BLAENAU GWENT COUNTY BOROUGH COUNCIL

**DISPOSAL AND ACQUISITION OF**

**LAND AND PROPERTY POLICY**



**Approved 22nd April 2015**

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**1.0 PURPOSE OF THIS POLICY**

The principal aim of this Policy is to provide a consistent process and framework to be followed with regard to the Council’s disposal and acquisition of land and property. It will act as a reference point for procedural matters and ensure that the Council meets any relevant statutory requirements, in particular S123 Local Government Act 1972 and supporting regulations. These regulations prescribe that a Council shall not dispose of land for a consideration less than the best price that can reasonably be obtained, subject to specified exceptions.

The Policy will also ensure that best practice is taken into account, enabling the Council to act in an efficient and effective manner when dealing with property related matters. It will also minimise the liabilities associated with holding and managing a significant land and property portfolio.

**2.0 DISPOSAL OF SURPLUS ASSETS POLICY**

**2.1 APPLICATION OF DISPOSAL OF SURPLUS ASSETS POLICY**

This Disposal of Surplus Assets Policy shall not apply to the following:

1. the sale of Council dwellings under the Housing Acts;
2. the sale of Freehold Reversions under the Leasehold Reform Act 1967;
3. the sale of Freehold Reversions to Lessees not entitled under the Leasehold Reform Act 1967;
4. repossessed properties and surplus non-housing revenue account dwellings which are advertised for sale inviting formal tenders or sealed offers.
5. properties acquired by the Council or predecessor authorities using Compulsory Purchase Powers, where the Crichel Down rules may apply.
6. sales or disposals as a result of the exercise against the Council of Statutory Powers, Compulsory Purchase Powers or decisions of the Lands Tribunal or Awards of Court;
7. when an Adverse Possession claim has been made against the Council to acquire the land.

**2.2 PROCESS FOR IDENTIFICATION OF SURPLUS ASSETS**

The definition of surplus land/property is when the Service no longer uses an asset for the use for which it was originally acquired or held. The Council’s requirement for assets is going through a significant period of change due to budgetary pressures and a challenging transformation programme. Alternative methods of service delivery, a property rationalisation programme (Area Reviews) and a pro-active approach to community asset transfer will influence the Councils requirements for assets.

The Council has a robust asset management planning process in place including regular reviews of our property holdings. The Estates and Strategic Asset Management Section will regularly engage with service departments to review operational property requirements in response to service delivery and transformation to identify any surplus land/property for disposal.

**2.2.1** **Service responsibilities for declaring an asset surplus**

When declaring an asset as surplus to requirements the Service will have regard to any statutory processes which may apply to the Service use of the asset.

Once the asset is identified as surplus to the requirements of a Service, the Service is responsible for formally instructing the Head of Estates and Strategic Asset Management to deal with the asset in accordance with this Policy.

**2.2.2 Internal Use**

The Estates and Strategic Asset Management Section will initially assess demand for the use of the property from internal users through the Corporate Asset Management Working Group. Consideration will also be given to market demands and any potential capital receipt. Information will be requested on any legal and planning restrictions and finance arrangements e.g. claw back provisions.

**2.2.3 Consultation**

The Estates and Strategic Asset Management Section will ask Ward Members for their views and comments, and will provide an explanation as to why the asset is surplus to Service requirements. Town Councils will be asked for their views/comments in respect of any buildings within their area.

**2.2.4 Other Public Sector Use**

The Council facilitates a Public Property Partnership Board. This is a Welsh Government supported project, the aim of which is to ensure public sector organisations within Blaenau Gwent maximise the benefit achieved from available capital and revenue resources and minimise the total cost to the public purse through co-location and collaboration. The Board will be consulted as to whether there is any other public sector interest in the asset. The asset will also be advertised on a restricted basis on the Welsh Government’s ePims available property schedule for a window of 40 days to establish any wider public sector interest.

