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**Policy for the**

**Acquisition and Disposal of Land and Property**

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**LISBURN & CASTLEREAGH CITY COUNCIL**

**DRAFT POLICY FOR THE ACQUISITION AND DISPOSAL OF LAND AND PROPERTY**

**1.0 INTRODUCTION**

The purpose of the Council’s Acquisition & Disposal Policy is to set out and inform Members, Officers and other interested parties as to the principles and procedures and a framework by which the Council will acquire and/or dispose of land and property including the disposal of such assets via lease.

The Councils Valuer in respect of this policy is Land & Property Services (LPS) or an alternative firm of chartered surveyors recommended by LPS. The Councils Assets Department will obtain any valuations required in this respect.

**2.0 LEGISLATIVE FRAMEWORK**

**ACQUISITION**

Councils are empowered to acquire land and property to facilitate functions for which they are responsible. Lisburn & Castlereagh City Council must comply with the Statutory Obligations as contained within Section 96 of the Local Government Act (Northern Ireland) 1972; The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 2002, appropriate extracts of which are cited at **Appendix 1**; and the Local Government Act (Northern Ireland) 2014.

**DISPOSAL**

The disposal of land and property is one of the most sensitive issues which Councils have to deal with. Councils are empowered under The Local Government Act (Northern Ireland) 1972 to dispose of land and property but are subject to various constraints, some enshrined in law, (see **Appendix 2**) whilst others arise due to the expectation and need for Councils to act in a fair and a transparent manner when disposing of such assets.

Councils must also bear in mind the guidance contained in the Disposal of Surplus Public Sector Property in Northern Ireland, issued by the Central Advisory Unit and any relevant circulars and guidance issued through Department of Finance and Department for Communities. This guidance is recognised as best practice by the Northern Ireland Audit Office

It is therefore clear that the Council is bound to achieve the “best price or for the best rent or otherwise on the best terms that can be reasonably obtained”.

In accordance with Section 7 (3) of the Local Government Act (Northern Ireland) 2014, the acquisition or disposal of land must be a Council decision and cannot be delegated to any officer. Therefore the decision making process in respect of all such matters is that the acquisition or disposal is referred to the relevant Committee with responsibility for decision and then to full Council for ratification.

For the purposes of this policy and for the avoidance of doubt, the disposal of land and property via lease is also covered by this policy and procedure. However, the awarding of a licence as a short term agreement in order to execute works by third parties is considered to be an operational matter and thus delegated to the relevant officer for Committee noting.

All references throughout to land equally apply to land, property or buildings. All references to the disposal (of land) should apply equally to the,

* Sale
* Leasing, letting or granting in fee farm
* Exchanging, giving or receiving money for equality of exchange
* Surrender (leasehold), granting a licence for use for any purpose or for such purposes as are mentioned in the licence, or
* Granting (by way of sale, lease, letting or licence) any easement, profit or right.

In re of the land (as per section 45 of the Interpretation Act (NI) 1954).

**3. DEFINITION OF ACQUISITION**

For the purposes of the Policy, an acquisition of land or property is considered to be an outright acquisition if it consists of:-

a) A transfer of the freehold of the asset; or

b) A transfer of the leasehold of the asset

The acquisition of any interest, e.g. wayleave, easement, or reversionary lease is still regarded as an acquisition.

**4. THE ACQUISITION POLICY**

Prior to Council acquiring any land or property and/or any interest in land or property, a Business Case should be prepared by the relevant Head of Service or Director, setting out the purpose for which the asset is being acquired; the evidence justifying the need; the timescale in which the asset is required; together with a full Business Case Options Appraisal. This Appraisal, including a whole of life costing, should involve an appraisal of all the options for delivery of the final objective. Consideration should also be given to all other Council owned property and its potential suitability to deliver the objective, prior to any acquisition.

Any decision to acquire a land or property asset should be informed by both capital and revenue implications of ownership and the risk associated therewith. This report must be agreed with the Head of Finance and Corporate Management Team prior to presentation to the Corporate Management Team (CMT) and then relevant service home Committee to approve the business need and Business Case and then to Regeneration and Growth Committee to approve the acquisition.

Acquisition Criteria

* The acquisition makes a positive contribution to current/future delivery of Council services.
* The proposed acquisition has the potential for future strategic regeneration and development.

