

SURPLUS PROPERTY PROCEDURE

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1. Introduction

Surplus property is any council-owned land or building that is not required for operational purposes. Capital receipts and revenue income generated from the sale or lease of surplus property assets and minimising the costs of maintaining the council's estate are vital in supporting the council's approved capital investment programme and funding the delivery of key services.

When disposing of surplus property assets, the council has a legal obligation to obtain "Best Value" under the Local Government (Scotland) Act 1973 and The Local Government in Scotland Act 2003. The 1973 Act places an obligation upon councils, when disposing of land, to dispose of that land for the best consideration that can reasonably be obtained, except in the circumstances as set out in The Disposal of Land by Local Authorities (Scotland) Regulations 2010. If disposing of land for less than the best consideration that can reasonably be obtained, the council requires to follow the procedure set out in the 2010 Regulations.

To support and enable corporate financial planning and resource allocation, Property Services are set annual targets for both capital receipts and commercial rental income. The Surplus Property Procedure is key in enabling those targets to be met through the effective and efficient disposal of surplus property assets and by ensuring that surplus property is managed in accordance with the principles of good estate management as set out in the council's approved Corporate Asset Management Strategy.

2. The purpose of the Surplus Property Procedure

The purpose of the Surplus Property Procedure is to:

- a) Provide a consistent, transparent and compliant process that ensures surplus property assets can be disposed of efficiently and effectively, minimising vacant property holding costs and securing the best terms reasonably obtainable for the council.
- b) Establish that the disposal of surplus property assets is agreed as being a commercial exercise, the primary aim of which is to secure the best consideration reasonably obtainable for the council, either by way of a capital receipt or commercial rental income, or disposal in accordance with the 2010 Regulations, securing Best Value

- c) Establish a link to the council's approved Community Asset Transfer Policy through which any community or third sector organisation seeking to acquire or occupy council property on concessionary terms, or who wish "community benefit" to be taken into consideration, should pursue their interest by way of a Community Asset Transfer Request under the provisions of Part 5 of The Community Empowerment (Scotland) Act 2015.

3. The Surplus Property Procedure

The Surplus Property Procedure has six distinct stages and these are as follows:

Stage 1 – Identifying the property as surplus

Following consultation with the occupying service(s), the property is identified by Property Services as no longer being required for service delivery. This may occur as a consequence of service modernisation or the property being replaced by a new facility.

Where a property is no longer required for service delivery, the vacating service(s) will be required to timeously and at their own cost clear the property of all movable items and equipment (including the removal / disposal of any confidential information).

Property Services will then write to all Heads of Service to make them aware that the property is becoming vacant and asking them to identify (within 10 working days) any operational need for the property. Where a potential service need is identified, that need will be explored. Since the council is seeking to reduce the size of its operational estate, only those services with an acute and demonstrable need and sufficient approved budget to cover existing and future revenue and capital costs for the property will be considered.

Property that is not occupied can become subject to vandalism, deteriorate in condition and become a financial burden to the council in terms of vacant property holding costs. Accordingly, in the lead up to a property becoming vacant, Property Services will initiate processes to decommission and secure the premises. The period that any property remains vacant will be kept to a minimum through early and effective implementation of the Surplus Property Procedure.

Where the property in question is not an operational asset (e.g. it is designated as Development Land or Industrial Land in the council's Asset Register), then there shall be no need to circulate its availability to Heads of Service or to have the property formally declared surplus to requirements by the Council Executive. In such cases, Property Services shall proceed directly to Stage 4 of the Surplus Property Procedure (marketing the property for disposal).

Stage 2 – Future use options appraisal

Property that is no longer required for service delivery will be subject to an appraisal by Property Services to identify how the asset can best contribute to corporate priorities.

In some cases, properties that are likely to become surplus will already have been identified as contributing capital receipts towards approved capital investment projects (e.g. as part of replacement property business cases). These will be dealt with in accordance with the reports that approved the respective capital investment projects.

Notwithstanding the foregoing, the appraisal for surplus properties in general will recognise the council's legal obligation to secure the best terms reasonably obtainable from the disposal or letting of property assets and ensure proposals comply with Best Value requirements. In addition, the appraisal will recognise the condition of the property and whether demolition should be considered.

The following are the main appraisal options that will typically be considered and recommended:

- **Revenue generation (commercial lease):** With increasing pressure on council revenue budgets, the potential for a surplus asset to generate additional commercial rental income for the council by leasing the property out will be considered.
- **Capital receipt generation (commercial disposal):** Capital receipts generated from disposals are used to support the council's approved capital investment programme. The potential for the surplus asset to generate a capital receipt will be considered.

