

STRATEGY / POLICY FRONT COVER



Name of Strategy / Policy: Acquisition and Disposal of Council Owned Land

Date last updated: 17th November 2009 (adopted by Cabinet)

Links to Council Priorities:

Priority	Linked Yes / No?
Environment – Civic Pride	Yes
Regeneration and Homes	Yes
Improving the Council	Yes
Community Safety	No

Links to Other Strategies and Policies

Financial Planning and Capital Strategy 2009/2010 to 2013/2014

Asset Management Plan 2009/2010 to 2013/2014

Action Plan in this document?

No

Is progress on the action plan regularly updated?

n/a

Officer Monitoring

n/a

Member Monitoring

Not applicable

Member forum for agreeing the policy / strategy: Cabinet

Has it been subject to a Diversity Impact Assessment? Yes

Has it been subject to an Environmental Sustainability Impact Appraisal? Yes



CASTLE POINT BOROUGH COUNCIL

CORPORATE POLICY

ON THE ACQUISITION AND DISPOSAL OF COUNCIL OWNED LAND

1. POLICY STATEMENT OF INTENT

1.1 The Council shall continuously review the sufficiency, suitability, condition and cost of retaining land owned by the Council

1.2 The Council may dispose of land it owns following a review if:

1.2.1 retention of the land would not meet the Council's corporate aims and objectives and

1.2.2 there is no justification for retaining the land and

1.2.3 the land is surplus to the Council's Service or Investment requirements or

1.2.4 management of the land is suitable for community ownership

1.3 Land meeting the criteria set out in paragraph 1.2 above shall be deemed surplus land

1.4 The Council may appoint a valuer to provide a valuation the costs of which shall be borne by the Applicant whether or not the disposal proceeds to completion.

1.5 Where the Council disposes of its land it will normally seek to achieve the best price

- 1.6 Generally the Council does not dispose of public open space unless to do so would result in a public benefit which meets the Council's corporate aims and objectives
- 1.7 Council owned land shall be referred to Members for a determination as to whether to dispose of or retain the land where:
 - 1.7.1 it has development potential or
 - 1.7.2 the Council's Asset Management Group considers that its disposal should be determined by Members or
 - 1.7.3 the applicant is a member of the Council's Asset Management Group or a service unit head or an officer within the Council who could be seen as having a direct input to and therefore influence on the determination or
 - 1.7.4 the applicant is a Member
 - 1.7.5 it is intended for community ownership
- 1.8 A decision to dispose of land that does not fall within paragraph 1.7 above may be made by the Council's Asset Management Group following a report and meeting of that Group to consider the observations raised by the Head of Regeneration and Homes and/or the Chief Development Control Officer, Section 151 Officer and Head of Legal Services.
- 1.9 Land disposed of by the Council shall be disposed of either by Private Treaty, Informal or Formal Tender depending upon the value of the land and any development potential
- 1.10 Land disposed of by the Council and deemed surplus land shall not be disposed of at an undervalue unless in accordance with guidance set out in Circular 06/03 Local Government Act 1972: General Disposal Consent (England) 2003 and with this Policy

- 1.11 Requests received from members of the public to the Council to dispose of its land for the benefit of the community shall in the first instance be considered by the Council's Asset Management Group
- 1.12 Land disposed of to a "special purchaser" shall be at the best price the Council can achieve
- 1.13 The Council shall as part of its decision making process consider whether the disposal will cause or have an impact upon a minority group or individuals who currently benefit from the land that cannot be accommodated elsewhere
- 1.14 The Council has an obligation to fulfil their fiduciary duty in a way which is accountable to local people and in doing this needs to ensure that if it does dispose of land at an undervalue the disposal secures the well being of the Borough pursuant to the Council's "Well Being Powers", and having regard to the priorities identified in the Sustainable Community Strategy and the Council's corporate aims and objectives.
- 1.15 In exercising its powers of acquisition the Council shall purchase land at the lowest price it can achieve and only acquire land that meets its corporate aims and objectives