It is a requirement as part of this policy that the appointed Estates Officer must carry out a due diligence on the asset being proposed to acquire. This includes, but not exclusively, the following.

* Title including any incumbencies, rights of way, covenants etc.
* Planning assessment.
* Condition Report if appropriate.
* Adjacencies of land and property interests.
* Overhead and underground infrastructure, wayleaves, existing or planned.

**5. PROCEDURES FOR ACQUISITION**

**5.1 Acquisition of Property**

Should Council require land or property which meet the relevant service criteria the following will be undertaken:-

**5.1.1 Option Appraisal**

Completion of an options appraisal which shows the most economic and efficient funding arrangements and demonstrates the benefits and positive outcomes.

**5.1.2 Legal Consultation**

This will form part of the business case.

* Council will be advised via a report to the designated Services Committee as to the title to the property together with any rights, obligations or potential hindrances to the acquisition of the property. Where the Disposing Party intends to include covenants or impose conditions, then legal advice will be sought concerning these prior to the property being acquired.

**5.1.3 Ascertain Valuation**

- Upon confirmation of the Council decision to acquire, the Assets Unit will appoint and liaise with either Land and Property Services or another firm of chartered valuers recommended by LPS in order to obtain a market value.

- The Valuers appointed as the Council’s agent will act within the framework of the Acquisition Policy, namely that Council should bid within the accepted tolerances of the amount recommended by the professional Valuer.

Any valuation report informing the acquisition value should be received within the six month period prior to the acquisition taking place.

**5.1.4 Instruct Solicitors**

Following approval by Corporate Management Team appoint a solicitor from the Corporate Services framework. The Assets Unit will liaise with the solicitor to ensure satisfactory completion of the acquisition.

All acquisitions will be registered through the appointed solicitor as a matter of course within land registry within six months of the acquisition. In addition, the Council’s Asset Register will be updated so as to inform the Council balance sheet and maintenance schedules.

**6. DEFINITION OF DISPOSAL**

For the purposes of the Policy, a disposal of land or property is considered to be an outright disposal if it consists of:-

a) A transfer of the freehold of the asset; or

b) A transfer of the leasehold of the asset.

c) Lease or sub lease of Council asset or any part thereof

The disposal of any interest, e.g. wayleave, easement, or reversionary lease is still regarded as a ‘disposal’ but, as will be noted below, the disposal of such interests are not necessarily subject to the same requirements of public advertisement etc. Examples of such disposals would include wayleaves to NIE etc.

**7. THE DISPOSAL POLICY**

Any disposal of Council owned land and property shall be at the best price or for the best rent or otherwise on the best terms that can be reasonably obtained.

Committee may be asked to weigh up open market value against other influencing factors that may influence that value against community and longer term strategic interests. In such circumstances the Community Asset Transfer policy (see below) should apply for community interest. Consequently it would be at the discretion of the Members to determine the parameters that they wish to apply in influencing the ultimate valuation to be agreed in consideration of a disposal be subject to DfC approval.

Except in exceptional circumstances, (see **Appendix 3**), the Council will publicly advertise any land or property deemed surplus to its requirements or which a Third Party seeks to purchase, in such a manner as to ensure that transparency and cross community coverage are achieved.

The disposal of land and property falls into two distinct categories:

1. Land which has been declared surplus to requirements, and
2. Requests received from third parties to purchase Council Land or property
3. *Land which has been declared surplus to requirement (See Appendix 4)*

A site will be deemed to be surplus to the Council’s requirements if either:

1. It makes no contribution to the delivery of the Council’s services
2. It has no potential for future strategic or regeneration/redevelopment purposes
3. It is not adjacent to a larger area of land or property in the ownership of the Council
4. Which is surplus to requirements or under-utilised by the respective service or those of other Council department
5. An alternative site has been identified which would achieve a more cost effective service delivery
6. Its disposal would help facilitate the achievement of the Council’s Corporate Plan objectives.
7. Where all or part of the property or land is vacant and is likely to remain so for the foreseeable future.
8. *Requests received from third parties to purchase or receive benefit from Council land or property*

Given the range of requests received from third parties to purchase, access, retain interest in, and the like of a piece of land or property from the Council, each request should be dealt with on a case by case basis. However the following should be considered in every request:

1. S96 of the Local Government (NI) Act 1972 – Requirement to get best price or best rent.
2. Any pre-emption rights.
3. Has or should market testing take place?
4. Should the land or property be placed on the open market – is it effectively surplus?
5. Consideration of impact on revenue budgets including existing Council contractual obligations to third parties
6. How is the land accessed? Can the applicant gain access to the land without going over Council property?
7. What is the land required for?
8. Is it a key or ransom strip? (Stokes v Cambridge).
9. Would disposing of the land have any impact on Council operations or services, including maintenance?
10. Are there equality implications?
11. Would the disposal have a detrimental impact on the remaining land, where only a portion has been requested?
12. Is there any relevant historical background to the land?
13. Should any restrictive covenants or special conditions be attached to the disposal?
14. Would the disposal have any impact (positive or negative) on any of the Section 75 groupings or Rural Impact Assessment?
15. Is the land to be disposed of a revenue generating asset e.g. carparks?
16. Existing covenants, incumbencies or other restrictions
17. Is there a requirement for community consultation?
18. The extent of the Council’s interests/tenure

**8. PROCEDURES FOR DISPOSAL**

**8.1** When land or property is declared surplus by a Council department the following stages in the preparation for disposal will be implemented:-

**8.1.1 Internal Consultation**

- The matter will be reported to Corporate Management Team in the first instance and following approval, to the relevant Committee responsible for that particular Council Directorate. This report should also include all relevant strategic cross departmental and legal considerations in respect of the asset which will be available from the Assets Unit;

- If the Committee agrees that the asset is surplus to the Directorate requirement, the matter will be referred to the Regeneration and Growth Committee for decision through the Assets team;

- If the Regeneration and Growth Committee is satisfied that the asset is surplus to the requirements of any other Council departments, then it will make a recommendation to Council, prior to a commitment being entered into;

- No agreements, arrangements or otherwise, with the exception of licences, in respect of land and property, whether acquisition or disposal, sale or lease, permanent or temporary, should be entered into without prior agreement having been given by the Regeneration and Growth Committee and ratified by Full Council.

**8.1.2 Legal Consultation**

Council will be advised via a report to the Regeneration and Growth Committee as to the title to the property together with any rights, obligations or potential hindrances to the disposal of the property and claw-back provisions. Where the Third Party intends to include covenants or impose conditions, then legal advice will be sought concerning these prior to the property being disposed. This will be completed by the relevant Director together with the Councils Central Support section.

**8.1.3 Identify Development Potential**

In order to obtain the optimum return to Council from any sale, an appraisal will be carried out by the relevant Director as to the development potential of the site. This will be completed in consultation with the Assets and Planning teams and will include checking the zoning of the area, where the land or property is situated, against the Area Plan as well as a Development Management assessment.

Development obligations and timescales would be contained in the contract. The contract would also contain claw-back provisions.

**8.1.4 Ascertain Valuation**

Upon determination of the potential development uses, the relevant Director will instruct Assets Unit to obtain a valuation from either Land and Property Services or another firm of chartered valuers recommended by LPS (for either lease or sale). The sale or lease value should not be below the valuation unless Committee agree to tone the valuation against the other factors to be weighed, as outlined above.

In all cases where Council proposes to dispose of an interest in land or property at ‘less that best price or rent or otherwise on the best terms that can be reasonably obtained’ Ministerial approval is required. All applications for such approval must include the following.

* Full details of the proposed disposal
* Terms of the sale/disposal
* Details of any outstanding loans on the property
* A current (i.e. within 6 months) open market valuation of the land from the District Valuer or other qualified valuer
* A map of the area for disposal and its position in relation to other Council property within its immediate vicinity.

**8.1.5 Costs**

In cases where a Third Party has sought to acquire an interest in Council land or property, the legal; valuation; and Council officer administrative fees will be included in the premium.

**8.1.6 Leasing**

To ensure a consistent approach to leasing Council property to third parties the Assets Unit in consultation with the commissioning Service Unit shall lead on the leasing process. A standard lease format shall be used, which shall be subject to the addition of any special arrangements pertaining to the particular leasing arrangement required.

