

Appendix E

	Existing Protocol	Proposed New Protocol	Reasons for Change
1	A disposal of council-owned land and/or property includes the following: <ul style="list-style-type: none"> • Freehold disposal by way of sale; • An exchange of council owned land or buildings. 	<p>This Protocol governs the disposal of land and property owned by the Council. It applies to all property interests owned by the Council. If a conflict exists between this protocol and statute or guidance (as may be the case, for example, for school properties or for residential properties held in the HRA) then this protocol will be followed to the extent that it does not conflict with statute or guidance.</p> <p>A disposal of Council-owned land and/or property includes the following:</p> <ul style="list-style-type: none"> • Freehold disposal by way of sale; • An exchange of Council owned land or buildings. • Leasing of Council owned properties on leases in excess of 7 years. 	More precise language. Clarity about the relationship between this Protocol and other guidance & legislation.
2	The protocol applies to every Member and Officer of the Authority and anyone acting on its behalf. Any exemptions from this protocol will require approval from Cabinet.	This Protocol applies to every Member and officer of the Council and anyone acting on its behalf. Any exemptions from this Protocol will require approval from Cabinet and should only be sought in exceptional circumstances	To emphasize the status of the protocol and the need to follow it.
3	The document complies with statutory duties and is in line with Government advice recommending that local authorities should have a document of this nature available for inspection and it is intended for use by Council Officers, Local Councillors, members of the public and developers.	The document complies with statutory duties and is in line with Government advice recommending that local authorities should have a document of this nature available for inspection and it is intended for use by members, officers, and as a source of information for the public and developers.	No change
4	It should be read in conjunction with the Council's Responsibility for Functions, the Scheme of Delegation to Officers, Standing Orders,	It should be read in conjunction with the Council's Responsibility for Functions, the Scheme of Delegation to Officers, Contract Procedure Rules and Financial	More precise language

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	Procurement and Contract Procedure rules and Financial Regulations.	Regulations, all of which can be found in the Council's Constitution	
5	Failure to adhere to this protocol may result in disciplinary action and / or a standards investigation.	Failure to follow this protocol may result in disciplinary action or action under the Members' Code of Conduct.	More precise language
	Not Covered	<p>Legal Background</p> <p>Section 123 of the Local Government Act 1972 ('LGA 72') states that <i>"a council may dispose of land held by them in any manner they wish"</i> but that <i>"except with the consent of the Secretary of State, a council shall not dispose of land under this section for a consideration less than the best that can reasonably be obtained"</i></p> <p>Circular 06/03: <i>"Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained"</i> provides further guidance, and this is referred to in section 7.0 below.</p> <p>An important distinction exists between the legislation relating to sale of land and property (set out in the LGA 72) and legislation relating to the procurement of services (set out in Public Contract Regulations 2015 'PCR 15'). This distinction is important because the procurement regime set out in the PCR 15 imposes certain obligations on a public body when entering into contracts for works and services, that do not apply to the disposal of land or real property, and the disposal of land is clearly set out in the legislation and guidance published relating to disposals. The definition of a <i>"public contract"</i> identifies four main constituents</p>	To ensure that the Protocol is closely aligned with the relevant legislation and government guidance.

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		<p>of such a contract: (1)that it is "<i>for pecuniary interest</i>"; (2)that it is "<i>in writing</i>"; (3) that it is entered into by an "<i>economic operator</i>" and a "<i>contracting authority</i>"; (4) that it should have as its "<i>object</i>" the "<i>execution of works</i>" or the "<i>supply of products</i>" or the "<i>provision of services</i>" (see Faraday Developments Ltd v West Berkshire Council 2016). The sale or disposal of property does not automatically fall into the definition contract for the execution of works, supply of products or provision of services.].</p> <p>Procurement of services generally involves the undertaking of competitive selection processes, and these are not generally necessary or appropriate for land transactions governed by LGA 72. However, where contracts for the sale of land place contractual obligations on the purchaser (other than planning obligations) to undertake activities for the Council’s benefit which could be considered to be services, then in certain circumstances, procurement legislation may apply. Legal advice must be sought where such obligations exist or are proposed.</p>	
6	<p>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 authority should ensure that it complies with normal and prudent commercial practices, including obtaining the view of a</p>	<p>Sale at less than Best Value</p> <p>Circular 06/03: "<i>Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained</i>" provides guidance on the circumstances in which assets can be sold for less</p>	<p>Improved alignment to the relevant law & guidance.</p>