**2.2.5 Community Asset Transfer**

If no internal user is identified then consideration will be given to the suitability of the asset for community asset transfer including any informal and formal interest received from the Third Sector. The Council’s Community Asset Transfer (CAT) Policy sets out the procedure for dealing with assets suitable for transfer. The CAT Policy also sets out which assets will not be considered for transfer e.g. industrial units and assets with the potential to generate significant capital receipts.

**2.2.6 Declaring the property surplus to the Council’s requirements**

A report will be submitted to Corporate Asset Management Working Group for approval. The report will either:

* identify an internal user
* recommend the asset is declared surplus to the Council’s requirements and negotiations commence to dispose to a public sector organisation
* recommend the asset is declared surplus to the Council’s requirements and dealt with in accordance with the Council’s CAT Policy
* recommend the asset is declared surplus to the Council’s requirements and is disposed of in accordance with this Policy

If the case is of a more complex, sensitive or controversial nature a CMT/Executive decision will also be required.

**2.2.7 Responsibility for ongoing property holding costs and demolition**

 The Corporate Landlord will be responsible for all ongoing revenue costs from the date the asset is declared surplus until such time it is sold. However, when developing a project for the replacement or rationalisation of a service which involves the closure of a facility, the Council will at the planning stage for the replacement facility Identify funding as part of the project plan to deal with the demolition (if appropriate) of the property being replaced.

**2.3 PROCESS FOR DISPOSAL OF SURPLUS ASSETS**

If the asset is not considered suitable for community asset transfer or disposal to another public sector organisation, the Head of Estates and Strategic Asset Management will decide on the most appropriate method of disposal in accordance with the requirements of Section 123 Local Government Act 1972 and supporting regulations. The method of disposal shall either be by public auction, sealed tender, or private treaty depending on the type of property, its condition, its value and the prevailing conditions in the market.

**2.3.1 Planning Consultation**

 The Estates and Strategic Asset Management Section will consult with the Head of Planning and Building Control in respect of any potential for development or a change of use, which could increase the realisation price. A

 Planning Guidance note will be included within any sales or auction particulars. Planning permission would not normally be sought before the property is marketed unless the site is a strategic development site.

 Where it is deemed appropriate a Restrictive Covenant or claw-back provision will be inserted within the Transfer. This will ensure the Council's financial position is protected should a purchaser later profit from a windfall gain if planning consent were to be obtained for a more profitable planning use.

**2.3.2 Marketing**

Subject to the exceptions detailed below and at 2.3.3, there is a presumption that all surplus property will be subject to a marketing exercise. The method of marketing adopted, and any associated costs, will be dependent on the individual characteristics of each case and benefits to be accrued from the disposal. This could include a For Sale sign and advertising through the Council’s social media channels, website and local on-line and printed media in addition to marketing by any agent/auction house.

Should the Council receive a written declaration of interest in a property which has not been subject to a marketing campaign, such a campaign must be instigated before any further negotiations can take place with the interested party.

Exceptions where marketing may not take place:

* 1. Industrial development land in order to determine the most appropriate use to promote the economic regeneration of the County Borough.
	2. Sales of land to meet proven housing need and in support of successful Social Housing Grant applications.
	3. Any land which was transferred to Tai Calon as part of the Housing Stock Transfer process which was being transferred back to the Council pursuant to the Transfer Agreement.
	4. Land acquired for the former National Garden Festival where the former Welsh Development Agency part funded the scheme and is entitled to a share of any capital receipt.
	5. Any partnership schemes involving the Council’s land, for example The Works site, where a Joint Venture Agreement with the former Welsh Development Agency for the development of the site exists. Any sale will be dealt with in accordance with the Joint Venture Agreement in place at the time.

**2.3.3 Property subject to an application process (not subject to marketing)**

In the circumstances detailed below the property will **not** be marketed and an application process will instead apply. Applicants will be required to make an

appropriate written application on the prescribed form (Appendix 1), which must be submitted with the requisite non-refundable application fee. However, should the transaction proceed to completion, this fee will be deducted from the Surveyor's fees due to the Council.