Negotiations over the lease must be approached in a constructive and collaborative manner. The agreement to the terms of the lease on a vacant possession letting must be recorded in written heads of terms, stating that it is ‘subject to contract’ and summarising, as a minimum, the position on each of the aspects detailed in **Appendix 4**.

Leases should be considered on a full repairing and insured basis. The amount of rent, should initially be considered on a commercial basis, as assessed by Land and Property Services as best rent whilst taking into consideration potential added benefit to the delivery of relevant Council services as a result of the lease e.g. community development or tourism benefits. Where significant community benefit can be established special arrangements may be agreed for example a Community Asset Transfer (CAT).

The Heads of Terms shall be agreed by both parties and approved by the Regeneration and Growth Committee. Following completion the final lease shall be brought to Full Council for Signing and Sealing.

As a matter of course all lessees will be restricted in the extent to which they can sub-lease the property without prior approval through the Council’s committee structure. Any alienation clauses should be included in the original lease and be aligned to the overall considerations of the lease arrangements.

**8.1.7 Community Asset Transfer**

The [NI Executive’s Community Asset Transfer (CAT) policy](https://www.communities-ni.gov.uk/sites/default/files/publications/dsd/community-asset-transfer-policy-framework.pdf) was developed to support the commitment in the Programme for Government (2011-2015) to “invest in social enterprise growth to increase sustainability in the broad community sector”. The policy provides a framework to facilitate community ownership of surplus public sector assets as an option as part of the normal disposal process.

CAT usually involves a transfer at less than market value, either at a reduced cost, or for a nominal consideration. The social, economic or environmental benefits of the proposed Transfer may be taken into account in determining the value.

Community Asset Transfer can take place in different forms including through:

* a management agreement
* a licence to occupy
* a short lease
* a long lease
* freehold

***See separate policy for Community Asset Transfer considerations.***

**8.1.8 Method of Disposal**

The disposal of all land & property will normally be through Land and Property Services Central Advisory Unit. The Northern Ireland Audit Office have stated this to be best practice for Councils. **See Appendix 5**

LPS will value the property which should and CAU will circulate details of the property to all public bodies in Northern Ireland. If, after a reasonable time no applications of interest are made or negotiations fail to reach agreement, a commercial agent will be appointed to handle the disposal.

The commercial agent will advertise the property sale and it will be disposed of to the best value bidder who meets the Council’s conditions as outlined in the property particulars.

There may be exceptions to this e.g. encroachments and in such instances the relevant director will consider the Councils Encroachment Policy, and following the consideration and recommendation of the Councils legal advisor, prepare a report to the Regeneration and Growth Committee.

However, apart from agreed exceptions, for all disposals the Assets Unit will carry out the following:-

* Appoint LPS and Central Advisory Unit.
* If necessary appoint a commercial agent to prepare a marketing plan and property particulars.
* Upon agreement of satisfactory terms with a purchaser, appoint a solicitor from the Corporate Services Legal Framework.
* Following Council agreement and the requisite call-in period, the Council’s legal advisor will act on the Council’s behalf to complete the disposal.

**9. GENERAL**

The relevant Director and Assets Unit has responsibility for maintaining records for buildings and land and their disposal.

In order to verify the Fixed Assets of the Council, it is necessary to establish which Fixed Assets have been acquired/disposed of during the year.

Any disposal of property should be in keeping with legislation pertaining to the Disposal of Land/Property.

Audit trails of all disposals will need to be maintained and accessible by internal/external audit to verify actions/values and giving detail as to how Council made the decision to dispose. Any appointment of a third party consultant must reserve the right of access to their records in relation to the transaction. This will be dealt with by way of appropriate contract conditions.

**APPENDIX 1**

**LEGAL AUTHORITY TO AQUIRE LAND**

Under Sections 95 and 96 of the Local Government Act (Northern Ireland) 1972, Councils have the right to acquire and hold land for a number of purposes as follows:-

“PART VII

MISCELLANEOUS FUNCTIONS

Land

95.-(1) A council may provide and maintain offices, halls or other buildings to be used for the purpose of transacting the business of the council or for public meetings, assemblies or entertainments.

(2) A council may acquire land otherwise than by agreement for the purposes of this section.

96.-(1) The purposes for which a council may acquire and hold land shall include:-

(a) the benefit of the inhabitants of its district;

(b) the improvement, development or future development of its district; and for the purposes of section 19 (1) (s) (iv) of the Interpretation Act (Northern Ireland) 1954 and any other transferred provision those purposes shall be deemed to be included among the purposes for which the council is constituted.