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	<p>professionally qualified valuer as to the likely amount of the undervalue.</p>		
7	<p>All disposals need to comply with the European Commission's State aid rules. The Commission's Communication on State aid elements in sales of land and buildings by public authorities (97/C 209/03) provides general [ILO: UNCLASSIFIED] guidance on this issue. When disposing of land at less than best consideration authorities are providing a subsidy to the owner, developer and/or the occupier of the land and property, depending on the nature of the development. Where this occurs authorities must ensure that the nature and amount of subsidy complies with the State aid rules, particularly if there is no element of competition in the sale process. Failure to comply with the rules means that the aid is unlawful, and may result in the benefit being recovered with interest from the recipient.</p> <p>Before disposing of any interest in land for a price which may be less than the best consideration reasonably obtainable, local authorities are strongly advised in all cases to ensure that they obtain a realistic valuation of that interest. This applies even for disposals by means of formal tender, sealed bids or auction. By following this advice, an authority will be able to demonstrate that it has adopted a consistent approach to decisions about land disposals by carrying out the same step by step valuation process on each occasion. Supporting documents should provide evidence that an</p>	<p>than Best Consideration Reasonably Obtainable. The Consent removes the requirement for authorities to seek specific consent from the Secretary of State for any disposal where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted ("the undervalue") is £2m or less. It is Government guidance that local authorities and other public bodies should dispose of surplus land wherever possible. Generally, it is expected that land should be sold for the best consideration reasonably obtainable. However, it is recognised that there may be circumstances where an authority considers it appropriate to dispose of land at an undervalue. Authorities should clearly not divest themselves of valuable public assets unless they are satisfied that the circumstances warrant such action.</p> <p>The Consent was issued to give local authorities autonomy to carry out their statutory duties and functions, and to fulfil such other objectives as they consider to be necessary or desirable. However, when disposing of land at an undervalue, authorities must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people.</p> <p>In determining whether 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 authority should ensure that it complies with normal and prudent commercial practices, including obtaining the view of a professionally</p>	

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	<p>authority has acted reasonably and with due regard to its fiduciary duty.</p>	<p>qualified valuer as to the likely amount of the undervalue.</p> <p>When disposing of land at less than best consideration authorities are potentially providing a subsidy to the purchaser. Legal advice should be sought and consideration should be given to relevant state aid legislation and to government guidance including the Government’s Summary Guidance to Awarding Subsidies.</p> <p>Where an asset is being sold at less than Best Consideration then:</p> <ul style="list-style-type: none">a. If the difference between the unrestricted value of the interest to be disposed of and the consideration accepted (ie the “undervalue”) is £50,000 or less, then the decision to sell at less than Best Consideration, together with an explanation as to the rationale, must be made in writing by the Director of Regeneration & Growth, the Section 151 officer and the Monitoring Officer.b. If the Undervalue is more than £50,000, then the decision to sell at less than Best Consideration must be made by Cabinet.c. If the Undervalue exceeds £2m then the approval of the Secretary of State is required. <p>In considering the legal and financial considerations of any disposal at an undervalue and/or granting of a lease, there must be demonstrable evidence that</p>	
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		<p>the outcome will be equally beneficial as compared to a disposal at market value and will be for the well-being of the whole or part of the area. If possible, the social, economic or environmental benefits, which are argued to be the justification for a disposal at an undervalue, and/or lease should be quantified in monetary terms.</p> <p>Where leases are granted as part of a number of linked transactions, ie where a separate service contract is being entered into between the Council and the lessee, simultaneously with the lease, under which the lessee commits to provide certain services to the Council or to residents, the nature and value of this commitment should be taken into account in (a) assessing whether the disposal is at an undervalue and (b) justifying the undervalue if it exists. Advice from Legal and Finance should be sought in this scenario, and care should be taken to ensure that CIPFA, RICS and other appropriate guidance regarding the treatment of Linked Transactions is followed.</p> <p>Community Asset Transfers will only be undertaken on a leasehold basis. When they do occur they will be undertaken in accordance with the Council's protocol on Community Asset Transfers and in accordance with this protocol.</p> <p>In all cases, where a disposal and/or granting of a lease is undertaken at less than best consideration, then to protect the Council's interest in the event of subsequent sales, it must include, where appropriate, an asset lock, clawback, overage or uplift clause, restrictive covenants, ransom strip retention, user rights, forfeiture or break clause or</p>	
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		right of pre-emption. This is to ensure that the Council eventually obtains best value and a purchaser does not profit excessively at the expense of the Council.	
8	The Full Council is responsible for: • Adopting the Council’s Constitution and Members Code of Conduct and for approving the policy framework, budget and borrowing within which the Cabinet operates; • Approving and monitoring compliance with the Authority’s overall framework of accountability as set out in its Constitution; • Monitoring compliance with agreed policy and reporting decisions taken; • Making or amending Procurement and Contract Procedure Rules and Financial Regulations, including this appendix to Financial Regulations.	<i>Full Council:</i> As land disposal is an executive function, decisions to dispose of land & buildings will not normally be referred to a meeting of Council.	To set out functions specifically in relation to disposals of land & assets, rather than describing general functions.
9	Audit Committee provides independent assurance to elected members of the adequacy of the risk management framework and the internal control environment. This appendix to Financial Regulations has been developed following a recommendation by Audit Committee and will be subject to regular monitoring by that committee.	<i>Audit & Risk Assurance Committee:</i> The Committee reviews policies and procedures, including this document. It is therefore responsible for: <ul style="list-style-type: none"> d. Approving this document as part of the revised Financial Regulations and updates e. Reviewing this document periodically as part of their wider review of the Financial Regulations f. Reviewing the implementation of this policy and seeking assurance that the policy is followed. 	To set out functions specifically in relation to disposals of land & assets, rather than describing general functions.
10	The Land and Asset Management Committee provides the strategic direction for all matters relating to the effective use of land and property	<i>The Land & Asset Management Officers Group</i> has no formal delegations under the Council’s constitution, so it does not make decisions as such,	To describe the decision-making process more accurately and to

