

**Property Procedures
for Disposals and Lettings
2019**

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1.0 Introduction

1.1 Purpose

The purpose of these procedures is to ensure that a standard approach is understood and adopted by Asset Management officers to the disposal and letting of its property holdings.

The procedures apply to all Asset Management officers responsible for implementing the Council's disposals programme and for letting vacant properties. They describe the steps to be taken to declare a property surplus and, subsequently, for its disposal. They also outline the steps to be undertaken when marketing the Council's commercial and community properties using both internal marketing and external agents.

The key steps are described through workflow diagrams which identify milestones to support Asset Management officers in managing the processes.

1.2 Scope

The Council and all employees and agents are to comply with the Council's Standing Orders, which comprise:

- a. These Property Procedures
- b. The Scheme of Delegations
- c. Financial Regulations
- d. Code of Practice on Local Authority Accounting.
- e. Formal guidance issued by Finance
- f. UK and EU law

In these procedures:

- "Property" shall mean any land or buildings owned by the Council or in which it has a legal interest.
- "Disposal" shall mean the sale of the freehold or the grant of a lease in excess of 25 years.
- "Letting" shall mean the grant of a lease for up to 25 years.
- These procedures will not describe the process for acquisitions.
- These procedures will not describe the process for instructing external agents.
- These procedures will not describe the process for granting way-leaves and easements.
- Land, buildings and property in the ownership of the Housing Revenue Account are included but Right to Buy sales are excluded.

All property is "owned" corporately by the Council in accordance with the "Corporate Landlord Model". Any Service occupying property does so in accordance with an Asset Plan prepared jointly by the occupying Service and Asset Management.

These procedures replace all previous procedures and policies.