(2) The right of a council to acquire land may be exercised, notwithstanding that the land is not immediately required for any of the purposes for which the council is constituted; but the council shall not exercise that right by virtue of this subsection otherwise than with the approval of the Ministry.

Section 8 of The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 2002 gave additional powers to Councils in relation to economic development:-

8.-(1) A district council may promote the economic development of its district.

(2) Without prejudice to the generality of paragraph (1), a district council may for the purposes of the economic development of its district:-

(a) make payments; and

(b) acquire, hold and develop land.

(3) The power to acquire land under paragraph (2)(b) includes power to acquire it otherwise than by agreement.

(4) In paragraph (2) “develop”, in relation to land includes:

(a) erect, alter or extend buildings thereon;

(b) carry out works thereon;

(c) provide means of access, services and other facilities for persons using the land;

(d) facilitate the doing of such things by another person;

(e) manage and dispose of the land.

(5) In exercising its powers under this Article a district council shall have regard to any guidance for the time being issues under paragraph (6).

(6) The Department for the Economy may, after consultation with district councils and other interested bodies or persons, issue guidance as to the exercise by district councils of their powers under this Article.”

**APPENDIX 2**

**LEGAL AUTHORITY TO DISPOSE OF LAND**

Under Section 96(5) of the Local Government Act (Northern Ireland) 1972, Councils have the right to dispose of land but are required to seek the approval of the Department if the disposal of land and property is at less than best price or best rent. The full wording of Section 96(5) is as follows:-

“The right of a Council to dispose of land shall be subject to the following restrictions:-

(a) except with the approval of the Ministry (Department), any disposal of land shall be at the best price or for the best rent or otherwise on the best terms that can be reasonably obtained.;

(b) any disposal of land which has been acquired otherwise than by agreement shall be subject to the right of pre-emption conferred by Section 128 to 131 of the Lands Clauses Consolidation Act 1845.” Councils must also bear in mind the guidance contained in the Disposal of Surplus Public Sector Property in Northern Ireland, issued by the Central Advisory Unit of the VLA; Circulars No LG 03/06 dated 1st June 2006 and LG 02/08 dated 11th January 2008, from DOE Local Government Division.

**APPENDIX 3**

**EXCEPTIONS TO THE GENERAL PRINCIPLE**

Council will publicly advertise any land or property deemed surplus or which a Third Party seeks to purchase in such a manner as to ensure that transparency and cross community coverage are achieved.

However, there may be exceptional circumstances to the norm and these are listed below:-

1. Where a Northern Ireland Government Department wishes to acquire an interest in all or part of land or property for a purpose for which it has vesting powers, provided it has obtained the requisite Ministerial approval to acquire and Council can obtain similar Ministerial approval for the disposal of same; or where a Government department, e.g. Department for Infrastructure or N I Water or service provider, e.g. NIE, BT, has statutory powers to access land to provide services;

2. ‘Favoured status’ may be granted to companies/clubs promoting joint enterprises with Council or where partnership companies have been formed with Council. In such cases the Third Party may be offered land/property at a consideration determined by a valuer without the land/property necessarily being publicly advertised;

3. Clubs or organisations deemed to be providing activities which are consistent with the Council’s Corporate Objectives could be granted land/property whereby grant aid significantly or wholly offsets the land valuation;

4. Economic Development Companies could be granted monies to assist in the purchase of land/property provided it is within the parameters of legislative guidance on government aid. This is so as not to create anti competitive assistance;

5. Adjoining landowners may be granted ‘favoured’ status where the purpose of the Third Party was in accord with Council policy for that area;

6. When availing of the opportunities created under ‘the German Land Deal’ case law;

7. In cases where Open Market advertising may not achieve the best consideration, e.g:-

a. Sales of small areas of land where there is realistically only one potential purchaser, e.g. an adjoining landowner;

b. Sales of land where there is a ‘special purchaser’ for whom the land has a higher value than for anyone else, e.g. ‘a ransom strip’ or ‘key value.’

As referred to within this policy all cases where Council proposes to dispose of an interest in land or property at ‘less than best price or rent or otherwise on the best terms that can be reasonably obtained” Ministerial approval is required.