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	assets within the borough to maximise social and economic benefits and regeneration; and makes recommendations to Cabinet about the use of those assets.	but it acts as a forum in which officers from across all the Council's service areas can discuss and agree on proposals to be taken to Leadership Team and to Cabinet.	ensure alignment to the Council's Scheme of Delegations.
11	Not Covered	<p><u>Leadership Team:</u> Leadership Team has no formal delegations under the Council's constitution, so it does not make decisions as such, but it acts as a forum in which directors can collectively set the direction, including:</p> <ul style="list-style-type: none"> g. Considering whether services can be rationalised, whether buildings can be vacated, and assets declared surplus. h. Considering whether proposals should go to Cabinet. 	To describe the decision-making process more accurately and to ensure alignment to the Council's Scheme of Delegations.
12	<p>Director – Regeneration & Economy (Chief Property Officer) • To negotiate and agree terms for the disposal of land and property by the most appropriate method of sale and in accordance with such policy as may be determined by the Council. That the Monitoring Officer be consulted by the Director – Regeneration and Economy on terms for the disposal of land and property in the event that there is a potential conflict including where there is a relevant entry in the Members Register of Interests and the Employees Register of Interests. • To negotiate and agree, terms for the disposal by the most appropriate method of sale of areas of land and premises up to a value of £100,000. That the Monitoring Officer be consulted by the Director – Regeneration and Economy to negotiate and</p>	<p><i>Director, Regeneration & Growth: The Director of Regeneration & Growth is responsible for:</i></p> <ul style="list-style-type: none"> i. As part of Leadership Team, considering proposals to rationalise the operational property estate in response to service needs. j. Making recommendations to Cabinet to declare assets in excess of £1m in value surplus. k. Making recommendations to Cabinet to dispose of assets over £1m in value. l. Making recommendations to the Cabinet Member for Regeneration & Growth to dispose of assets 	To describe the decision-making process more accurately and to ensure alignment to the Council's Scheme of Delegations.

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	<p>agree, terms for the disposal by the most appropriate method of sale of areas of land and premises up to a value of £100,000 in the event that that there is a potential conflict including where there is a relevant entry in the Members Register of Interests and the Employees Register of Interests. [ILO: UNCLASSIFIED] • In consultation with the appropriate Director, to offer land and/or premises for disposal at auctions where the estimate of value does not exceed £100,000. That the Monitoring Officer be consulted by the Director – Regeneration and Economy on the offer land and/or premises for disposal at auctions where the estimate of value does not exceed £100,000 in the event that that there is a potential conflict including where there is a relevant entry in the Members Register of Interests and the Employees Register of Interests.</p>	<p>between £500,000 and £1m in value.</p> <ul style="list-style-type: none"> m. In consultation with the Cabinet Member for Regeneration & Growth, with Ward Members as appropriate and with the Director of Finance and s151 Officer, declaring assets between £100,000 and £500,000 in value surplus. n. In consultation with the Director of Finance and s151 officer, approving the disposal of assets between £100,000 and £500,000. o. In consultation with the Cabinet Member and with Ward Members as appropriate, declaring assets up to £100,000 surplus. p. Approving the disposal of assets up to £100,000 in value. q. Overseeing the negotiation of property transactions. <p>Approving the details of transactions in accordance with delegations put in place by Cabinet.</p>	
13	<p>Monitoring Officer • To sign off and authorise on behalf of the Council any express or implied undertakings for the disposal and acquisition of land to be given by a Council officer. • To acquire and dispose of land and property upon receipt of instructions from the Director - Regeneration and Economy, on terms to be agreed in accordance with authority delegated to him, and being satisfied that all necessary statutory or other authorities in connection with the acquisition or disposal have</p>	<p>1.2 <u>Director of Law & Governance and Monitoring Officer:</u></p> <ul style="list-style-type: none"> a. To execute legal documentation in accordance with instructions received from Cabinet or from the Director of Regeneration & Growth. b. To ensure that all transactions are in the Council’s best interest, are 	

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	<p>been agreed. • To dispose of land and/or premises at auction where the Director – Regeneration and Economy estimates the value of the land/property being offered for sale is less than £100,000 but the bid price exceeds that amount. • To dispose of land up to a value of £100,000 on terms agreed by the Director - Regeneration and Economy, in accordance with the authority delegated to him.</p>	<p>within the Council’s powers and are legal.</p> <p>c. To ensure that there are no conflicts of interest arising from a relevant entry in the Members Register of Interests or the Employees Register of Interests.</p>	
14	<p>Chief Finance Officer (Section 151 Officer) The Chief Finance Officer is responsible for maintaining a continuous review of Financial Regulations and Procedures, including this protocol, and submitting any additions or changes to the full council for approval. The Chief Finance [ILO: UNCLASSIFIED] Officer is also responsible for reporting breaches of Financial Regulations and Procedures to the Council and/or to Cabinet Members</p>	<p><u>Director of Finance and Section 151 Officer</u></p> <p>d. Advising on the financial implications of a property transaction (such as the impact on the revenue budget of selling a capital asset, or the impact on the Council’s ledger if a sale price is above or below the most recent asset valuation). Preparing the “Financial Implications” section in Cabinet papers.</p> <p>e. Processing any financial receipts and ensuring that they are recorded appropriately in the Council’s accounts.</p> <p>f. Consulting with the Director of Regeneration & Growth regarding the declaring of assets surplus and the approval of disposal of assets over £100,000 and up to £500,000.</p>	
15	<p>Corporate Landlord (part of Assistant Chief Executive) Corporate Landlord is responsible for the management of land and premises required for operational purposes. This includes: • Ensuring that</p>	<p>Not Covered</p>	<p>This is a general description of the property function, and it is not specifically relevant to the disposal</p>