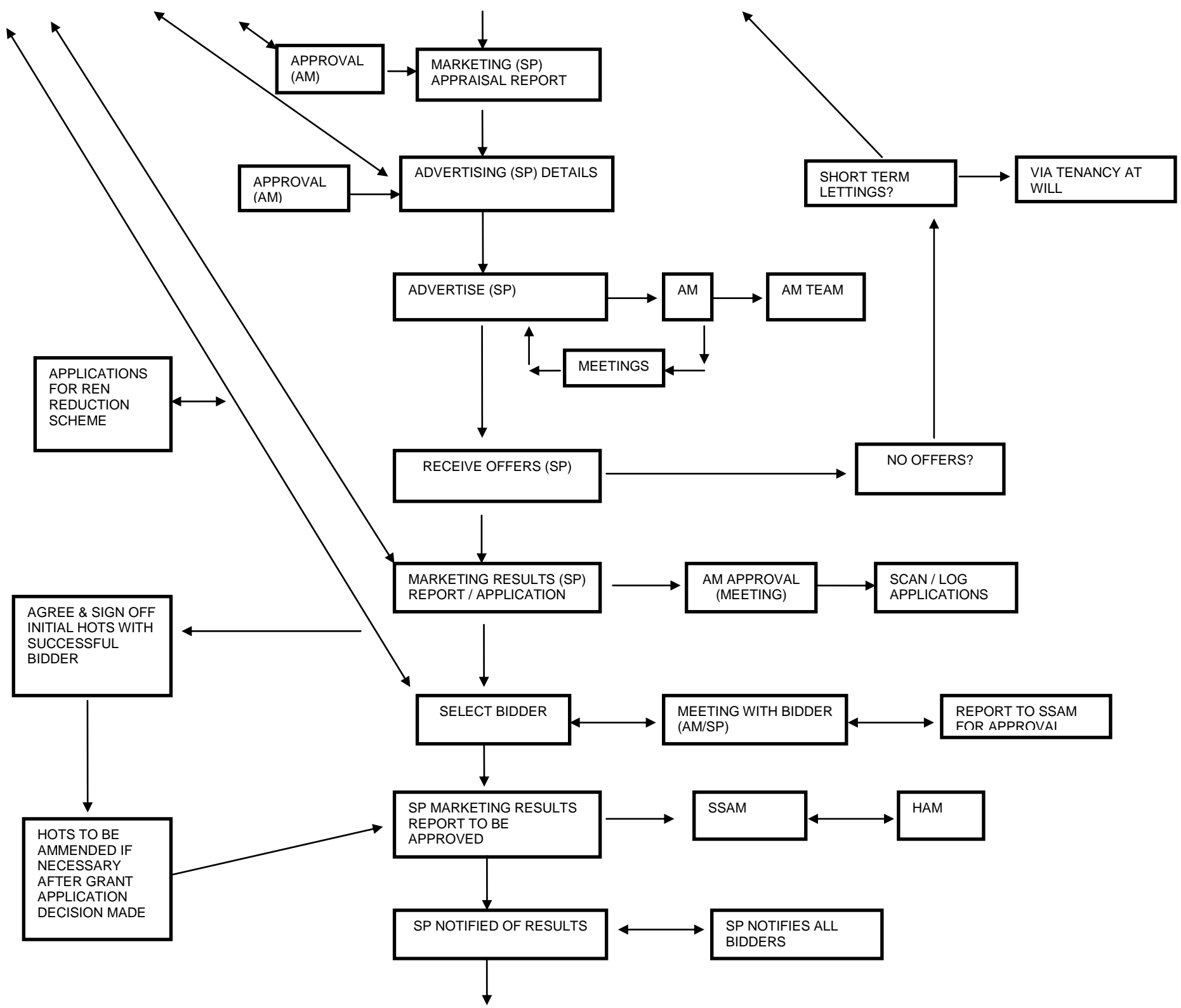
1.3 Roles

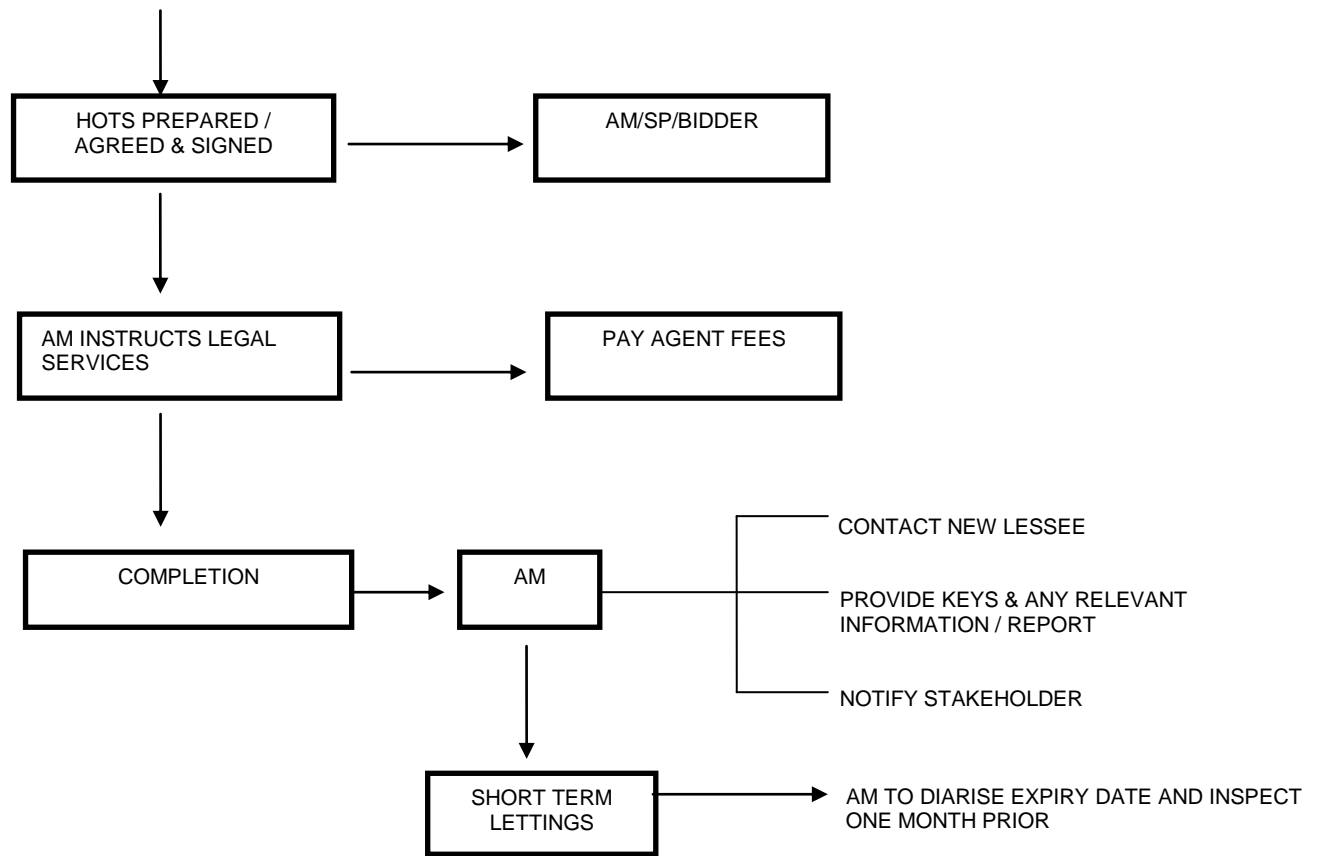
The table below describes the roles and the functions of the officers involved in the letting and disposal process.

Role	Function
Head of Asset Management (HAM)	Responsible for providing overall direction, DD of Place and deciding on method of disposal and basis of tenure to be offered. The HAM has the ultimate responsibility and accountability to ensure that the Council's surplus commercial properties are let or disposed of in a timely manner.
Senior Strategic Asset Manager (SSAM) And Asset Manager (AM)	Responsible for declaring the property surplus and instructing external agents to market the property. The SSAM ensures that the marketing is completed in accordance with these procedures and has overall responsibility for the day to day management of the disposal.
Property Support Officer (PSO)	Responsible for certain tasks associated with marketing the council's commercial and community properties for letting. The PSO will act under the supervision of the SSAM or the AM.
Business Support (BS) Team	Responsible for administrative tasks as instructed by the SSAM or the AM, and updating the relevant Asset Management service's database.

2.0 Workflow Diagrams-

2.1 Lettings





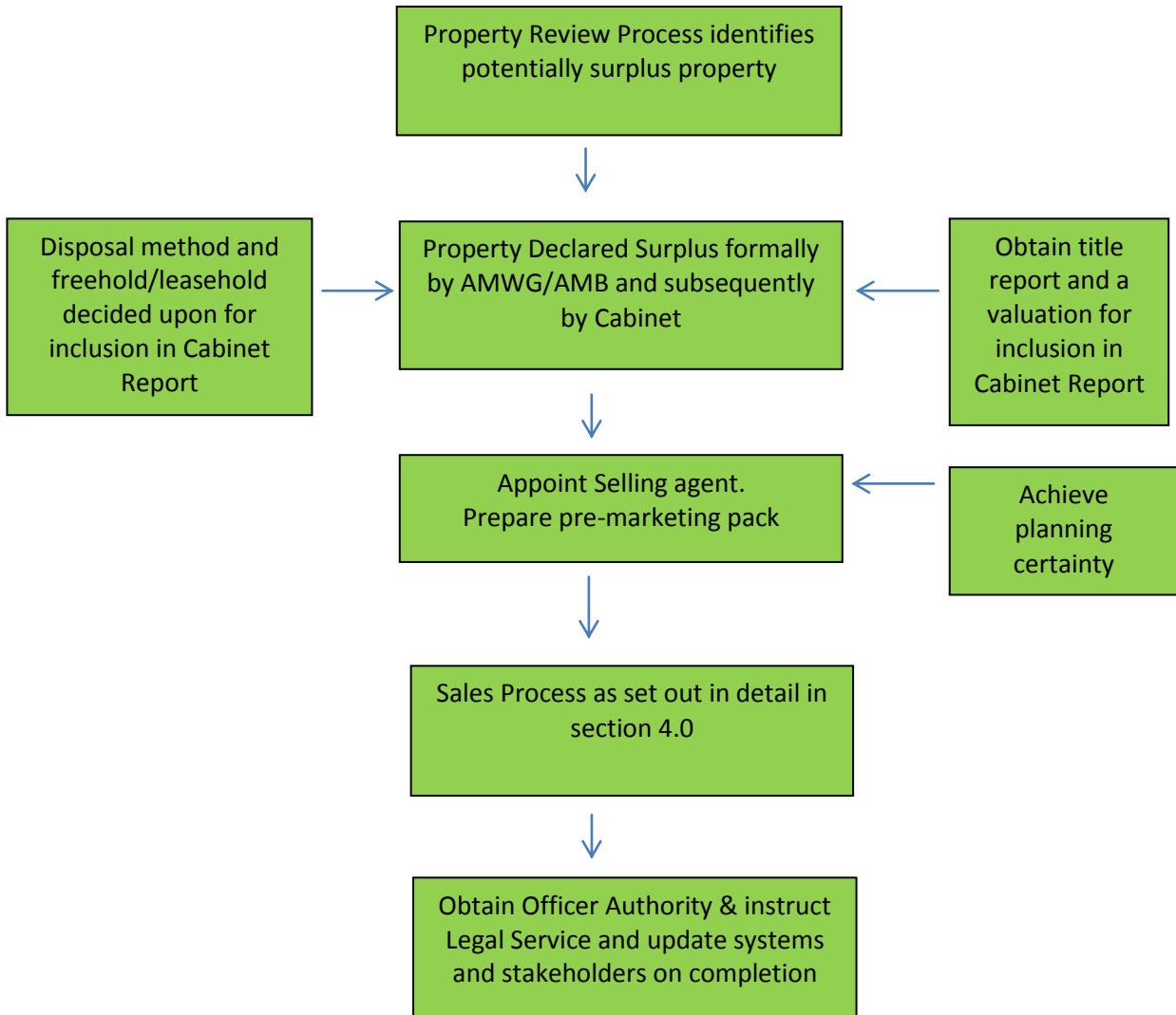
KEYS:-

- HAM – Head of Asset Management
- SSAM – Senior Strategic Asset Manager
- AM – Asset Manager
- PSO – Property service Officer
- AMDO – Asset Management Database Officer
- SP – Service Provider / Agent