**APPENDIX 4**

**LEASING**

**1 Negotiations and heads of terms**

* 1. Negotiations over the lease must be approached in a constructive and collaborative manner.

1.2 The agreement as to the terms of the lease on a vacant possession letting must be recorded in written heads of terms, stating that it is ‘subject to contract’ and summarising, as a minimum, the position on each of the following aspects:

• the identity and extent of the premises (and requiring the landlord to arrange the provision of a Land Registry-compliant plan if the lease is registerable)

• any special rights to be granted, such as parking or telecom/data access

• the length of term and whether the Landlord and Tenant Act 1954 will apply or be excluded

• any options for renewal or break rights

• any requirements for a guarantor and/or rent deposit

• the amount of rent, frequency of payment and whether exclusive of business rates

• whether the landlord intends to charge VAT on the rent

• any rent-free period or other incentive

• any rent reviews including frequency and basis of review

• liability to pay service charge and/or insurance premiums

• rights to assign, sublet, charge or share the premises

• repairing obligations

• the initial permitted use and whether any changes of use will be allowed

• rights to make alterations and any particular reinstatement obligations

• any initial alterations or fit-out (if known) and

• any conditions of the letting, such as subject to surveys, board approvals or planning permission

1.4 At a lease renewal or extension, the heads of terms must comply with the above except for any terms that are stated to follow the tenant’s existing lease subject to reasonable modernisation.

1.5 Negotiations should aim to produce letting terms that achieve a fair balance between the parties having regard to their respective commercial interests. The landlord, or its letting agent where relevant, will be responsible for ensuring that heads of terms complying with those provisions are in place before the initial draft lease is circulated

**2 Lease Negotiation**

**2.1 The premises**

2.1.1 The identity and extent of the premises being let should be clearly defined, including which elements of the structure or fabric are included.

2.1.2 A lease plan should be supplied by the landlord for attaching to the lease if that is necessary or desirable for identifying the premises and in all cases where the duration of the lease will exceed seven years, where it should comply with the requirements for registration of the lease at the Land Registry.

2.1.3 The tenant should be granted all rights necessary for the intended use of the premises. This includes clear arrangements for any special rights such as parking or for electronic communication connections including, where necessary, the right to require the landlord to grant wayleaves for data cabling.

**2.2 Length of term, renewal rights and break rights**

2.2.1 The length of term should be clearly specified and any date when it is intended to start.

2.2.2 Any options to break should be clearly specified, including the dates (or range of dates) when a party can end the lease, the length of prior notice to be given and any pre-conditions for the break being effective. It should also state the method of serving notice.

The 1996 Order defines the requirements for the landlord and the tenant at the date of termination. It specifies the notice period for both parties.

* + 1. Unless the parties have agreed stricter conditions in the heads of terms, a tenant’s break should be conditional only on the tenant paying all basic rent payable on any date before the break date, giving up occupation and leaving no subtenants or other occupiers.

A dilapidations survey should be undertaken to ensure all tenant’s obligations have been met.

2.2.4 There is a general principle that any sub leases should be agreed through the Council’s committee structure. The exception to this are alienation clauses contained within the lease and should be explicit within the initial head of terms

2.2.5 Leases should require landlords to repay any rent, service charge or insurance paid by the tenant for any period after a break takes effect. Repayment of service charges may be deferred until the service charge accounts are finalised.

**3 Rent deposits and guarantees**

3.1 Details of any rent deposit should include the amount (including where required any sum to cover VAT), the time it will be held, whether it will be security for only the rent or all the tenant’s obligations under the lease and the circumstances in which the deposit will be returned to the tenant with any accrued interest.

3.2 Rent deposit agreements should provide that landlords will hold rent deposit funds in bank accounts designated for holding only rent deposits and that any bank interest will accrue for the tenant.

3.3 Details of any guarantee should include whether it will cover only the rent or all the tenant’s obligations under the lease, the amount of any cap on the guarantor’s liability and the circumstances (if any) in which the guarantee will be released.

**4 Rent and rent review**

4.1 The initial rent, the frequency of payment and whether the landlord intends to charge VAT on the rent should all be clearly stated, together with details of any rent-free period or other incentive.