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	<p>the council's operational property portfolio is fit for purpose, sustainable and in good repair; • Identifying assets surplus to council requirements; • The formulation of business cases relating to the rationalisation and continued improvement of the council's operational property portfolio.</p>		<p>of assets, so it is not included in the proposed new protocol.</p>
16	<p>Property Services (part of Regeneration & Economy) Property Services is responsible for: • The disposal of any parcel of land or property which is surplus to council requirements; • The grant of leases to third parties and/or organisations; and • The management of the council's commercial estate e.g. shops, industrial units, ground leases etc.</p>	<p><u>Strategic Assets & Land Team</u> will develop proposals to put to the Land & Assets Management Officers Group, to Leadership Team and to Cabinet as appropriate. The team will also be responsible for undertaking negotiations and implementing the decisions made by Cabinet and by the Director of Regeneration & Growth.</p>	<p>To describe the decision-making process more accurately and to ensure alignment to the Council's Scheme of Delegations.</p>
17	<p>Legal Services (part of Assistant Chief Executive) Legal Services is responsible for: • Completion of all legal paperwork including contract documentation for the acquisition and/or disposal of land and/or property whether the transaction is on a freehold or leasehold basis.</p>	<p>For Complex Contractual Arrangements or for transactions with a consideration in excess of £1 million, the Director of Regeneration & Growth, in consultation with the Director of Law & Governance, will approve the selection and appointment of an appropriate firm of lawyers to represent the Council.</p> <p>Documents will be executed in accordance with the Scheme of Delegations, including affixing the Council's common seal when necessary. Documents prepared by external legal representatives will be reviewed by the Director of Law & Governance and Monitoring Officer, to ensure they are comply with the Council's legal duties and responsibilities and in accordance with the Council's Constitution (including this protocol, to the extent that it is relevant).</p>	<p>The Director of Regeneration & Growth will decide whether to use internal or external lawyers to complete legal paperwork / contract documentation. The Monitoring Officer has responsibility for ensuring that all transactions are in the Council's best interest, are within the Council's powers and are legal.</p>

