all supporting correspondence and negotiation detail, must be kept on file (either electronic or hard copy) readily available for inspection as required.

Appendix D

PROCESS FOR DISPOSAL OF SURPLUS SCHOOLS

PROCESS FOR DISPOSAL OF SURPLUS SCHOOLS

1. Where, as a result of the Council's Modernising Education Provision Programme, schools are identified as not being required for educational purposes they will generally be sold on the open market.
2. In exceptional circumstances it may be appropriate to consider ongoing community use of the property. Such a use would only be approved if there is a clear identified need for such use in the area and where there is a Business Plan in place which indicates the viability of the alternative use - both in terms of the availability of capital funding for any conversion / refurbishment costs, and also for the ongoing revenue funding of the project. Given that there is a lengthy lead-in time during consultation before any school closes, it is expected that this Business Plan can be put in place before the actual closure of the school takes place.
3. In assessing any application it will also be necessary to identify whether any requirements can reasonably be accommodated in other facilities serving the community (e.g. a proposed new extended school, other village halls, play areas, recreation grounds, public houses, churches etc.).
4. Where a redundant school is let or sold for community use, the future use of the property would be restricted to community use only. The County Council would protect this position by including appropriate covenants or overage clauses in the contract documentation.
5. All applications for redundant schools to be made available for community use will be evaluated by the Property and Major Projects Manager in consultation with officers from Education Policy & Performance and Economic Development. Following this appraisal, any proposed community use would require Executive Board approval.
6. If community use is agreed then the County Council would offer non-financial assistance and advice as appropriate. This process should not however be confused with the Councils Community Asset Transfer Procedures (2013 – 2016), which covers the continuation of delivery of a Council service from the asset by a third party.

Appendix E

DISPOSAL METHODOLOGY GUIDANCE

1. Disposal by private treaty

The main characteristics of a sale by private treaty are:

- 1) The timescales for completion of the transaction are not fixed until exchange of contracts;
- 2) Offers are made subject to Contract;
- 3) Offers are, or may, not all be received at the same time;
- 4) It is usual for the asking price to be quoted.

The steps involved in a private treaty sale will usually include:

- i) Openly advertising the property for sale through an agency or direct advertising media;
- ii) Taking offers from interested parties
- iii) Identifying preferred offers, which may or may not be based on the financial offer
- iv) Negotiation of bids to ensure best value. In this case, the Council will normally consider the highest bid as representing the best consideration that can be reasonably obtained, subject to ensuring any conditions attached to bids are reflected in the final evaluation. The process for disposal by private treaty can still include a closing date and be by way of sealed bids if considerable interest is anticipated.

If land is to be sold by private treaty without being marketed, then reasons justifying a private treaty sale must be recorded in writing. In some circumstances the Council may seek an independent valuation to verify that 'best consideration' is being obtained. Examples here may include special purchaser situations.

A private sale without the asset being openly marketed may be justified where:

- a) The land to be disposed of is relatively small in size and an adjoining or closely located landowner(s) is (are) the only potential or likely purchaser(s);
- b) The nature of the Council's land ownership and that of the surrounding land ownership is such that the land must be sold to adjoining or surrounding landowners if best consideration is to be obtained;
- c) The Council's corporate objectives and best consideration can best be achieved by a sale to a particular purchaser and/or the value of the asset can be used to attract additional funding;
- d) The sale is to a non-profit making organisation and the role of that organisation is conducive to the improvement of public services and facilities available within Carmarthenshire;
- e) The purchaser has a particular interest in purchasing the premises or a particular association with the premises and where open marketing of the premises may lead that particular purchaser to reduce the value of their offer for the premises or withdraw their interest in the premises altogether;
- f) The purchaser has a particular interest in purchasing the site or a particular association with the site and where in the opinion of the Executive Board Member for Resources open marketing of the site may cause undue hardship or unrest for that particular purchaser or where the sale of the premises to a party other than that particular individual would substantially and detrimentally affect the normal operation of the business associated with the premises.

If a private sale is justified, the overriding duty on the Council under section 123 of the Local Government Act 1972 to obtain the best consideration that can be reasonably obtained for the disposal of land will still apply.

2. Disposal by public auction

Sale by public auction may be appropriate where there is no obvious potential purchaser and where speed and best price can be publicly demonstrated.