2. POLICY OBJECTIVES

- 2.1 To secure a transparent and consistent approach to the acquisition and disposal of Council owned land
- 2.2 To obviate any accusations of unfairness and impropriety

3. DETAILS

3.1 Interpretations

- 3.1.1 "**Acquisition**" means land acquired by the Council by agreement, gift or exercising its compulsory powers for the benefit, improvement or development of the Borough or for the purposes of undertaking its services or functions

- 3.1.2 “**Community Asset**” means a community centre, hall, village hall, community or sports pavilion
- 3.1.3 “**Community Organisation**” means
- 3.1.3.1 a group of individuals or members of the public that are independent to the Council and their governing board or committee includes a majority of community representatives of people living in the Borough or
- 3.1.3.2 one or more of the Council’s public sector or voluntary sector partners whose objective is to provide a social or community benefit
- 3.1.4 “**Community Ownership**” means a community asset owned or managed for the benefit of the community aimed at bringing people from different backgrounds together
- 3.1.5 “**Disposal**” means to sell either the Council’s freehold interest in the land or to grant a leasehold interest to a buyer with the Council retaining its freehold interest in the land.
- 3.1.6 “**Formal Tender**” means offers that are invited giving a firm closing date. Offers received are to be submitted in sealed envelopes and not opened but opened together at a published date and time
- 3.1.7 “**Informal Tender**” means a process whereby offers are invited without necessarily giving a firm closing date. As offers are received they are opened as they are received. Bidders may be invited to increase their bids, possibly having been informed that a higher bid has been received following a closing date for initial bids. The invitation to submit further bids shall be subject to a final bid closing date. Should a higher bid be received after the final bid closing date the Council makes its position clear that in this event

any higher offer being received before completion of the sale, the Council may be obliged to consider it.

3.1.8 “**Land**” means land owned or may be acquired by the Council, which may or may not have any building or buildings or other structures erected on it including a community asset

3.1.9 “**Private Treaty**” means negotiations that are carried out between the Council and the prospective buyer (or their agents) privately and in comparative secrecy, normally without a limit on the time within which they must complete the negotiations.

3.1.10 “**Special purchaser**” means a buyer who has a special reason for paying more than the market value, for instance if the land is adjoining their existing property or provides the only viable option to a buyer in relation to the project or scheme they are pursuing which requires them to acquire the land

3.1.11 “**State Aid**” means an advantage given by the Council benefiting particular industrial sectors or individual undertakings and which may affect or distort competition

3.1.12 “**Surplus**” means Council owned land that has been subject to a review and is deemed surplus pursuant to paragraph 1.2 above

3.1.13 “**Undervalue**” means a disposal at less than market value and where such disposal:

3.1.13.1 secures the promotion or improvement of the economic, social or environmental well-being of the Borough of Castle Point pursuant to the Council’s “Well-Being Powers” and

3.1.13.2 is subject to voluntary conditions which have a direct or indirect monetary value to the Council

3.1.11 “**Valuer**” means a suitably qualified Surveyor selected from the Council’s select list of Surveyors

3.1.12 “**Well-Being Powers**” means the powers given to Local Authorities pursuant to Section 2 subject to the restrictions contained in Section 3 of the Local Government Act 2000 to do anything the Council considers likely to promote the economic, social and environmental well-being of its area unless explicitly prohibited elsewhere in legislation and may encompass cultural well-being and the promotion or improvement of the health of its residents and visitors.

3.1.13 “**Whole life costing**” means a method of determining the total costs of an asset over its entire life from acquisition, through usage and ultimately to final cessation of use and disposal

3.2 The Council shall consider requests to purchase land from any interested party.

3.3 Any request to purchase land from the Council must include details of the proposed use of the land together with any other information considered appropriate to enable a fully informed decision to be made by the Council. The request may be rejected if insufficient information has been given and the Applicant may be asked to resubmit their application with the relevant information.

3.4 If the land has development potential or community amenity value the request may be declined and the applicant will be informed in writing.

3.5 Land having development potential may still be disposed of but the development potential must be reflected in the sale price.