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<p>18</p>	<p>Strategic Finance (part of Assistant Chief Executive) Strategic Finance is responsible for: • Ensuring transactions relating to the disposal of land and/or property are properly recorded in the financial records of the Council.</p>	<p><u>Director of Finance and Section 151 Officer</u></p> <ul style="list-style-type: none"> g. Advising on the financial implications of a property transaction (such as the impact on the revenue budget of selling a capital asset, or the impact on the Council’s ledger if a sale price is above or below the most recent asset valuation). Preparing the “Financial Implications” section in Cabinet papers. h. Processing any financial receipts and ensuring that they are recorded appropriately in the Council’s accounts. i. Consulting with the Director of Regeneration & Growth regarding the declaring of assets surplus and the approval of disposal of assets over £100,000 and up to £500,000. <p>If the disposal of an asset has an impact on the value of any retained assets (for example, granting of a lease might have an impact on the value of the retained freehold) then this should be assessed, and it should be explained in the report which seeks approval to the disposal. Advice from Finance should be sought regarding the impact on the Council’s annual asset valuations and whether a write-down is necessary.</p>	<p>To describe the decision-making process more accurately and to ensure alignment to the Council’s Scheme of Delegations.</p>
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<p>19</p>	<p>Corporate Landlord is responsible for determining whether operational land or buildings are potentially surplus to requirements and for reporting their availability to the Land and Asset Management Officer Group. The report will include: • An initial estimate of valuation • Proof of Ownership • Title issues • Restrictive covenants • Ransom strip issues • Rights of way and other easements • Retaining rights over adjoining land • Potential for grant repayment • The relevant entry in the asset management system • The relevant entry in the asset register, including the valuation currently assigned to that asset.</p>	<p>Service Managers will be responsible for defining their service needs as part of the service planning process and agreeing these with their relevant Director. The Strategic Land & Assets Team will support this process by advising on property matters and by identifying the most efficient way of providing for a service area’s property needs.</p> <p>Where the above process results in property assets being no longer required for service provision (and where this has been confirmed by email by the Director responsible for the service), proposals will be brought to Land & Asset Management Officers Group, which will consider the possible needs of other service areas before recommending that an asset is declared surplus.</p> <p>Once a service has declared that they no longer require use of an asset and once the Land & Asset Management Officers Group have considered the needs of other service areas, the decision to declare the asset surplus (if it exceeds £1m in value) will be a decision for Cabinet. For assets between £500,001 and £1m it will be a decision for the Cabinet Member for Regeneration & Growth. For assets between £100,000 and £500,000 in value it will be a decision for the Director of Regeneration & Growth in consultation with the Cabinet Member, with Ward Members as appropriate and with the Director of Finance and s151 officer. For assets below £100,000 it will be a decision for the Director of Regeneration & Growth in consultation with the Cabinet Member for</p>	<p>Clarifying the fact that the purpose of the property function is to support the delivery of services.</p>
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		<p>Regeneration & Growth and relevant Ward Members as appropriate.</p> <p>Policy decisions which materially affect the delivery of services will usually be made by Cabinet. When such a decision is made it will be good practice to ask Cabinet to delegate responsibility to the Director of Regeneration & Growth, in consultation with the Director of Finance & s151 Officer, to declare surplus any property assets which become surplus as a result of that decision.</p> <p>Similarly, where policy decisions are made as part of the budget setting process, it will be good practice to ask Cabinet, when they approve the budget, to delegate responsibility to the Director of Regeneration & Growth, in consultation with the Director of Finance & s151 Officer, to declare surplus any property assets which become surplus as a result of the budget setting process.</p> <p>If Land & Asset Management Officers Group recommends that an asset is declared surplus then a Cabinet paper will be prepared, which will be consulted upon in the usual way with Members and with Leadership Team.</p> <p>Until an asset is declared surplus in accordance with 4.3 above it remains the budgetary responsibility of the relevant service area. Once it is declared surplus it becomes the responsibility of Strategic Assets & Land who will be charged to dispose of the asset.</p>	
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20	The Land and Asset Management Officer Group will consider the report presented by Corporate Landlord and will make recommendations on all property transactions prior to disposal. The Group membership will include the following officers or their representatives: • Director – Regeneration & Economy • Corporate Landlord • Monitoring Officer • Section 151 Officer	<p><i>The Land & Asset Management Officers Group</i> has no formal delegations under the Council’s constitution, so it does not make decisions as such, but it acts as a forum in which officers from across all the Council’s service areas can discuss and agree on proposals to be taken to Leadership Team and to Cabinet.</p>	To ensure alignment to the Council’s Scheme of Delegations.
21	The Land and Asset Management Officer Group will consider the report and determine whether or not the sale will proceed.		
22	If approval for disposal is given a valuation will be obtained. All valuations will be in line with Royal Institute of Chartered Surveyors professional standards.	<p>For all property disposals a formal written valuation will be obtained and attached to the Cabinet or Individual Cabinet Member report. The exception to this will be where properties are sold at auction or by formal tender. All valuations must be in line with Royal Institute of Chartered Surveyors professional standards.</p> <p>The Director of Regeneration & Growth will approve the appointment of a valuer, decide whether the valuation should be conducted internally or by an external valuer, and satisfy himself that no conflicts of interest exist.</p> <p>If the disposal of an asset has an impact on the value of any retained assets (for example, granting of a lease might have an impact on the value of the retained freehold) then this should be assessed, and it should be explained in the report which seeks approval to the disposal. Advice from Finance</p>	<p>To delegate decisions regarding the appointment of valuers, as appropriate, in line with the Scheme of Delegations.</p> <p>Conflicts of Interest are adequately covered by the responsibilities of the Director of Law & Governance and Monitoring Officer, and beyond this there is no need to be prescriptive as to how sales to employees or council Members etc will be dealt with.</p>
23	<p>Internal valuations will be undertaken where: [ILO: UNCLASSIFIED] - the value of the site does not exceed a de-minimis threshold that will initially be set at £50,000 that will be reviewed after 12 months of operation; - an open market sale is to be undertaken.</p> <p>In those cases where a valuation is difficult but is anticipated to not exceed £100,000 the sale will be conducted in compliance with procurement and contract procedure rules with the bids received being used to set the market valuation. 4.7 External valuations will be obtained for all other land sales; sales to a council employee and/or local councillor; where a sale at less than best is being considered; or if the land is to be sold subject to a restrictive covenant affecting its value.</p>		

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24	Where the valuation does not exceed £100,000 the Director – Regeneration & Economy will negotiate and agree terms for the disposal by the most appropriate method of sale. The Monitoring Officer will be consulted in the event that there is a conflict arising from a relevant entry in the Members Register of Interests and the Employees Register of Interests.	should be sought regarding the impact on the Council’s annual asset valuations and whether a write-down is necessary.	
25	Where the value of the asset being considered for disposal exceeds £100,000 the matter will be submitted to the Land & Asset Management Committee and to Cabinet approval.	<p>Cabinet makes the decision to:</p> <p style="padding-left: 40px;">Declare assets Surplus where their value exceeds £1m.</p> <p style="padding-left: 40px;">Dispose of Surplus Assets which exceed £1m in value. In approving disposals it may delegate to the Director of Regeneration & Growth the responsibility for approving the details of the transaction.</p>	
26	Not Covered	<p><u>Cabinet Member for Regeneration & Growth</u> makes decisions to:</p> <p style="padding-left: 40px;">a. Declare assets Surplus where their value is between £500,001 and £1m .</p> <p style="padding-left: 40px;">b. Dispose of Surplus Assets where their value is between £500,001 and £1m. In approving disposals, they may delegate to the Director of Regeneration & Growth the responsibility for approving the details of the transaction.</p>	To reflect new Scheme of Delegations
27	Not Covered	<u>Scrutiny Panel:</u> Scrutiny Panel has the power to call in and scrutinize individual decisions, including	To describe the decision-making process more accurately and to