An auction reserve is used to ensure that a property is not sold below certain agreed levels. Prior to the sale it will therefore be necessary for Director of Regeneration and Policy, to determine the auction reserve to be applied in accordance with the scheme of delegated authorities for the Council. A Council Officer shall attend the auction to act on behalf of the Council.

The contract for sale or lease must be ready for exchange at the auction.

The binding contract will be made on the acceptance of the highest bid providing it has reached the reserve price. Contracts for the sale or lease will immediately be signed and exchanged.

3. Disposal by informal tender

A disposal by informal tender differs from a formal tender in that neither the Council nor the successful bidder is legally obliged to enter into a contract for the disposal of the land. In the process known as 'For Sale by Informal Tender' the asking price will not be stated generally a guide price will be given. Written offers will be invited (sealed bids) and a closing date for such offers published. All offers are opened at the same time. Generally, the vendor is not committed to accepting the highest or any offer.

This method is used when there is strong interest and competition for the property and a choice of buyer is likely or anticipated. If a property has been offered for sale by private treaty, resulting in sufficient competing interest, the sale process is frequently extended to an informal tender process in instances where a closure date is required.

4. Disposal by formal tender

When a property is sold by formal tender, as with an informal tender, the sale will be advertised with a deadline by which prospective purchasers must submit their bid. Each tender document from the bidders must include the full legal contract for sale and all bids have to include a bankers draft as a deposit on the contract. The bids are opened by the vendor or agent (representative). As soon as the "best bid" is selected, the bankers draft is accepted and contracts are automatically exchanged. The successful bidder is then committed to the contract and will have to complete the sale on the appointed date. If the successful bidder fails to complete the sale they will forfeit their deposit and further costs may be incurred.

This method can provide a well organised, transparent way of achieving completion when a timeframe is essential, but is often more costly and a longer lead in period is

required. As a result it is not favoured in the market place and it is an option that is not likely to be frequently adopted.

5. Disposal by exchange of land

Disposal by exchange of land will be appropriate when it will achieve best consideration for the Authority and is advantageous to the Council and other parties to exchange land in their ownerships.

Authority for a disposal of land by exchange with another land owner for alternative land will be by either the Executive Member for Resources, or the Director of Regeneration and Policy and/or Director of Environment under Delegated Authority. In either case, reasons for justifying this manner of disposal must be recorded in writing. A binding legal agreement will be created when a contract is exchanged for the exchange. Where the asset to be exchanged falls into the category of a "strategic asset", the decision shall be reserved to the Executive Board.

The exchange will usually be equal in value. However, an inequality in land value may be compensated for by an equality payment or by other means where appropriate. For example, where the Council in exchange for a larger piece of land receives a smaller piece of land but the recipient of the larger plot agrees to build industrial units on the Council's smaller area to equalise the consideration. In such circumstances the Council may seek an independent valuation to verify that 'best consideration' will be obtained.

Appendix F

Informal Tender Procedure

INFORMAL TENDER PROCEDURE

- a) Where appropriate tenders will be advertised in the local press and occasionally the national press, together with an appropriate trade magazine or publication. If a property has been offered for sale by private treaty, resulting in sufficient competing interest, the sale process might be extended to a formal tender process without the need for advertising.
- b) Where an agent has been appointed to act on the Council's behalf, their name and address will also be given, and they will be required to acknowledge and comply with the County Councils Procurement Standing Orders.
- c) Interested parties will then be provided with property particulars and details of the tender process.
- d) All tenders must be delivered in the envelope provided and addressed to the Chief Executive, bearing the words "Tender for" and the address of the land or property for sale, but without any name or mark indicating the sender. Applicants who wish to make their offers by post are advised to do so by Recorded Delivery.
- e) No bid shall be accepted that is not specific, or made in reference to another bid, such as £100 over the highest bid.
- f) The Council will make it clear that it does not bind itself to accept the highest tender or indeed, any tender.
- g) Tender envelopes will remain unopened in the custody of the Chief Executive Department until the appointed time for opening.
- h) All tenders will be opened together after the Closing Date has expired by the appointed officer. A representative of Property and Regeneration, other than the officer directly involved with the sale, will attend the tender opening.
- i) A record of tenders received will be maintained and signed by the officers present.
- j) Any tenders received after the expiration of time for tendering, or which contravene any provision of the tendering conditions or instructions will only be opened with the authority of the Director of Regeneration and Policy.