3.6 Any request to purchase land designated as public open space will be subject to legal requirements that the intention to dispose of the land be advertised in two

consecutive weeks in a local newspaper and any objections are taken into consideration.

- 3.7 Any request to purchase public open space will be subject to payment of the costs by the Applicant of the public notice whether or not the transaction proceeds to completion
- 3.8 Disposal of public open space will be subject to the condition that it be retained for recreational purposes for the benefit of the public
- 3.9 Disposal of Council land for community management and ownership shall be considered by the Council as part of its strategic approach to asset management and may be disposal of at an Undervalue subject to following the procedure set out in clause 4.4 below
- 3.10 Any request to purchase council land must be submitted with a plan showing the area which is subject to the request¹
- 3.11 The Council shall impose such conditions, covenants or restrictions upon the disposal of the land as it considers necessary and appropriate
- 3.12 Upon a request to purchase Council land the Council may appoint a valuer to value the land the cost of which may be met by the Applicant whether or not the transaction proceeds to completion
- 3.13 Land disposed of by the Council where the value of the land does not exceed £10,000 or is at a Special Purchaser and is intended to be used by the buyer:
 - 3.13.1 as an extension to their garden or
 - 3.13.2 for the erection of a separate building associated with their existing property or
 - 3.13.3 extension associated with their existing propertyshall be disposed of by Private Treaty

¹ Appendix 3 sets out an Application Form which can be completed and submitted to the Council addressed to the Council's Head of Legal Services

- 3.14 Land disposed of by the Council where the value of the land does not exceed £20,000 and the provisions of paragraph 3.13 above do not apply shall be disposed of by informal tender
- 3.15 Land disposed of by the Council where the value of the land exceeds £20,001 shall be disposed of by formal tender
- 3.16 Disposal of Council land shall follow the Council's procedures for the disposal of its land as set out in paragraph 4 below
- 3.17 In inviting bids for the purchase of Council land information as to the criteria the Council intends to use in evaluating the bids shall be provided to the bidders within the tender documents but in most cases will be the best price the Council can achieve
- 3.18 Where land is deemed surplus and disposed of for less than the best price the Council can achieve it will only do so in accordance with the guidance set out in Circular 06/03 Local Government Act 1972: General Disposal Consent (England) 2003².
- 3.19 Where land is disposed of for less than the best price the Council can achieve or where the disposal is subsidised by the Council the Asset Management Group must consider in consultation with the Head of Legal Services and Section 151 Officer whether such disposal amounts to State Aid
- 3.20 Where the land disposal forms part of a mixed transaction involving the procurement of public "works", "supply" or "services" the Asset Management Group must consider in consultation with the Head of Legal Services whether the disposal amounts to procurement rather than a simple land transaction in which case the Council's Contract Procedure Rules and EU Procurement Regulations may apply

² Attached at Appendix 1

3.21 Disposal shall only take place with the approval of the Council's Section 151 Officer and upon such terms and conditions as considered appropriate by the Head of Legal Services

3.22 The Council's Asset Management Group shall determine whether to dispose of Council owned land unless any provisions of 1.8 above applies

3.23 The Head of Legal Services shall negotiate the most advantageous terms and conditions to the Council with the Applicant and is authorised to enter into a Contract with the Applicant on behalf of the Council subject to compliance with the provisions of this paragraph 3.

3.24 Acquisition of land shall follow the Council's corporate procedures for the acquisition of land set out in paragraph 5 below

4 PROCEDURE FOR DISPOSAL OF COUNCIL OWNED LAND

Flowcharts showing those involved in the decision making process on behalf of the Council are shown at Appendix 1 and the process for making a decision is shown at Appendix 2 to this Policy.

4.2 Upon receipt of a request to purchase Council Owned land³ consideration shall be given to the Council's Asset Management Plan⁴ and a review carried out as to the sufficiency, suitability, condition and Whole Life costing of retaining the land in the light of the Council's corporate aims and objectives and service provision

4.3 If the land does not meet the criteria set out in paragraph 4.2 above and there is no justification for retaining the land:

4.3.1. The Manager of the Section of the Council responsible for management of the land shall be invited to give written consent to the disposal.