Should Housing Revenue Account (HRA) wish to acquire a General Services asset (or vice versa) in connection with corporate objectives, then full market value shall be payable for the asset. Full market value shall reflect what the property might realistically expect to sell for were it to be offered for sale on the open market. That value shall be determined by way of a joint valuation referral to the District Valuer, with the cost of the valuation being shared equally between HRA and General Services.

In some instances, it may be in the council's best interests for an excambion (i.e. an exchange of land) to take place between HRA and General Services. In such cases, the market value of the respective pieces of land shall be determined by the District Valuer. The transferring parcels of land should be of equivalent value. Where there is a shortfall, a suitable "make-weight" capital payment shall be made by the acquiring account to the selling account.

It should be noted that proposed transfers between General Services and HRA may, in some instances, trigger Common Good provisions and associated statutory requirements.

- **Demolition:** In some circumstances a property may only be considered suitable for demolition. This may be due to its condition or its size or location making it unsuitable for letting or disposal. In some instance, the cleared site may then be suitable for let or disposal on the open market.

As part of the appraisal process and to help inform officer recommendations, Legal Services will be instructed to undertake a title search with a view to identifying any issues relating to Common Good and/or other legal provisions or title burdens that could potentially impact a proposed future sale, lease or demolition of the property.

Each of the above options will be considered in terms of viability and deliverability and thereafter Property Services will prepare a report, complete with officer recommendation, for consideration by the Council Executive.

It is acknowledged that, in some instances, community groups and/or other third sector organisations may have an interest in acquiring or leasing surplus council properties. Those groups are free to submit commercial offers, along with any other interested parties, when properties are openly marketed.

Community or third sector organisation seeking to acquire or occupy council property on concessionary terms, or who wish “community benefit” to be taken into consideration however should pursue their interest by way of a Community Asset Transfer Request under the provisions of Part 5 of The Community Empowerment (Scotland) Act 2015 and as provided for under the council’s approved Community Asset Transfer Policy.

Stage 3 – Declaring the property surplus

Council Executive will be presented with a report confirming that the property is no longer required for the delivery of services and a summary provided of the appraisal undertaken. The report will seek approval for the property to be formally declared surplus to the council’s requirements and it will include an officer recommendation as to how the property should be disposed of. It may include recommendations about demolition or precautionary measures necessary until the end of the procedure.

Some assets may be considered suitable either for sale or lease, in which case the officer recommendation may be to openly market the property and to invite both offers of lease and offers to purchase to a closing date.

Where the Council Executive declares a property surplus and agrees that it should be sold or leased, the property will be marketed by Property Services. Where the Council Executive agrees that the property should be demolished, Property Services will initiate the demolition works in accordance with any prevailing procurement requirements.

Stage 4 – Marketing the property for disposal

In the interests of equality, fairness and transparency and in order to demonstrate the achievement of Best Value, surplus assets will typically be advertised on the open market and offers from interested parties invited to a closing date.

Property Services will arrange for marketing particulars to be prepared and distributed to interested parties. The local elected members will be provided with a copy of the marketing particulars for information. The marketing particulars will be published on the council’s commercial property portfolio web-site (Novaloca) and marketing signage will be erected at the property. Virtual and/or in-person viewings will be arranged as necessary and any interested parties will have the opportunity to raise queries and have them answered.

Whilst the marketing exercise will typically be undertaken “in-house”, where the property is considered to be sufficiently specialised or where it is considered to support the achievement of Best Value, Property Services may (subject to procurement requirements) opt to appoint external agents to market and/or dispose of the property on behalf of the council.

In exceptional circumstances, Property Services may consider it to be in the council’s best interests to dispose of a property by way of an off-market, negotiated sale to one particular party. One such example might be if the council’s property is landlocked and can only realistically be used or developed by the neighbouring landowner. Council Executive on 28 October 2014 agreed that, in some circumstances, officers should be able to enter into negotiations on a one-to-one basis, subject to any final agreement on a disposal being approved by the Council Executive.

In order to raise awareness amongst any community groups who may have aspirations to explore community ownership and/or asset transfer, details of surplus properties will be provided on the council’s community asset transfer webpage.

Stage 5 – Evaluation and reporting offers

Notwithstanding any exceptional circumstances and any resulting off-market negotiations, following a period of open marketing, a closing date will be set to which interested parties will submit their confidential offers. Immediately after the closing date, these confidential offers will be opened, witnessed and evaluated by a Property Services manager. It should be noted that the setting of a closing date will not preclude the submission of an asset transfer application prior to or after that date.

Setting aside community asset transfer requests that may emerge, since the disposal of surplus property assets is a commercial exercise, the primary aim of which is to secure the best terms reasonably obtainable for the council, either by way of a capital receipt or commercial rental income, the main focus of the evaluation will be to determine which of the respective offers provides the council with the best potential financial return. Typically, this will result in the highest offer being recommended for acceptance, however the following matters will also be material considerations:

- Planning status – Does the proposed use require a change of use planning consent and is there a realistic prospect of that consent being secured?