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		<p>decisions to declare assets surplus and decisions to sell land & buildings (including the terms of transactions).</p>	<p>ensure alignment to the Council's Scheme of Delegations.</p>
<p>28</p>	<p>The Land & Asset Management Committee will consider the report prepared by the officer group and determine whether or not the sale will proceed. The report will include: • The valuation; • Legislation and Secretary of State guidance governing the disposal process; • The proposed method of disposal and explanation as to why that option has been chosen; • General guidelines which are applicable, e.g. the Crichel Down rules which apply to most disposals by the Council of property acquired using compulsory purchase or under threat of compulsory purchase. Where the rules are applicable, there is an obligation to offer the property back to the original owner before it can be placed on the open market; [ILO: UNCLASSIFIED] • Confirmation as to whether or not the transaction is caught by the public procurement rules; • Confirmation as to whether or not the transaction is caught by the State Aid rules; • An indicative location plan highlighting the land/property to be sold; • Financial implications.</p>	<p><i>The Land & Asset Management Officers Group</i> has no formal delegations under the Council's constitution, so it does not make decisions as such, but it acts as a forum in which officers from across all the Council's service areas can discuss and agree on proposals to be taken to Leadership Team and to Cabinet.</p> <p>Disposal Method</p> <p>The Director of Regeneration & Growth will decide on the most appropriate method of disposal taking into account the need to achieve best value, also social value and the corporate priorities of the Council. For assets in excess of £1m in value this decision will be ratified by Cabinet when they approve the disposal. Alternative disposal methods include:</p> <p>Direct disposal. Where an unsolicited offer is received from a party for an asset, it may be appropriate to negotiate and agree terms with that one party. The Director of Regeneration & Growth will need to be satisfied that the sale complies with the s123 LGA 72 obligation to achieve the best price that can reasonably be obtained, and to that end a Red Book valuation will usually be necessary. Direct disposal is most likely to be appropriate where an offer is made by a special purchaser (eg</p>	<p>To describe the decision-making process more accurately and to ensure alignment to the Council's Scheme of Delegations.</p> <p>There is no need to be prescriptive in the Protocol as to what headings must be included in a report, as officers will make this judgement on a case-by-case basis.</p>

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		<p>neighbour), or where there is reason to think that a competitive process is unlikely to achieve a better result. Where there is to be a direct disposal, then the purchaser will be required to formally declare if they have an interest with or are related to an Elected Member or officer of the Council. Where such a relationship is declared, then approval to proceed should be sought from Cabinet regardless of the value of the asset.</p> <p>Appointment of agents. Where assets are declared surplus it may be appropriate to appoint a firm of estate agents to market the asset on the Council's behalf.</p> <p>Direct Marketing. The Council could itself advertise the asset and deal with enquiries itself.</p> <p>Sale by tender.</p> <p>Auction.</p>	
29	If the proposed sale price is less than the valuation, then Cabinet approval will be required.	<p>Sale at less than Best Value</p> <p>Circular 06/03: <i>“Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained”</i> provides guidance on the circumstances in which assets can be sold for less than Best Consideration Reasonably Obtainable. The Consent removes the requirement for authorities to seek specific consent from the Secretary of State for any disposal where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted (“the undervalue”) is £2m or less.</p>	<p>To describe the decision-making process more accurately and to ensure alignment to the Council's Scheme of Delegations.</p> <p>To align the protocol more closely with legislation and government guidance.</p>
30	In considering the legal and financial considerations of any disposal at an undervalue, there must be demonstrable evidence that the outcome will be equally beneficial as compared to a disposal at market value and will be for the well-being of the whole or part of the area. If possible, the social, economic or environmental benefits, which are argued to be the justification for a disposal at an undervalue, should be quantified in monetary terms		
31	In all cases, where a disposal is undertaken at less than best consideration, then to protect the Council's interest in the event of subsequent sales, it will include, where appropriate, an asset lock,		