³ Attached Appendix 3 is an Application Form which can be completed and submitted to the Council addressed to the Head of Legal Services

⁴ Available on the Council's website or for inspection at the Council Offices

Refusal to give consent shall be accompanied with full reasons for refusal in writing.

- 4.3.2. The views of the Local Planning Authority as to any development potential of the land shall be sought and the Local Planning Authority's views taken into consideration in reaching a decision as to whether or not to dispose of the land
- 4.3.3. The Head of Legal Services shall consider the Council's title deeds to the land to ascertain any restrictive covenants or obligations on the Council which may affect the value or disposal of the land e.g. if the land was compulsorily purchased and whether it has to be offered back to the original seller
- 4.3.4 A valuation of the land shall be sought from the Council's valuer where appropriate to ascertain the market value of the land
- 4.3.5. The Council's Section 151 Officer may carry out a financial appraisal as to whether or not disposal of the land would be financially viable for the Council. The details of such financial appraisal shall remain Confidential to the Council's Section 151 Officer or their duly appointed representative until such time as evaluation of the bids is undertaken
- 4.3.6. The Asset Management Group shall identify whether the land is to be disposed by private treaty, informal tender or formal tender
- 4.3.7 The Manager of the Section of the Council responsibility for management of the land shall prepare a written report incorporating the observations of the Council's Section 151 Officer, Council's Head of Legal Services and the Local Planning Authority to enable a fully informed decision to be made as to whether to dispose of the land or not

4.3.8 Disposal of Council owned land may be subject to the buyer being responsible for the Council's Surveyors fees, Legal Costs and Advertising Costs (if any) and also subject to such other terms and conditions as the Head of Legal Services considers appropriate

4.3.9 Negotiations between an Applicant and the Council shall take place either orally or in writing or at a venue to be agreed between the Council and the Applicant but two Council officers shall be appointed by the Council to attend any meeting and such negotiations shall be recorded in writing.

4.3.10 Following determination, if land is to be disposed of the matter is passed to the Head of Legal Services for processing

4.3.11 The Head of Legal Services shall endeavour to process the application and complete the disposal within 12 weeks from receipt of all the necessary information.

4.3.12 Following completion of the disposal any unsuccessful bidders shall be informed in writing of completion of the disposal and the purchase price obtained.

4.4 Disposal of Council owned land for community management and ownership shall follow the following procedure:

4.4.1. The Community Organisation shall prepare a Business Plan setting out the benefits to the community and evidence how it intends to manage and operate the land for the benefit of the community should the Council dispose of the land to the Community Organisation such benefits may include by way of example:

4.4.1.1. Use of land for base for community groups benefiting local people and organisations as a "community anchor"

4.4.1.2 Providing social and economic support to minority groups in the community

4.4.1.3 Promoting start up enterprises and fostering innovation and entrepreneurship through social enterprise

4.4.2 The Head of Legal Services shall review the Council's title deeds to the land to ascertain any restrictive covenants or obligations on the Council which may affect the value or disposal of the land e.g. if the land was compulsorily purchased and whether it has to be offered back to the original seller

4.4.3 A valuation of the land shall be sought from the Council's valuer where appropriate to ascertain the market value of the land and any potential undervalue

4.4.4 The Council's Section 151 Officer may carry out a financial appraisal as to whether or not disposal of the land to the community based on their business plan is acceptable to the Council.

4.4.5 The Asset Management Group shall:

4.4.5.1 Identify any risks involved in the transfer of the land to the community organisation from the business plan and other sources of information and

4.4.5.2 How these risks may be mitigated and managed and

4.4.5.3 Identify the benefits of community management and ownership and whether the benefits and opportunity costs outweigh the risks

4.4.5.4 Seek any further information necessary from the Community Organisation to enable the Council to make a fully informed decision

4.4.6 The Asset Management Group shall identify any ongoing resource implications to the Council as a result of the disposal including lifecycle costs.