4.2 Where the landlord proposes that rent is to be subject to review, the tenant should be notified of the proposed frequency and the method or formula of review at the outset in order to obtain early professional advice as to the implications.

4.3 Rent review clauses should be clearly expressed. Definitions of market rent should not result in a ‘headline rent’ unless that has been expressly agreed by the parties, such as where that is agreed in return for a financial inducement. Provisions for indexed rent reviews should not contain obscure formulae designed to produce a greater increase than is proportionate to the increase in the index over the appropriate period or outside any agreed caps or collars.

4.4 Leases should allow either party to start the rent review process and should not impose time limits intended to prevent a review or set a new rent through inaction by either party.

**5 Service charges, insurance costs and other outgoings**

5.1 The landlord should indicate the range of main services, if any, and provide proper estimates of service charges and insurance payments. The landlord should also disclose the types of other outgoings (such as business rates) that the tenant will incur under the lease. Landlords should disclose known irregular events that would have a significant impact on the amount of future service charges.

5.2 The parties should have regard to the current edition of Service Charges in Commercial Property, RICS professional statement and, so far as practicable in the circumstances, service charge provisions in leases should be drafted in conformity with the core principles and mandatory provisions of that professional statement.

**6 Assigning, subletting, charging and sharing**

6.1 Leases should allow tenants to assign the whole of the premises with the landlord’s consent, which is not to be unreasonably withheld or delayed. Landlords may set out circumstances in which consent can be refused, such as where there are arrears of rents, service charges or insurance premiums that are not the subject of a legitimate dispute, or where the assignee has insufficient financial strength, but all such circumstances should be reasonable and appropriate.

6.2 Leases should also provide that, if in each case the landlord reasonably requires, the assigning tenant is to provide an authorised guarantee agreement (AGA), any existing guarantor is to guarantee that the assigning tenant complies with the AGA, and/or the assignee is to procure a new guarantor and/or rent deposit.

6.3 Leases should allow corporate tenants to share the premises with other companies while they are in the same corporate group and do not create a subletting. In appropriate cases, leases of retail units may allow the tenant to grant licences of areas for use by concessions, such as where retail brands can be given stalls in a large store.

6.4 Leases should allow tenants to sublet the whole of the premises and may allow subleases of parts, if appropriate without security of tenure, and in each case with the landlord’s consent, which is not to be unreasonably withheld or delayed and at rents not less than market rent. Subleases should be required to be on terms consistent with the tenant’s own lease.

**7** **Repairs**

7.1 Leases should contain tenant’s repairing obligations appropriate to the length of the term, the condition of the premises and the financial terms.

7.2 If the tenant’s repairing obligations are to be limited to the initial condition of the premises, a schedule of condition will normally be required and the parties should agree which party is responsible for the cost of obtaining it.

7.3 Where the premises are or will be newly built, a tenant taking on direct or indirect responsibility for repairs should be given suitable protection against inherent construction defects for an appropriate period.

1. **Change of use, alterations and fit-out**

8.1 Leases should give landlords control over alterations and changes of use that are no more restrictive than are necessary to protect the value of the premises and any adjoining or neighbouring premises of the landlord, and this may differ between different types of property.

8.2 Where the landlord intends to prohibit certain changes of use or the making of certain alterations, or to require a licence from the landlord before they can take place, the tenant should be notified at the outset in order to obtain early professional advice as to the implications. This does not apply to normal provisions against changing the use outside the existing use class under planning law.

8.3 In a lease of an entire building, a landlord should not normally prohibit, or require its consent to be obtained for, internal non-structural alterations that do not adversely affect the character, value, structural stability, statutory compliance or energy efficiency performance of the building, but landlords will require the tenant to carry out such works properly and without causing damage or nuisance and to give written details to the landlord.

8.4 In a lease of a unit in a multi-let building, a landlord may require that its consent for internal non-structural alterations is to be obtained and that such consent is not to be unreasonably withheld or delayed, and may prohibit any alterations that adversely affect the character, value, structural stability, statutory compliance or energy efficiency performance of the building or its building services.

8.5 Except where the heads of terms state that there will be a reinstatement specification or an obligation on tenants to remove alterations, a lease should allow the tenant to leave alterations in place unless it is reasonable for the landlord to require their removal.