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	<p>clawback, overage or uplift clause, restrictive covenants, ransom strip retention, user rights, forfeiture or break clause or right of pre-emption. This is to ensure that the Council eventually obtains best value and a purchaser does not profit excessively at the expense of the Council.</p>	<p>It is Government guidance that local authorities and other public bodies should dispose of surplus land wherever possible. Generally, it is expected that land should be sold for the best consideration reasonably obtainable. However, it is recognised that there may be circumstances where an authority considers it appropriate to dispose of land at an undervalue. Authorities should clearly not divest themselves of valuable public assets unless they are satisfied that the circumstances warrant such action.</p> <p>The Consent was issued to give local authorities autonomy to carry out their statutory duties and functions, and to fulfil such other objectives as they consider to be necessary or desirable. However, when disposing of land at an undervalue, authorities must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people.</p> <p>In determining whether 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 authority 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.</p> <p>When disposing of land at less than best consideration authorities are potentially providing</p>	
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		<p>a subsidy to the purchaser. Legal advice should be sought and consideration should be given to relevant state aid legislation and to government guidance including the Government's Summary Guidance to Awarding Subsidies.</p> <p>Where an asset is being sold at less than Best Consideration then:</p> <ul style="list-style-type: none">j. If the difference between the unrestricted value of the interest to be disposed of and the consideration accepted (ie the "undervalue") is £50,000 or less, then the decision to sell at less than Best Consideration, together with an explanation as to the rationale, must be made in writing by the Director of Regeneration & Growth, the Section 151 officer and the Monitoring Officer.k. If the Undervalue is more than £50,000, then the decision to sell at less than Best Consideration must be made by Cabinet.l. If the Undervalue exceeds £2m then the approval of the Secretary of State is required. <p>In considering the legal and financial considerations of any disposal at an undervalue and/or granting of a lease, there must be demonstrable evidence that the outcome will be equally beneficial as compared to a disposal at market value and will be for the</p>	
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		<p>well-being of the whole or part of the area. If possible, the social, economic or environmental benefits, which are argued to be the justification for a disposal at an undervalue, and/or lease should be quantified in monetary terms.</p> <p>Where leases are granted as part of a number of linked transactions, ie where a separate service contract is being entered into between the Council and the lessee, simultaneously with the lease, under which the lessee commits to provide certain services to the Council or to residents, the nature and value of this commitment should be taken into account in (a) assessing whether the disposal is at an undervalue and (b) justifying the undervalue if it exists. Advice from Legal and Finance should be sought in this scenario, and care should be taken to ensure that CIPFA, RICS and other appropriate guidance regarding the treatment of Linked Transactions is followed.</p> <p>Community Asset Transfers will only be undertaken on a leasehold basis. When they do occur they will be undertaken in accordance with the Council's protocol on Community Asset Transfers and in accordance with this protocol.</p> <p>In all cases, where a disposal and/or granting of a lease is undertaken at less than best consideration, then to protect the Council's interest in the event of subsequent sales, it must include, where appropriate, an asset lock, clawback, overage or uplift clause, restrictive covenants, ransom strip</p>	
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		retention, user rights, forfeiture or break clause or right of pre-emption. This is to ensure that the Council eventually obtains best value and a purchaser does not profit excessively at the expense of the Council.	
32	Files will be maintained for every disposal by the Director – Regeneration & Economy (property file) and the Director – Governance (legal file) and these files will be accessible by Internal/External audit.	Not covered	Maintaining of appropriate records is an officer responsibility across all service areas, and it is the responsibility of management to ensure that appropriate record-keeping is in place. It is not necessary or appropriate for this protocol to be prescriptive.
33	The property file will contain all correspondence to verify how the authority made the decision to dispose, including a copy of the appropriate minute authorising the sale or a signed delegation form, verification of value in the form of a formal written valuation in line with Royal Institute of Chartered Surveyors professional standards, signed instructions to Legal Services, completion statement and actions taken by the case officer in relation to the matter.	Not covered	
34	The legal file will contain a copy of the Legal Instructions (Legal Instructions should contain a surveyor certificate of best consideration, written valuation in line with Royal Institute of Chartered Surveyors professional standards, reason for any discrepancies in final sale price and valuation, the contract documentation, confirmation of all checks in relation to the title of the property, money laundering compliance, best value confirmation from the instructing officer and member involvement information); any correspondence in relation to the matter and a completion statement.	Not Covered	

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35	A completion statement will be passed to: - Director – Regeneration & Economy - Corporate Landlord - Monitoring Officer - Section 151 Officer	Not Covered	
36	Receipts from the disposal of assets will be treated as a corporate resource.	<p><u>Director of Finance and Section 151 Officer</u></p> <p>Advising on the financial implications of a property transaction (such as the impact on the revenue budget of selling a capital asset, or the impact on the Council’s ledger if a sale price is above or below the most recent asset valuation). Preparing the “Financial Implications” section in Cabinet papers.</p> <p>Processing any financial receipts and ensuring that they are recorded appropriately in the Council’s accounts.</p> <p>Consulting with the Director of Regeneration & Growth regarding the declaring of assets surplus and the approval of disposal of assets over £100,000 and up to £500,000.</p>	
37	Not Covered	<p>Complex Contractual Arrangements</p> <p>This section sets out a protocol for undertaking discussions and negotiations with developers relating to Council-owned land. In particular it focuses on the circumstances in which the Council might enter into complex contractual</p>	To provide guidance and to protect the Council’s interests in its dealings with property developers.