4.4.7 The Manager of the Section of the Council responsible for management of the land shall prepare a written report incorporating the observations of the Council's Section 151 Officer, Council's Head of Legal Services and Asset Management Group to enable a fully informed decision to be made as to whether to dispose of the land or not

4.4.8 Following consideration of the Report Members shall determine whether or not to approve in principle disposal of the land to the Community Organisation for community management and ownership upon such terms and conditions the Head of Legal Services considers appropriate

4.4.9 Following a decision by Member to approve disposal in principle negotiations between an Community Organisation and the Council shall take place either orally or in writing or at a venue to be agreed between the Council and the Community Organisation but two Council officers shall be appointed by the Council to attend any meeting and such negotiations shall be recorded in writing and shall include:

4.4.9.1 benefits to the community

4.4.9.2 market value and proposed undervalue of the land

4.4.9.3 risks and management and mitigation of those risks

4.4.9.4 ongoing future partnership working between the Council and the Community Organisation and monitoring of the benefits to the community as a result of the disposal

4.4.10 Following determination, if land is to be disposed of the matter is passed to the Head of Legal Services for processing

4.4.11 The Head of Legal Services shall endeavour to process the application and complete the disposal within 12 weeks from receipt of all the necessary information.

5. PROCEDURE FOR ACQUISITION OF LAND BY THE COUNCIL

5.1 The Council may be approached by a member of the public or organisation to acquire land in their ownership or the Council may become aware of land that is either on the market for sale or approach a landowner to acquire the land to support its corporate aims and objectives or to meet the priorities identified in the Sustainable Community Strategy

5.2 Before purchasing the land the Council shall undertake a whole life costing exercise to fully understand the implications of the acquisition upon the Council and its resources and report to the Council's Asset Management Group to consider any observations raised by the Head of Regeneration and Homes, Section 151 Officer and Head of Legal Services

5.3 The Council shall identify the purpose of the acquisition and future responsibility within the Council for the land

5.4 The Council's Section 151 Officer shall carry out a financial appraisal as to whether it would be financially viable for the Council to acquire the land. The details of such financial appraisal shall remain Confidential to the Council's Section 151 Officer or their duly appointed representative

- 5.5 Acquisition of land shall only take place with the approval of the Council's Section 151 Officer and upon such terms and conditions as considered appropriate by the Head of Legal Services
- 5.6 Members shall determine whether to acquire the land after receiving a fully informed report from the Council's Lead Officer setting out:
- 5.6.1 Description of the land
 - 5.6.2 Reason for the acquisition and how its acquisition supports service delivery
 - 5.6.3 Whole life costing to include the findings of the S151 Officers financial appraisal
 - 5.6.4 Other options open to the Council other than acquisition of the land to support service delivery
 - 5.6.5 Equality and sustainability issues
 - 5.6.6 Recommendation to members whether the Council should acquire the land
- 5.7 Following determination, if the land is to be acquired the matter is passed to the Head of Legal Services for processing
- 5.8 The Head of Legal Services shall endeavour to process the application and complete the disposal within 12 weeks from receipt of all the necessary information.

NB

The above procedures are for the guidance and assistance of Council Officers, Members and the Public. Appropriate expert opinion will be sought where Council Officers do not have the requisite expertise e.g. valuations of land. Surveyors chosen from a select list may be used to advertise and deal with the receipt of bids

and to negotiate with potential purchasers on behalf of the Council to obtain the best price for the land.

Date:

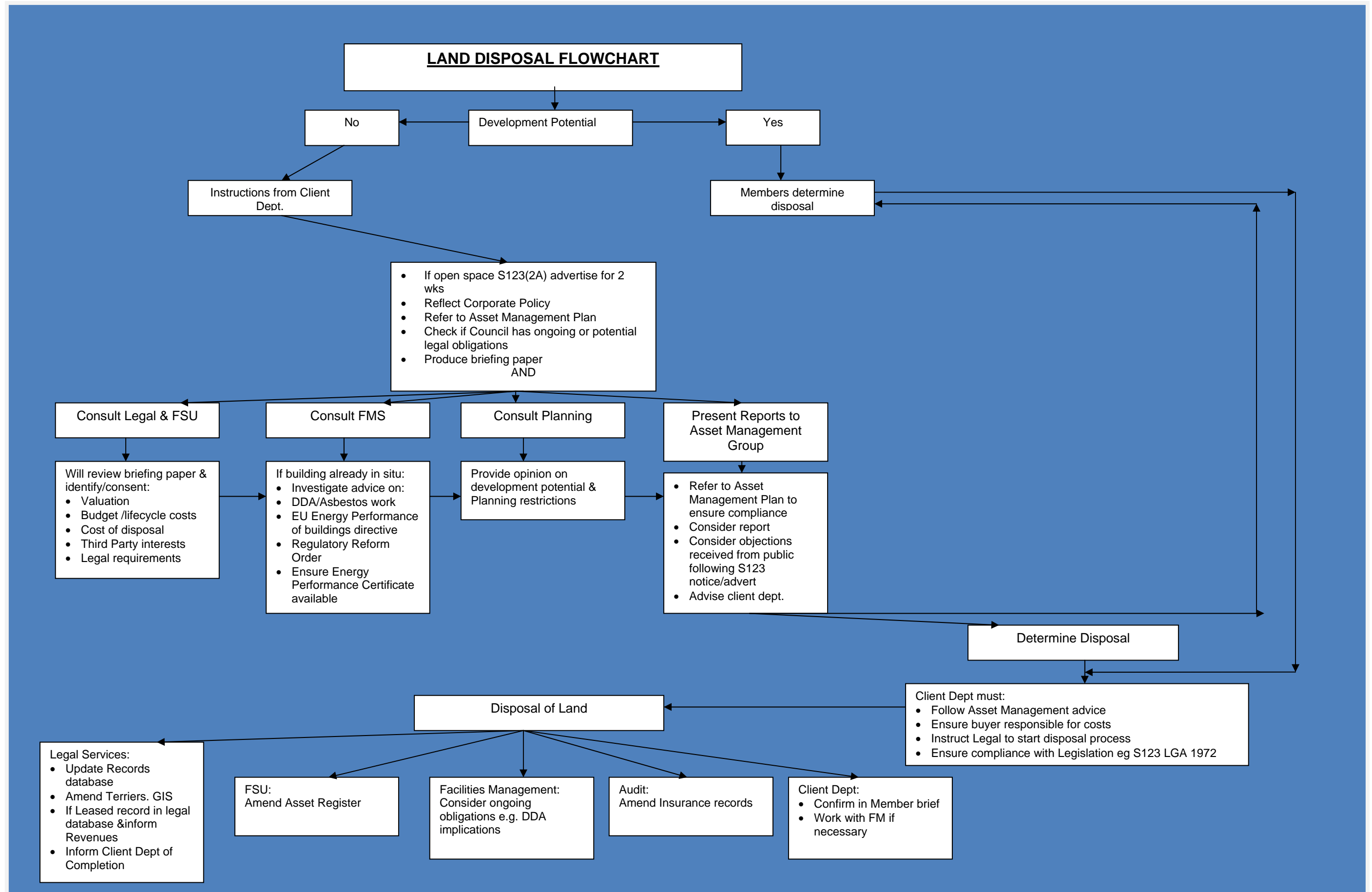
APPENDIX 1

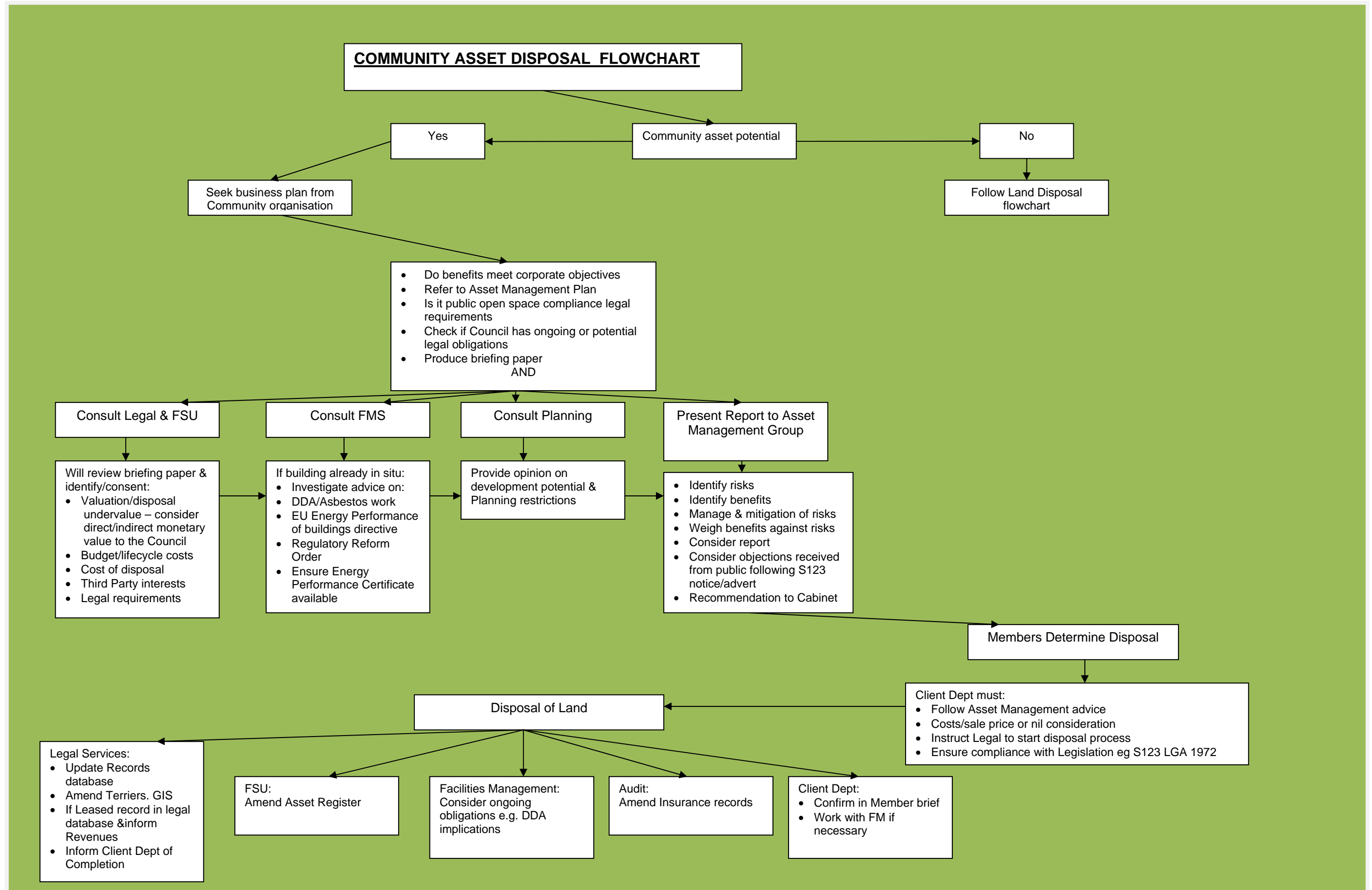
Circular 06/03 Local Government Act 1972: General Disposal Consent (England) 2003