* 1. Subject to the discretion of the Head of Legal and Corporate Compliance, small areas of land where only one prospective purchaser in the market could make purposeful use of the land in question e.g. a parcel of land adjoining a prospective purchaser's own property
	2. Small areas of land where the cost of marketing outweighs the financial benefit and receipt which will be generated
	3. Grazing land in accordance with the current grazing policy. The Council will consider the sale of areas of grazing land which are considered unsuitable for development or environmental purposes
	4. Requests to vary or release Restrictive Covenants imposed when the Council previously sold land
	5. Land forming a Ransom Strip
	6. A “special purchaser” as defined in the Royal Institution of Chartered Surveyors – Professional Standards (the 'Red Book') January 2014 or subsequent editions

**2.3.4 Valuation matters**

. In respect of properties that are to be sold on the basis of Market Value, this will be as defined in the Royal Institution of Chartered Surveyors – Professional Standards (the 'Red Book') January 2014 or subsequent editions.

**2.3.5 Disposals by sealed offers and tenders**

Where in pursuance of this Policy either sealed offers or tenders are invited, every invitation shall be based on a standard form and process as prescribed by the Council’s Head of Corporate Procurement in accordance with the Council’s procurement procedures, setting out the terms and conditions upon which all bids should be made. The Council will be under no obligation to accept the highest or any offer.

**2.3.6 Disposals by private treaty**

Where the principle of a sale is agreed in respect of properties categorised in 2.3.2 (a) to (d) and 2.3.3 above, the sale shall proceed by Private Treaty. Negotiations will be entered in to with the applicant and his/her agent utilising the services of the Council’s own in-house valuers or external valuers where appropriate.

**2.3.7 Use of external valuers**

There may be circumstances where there could be perceived conflicts of interest or bias, for example where a transaction with either a Member or Officer proceeds by Private Treaty. In these circumstances it will be appropriate to instruct the District Valuer or other independent external agents to negotiate on behalf of the Council. The decision to instruct an external valuer shall be delegated to the Head of Legal and Corporate Compliance.

**2.3.8 Members and Officers Code of Conduct**

Members and Officers, other than Estates and Strategic Asset Management and Legal Section officers, and Regeneration officers dealing with the letting of the Council’s Industrial Estate Portfolio, should **not engage in negotiations under** **any circumstances** or carry out any actions that may directly or indirectly seek to influence an employee in the conduct of any property based transaction involving the Council. Any such action will constitute a breach of the Members or Officers Code of Conduct.

**2.4 REPORTING REQUIREMENTS AND COMPLETION OF DISPOSALS**

In accordance with the Constitution of the Council, the Head of Corporate and Legal Compliance has delegated powers to approve the principle of any sales and the terms of the transaction. A report on the tender or sealed offers received shall be prepared and submitted by the Estates and Strategic Asset Management Section with an appropriate recommendation for approval.

If the disposal is at less than best consideration and involves a grant of lease over 25 years or sale of freehold, for example Community Asset Transfer, then a report will be prepared for Executive approval. It should be noted that the consent of the Welsh Government may also be required in certain circumstances.

Executive approval will also be required for any disposal of a property with a value in excess of £500,000.

 Following approval by the Head of Corporate and Legal Compliance or Executive to the terms of any sale, the Estates and Strategic Asset Management Section shall instruct the Legal Section to progress all legal work to ensure the sale is completed as expeditiously as possible.

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 On receipt of a Completion Notice from the Legal Section the sale will be recorded on the Council’s Terrier and Asset Register.

 **2.4.1 Capital Receipts**

 All capital receipts, net of all allowable disposal costs will initially be retained centrally for subsequent prioritised allocation in accordance with the approved Capital Programme and existing Council Policy.