		<p>arrangements with property developers relating to land. It defines, purely for the purposes of this document, what we mean by ‘complex contractual arrangements’, it highlights the risks to be considered and it sets out clear guidance which officers must follow in negotiating and agreeing such arrangements.</p> <p>Complex Contractual Arrangements: For the purposes of this document Complex Contractual Arrangements are contracts which commit the Council to dispose of land but where the receipt of purchase monies is delayed and/or is conditional on a future event. Such arrangements include:</p> <ul style="list-style-type: none"> • Option agreements which give a developer the right to acquire land at a future date, either at a pre-agreed price, a price to be fixed by a formula (such as a development appraisal) or a price to be fixed by independent valuation. • Sale contracts or agreements for lease, which are conditional on receipt of a planning approval, on satisfactory due diligence (eg site investigations), funding or other matters. • Sale contracts or lease agreements where payment of purchase monies is delayed until a future event takes place such as Practical Completion of a development project, completion of other adjoining site acquisitions, future property sales, funding agreements. • CPO Indemnity Agreements where developers reimburse CPO costs • Contracts with Overage or profit-share clauses 	
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		<ul style="list-style-type: none">• Joint Ventures• Exclusivity agreements• Promotion agreements• Release of restrictive covenants. <p>Circumstances in which Option Agreements or Conditional Contracts are appropriate: From time to time the Council will want to encourage and promote property development in order to promote regeneration & renewal or to contribute to strategic targets such as housing numbers – and to this end working with, negotiating with and entering into contracts with property developers is an important part of Council business. Promoting complex property development schemes is time-consuming and expensive. Developers often spend years promoting schemes through the planning process, incurring large costs in professional fees, only to find that schemes fail to obtain planning approval or they become unviable as costs and values change. It is common therefore for developers to seek to manage their exposure by securing the right to acquire a site (without which they could not justify the expenditure on fees) but preserving their ability to withdraw, or delaying payments for land, until key risks (such as planning) have been mitigated. To a degree, the Council needs to recognise this in its dealings with developers. It does however need to protect its own interests at the same time.</p>	
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		<p>Risks for the Council: In entering into complex contractual arrangements the Council must take care that it does not:</p> <ul style="list-style-type: none">m. Find itself unable to terminate an agreement with a developer who is not performing, or where it has become apparent that the scheme cannot be delivered.n. Find that the developer is deliberately delaying (for example by delaying signature of a section 106 agreement) and the Council is unable to terminate.o. Finds itself under undue pressure to renegotiate the terms of a transaction because the alternative would be non-delivery and political embarrassment, because the agreement cannot be terminated.p. Find that it is committed to sell a site for a price which, because of the valuation mechanism employed or because of the outcome of due diligence work, is significantly less than the Council was expecting and/or less than the existing use value of the site.q. Find that the conditions in a conditional sale agreement are such that the purchaser is in complete control, and so the conditional contract effectively	
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		<p>functions as an option agreement. An example of this is where a contract is conditional on receipt of a 'Satisfactory Planning Permission' and that is defined as 'A permission which the purchaser in their absolute discretion finds satisfactory'.</p> <p>r. Find that it is due substantial payments from a corporate entity that has insufficient financial strength, and no bonds or guarantees are in place.</p> <p>Other risks for the Council include:</p> <p>s. Lack of clear distinction between the Council's statutory role as planning authority and its role as landowner and financial beneficiary. A clear distinction is essential from a probity perspective and to avoid Judicial Review of decisions.</p> <p>t. Lack of an appropriate competitive process in selecting developers to work with, resulting in procurement challenges and/or best value not being achieved.</p> <p>Mitigations: To mitigate these risks the Council should:</p>	
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		<ul style="list-style-type: none">u. Only enter into exclusive discussions with a developer about a development project where that developer has an exclusive position relating to the project, such as ownership of an adjoining site, access rights or other rights which mean only they can deliver the scheme. 'Exclusive discussions' include informal meetings with officers and Members.v. Not enter into option agreements which are longer than reasonably necessary. Only under exceptional circumstances should options be more than 18 months long, and they should never be more than five years long. Any extensions beyond the original option period (apart from automatic extensions linked to Judicial Review) must be subject to Cabinet approval at the time that the original option period expires.w. Only enter into Option Agreements which have clearly set out milestones which the developer must achieve, and the ability for the Council to terminate if they are not achieved. They might include:<ul style="list-style-type: none">i. A timescale for formal planning pre-application discussions	
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		<ul style="list-style-type: none"> ii. A timescale for development of design to each of the RIBA stages iii. A public consultation strategy, with timescales iv. A timescale for submitting planning applications, outline and/or detailed. v. A timescale for satisfactory conclusion of due diligence (site investigations, discussions with the Environment Agency etc) and the ability to terminate if the results are unsatisfactory. vi. A timescale for entering into funding agreements vii. A timescale for signing section 106 agreements etc. x. Only enter into Conditional sale contracts which have similar milestones (and similar ability for the Council to terminate) as set out in c. above. The Conditional Period should not be longer than reasonably necessary. Only under exceptional circumstances should it be more than 18 months long, and it should never be more than five years long. Any extensions beyond the original conditional period 	
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		<p>(apart from automatic extensions linked to Judicial Review) must be subject to Cabinet approval at the time that the original conditional period expires.</p> <ul style="list-style-type: none">y. Ensure that before entering into any complex contractual arrangement, it has had sight of the developer's financial appraisals and cost plans, it has had obtained its own professional advice on these and is satisfied that the scheme is viable. If the scheme is not viable then it is inevitable that the developer will delay or will seek to renegotiate, and the Council's expectations will not be met.z. Does not enter into contracts for the sale of land where purchase monies are delayed beyond Completion unless:<ul style="list-style-type: none">i. There is a guaranteed minimum purchase price (which is not dependent on a future valuation or appraisal) which is equal to or greater than the Open Market Value of the site at the date of the contract, that this is payable unconditionally and that it is suitably secured against	
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		<ul style="list-style-type: none"> the appropriate assets of the purchaser. ii. Payment of the guaranteed minimum purchase price must not be delayed more than 2 years beyond Completion. iii. There is an appropriate drop-dead date by which all purchase monies must be paid regardless of any other factors. iv. The Council retains a charge over the land until all purchase monies are paid. aa. Only enters into Complex Contractual Arrangements with companies of suitable financial standing or where suitable guarantees are in place. <p>The decision to enter into a Complex Contractual Arrangement is a decision for Cabinet if the likely end sale price of the land (including any uplift resulting from change of use) exceeds £1m. If the likely price is between £500,001 and £1m it will be a decision for the Cabinet Member for Regeneration & Growth. If the likely price is between £100,000 and £500,000 it will be a decision for the Director of Regeneration & Growth in consultation with the Cabinet Member, with Ward Members as appropriate and with the</p>	
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