STAKEHOLDERS:-

- Business Rate Section
- Property Insurance Section
- Facilities Management
- Empty Properties Officer
- Utilities –Gas, Electricity, Water
- Third Sector Team

2.2 Disposals



3.0 Procedures for Lettings

3.1 Introduction

These procedures will apply to all commercial properties that are held by the Council. Properties will only be marketed when properties have been either considered as part of the asset review process and declared surplus to the Council's requirement, or already form part of the Council's commercial portfolio and continue to be retained for investment purposes.

It is mandatory that this letting procedure is followed on all commercial lettings except for the following exceptions:

- 1 Where it is necessary to obtain an Executive Decision in accordance with the policy and procedure where a letting may be recommended to a special party that can be defined as an organisation that is providing an essential service for residents that would otherwise need to be provided by the Council, but more cost effectively and efficiently.
- 2 On properties where leases are being granted to service providers to provide commissioned services and it is a condition of the awarded contract that a lease will be granted on the subject property to enable the service provider to provide the commissioned service.

3.2 Identification of Surplus Property

Step 1

A property will be identified as being surplus to the Council's requirements through the asset review process in which it has been identified by Asset Management and the occupying Service as being unused, under used or not offering value for money. For example, as a result of individual property review, the costs of maintenance may be prohibitive such that it is no longer cost effective to retain them. The property must also not be required for use by any alternative Council service area.

Any decision confirming a property as surplus to operational requirements will need to be cleared by the Asset Management and Capital Delivery Working Group (AMCDWG) and by the Asset Management Capital Delivery Board (AMCDB).

After clearance by AMCDB but prior to a decision by Cabinet, appropriate Cabinet members and Directors will be consulted on the proposal and their comments, if any, included in the Cabinet report.

Step 2

Once a Council-owned commercial investment or community property becomes available, the SSAM will create a marketing folder in the Asset Management electronic filing structure and notify the Business Support Team who will update the Technology Forge database.

3.3 Property Inspection

Step 1

The AM will arrange for a PSOI to inspect the property to ensure it is secure in order to prevent the risks of:

- Squatters and unauthorised entry (consider lock changes and installing security locks) If intruder alarm systems are in place, ensure proper operation.
- Fire hazards (remove any flammable material and close up any letter boxes)
- Flooding risks (by turning off the main water pipe and draining down the water systems)
- Gas explosions (turning off stopcock/isolating gas appliances)

The inspection should include:

- Completion of the empty property inspection sheet
- An Inventory if necessary
- Meter readings
- Photographs-internal and external

Step 2

The inspection findings will be discussed with the SSAM.

The following actions are required to be completed:

- Advise utility companies, to include meter readings taken and any forwarding address for previous occupiers.
- Decide whether electricity is still required to be left on e.g. electric shutters, access for viewing arrangements, contractors etc.
- Arrange any necessary clearance
- Consider any works required to secure a letting
- Advise the Insurance Section that the property is vacant
- Notify the Business Rates department that the property is vacant
- Notify the rental collection department that the property is vacant
- Consider whether a schedule of condition is required
- Obtain an Energy Performance Certificate (EPC).
- Consider presence of asbestos-is there any existing asbestos survey/management plan?
- Consider need for any property owners statutory compliance works/testing e.g. water purity, testing, electrical testing, boiler servicing.
- Ensure property is added to the Empty Property Inspection Schedule
- Consider need for lock changes if not already done.

NB: In deciding whether to discontinue a utility service it is relevant to consider the likely period before re-letting, the cost of re-connection and the amount of natural light available to undertake a viewing without electricity. Also any electrically powered security systems in place such as intruder alarms and shutters.

3.4 Property Marketed by External Agent

Before instructing an external agent, the AM should prepare a Marketing Strategy Report which should be submitted to the SSAM for approval. The AM should consult with the Council's Regeneration Team in the preparation of this report to take into account any redevelopment considerations pertinent to the case. The report should include such matters as type of use, (especially where a shopping parade is considered), suggested lease terms and any special considerations relating to individual properties, such as restrictions on type of retail use, intruder alarm codes etc. It should also cover details of any expenditure required prior to marketing to include essential repairs and maintenance. Once approved, a copy of this can be made available to the external agent prior to obtaining a market rental valuation.

Step 1

The council has made a decision to use external firms to market all vacant properties on their behalf rather than marketing properties internally.

The Council has entered into a contract with certain service providers to provide a range of estate management functions which includes the marketing of vacant properties. This activity is undertaken within a property consultancy framework with agreed fees.

It is the responsibility for the Asset Manager to select a service provider based on experience and specialist knowledge, prior performance and fee quote for undertaking a marketing appraisal and then for marketing the subject property.

Step 2

The service provider will first be instructed to provide a Rental Determination Report (market appraisal) within two weeks (10 working days) of instructions. The standard agreed template should be used for this purpose and should include the following:

- **Instruction summary and approved marketing strategy report**
- **Premises description**
- **Accommodation**
- **Market evidence (A minimum of three relevant comparables to be provided)**
- **Recommended quoting rental**
- **Recommended Market Rental (MV)**

A standard report should be provided as part of the procedure.

For all properties the following will be provided to the service provider:

- EPC certificate
- Planning use/planning consent plus required management use
- Floor plans
- Previous copy of the lease
- Approved marketing strategy report
- Keys for viewings
- Asbestos management plan, if appropriate

Step 3

The service provider will be instructed to provide an end to end letting service on behalf of the Council. This will include the preparation of marketing documents, advertising (both through the Council website and other media outlets to be agreed) viewings, agreements of heads of terms and preparation of land registry compliant lease plans.

The service provider will also be required to test business viability and complete credit checks in line with the Council policy and procedure, and data protection laws.

In order that the process is fully transparent and that the Council maintains mixed parades that support communities, the service provider will carry out marketing and letting in line with the Council's shop policy, marketing strategy report and this procedure for Disposal and Letting.

For the avoidance of doubt, any advertising (other than through the Council's or the service providers website) requested by the Council will be charged to the Council at cost price e.g. advertising boards, advertisements in the press media.

The service provider will advise the Council of interest and bids of relevance for review as part of their recommendation to proceed with a new letting in accordance with Step 8 below.