**2.5 MONITORING OF DISPOSAL OF SURPLUS ASSETS**

The Estates and Strategic Asset Management Section and Legal Section meet on a monthly basis to review the Council’s surplus assets to ensure they are disposed of in a timely manner and any vacant property costs minimised. Progress is monitored on a 6 weekly basis by the Corporate Asset Management Working Group, where any issues or hindrances to disposal are discussed and appropriate action agreed.

An annual overview of progress of the Council’s key disposals will be provided in the Annual Review of the Strategic Asset Management Plan and will include performance against the annual capital receipts target. It will also include a review of any community asset transfers and the benefits delivered.

**3.0 ACQUISITION OF LAND AND PROPERTY POLICY**

**3.1 APPLICATION OF ACQUISITIONS STRATEGY**

Any Service requirement for property should form part of the overall strategic plan for the Council’s asset needs. It should be based on sound options appraisal and a business case in line with priorities identified within the relevant service delivery plan and Strategic Asset Management Plan (or Annual Review). It is important that the Estates and Strategic Asset Management section are engaged in any discussions in respect of Service land and property requirements at the earliest opportunity.

This procedure refers to **any** **Council requirement for land and property including internal reorganisations and allocation of space in Council buildings**. It also includes any property constructed on land and land itself. The term acquisition refers to any relevant interest including freehold, leasehold, tenancies, options etc.

A land and property requirement (internal or external) may be identified by the Service as part of their business planning, or following an asset management review. Unless there are exceptional circumstances the Council will only acquire land or property in third party ownership for the following reasons:

* It contributes towards the functional provision of the Council’s services.
* Enables delivery of corporate and strategic priorities.
* Identified as a priority need within the relevant service delivery plan and Strategic Asset Management Plan (or Annual Review).
* Ownership required for strategic planning, regeneration or redevelopment purposes.

**3.2 PROJECT CONCEPT PAPER**

Most requirements to acquire land or property, whether Council owned or in third party ownership, should fall within the definition of a ”project” in accordance with the Council’s Project Management Framework. Once the Project Concept Paper has been approved it should be submitted together with a suitably detailed requirements brief to the Strategic Asset Management Team.

If support is required to help develop the Project Concept Paper or the requirement does not fall within the Council’s Project Management Framework, then as a minimum, information under the following headings should be provided with the requirements brief. The level of detail required will be dependent on the requirement:

* + - **Project Background:** the reasoning for why the project is needed, and an explanation of what the project needs to achieve.
		- **Project Objectives:** the overall aims of the project, and an indication of the intended outputs, covering time, cost, quality and scope.
		- **Fit with Corporate/Directorate priorities:** where the project may contribute towards meeting the Councils corporate and / or service objectives

Evidence of support from the relevant portfolio Executive Member should also be provided with the Project Concept Paper/brief.

**3.2.1 Approval in principle**

A short report to approve the principle of the acquisition will be submitted to the Corporate Asset Management Working Group before any detailed feasibility work is progressed at 3.3. This will include the Project Concept Paper/project details and any consultation responses.

##### 3.3 PROPERTY SEARCH

For all other requirements, the Estates and Strategic Asset Management section will undertake investigations as to whether suitable land or property is already held by the Council, and if applicable initiate a search to establish whether any suitable land or property exists in third party ownership (public or private sector).

A list of options will be identified in consultation with the Service. This may include either internal options or land or property in third party ownership, or a combination of both. The Service in consultation with the Estates and

Strategic Asset Management section will undertake a SWOT analysis to consider account indicative costs, location, condition, availability, tenure and risk etc. A preferred option will be agreed to progress to a more detail appraisal.

**3.4 FINANCIAL APPRAISAL**

A financial appraisal will be applied to the preferred option to establish the budgetary implications in terms of initial capital costs and future revenue costs. Capital and revenue costs should be based on survey results where possible e.g. valuation, condition, DDA compliance, asbestos etc. If surveys are not carried out it should be clearly stated within the appraisal that the costs are estimates only. In the case of projects managed within the Council’s Project Management Framework the financial appraisal will be included within the Business Case.