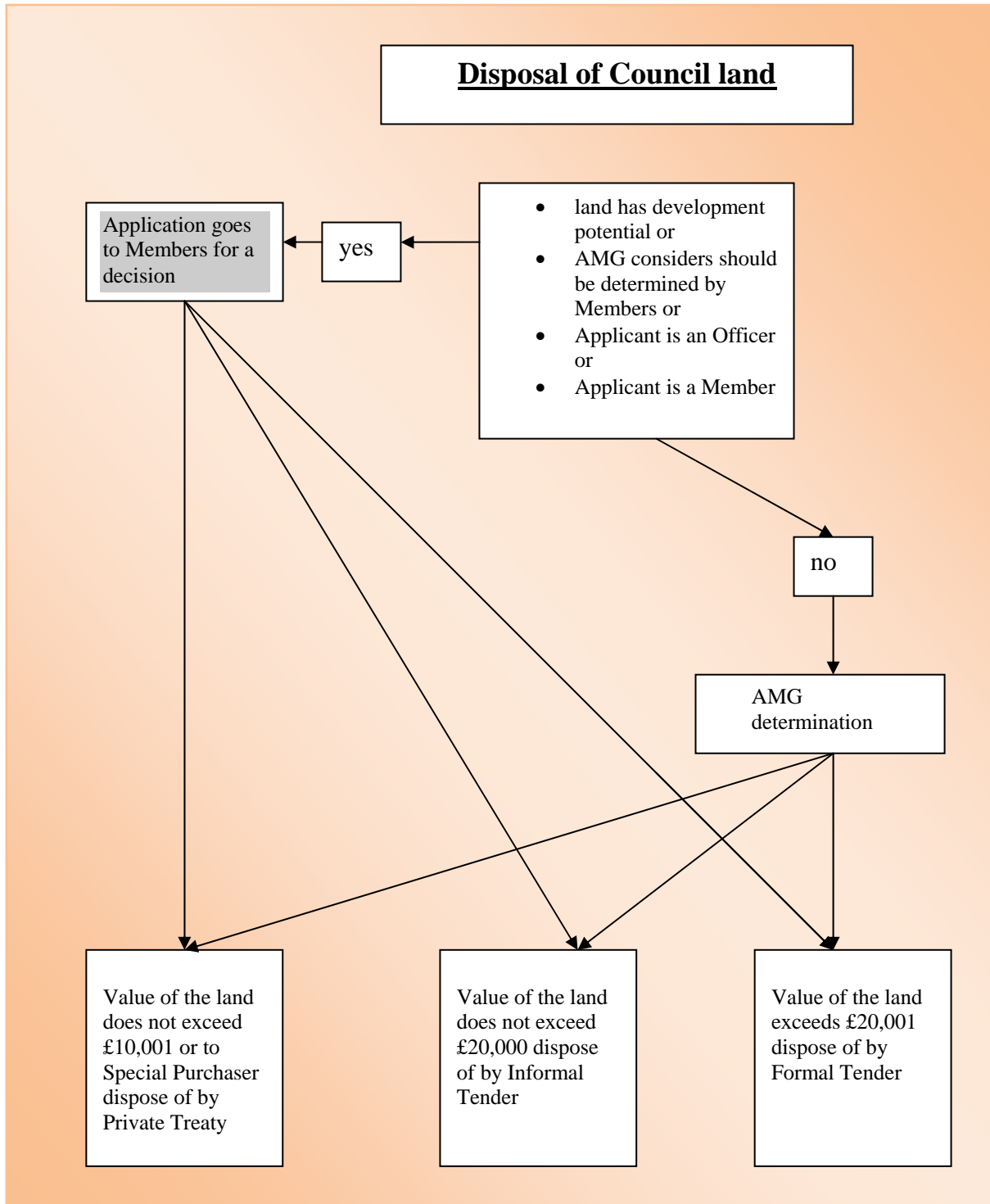
Circular disposal of
land.doc

Disposal of Council Owned Land Decision Making Flowcharts below





APPENDIX 2





APPENDIX 3

APPLICATION TO PURCHASE COUNCIL OWNED LAND

Please print this form and enter the required information clearly in the space provided.

<u>Section A – DETAILS OF THE APPLICANT</u>	
NAME	
ADDRESS	
DAYTIME TELEPHONE NUMBER	
E MAIL ADDRESS	
<u>Section B – LOCATION OF THE LAND AND PROPOSED USE</u> <u>NB PLEASE INCLUDE A SKETCH PLAN WHICH IDENTIFIES THE LAND</u> <u>AND APPROPRIATE MEASUREMENTS</u>	
<u>If disposal to community organisation provide business plan evidencing community benefits</u>	
<u>Section C – SIGNATURE</u>	
Date:	

Please return this form to Head of Legal Services, Council Offices, Kiln Road, Thundersley Benfleet, Essex SS7 1TF