Step 4

The service provider will prepare marketing details for approval by the Asset Manager. These should follow a standard format and include the following details (this is not an exhaustive list)

- **Photographs**
- **The address including the full postcode**
- **Location plan of the property**
- **A brief description of the property and the area**
- **A breakdown of the accommodation.**
- **Quoting rental**
- **Length of lease being offered including the standard form of lease, and particular specified use if appropriate e.g. butcher shop.**
- **A floor plan to scale**
- **Block viewing dates and contact details.**
- **Deadline for applications and name and address of contract at service provider to whom applications should be sent to.**
- **The Council's logo should also appear on the details.**
- **Permitted planning use/planning consent.**

Standard letting details template should be attached to the procedures.

Step 5

The Asset Manager will approve the letting details. The Service provider will arrange for their publication.

The minimum publicity should include the following:

- The service providers web page
- The Councils website
- The Docklands and East London Advertiser
- To place a "To Let" board on the property.
- Other websites or other media outlets to be agreed between the Asset Manager and the service provider on instructions.

The property will be marketed for no less than 4 weeks and for a maximum a period, to be agreed between the Asset Manager and the service provider. Over this period, the selected agency will be given sole letting rights

Interested parties are only to view the premises by prior arrangement with the service provider not the Council. The service provider will be required to keep a record of the parties who have viewed the property.

The service provider will be required to update the Asset Manager on the level of interest and progress on a regular basis, the frequency to be agreed at the time of instruction.

Step 6

The Asset Manager will notify the whole of the Asset Management Team of the publication details to ensure that they know to direct any interested parties to the service provider.

Step 7

All completed application forms (offers) and references will be received by the service provider and will only be provided to the Asset Management Team at the end of the process.

The scanned forms and references will be saved by the Asset Manager in the relevant property folder.

Step 8

The Service provider will be required to prepare a Marketing Results report summarising all offers received, bids of relevance for review and recommendations for acceptance or rejection of any offers.

The service provider will take the factors below into account when considering all the offers and making a recommendation to the Council.

- Rental value offered
- Suitability of use proposed
- Ability to pay
- Due diligence to include covenant strength, references and credit reports
- Lease term requested/offered
- Business experience
- Business plan
- Cash flow forecast
- Benefit to the parade (if a shop) and community generally

The service provider needs to confirm that the rental reflects best consideration reasonably obtainable and complies with the Local Government Act 1972 section 123. It should be noted that best consideration does not oblige the Council to accept the highest offer. The status of the prospective lessees must be considered in terms of their ability to service the rent and any other payments due and the suitability of their business to the location under consideration.

It is noted that there is a general presumption against A3 and A5 uses, however uses will be considered in the context of the viability of the parade and the existing level of provision locally.

Declaration of interest (conflicts of interest)

The authority requires bidders to identify any actual, potential or perceived conflict of interest in relation to the authority and its organisation (limited to person dealing with the negotiation and/or acquisition of the site in question.) The concept of a conflict of interest includes any situation where relevant staff members and elected officials have directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the disposal process.

Where there is any indication that a conflict of interest exists, may arise or be perceived then it is the responsibility of the bidder to inform the authority detailing any conflict.

Included within the bid application form sent to all bidders will be the following question:

“Please confirm whether there are any actual, potential or perceived conflicts of interest in relation to the authority and your organisation (limited to persons dealing with the negotiations and/or acquisition of the site in question).

Yes/No

If yes please detail the conflict of interest below: “

The service provider will be required to submit their report within two working days of the expiry of the deadline for receipt of applications.

Step 9

The Asset Manager will arrange a meeting with the service provider to discuss and review the service provider report and recommendations within a week of the closing date for offers, if necessary.

Prior to that meeting, the AM will check with officers within the Council’s Income Section to ascertain if any of the candidates are previously known to the Council and have a past poor payment history.

At this meeting, all applications received will be reviewed together with any business plans and cash flows.

Due to the relatively low rental income for the majority of Council owned shops, it is not practical to seek expert advice on the quality of a cash flow or business plan and it is accepted that the Asset Manager and service provider will take a common sense approach when assessing these criteria. Where expert advice is required, the Council’s Finance Business Partner should be consulted.

Following initial selection, the AM should then meet briefly with the selected candidate to further ensure suitability before proceeding to Step 10. AM should arrange for all meetings to be minuted and filed.

Step 10

Following the preparation of a summary report (to include the offers that have been made together with the service provider's recommendations, with a requirement for the HAM to authorise the same), the Asset Manager will discuss the service provider's recommendations with the Head of Asset Management and obtain signed approval to proceed with the letting.

Step 11

The Asset Manager will obtain the appropriate necessary approval for the proposed letting via a Cabinet Report or by obtaining authorisation from the Director under delegated powers, using the Officer Authority (OA) /Directorate Decision form for the proposed letting.

Once this is obtained the Asset Manager will advise the service provider so that the successful bidder can be advised and also to inform those that were unsuccessful. The service provider/agent will then be instructed to prepare heads of terms to be agreed with the AM and then signed off by the successful bidder via the service provider/agent. The AM will then instruct Legal Services to prepare the draft lease and copy the Business Support Team who will populate the Legal Instruction schedule for monitoring purposes.

Completion should normally be within 28 days of confirming instructions, unless otherwise stated.

Step 12

It is usual for the Council to require a 6 month rent deposit from the lessee at the time of completion together with the first quarter's rent in advance, and it may also be necessary to obtain a guarantor in some circumstances. Rent deposits should be held in a separate interest bearing account and returned to the lessee with interest on final vacation of the property (unless otherwise agreed), on the proviso that there are no arrears or other breaches of covenant that will result in a financial loss to the Council.

AM should consult with the Chief Finance Officer and internal processes for rent deposit collection, recording, refund and reconciliation put in place.

Following agreement on the above with the lessee, the Council's solicitor should be then instructed by the AM to prepare the necessary legal documents.

Once the Lease and Deposit Deeds (and any guarantor agreements) are completed the Asset Manager will be responsible for ensuring that the following is handed over to the tenant:

- Compliance certificates
- Asbestos report
- EPC
- Keys
- Meter readings for utilities

In the event that the letting is aborted, consideration should be given to either selecting another suitable candidate from the initial marketing exercise or re-marketing the property.

Step 13

The Asset Manager will notify all stakeholders of the completion of the new lease.

Finance – so it is known to charge rent, frequency and service charges.

Business Rates Section

Insurance Section – So they know to charge the tenant to reimburse the Council for the building insurance.

Empty Properties Inspection list-delete relevant property address

Asset Management Database Officer – to update the details of the new letting on TF cloud. Also to upload the completed lease and Deposit Deed onto TF Cloud.

Utility companies-gas water and electricity

Facilities Management - if appropriate.