**3.4.1 Costs**

The following costs should be taken into account within the financial appraisal:

* Capital costs of acquisition including purchase price
* Rent if leasehold property
* Potential revenue to be generated from the property
* Costs of occupying property (capital and revenue):
	+ - refurbishment costs
		- repairs and maintenance/life cycle costs
		- statutory maintenance
		- rates
		- insurance
		- utility costs
		- cleaning and waste disposal
		- ICT costs
		- costs of equipment, furniture and moving
		- if leasehold – any reinstatement costs on expiry/break/surrender
	+ Costs associated with releasing any existing property as a direct consequence of acquiring new property:
	+ dilapidations
	+ disposal costs (demolition, removal of asbestos etc)
	+ refurbishment/adaptation works for alternative Council user if applicable.

**3.4.2 Funding Sources**

The detail and availability of all funding and budget sources should be clearly stated within the financial appraisal. It is important that both sufficient capital **and** revenue funds are available for both the acquisition and dealing with any consequential surplus property. The Council’s Corporate Landlord would in most circumstances be responsible for the property running and maintenance costs of any newly acquired property. The Head of Technical Services must be consulted in respect of the potential budgetary implications for the Corporate Landlord.

 **3.5 REPORTING REQUIREMENTS AND COMPLETION**

Once the financial appraisal has been prepared a joint report will be submitted to the Corporate Asset Management Working Group for approval of the preferred option and to open formal negotiations if a third party acquisition.

Following Corporate Asset Management approval the Service looking to acquire the land or property will be responsible for consulting with Ward Members.

If the acquisitioninvolves an internal use of Council owned land or property only then the Corporate Asset Management Working Group approval is sufficient. However, if the nature of the project involves sensitivity or controversy then it will be referred to CMT/Executive for approval.

**3.5.1 Negotiation**

Where the principle of a third party acquisition is agreed by the Corporate Asset Management Working Group, the Estates and Asset Management section shall be instructed by the Service to commence negotiations with the owner and his/her agent. There may be circumstances where there could be perceived conflicts of interest or bias, for example where a transaction involves either a Member or Officer. In these circumstances it will be appropriate to instruct the District Valuer or other external agents to negotiate on behalf of the Council. The decision to instruct an external valuer shall be delegated to the Head of Legal and Corporate Compliance.

Prior to finalising terms any necessary surveys which were not carried out at the appraisal stage should be undertaken. If such surveys identify capital or revenue costs in excess of the estimates in the original appraisal then additional funding must be identified.

**3.5.2 Member and Officer Code of Conduct**

Technical Services and Estates and Strategic Asset Management are responsible for the provision of professional advice to the Council on valuation and property matters, including negotiation of terms, condition surveys, asbestos advice etc. Members and Officers (other than these staff) **should not engage in these activities** **under any circumstances,** or carry out any actions that may directly or indirectly seek to influence an employee in the conduct of any property based transaction involving the Council. Any such action will constitute a breach of the Members or Officers Code of Conduct.

**3.5.3 Approvals for acquisition of land or property in third party ownership**

If the acquisition involves land or property in third party ownership, approval for the acquisition shall then be sought from either the Head of Legal and Compliance or the Executive, dependant on the nature, sensitivity or controversy of the project and in accordance with the reporting requirements of the Council’s Constitution and Project Management Framework.

**3.5.4 Completion**

Following approval by the Head of Legal and Corporate Compliance or the Executive to the terms of any sale, the Estates and Strategic Asset Management section shall instruct the Legal Section to progress all legal work to ensure the acquisition is completed as expeditiously as possible.

On receipt of a Completion Notice from the Legal Section the sale will be recorded on the Council’s Terrier and Asset Register.