- Suspensive conditions – Does the offer contain any suspensive conditions that could impact upon the potential financial return for the council and/or the time taken to conclude the transaction?
- Deductible costs – Does the offer contain deductible costs that could impact upon the potential financial return for the council?
- Financial status – Is the bidder considered to be of sound financial status, sufficient to meet the financial commitments of the offer submitted?
- Economic development – Will the proposed use create jobs, enable new businesses to locate in West Lothian or allow existing businesses to expand?
- Corporate priorities – Does the offer and the proposed use support the council's other stated corporate priorities?

Once the evaluation is complete and documented, Property Services will decide which offer (if any) represents the best terms reasonably obtainable and that party shall be considered to be the "Preferred Bidder".

Where the terms of the proposed transaction fall within the Head of Property Service's delegated powers, those delegated powers may be used to progress and conclude the transaction. Alternatively, where it is considered to be in the council's interests to do so, the Head of Finance and Property Services may choose to forego those delegated powers and refer the matter to the Council Executive.

Where the terms of the proposed transaction go beyond the Head of Property Service's delegated powers, a report (complete with officer recommendation) will be submitted to the Council Executive seeking approval to proceed with the offer received from the Preferred Bidder.

For reasons of commercial confidentiality and in order to protect the council's negotiating position as the seller, reports to the Council Executive will only include information on the offer submitted by the Preferred Bidder and not details of offers submitted by any under-bidders.

Whilst community and third sector organisations should pursue property interests by way of a community asset transfer request under the provisions of Part 5 of The Community Empowerment (Scotland) Act 2015 and as provided for under the council's approved Community Asset Transfer Policy, it is acknowledged that some groups may nonetheless lodge an offer / submission to the closing date. Where a community or third sector organisation lodges an offer / submission to a closing date, officers will provide details of that offer/submission in the Council Executive report for information.

In the event of a community asset transfer request being received, that request will be determined by the Asset Transfer Committee in accordance with the council's approved Community Asset Transfer Policy and in doing so will take into consideration any alternative proposals, which may include commercial offers that have been received for the property.

Stage 6 – Implementation of the committee decision

Once the Council Executive has considered the report and made a decision, Property Services will move to implement that decision. Where the decision is to sell or lease the surplus property, Legal Services will be instructed to proceed with and conclude the transaction.

To ensure surplus properties remain vacant for as short a time as possible and annual capital receipt / commercial income targets are met, officers will seek to conclude approved sales and leases as expeditiously as possible.

Where appropriate, Council Executive approval may be sought to authorise the Head of Finance and Property Services to carry out any further negotiations with the purchaser in respect of the terms of sale on the basis that any revised terms and conditions still represent the achievement of best value for the council.

4. Common Good property

Common good is property owned by a local authority which has been passed down, through local government reorganisation, from former burghs, and which meets other legal criteria. Those burghs would have received it as a gift or purchased it. It includes land and buildings, and moveable items such as furniture and art. It may include cash where property has been sold, and income received from the leasing of common good property.

The Community Empowerment (Scotland) Act 2015 (the Act) imposes duties on local authorities in relation to common good property. Part 8 of the Act seeks to increase transparency about the existence of common good assets and to ensure there is community involvement in decisions taken about their identification, use and disposal.

Council Executive at its meeting on 25 October 2022 approved governance arrangements for the management of common good property in accordance with the requirements of Part 8 of the Act. Accordingly, the disposal of any surplus property assets that are found to be common good shall be processed in accordance with and governed by those approved arrangements.

Where the council wishes to dispose of common good property (which disposal shall include the granting of leases) or change the way in which a common good property is used, the Act requires that specific processes must be followed, including undertaking a period of community consultation (the period of which shall be not less than eight weeks).

In the case of land and buildings, Property Services, supported by Legal Services, shall ensure those statutory consultation processes are followed. Officers shall ensure that the relevant Community Council and the elected members for the ward in question are consulted on any proposals in advance for not less than the required eight week period. Any such proposals will also be published online.

Any decisions regarding the proposed disposal (including leases), acquisition, investment in or changes to the use of common good property should be referred to and made by the Council Executive, after appropriate consultation. That reflects the corporate duties on the council, as statutory successor to previous local government bodies, to identify, manage, maintain, and account for disposal methods and proceeds, for all common good property inherited from the former burghs.

In circumstances where a question arises as to the alienability of common good property, legislation requires referral to the court for authority to dispose of it. An application will be made to the court once the desired means of disposal has been agreed by Council Executive following the conclusion of the statutory consultation.

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