Voluntary Sector Team – if appropriate

3.5 Short term/Seasonal lettings

- (i) Following completion of steps 1-6 above, in the event that after a reasonable period of market exposure (say 2-3 months), there has been little or no positive interest or acceptable offers received, the AM should consider short term or seasonal lettings (the latter dependent on the time of year). E.g. around celebratory times or holidays e.g. Christmas, Easter or other suitable ethnic events likely to generate property demand for a limited period.
- (ii) The AM should liaise with the appointed agent to consider re-offering the property on a short term basis (up to 6 months is suggested). Fees may have to be renegotiated with the agent and possibly the market rent level (Consider using an all inclusive figure to cover business rates, utilities and buildings insurance), plus further approval to marketing details. Steps 3-6 above should be reviewed and followed as appropriate to the case under consideration.
- (iii) Following re-marketing and receipt of offers, steps 7-13 should also be reviewed and followed as appropriate to the case. It is unlikely that a full 6 month rent deposit or guarantor will be required, although consideration should be given to taking the total amount of rent due in advance for the limited period of occupation.
- (iv) Diarise the tenancy termination date and inspect 1 month prior to arrange a timely vacation.

- (v) It should be appreciated that these types of occupiers usually require occupation quickly due to the immediate and time limited nature of their business so time taken to give possession will usually be critical if a successful letting is to be achieved.
- (vi) Consideration should be given to using a standard short term form of agreement, such as a tenancy at will in order to expedite the legal process. Immediate and effective liaison with the Council's solicitor will usually be crucial and it would be beneficial to obtaining delegated authority for Asset Management Team to utilise a standard tenancy at will document, the content agreed with the Council's solicitor and HAM to sign off such a document without further recourse to Legal Services.

3.6 Selecting a Tenant for a Community Building

General Background

The Council's letting policy for community buildings has been set as follows:

Lease term: 3 to 5 years on full repairing and insuring terms

Rent: A community rent level of £14 psf will be used for D1 uses for existing occupiers for new lease agreements in accordance with the Statement of Policy and Procedures agreed by Cabinet in March 2018 and recognised as representative of market rent at the time of the Cabinet decision. For future new lettings, Market Rental Value will be determined following a marketing exercise or obtaining a current valuation from a suitably qualified and experienced professional to ensure that the Council continues to receive best consideration in accordance with its statutory obligations.

All vacant community properties that have been declared surplus will be marketed by service providers on the same basis as the Council's commercial portfolio, i.e. market rental value, but the focus will be on community output rather than the rental achieved.

Eligible applicants will be able to apply for grants under the Council's Community Benefit Rent Reduction Scheme (CBRRS)

All offers received for such properties within the Council's portfolio will be referred to LBTH Voluntary Sector Team for consideration to maintain due-diligence in terms of ensuring that organisations meet acceptable standards of governance, management and financial controls which are consistent with those applied to funding and other support from the Council to the Voluntary and Community Sector.

Step 1

Follow the processes and steps set out in paragraphs 3.1-3.3 above as appropriate.

Step 2

The AM will prepare a Marketing Strategy Report as per paragraph 3.4 above. It should contain the usual property detail as outlined in the aforementioned paragraph, but should also include details relating to the Council's Rent Reduction

Scheme and suggestions relating to the appointment of a suitably experienced service provider/agent.

The draft report should be passed to the Voluntary Sector Team for input, likely to include advice/assistance in relation to the Council's policy when leasing community buildings, the CBRRS and service provider appointment, and may include a "lettings pack" for potential bidders which will help to ensure transparency and that any bids received are relevant and meaningful.

The report should then be submitted to the SSAM for review and approval.

Step 3

Next follows the appointment of a suitably experienced service provider/agent.

The Voluntary Sector Team should be involved in advising the agent to ensure VCS organisations are made aware of the opportunity. The Voluntary Sector Team in turn will use its network of marketing channels, including the VCS Premises Forum to promote the opportunity.

Step 4

After appointment of the service provider/agent, Steps 2-4 in para. 3.4 above should be followed where appropriate and if possible, a standard letting details template should be prepared by the AM in liaison with the Voluntary Sector Team and approved by the SSAM.

Step 5

Letting details are to be prepared by the service provider/agent and approved by the AM and Voluntary Sector Team. Then proceed as per para. 3.4, Step 5 through to Step 9.

At the meeting with the service provider/agent to select the successful bidder, both AM and Voluntary Sector Team should participate in the selection process and notes of the meeting taken and filed to include selection criteria..

Step 6

Proceed then to steps 10 and 11 (para .3.4 above) to include agreeing and obtaining a signed copy of the initial heads of terms via the service provider/agent. The successful bidder, where applicable, may wish to make an application to the CBRRS via the Third Sector Team before the Council's Legal Services Team can be instructed to prepare a draft lease. It should be noted that this process could take circa. 3 months to complete and the outcome is not certain. This will delay completion beyond the stated usual 28 day period for commercial property leases.

Step 7

Following the outcome of the CBRRS application, the AM will review the initially agreed heads of terms together with the Voluntary Sector Team, and amend as necessary before submitting to the service provider for final agreement with the successful bidder.

Step 8

Proceed then with steps 12 and 13 (para 3.4 above), notifying all relevant stakeholders, including the Voluntary Sector Team, following lease completion.

4.0 Procedure for Disposals

4.1 Key Steps

Step 1

A property will be identified as being surplus to the Council's requirements through a process of ongoing property review in which it has been identified by Asset Management and the occupying Service as being unused, under used or not offering value for money (because, for example, as a result of individual property review, the costs of maintenance may be prohibitive such that it is no longer cost effective to retain them).

Alternatively a service reconfiguration exercise led by a service department may identify that a property could be released for disposal subject to decisions about the future delivery of the service and potentially the investment of the proceeds of disposal in the service.

The HAM will then consult other Service departments and relevant partners to establish whether the property could meet their current or future service needs.

The officer decision confirming a property as surplus to operational requirements will be taken by the Asset Management Board on the recommendation of the Asset Management Working Group.

After clearance by AMB, but prior to any decision by the Mayor in Cabinet, appropriate Cabinet Members and Directors will be consulted on the proposal and their comments, if any, included in the Cabinet report.

The Cabinet report will seek approval to dispose delegation for the Director, Place, in consultation with the Director, Governance, to accept an offer and to negotiate further if necessary and to enter into the legal documentation necessary to complete the disposal.

The Cabinet report will recommend whether the sale should be leasehold or freehold and will include an assessment of the value and other implications of the alternative approaches It will also advise on the timing of the disposal and when the property should be brought forward.

The Cabinet report will include the comments of the Director, Resources, for example, capital, revenue or VAT implications and also of the Corporate Director, Governance, which may include the effect of any covenants, restrictions, ACV listing or other legal implications and the implications of any statutory consents.

The principle of property disposals will be reported in the open part of the agenda to ensure transparency and openness for the public, whilst valuation and other commercially sensitive information will be included in an exempt appendix

Following approval of Cabinet the SSAM will create a marketing folder and update

the Technology Forge database.