**APPENDIX 1 – FLOWCHART FOR DISPOSAL**

**Identification of Surplus Asset (Service or ESAM)**

**CONSULTATION**

**Internal Use – CAMWG**

**Local Members**

**Public Sector Use – PPP Board/EPIMS**

**Consider for Community Asset Transfer (CAT)**

**Report to CAMWG**

**Report to CMT/Executive**

**for decision**

**Is Case Controversial, Sensitive or Complex?**

 **YES**

 **NO** **YES**

**Transfer Asset to Internal User**

**Internal User Identified**

**OR**

 **YES**

**Suitable for CAT**

**Asset Dealt with in Accordance with CAT Policy**

 **YES**

**OR**

**Public Sector Use Identified**

**OR**

**Disposal**

**Planning Consultation**

**Marketing / Negotiation by Private Treaty**

**Terms Agreed**

**Report (ESAM)**

 **YES**

**Report to CMT / Executive for decision**

**Disposal less than best consideration and lease in excess of 25 years / Freehold or over £500,000**

 **NO**

**Delegated Approval**

**Legal Completion**

**Records Amended**

**APPENDIX 2 – LAND AND PROPERTY APPLICATION FORM**



## LAND /PROPERTY APPLICATION FORM

**NAME** …………………………………………………………………………………

**ADDRESS** ……………………………………………………………………………

…………………………………………………………………………………………..

Tel No:- ………………………………………………………………..…………….

E-Mail Address:-…………………………………………………………………….

### APPLICATION TO RENT/ PURCHASE/ LEASE LAND *(please delete as appropriate)*

**LOCATION** ……………………………………………………………………………………………………………

…………………………………………………………………………………………………………….

**PROPOSED USE OF LAND** …………………………………………………………………………

…………………………………………………………………………………………………………….

#### Please ensure the following are attached to this form:-

* A Sketch/Ordnance Survey plan indicating edged red the approximate dimensions of the area you are interested in acquiring.
* The fee of £113.40 (inc v.a.t.) per application per parcel of land is non-refundable.
* Please return to Blaenau Gwent County Borough Council, Estates Section, The General Offices, Steelworks Road, Ebbw Vale, Blaenau Gwent, NP23 6DN.

# OFFICE USE ONLY

**Date Received** …………………………………………………………………

**Fee Received**…………………………………………………………………….

**Officer Issued to** ……………………………………………………………….

**Principal Estates Officer's Comments** **………………………………..**

………………………………………………………………………………..

**Deed No.** ………… ……………………**Asset No.** ……………………………

………………………………………………………………………………………

Should your application be successful you will also be expected to meet the

#### following costs:

1. Council’s Surveyors fees for dealing with your application.
2. Council’s Solicitors fees for dealing with the Conveyance/Transfer of the property to you.
3. Planning Fees if applicable (please check current planning fees with the Council’s Planning Department) .
4. Meet any other external costs e.g. Council’s external valuers fees
5. Meet your own Solicitors costs
6. .

### Authority Employee/Member

With respect to the Authority, I am

1. a member of staff Do any of these
2. an elected member statements apply to you?
3. related to a member of staff
4. related to an elected member

 Yes No

If Yes, please provide details of the name, relationship and role

* *The Council will process your personal data in accordance with Data Protection Legislation. For more information and access to privacy notices outlining how the Council handles your personal data, please go to the Data Protection section of the Council's* [*website*](https://blaenau-gwent.gov.uk/en/council/data-protection-foi/councils-privacy-notice/).

**Hysbysiad Preifatrwydd**

* *Bydd y Cyngor yn prosesu eich data personol yn unol â Deddfwriaeth Diogelu Data.  Am fwy o wybodaeth a mynediad at hysbysiadau preifatrwydd yn amlinellu sut mae’r Cyngor yn trin eich data personol, ewch i adran Diogelu Data gwefan y Cyngor.*