8.6 The tenant should be notified at the earliest practicable time if the landlord intends to impose any obligations for an initial fit-out that might involve material cost or to restrict how the tenant can fit-out or use the premises. The heads of terms and the lease should set out any agreed minimum requirements and any capital contributions.

1. **Insurance and damage**

9.1 Where the landlord will insure the property, leases should provide that the policy will be on normal market terms, that full terrorism cover will be provided if it is available at reasonable rates of premium, and that the landlord will insure with reputable insurers and provide details of the insurance to the tenant on reasonable request.

9.2 Leases should state that rent suspension will apply if the premises or any landlord’s areas or services serving them are damaged by an insured risk or, other than where due to an act or default of the tenant, an uninsured risk. If the lease limits the period in which rent is to be suspended, either party should be allowed to terminate the lease if reinstatement of significant damage is not completed within that period.

9.3 Leases should state that if the whole or a substantial part of the premises or any landlord’s areas or services serving them are so damaged by an uninsured risk as not to be capable of normal use by the tenant, either party should be allowed to terminate the lease unless the landlord agrees to rebuild at its own cost.

9.4 Landlords should pass on to tenants the benefit of discounted premiums and should disclose to tenants whether the landlord benefits from insurance commissions.

1. **Management and operational performance**

10.1 Leases of parts of multi-let buildings should contain provisions, appropriate to the characteristics of the building that encourage cooperation between the parties to improve operational efficiencies in the building and to share available data.

10.2 Consideration should be given to including in the lease other ‘green’ provisions, see examples in the Better Building Partnership’s Green Lease Toolkit.

**11 Energy Performance Certificates (EPCs)**

11.1 Leases should state which party is responsible for obtaining any EPC that may be needed during the lease term.

11.2 Landlords should be required to act reasonably if they reserve the right to choose which EPC assessor the tenant may use.

**12 Landlord’s title**

12.1 The landlord should be responsible for obtaining any consent for the grant of the lease required from a superior landlord, mortgagee or other third party.

**APPENDIX 5**

**CENTRAL ADVISORY UNIT**

Northern Ireland Government Departments and their Executive Agencies; Non-Departmental Public Bodies and Education & Library boards are required to advise the Central Advisory Unit (CAU) of the Land & Property Services (Valuation) of all lands and property which they declare surplus. The CAU then circulates details of these assets to other Agencies including Councils. While the DOE Local Government Circular LG03/06 dated 1st June 2006 suggested a reciprocal notification by Councils, this was not made compulsory for Councils to automatically offer surplus land or property to the Public Sector by approaching the “public sector clearing house” through the CAU.

Land and Property Services Central Advisory Unit have produced advice on the Disposal of Surplus Public Sector Property in Northern Ireland, March 2013. The Northern Ireland Audit Office have advised that this is the best practice for Councils and Councils are strongly encouraged to follow it. . [Disposal of surplus public sector property in Northern Ireland - guidance (finance-ni.gov.uk)](https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/Disposal%20of%20surplus%20public%20sector%20property%20in%20Northern%20Ireland%20-%20guidance%20-%20Nov%2018_0_0.pdf)

“Property centres and accounting officers should not normally depart from the guidance unless there is a very good reason to do so,” and that “compliance with these guidelines can be important in the context of a Judicial Review or an Investigation.”

**APPENDIX 6**

**Acquisitions Flowchart**

Budget identified and CMT approval to acquire

Search for suitable sites/shortlist

Statutory compliance met?

**Options appraisal & business case prepared**

Identification of options for acquisition

Identification of need to acquire asset

Financial and other criteria met?

Management and interim arrangements prior to occupation identified

Considerations

* Timescale
* Process
* Method
* Valuation
* Performance management
* Elected Member Engagement

**Formal acquisition of asset**

**Formal Council approval to acquire asset**

**Disposals Flowchart**

Alternative use options while vacant

External consents required?

Management of asset & budget required prior to disposal

CMT Approval to dispose off

Valuation of asset

Identification of method for disposal

Surplus for disposal criteria met?

Identification of options for disposal

Identification of surplus asset

**Formal Council approval to dispose**

**Options appraisal & business case prepared**

**Formal disposal of asset**

Considerations

* Timescale
* Process
* Method
* Valuation
* Disposal costs
* Marketing
* Performance management
* Local member engagement