There is delegated authority for the Director, Place to agree to the disposal of property at market value where the estimated value is up to £250,000. In the case of disposals at an undervalue the delegation applies where the value of the consideration and the undervalue foregone do not together exceed £250,000.

There is a caveat to the delegated authority where the property consists in whole or part of open space to which the advertising requirements of the 1972 Act apply.

In cases of delegated authority the steps above will be followed except that a report to the Director for decision, rather than to Cabinet

Step 2 Deciding on the Method of Disposal

The methods of disposal that may be used are:

- (a) Informal tender
- (b) Formal tender
- (c) Auction
- (d) Sale by Negotiation

The Divisional Director in consultation with HAM,, will determine the most appropriate method of sale. This will be a matter of professional judgement based on the type and location of the property and the prevailing property market and will always be subject to the Council meeting its legal requirements. Where a disposal requires outputs such as social housing or community benefit it may be governed by Public Procurement Regulations as well as s land sale legislation.

The general presumption is that the method of sale should require the open invitation of competitive bids unless the Divisional Director and HAM considers that an alternative method of disposal would be more appropriate.

Sales by **Formal Tender** and **Auction** (see definitions) are largely regulated by the process that needs to be followed to achieve a legally binding contract and are not described in these procedures.

Sales by **Negotiation** are likely to involve a “special purchaser” (see definitions) and examples are:

- (i) Sale to a party with an existing interest in the property, often a leaseholder.
- (ii) Sale of an access right which would enable a purchaser to release development value locked up in other property.
- (iii) Sale to an adjoining owner or sale of a part-interest in a property where amalgamation of interests could enable “marriage value” to be realised.
- (iv) Sale to a public body (e.g. an RP) at less than market value where other benefits are offered to the Council, provided that such sale is within the terms of disposal at undervalue consents, or receives Secretary of State Consent and subject to European legislative requirements, relating to State Aid for example.

These examples are given on the basis that the Divisional Director and HAM

consider that negotiations with one party would produce a higher figure or, alternatively that non-financial considerations that fall within the Council's discretion justify a sale (see definition). In all such cases a valuation must be provided by external consultants.

The SSAM will obtain a title report from Legal Services to ascertain any issues that may have an effect on value or the method of sale.

Where a property is on the list of Assets of Community Value there is a prescribed process to follow whereby the Council will give notice of its intention to dispose and, depending on the response, may need to allow a moratorium period during which it will not be able to conclude a transaction except to a community interest organisation.

Where Crichel Down rules apply the Council must follow a procedure to trace a former owner and offer an opportunity to purchase.

Step 3 Tenure – Deciding whether to sell the Freehold or Leasehold

Whether to sell freehold or a long leasehold needs to be considered on a case by case basis. However, the Council has a general policy to dispose of property via long leaseholds.

As part of the report to Cabinet or the Director recommending a property being declared surplus, the Divisional Director/HAM will recommend if the sale should be leasehold or freehold. This will include an assessment of the value and the impact on value, if any, of the respective tenures.

Examples of where a freehold sale may be considered appropriate are:

- (a) Where the level of capital receipt, over and above a leasehold disposal, exceeds the perceived benefit of a leasehold disposal (i.e. so that a leasehold disposal could not be reasonably justified).
- (b) For commercial transactions, where a developer or funder's reasonable requirements require a freehold transfer to facilitate a sale or regeneration, often where land for redevelopment is being assembled from different owners.
- (c) Where it is necessary to sell a freehold to release additional value from a transaction (e.g. marriage value through bringing sites into single ownership).

This list is not exhaustive and other circumstances could apply. Because of the potential effect on value the Council needs to ensure that each case is considered on its merits.

Step 4 Obtaining Planning Certainty

Prior to sale, the Divisional Director/HAM will consider what level of certainty of planning is required to maximise value. Greater planning certainty may crystallise value and increase the Council's chances of achieving a quicker, unconditional sale. Planning certainty can be achieved through obtaining planning permission (outline or full) or alternatively, and to a lesser degree, by preparing a planning advice note or a Planning Brief/SPD.

At a site specific level, a planning advice note provides a valuable mechanism to establish clear principles for the future development of a site, to shape both the form and nature of uses.

A Planning Brief/SPD is more appropriate for large sites which may have been the subject of public consultation and its adoption as Council policy by the Cabinet provides a guide to a potential developer, officers and the appropriate Planning Committee, of the Council's expectations for the future use of the site.

No property with development potential will be marketed without a planning advice note as a minimum.

All marketing information relating to disposals (except those under statutory powers) will include the relevant planning advice note or Planning Brief/SPD.

It is acknowledged however that such planning documents cannot fetter the discretion of the development control process in determining a subsequent planning application. Officers will ensure that clear boundaries will be maintained to ensure that the Council exercising its disposal powers as landowner does not fetter its duties as Local Planning Authority.

Step 5 Preparation of Pre-marketing Pack

The SSAM will collate an information pack which will vary according to the type of property being sold but generally will include the following:

- A brochure including photographs, location and site plans, address including postcode,
- sale process and contact details
- Energy Performance Certificate (EPC)
- Asbestos reports if available
- Any specialist surveys that the site specifics require
- Services and utilities plans if available
- Planning information
- Title issues
- Occupations
- Boundary issues
- Contamination
- Any consents that may be required
- Tax issues

Essentially the information supplied will need to include the brochure/advertising details, sale process, contact details, title details plus any planning information/consents available.

Step 6 The Sales Process for Sale by Informal Tender

When a property is to be sold by informal tender the Council will ensure that the appointed agent openly markets the property locally and nationally on websites and/or printed media. It will also ensure that the highest levels of probity and confidentiality are maintained during the sales process. The appointed agent will be expected to enter into the Council's standard agency contract prepared by the

Council's solicitor which will include confidentiality and declarations of interest clauses.

The following process will be followed by the SSAM and the appointed agent to ensure the Council's interests are protected:

Marketing

- The property must be advertised in a national and a local newspaper (or specialist property publication), on the marketing agents website and social media platforms and also on the Council's Webpage
- A board must be erected on site
- The agent will market the property for a six to eight week period, conduct all viewings and maintain a log of those viewing
- All offers are to be submitted in a pro-forma prescribed by the agent and the SSAM, to include declarations of interest.
- Offers must be submitted by a fixed time and date
- Declarations of interest and controls should be defined in the agency contract with the service provider.

Receipt of Bids

- Bids must be returned to the Council's Divisional Director, Property & Major Programmes in a plain sealed envelope marked 'OFFER' identifying the property but not the identity of the bidder or to an e-portal set up for the purpose and operated by the Council's procurement team.
- The bids must not be opened prior to the specially convened bid opening meeting and will include any electronic or late bids authorised by HAM.
- The SSAM must inform Facilities Management and Business Support before the tender deadline that hard copy bids are due and must not be opened
- Facilities Management will give advance notice to the post room/reception and will ensure that they notify the SSAM and/or Business Support of bid arrivals immediately that they arrive
- Business Support will initial, date and time stamp the bid envelopes on receipt and issue each with a sequential receipt number to indicate the order in which offers have arrived
- All bids must be held in the safe of the Divisional Director, Property & Major Programmes' until opening
- The agent/service provider will be responsible for ensuring the confidentiality of all bids, including any received electronically

Bid Opening

- Bids should be opened by the Divisional Director/HAM in a specially convened meeting attended by the SSAM, a representative from the external agent's firm and a legal officer
- At the meeting, the Divisional Director/HAM must initial and time each offer and record it in a formal schedule
- Officers will record the following information in the schedule at the bid opening meeting:
 - the name of the bidder

- the level of offer
 - any conditions attached to the offer such as planning consent
- The schedule must be signed and dated by all present at the end of the bid opening meeting
 - The schedule will be then retained within an overall register (in the form of a book) maintained and kept in the safe of the Divisional Director
 - Equivalent processes will be followed where e-bids have been submitted.

Bid Evaluation

- Following the bid opening meeting the SSAM will scan or save the bids to the secure drive of the Divisional Director/HAM
- No other soft copies of the bids will be held
- The SSAM will ensure that the hard copy bids are held in the safe of the Divisional Director during the period until contracts are exchanged after which they may be archived
- The SSAM will send the bids to the agent for full analysis and subsequent detailed reporting
- The agents will consider and record the following key information (which is not exhaustive):
 - the level of offer
 - the bidders' track record (previous experience, to include details of any similar successfully completed projects.)
 - any conditions attached to the offer
 - details of funding and to the extent possible, proof of funding (e.g. bank statements, certified copy accounts, approved applications for loans and grants.
 - the proposed use
 - any other relevant information
 - Decisions will not be made just on the basis of highest offer.
 - All bids to be treated as confidential by the agent in accordance with the agency contract with the service provider.
- The agents report will include, amongst other things, a clear recommendation on which bids to progress, whether to enter into a further bid stage and whether to interview any bidders for clarification purposes. This report is to be reviewed and authorised by HAM.
- Failure to meet any of the pre-conditions or processes required by the Council may invalidate an offer
- The agents will keep a written record of every discussion held with a bidder
- All bids to be treated as confidential, including electronic bids as per the agent's contract with the Council.

General Requirements Relating to Bids

- Any negotiation for a land transaction above £250,000 should be reported

to the Divisional Director as they take place and a file note or other record of each discussion should be placed on the relevant file

- Pre-contract enquiries and a standard form of lease/transfer may be made available to bidders as part of the marketing process in order to expedite a sale but this is not a requirement
- Bidders will be required to exchange contracts within a prescribed number of days from the date of being provided with a contract. If exchange does not occur within the prescribed timescale, the offer may be deemed to be withdrawn and the Council may accept an offer from the second ranked bidder to be selected by the Asset Manager after consultation with the agent.
- Bidders must be informed that bids can be subject to scrutiny by Overview & Scrutiny Committee and therefore, they will need to identify information that they believe is commercially sensitive and note that after a time period it will no longer be deemed to be commercially sensitive and will also be subject to FoI requests.
- All meetings to be minuted by AM and filed.

Step 7 Instructing Legal Services or External Solicitors

The marketing agents under the direction of the SSAM will produce Heads of Terms and obtain an Officer Authority to instruct Legal Services or the appointed external solicitors as appropriate.

Once the sale process has completed Legal Services will issue a completion statement which will be sent to all internal stakeholders including:

- Finance Section
- Insurance Section
- Rates Section
- The client department
- The database manager

Any other relevant departments or parties Payments on completion

The SSAM will liaise with Legal Services to agree sums to be paid on completion and the correct allocation of sums within the Council's accounts.

4.2 Other Bids

Any bid which, on the evidence available, is considered to be incomplete, insubstantial or in any other way defective, mischievous or frivolous may be rejected by the Divisional Director/HAM after consultation with the Director of Governance.

The Council's obligation to obtain best consideration must be considered when dealing with all property transactions.

Emailed Bids

Agents must inform interested parties that e-mailed bids should not be submitted and that the hard copy or e-bidding routes via the Council's electronic portal should be pursued.

However, recognising that in practice some bidders will fail to adhere to this stipulation and such emailed bids, if received, may be considered on a case by case basis and at the discretion of the Director in consultation with HAM and Director of Governance.

Late Bids

It is recognised that late bids will sometimes be received whether this is before the bid opening meeting or afterwards.

As a generality, late bids received before the bid opening meeting can be considered provided that the bids already received on time have been secured such that no officer or person could have had access to the detail of the bids before they are opened.

With regard to late bids received after bid opening, guidance from The Local Government Ombudsman recognises the difficulties facing Councils if a higher offer is received by the Council after another offer has been accepted subject to contract, particularly in view of the obligation for Councils to achieve best consideration. Such difficulties will be less likely to occur if Councils ensure that exchange of contracts takes place quickly after the decision has been made to whom to sell the property.

The decision to consider a late bid is at the discretion of the Divisional Director after consultation with HAM and the Head of Legal Services. Any SUCH DECISION SHOULD BE DOCUMENTED AND SIGNED BY BOTH PARTIES.

Where it is clear that a private "auction" is developing, potential purchasers must be given a specific date and time to reconsider and submit their highest and final bid. If the Council wishes to impose any conditions upon acceptance, i.e. specific completion date, this should be made clear. It is also recommended that potential purchasers are informed that the successful bidder would be given a specific period in which to exchange contracts. This process will be controlled in the same way as receipt of tender bids, incorporating deadline dates for the receipt of best offers and should have the same level of confidentiality.

4.3 Transactions at less than Market Value

Except where the undervalue is less than £250,000, approval must be obtained from the Mayor to disposals or lettings of over seven years which are proposed to be at less than market value. And/or where State Aid issues may arise. The Divisional Director shall seek the agreement of the Mayor by submitting a report to accept a disposal at an under-value. The report shall make the level of under-value explicit and will need to set out the well-being benefits to be derived and whether they have a measurable financial value. If so this value is to be specified. .

The Council has powers derived from the Housing Act 1985 and Local Government Act 1988 [check] to dispose of HRA land to parties including Registered Providers at less than market value For GF land the powers are in the Local Government Act

1972: General Disposal Consent (England) 2003. Other than under these general consents, the Council has to seek the consent of the Secretary of State to dispose of its assets other than by the grant of short leases at less than best consideration.

Where land is held for planning purposes under s233 of the 1990 Act there is no discretion for the Council to dispose at less than market value.

The Council must be able to demonstrate that it has acted reasonably in agreeing a sale at less than market value; that there was an appropriate decision making process and that regard has been had to the Council's statutory and fiduciary duties (see definitions). Decisions must be robust and defensible and the monetary or intangible benefit assessment of impacts will require detailed individual assessment in every case.

The Divisional Director will establish and keep under review a timetable for each disposal and will advise the AMB and shall provide a detailed report on an agreed basis to the Corporate Director, Resources on the progress of disposals for financial planning purposes.

4.4 Conflict of interest

The authority requires agents and bidders to identify any actual, potential or perceived conflict of interest in relation to the authority and its organisation. The concept of a conflict of interest includes any situation where relevant staff members and elected officials have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the disposal process.

Where there is any indication that a conflict of interest exists, may arise or be perceived then it is the responsibility of the staff member, bidder or agent to inform the authority, detailing the conflict.

Included within the bid pro-forma sent to all bidders will be the following question:

"Please confirm whether there are any actual, potential or perceived conflicts of interest in relation to the authority and your organisation (limited to persons dealing with the negotiation and/or acquisition of the site in question)? Yes/No. If yes, please detail the conflict of interest below."

5.0 Authority

Disposal of surplus property will be dealt with through the Mayor, usually in Cabinet, except where the value is less than £250,000. Any report to the Mayor or Cabinet will provide a recommendation from the Divisional Director/HAM about the proposed method of sale and whether the sale should be freehold or long leasehold.

The Mayor or Cabinet will usually be asked to delegate all matters relating to the sale to officers without referring offers back to the Mayor or Cabinet for final approval.

In all dealings with property matters it is essential that the highest levels of probity and confidentiality are maintained to ensure that best consideration is achieved under the Council's statutory duty.

Members have a both a fiduciary duty and statutory duties to the residents of the Borough to obtain best consideration.

6.0 Definitions

"Auction"

An auction quickly concludes completion and identifies the successful bidder who will sign a binding contract at the sale and exchange a 10% deposit. It is particularly suitable for properties for which there is likely to be keen competition from a wide market of potential cash purchasers, or for properties of an unusual nature but for which there is likely to be a ready market.

However, it is often inappropriate for properties where the majority of purchasers will prefer to submit offers subject to contract and to minimise the risk of abortive costs, such as development land, housing sites, etc.

"Fiduciary duty"

Fiduciary duty has been described as a duty to act in "a fairly business-like manner with reasonable skill and caution". The relevant principles established from case law can be summarised as follows:

- (a) Local Authorities are under a special duty in the exercise of all their powers to consider the financial consequences for the Rates and Council Tax payers. This duty is proportionate and equivalent to the fiduciary duty owed by a person in the position of trustee.
- (b) In considering the financial consequences of a decision, an Authority is required to conduct a balancing exercise between the interests of those who will benefit from the proposed measure and the cost to Rates and Council Tax payers.
- (c) Failure to have proper regard to their fiduciary duty renders a Local Authority decision liable to challenge on the grounds of illegality.
- (d) The fact that an Authority may have an electoral mandate for their decision is irrelevant to the question of whether the act is ultra vires.

“Formal Tender”

This method of disposal creates contractual certainty as, at the final stage, if an offer is accepted it constitutes a legally binding contract. 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 a bankers draft as a deposit on the contract. 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. This form of sale is generally rarely used due to its complexity.

“Informal tender”

This is a flexible method of securing offers of interest in property since it does not bind either party until completion of negotiations. Property is openly marketed and all offers have to be submitted by a fixed closing date. It does not preclude the purchaser or vendor from seeking to renegotiate more advantageous terms even when the sale is at a fairly advanced stage to take account of any changes in circumstances.

Risks inherent in this can be partly overcome by stipulating time limits for exchanging contracts. This method allows the Council to view a number of competing proposals on a site where the Council has no fixed policy as to exactly what is required or wanted and where consideration can be given to a number of options without contractual obligations to the parties involved.

“Market Value”

The estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm’s length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.

“Special purchaser”

A purchaser to whom a particular asset has special value because of advantages arising from its ownership that would not be available to general purchasers in the market.

“The General Disposal Consent 2003

For GF land, the Council will need to meet its obligations in relation to the disposal of assets under Local Government Act 1972 and the General Disposal Consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained (“the Consent”).

Under the Consent a Local Authority has discretion to sell at an “undervalue” of up to £2,000,000. Undervalue is defined as “the difference between the unrestricted value of the interest to be disposed of and the consideration accepted”.

Where an under-value of less than £2,000,000 exists an Authority can dispose at less than market value provided that certain criteria are met. The full definition from the Consent is:

“(a) the Local Authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;

- i) the promotion or improvement of economic well-being;
- ii) the promotion or improvement of social well-being;
- iii) the promotion or improvement of environmental well-being; and

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

Where an Authority intends to dispose of land where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted ("the undervalue") is more than £2,000,000 (two million pounds) the requirement is for Authorities to seek specific consent from the Secretary of State.

In determining whether or not to dispose of land for less than the best consideration reasonably obtainable, and whether or not any specific proposal to take such action falls within the terms of the Consent, the Council should 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.

It will be for the Council to decide whether any proposed disposal requires specific consent under the 1972 Act, since the Secretary of State has no statutory powers to advise authorities that consent is needed in any particular case. Once an application for a specific consent is submitted, the Secretary of State is obliged to make a decision on the proposed disposal on its merits. However, if he/she is of the opinion that consent is not required (i.e. the sale is not at an undervalue), or if he/she believes that the case falls within the terms of the Consent, the statutory function to give specific consent will not arise. Where the Council is uncertain about the need to seek consent, it may seek legal advice on the matter. It is recommended that an authority may find it useful to keep its appointed auditor informed of any legal advice it receives and the proposed action it wishes to take. An auditor has a duty to consider whether the authority is acting lawfully.

The Secretary of State will require the following information:

- i. a written description of the site and buildings, its physical characteristics, location and surroundings together with a plan which should be accurate enough to allow it to be used to identify the land in the Secretary of State's decision in cases where consent is given;
- ii. a written description of the authority's tenure and a summary of the details of any leases, encumbrances, such as easements etc. to which it is subject. Details should be given of the purpose(s) for which the authority holds the land. Normally land is held for the purposes of the power under which it was

acquired, or taken on lease, unless it has since been formally appropriated to another purpose;

- iii. a written description of the existing use(s), current planning consents and alternative planning uses(s) that are likely to be permitted;
- iv. a summary of the proposed transaction, noting the reasons for disposing at an undervalue, the key terms and any restrictions to be imposed by the authority; and
- v. a detailed Valuation Report covering the matters listed in the Technical Appendix, and signed by a qualified valuer (a member of the RICS). The Department would normally expect the valuation to have been undertaken no earlier than six months before the submission.

Money Laundering, bribery and corruption

The Council will minimise the risk of the above by employing reputable firms of chartered surveyors to act as its agents as such firms have their own systems in place to avoid such situations developing. However, the council's Head of Legal Services has been asked to advise on these matters and the AM should report to HAM if this is suspected and HAM will liaise with the Council's solicitor prior to taking any action in this regard.