

CABINET

10.00 A.M.

17TH MARCH 2009

PRESENT:- Councillors Abbott Bryning (Chairman), Evelyn Archer, Jon Barry (part), Eileen Blamire, Shirley Burns, Susie Charles, Jane Fletcher, John Gilbert, David Kerr and Roger Mace

Officers in attendance:-

Mark Cullinan	Chief Executive
Heather McManus	Corporate Director (Regeneration)
Roger Muckle	Corporate Director (Finance and Performance)
Debbie Chambers	Principal Democratic Support Officer

159 MINUTES

The minutes of the meetings held on Tuesday 17th February 2009 and Tuesday 3rd March 2009 were approved as correct records.

160 ITEMS OF URGENT BUSINESS AUTHORISED BY THE LEADER

The Chairman advised that there were no items of urgent business.

161 DECLARATIONS OF INTEREST

No declarations were made at this point.

162 PUBLIC SPEAKING

Members were advised that there had been no requests to speak at the meeting in accordance with the Cabinet's agreed procedure.

163 RESPONDING TO WORKLESSNESS

(Cabinet Members with Special Responsibility Councillors Archer and Mace)

The Corporate Director (Regeneration) submitted a report to outline, and seek approval for, the City Council's role in supporting employment and skills activities identified in the LDLSP Education, Skills and Opportunities Thematic Group Action Plan as a response to worklessness within the District. Specific approval is sought for a funding bid to the LDLSP for a Worklessness Pilot Project focused on outreach and engagement with hard to reach individuals and groups in the District's most deprived areas.

The options, options analysis, including risk assessment, were set out in the report as follows:

Lancaster & Morecambe Worklessness Pilot Project

Option	Advantages	Disadvantages	Risks
1. Withdraw the pilot project proposal/funding bids	None	<p>Opportunity to secure 100% external funding for the project would be lost.</p> <p>Loss of existing staff would lead to inability to draw down complementary Supporting People Programme funding.</p> <p>Redundancy costs incurred for existing staff.</p>	Lancashire LAA 2006/2009 reward targets and funding would be unaffected but there would be increased likelihood that the local contribution towards LAA 2008/2011 targets would not be achieved with possible impact on reward funding
2. Endorse the project funding bid to the LDLSP (and the Supporting People funding bid) and proceed with the pilot project proposal leading to full implementation if funding is secured.	<p>Provides continuity of employment for existing staff in the Integrated Support Team.</p> <p>This would allow the project to work within the priority super output areas, the most deprived wards, to help disadvantaged households gain sustainable long term employment.</p> <p>No requirement for City Council match funding.</p> <p>Contribution to LAA target to reduce worklessness.</p> <p>Sharing of housing-led approach with other authorities.</p>	Sustainability of the project beyond the 2-year pilot phase likely to be dependent on other sources of funding (eg European Social Fund).	Risks associated with project implementation including appointment of staff, achievement of outputs

City Council approach towards worklessness

Option	Advantages	Disadvantages	Risks
1. Do nothing ie do not take lead in appropriate actions identified in the ESO Thematic Group Action Plan	No impact on staff time and other priorities	ESO Thematic Group Action Plan not fully implemented Failure to achieve draft 2009/10 Corporate Plan priority	Lancashire LAA 2006/2009 reward targets and funding not affected but local contribution towards achieving LAA 2008/2011 reward targets related to worklessness minimised
2. Take active lead in appropriate actions identified in the ESO Thematic Group Action Plan, including establishing Work Group	Draft 2009/10 Corporate Plan priority addressed Firm base established for development of initiatives to address worklessness through joint working	Significant staff time potentially required – possibly up to half a full time equivalent post in the short/medium term.	There is a risk that insufficient staff time would be available to support the full range of actions and the Work Group. In this event administrative support could be required but it may be possible to seek appropriate resources through the LDLSP.

Officer Preferred Option (and comments):

Option 2 is the preferred option for the Worklessness Pilot Project as this will enable the City Council to undertake an active role in supporting some of the hardest-to-reach groups and individuals to secure employment and training opportunities, contributing towards efforts to achieve the LAA target to reduce the number of working age people claiming out of work benefits in target areas (although this target may be subject to revision in response to the economic downturn). It would also enable the City Council to maintain its work with vulnerable households with the additional Supporting People funding potentially available from Lancashire County Council.

Option 2 is also the preferred option for the City Council's approach towards worklessness as this will be in accordance with the draft 2009/10 Corporate Plan Key Action 1.3 to deliver the Council's actions in the LDLSP's Education, Skills and Opportunities Thematic Group Action Plan. It will also support local action planning to respond to LAA targets related to worklessness and skills. The development of the Employment and Skills Plan could also provide valuable input to the economic assessment process proposed under the Sub National Review of Economic Development and Regeneration, especially in the context of emerging Government proposals to introduce Work and Skills Plans setting out how local partners can achieve their LAA targets.

The Corporate Director (Regeneration) clarified with Cabinet Members that, should Recommendation 1 in the report be accepted, Cabinet would be effectively authorising vacancies for the pilot project, since to prepare and submit vacancy forms to Cabinet following acceptance of the recommendation would create a delay with the project.

It was moved by Councillor Archer and seconded by Councillor Mace:-

“That the recommendations, as set out in the report, be approved.”

Members then voted:-

Resolved unanimously:

(Note: Councillor Barry was not present when the vote was taken.)

- (1) That Members endorse the funding bid to the Lancaster District Local Strategic Partnership (LDLSP) for the Lancaster & Morecambe Worklessness Pilot Project, approve its implementation and the updating of the revenue budget if the bid is successful and authorise the Corporate Director (Regeneration) to agree appropriate line management arrangements.
- (2) That Members endorse the Supporting People funding bid already made to Lancashire County Council and, if formally offered, approve the on-going implementation of the vulnerable households activity to complement the Worklessness Pilot Project, and the updating of the revenue budget.
- (3) That Members acknowledge the role of the City Council in employment and skills activities which complement its draft 2009/10 Corporate Plan priority to deliver the Council's actions in the LDLSP's Education, Skills and Opportunities Thematic Group Action Plan.
- (4) That appropriate officer time be committed, within existing staff resources, to support actions included within the LDLSP Education, Skills and Opportunities Thematic Group Action Plan.

Officers responsible for effecting the decision:

Corporate Director (Regeneration)
Head of Economic Development and Tourism

Reasons for making the decision:

The decision is in line with the preferred options in the report. The Worklessness Pilot Project will enable the City Council to undertake an active role in supporting some of the hardest-to-reach groups and individuals to secure employment and training opportunities, contribute towards efforts to achieve the LAA target to reduce the number of working age people claiming out of work benefits in target areas. It will also enable the City Council to maintain its work with vulnerable households with the additional Supporting People funding potentially available from Lancashire County Council.

The preferred option for the City Council's approach towards worklessness is in accordance with the draft 2009/10 Corporate Plan Key Action 1.3 to deliver the Council's

actions in the LDLSP's Education, Skills and Opportunities Thematic Group Action Plan. It will also support local action planning to respond to LAA targets related to worklessness and skills. The development of the Employment and Skills Plan could also provide valuable input to the economic assessment process proposed under the Sub National Review of Economic Development and Regeneration, especially in the context of emerging Government proposals to introduce Work and Skills Plans setting out how local partners can achieve their LAA targets.

164 COMMUNITY COHESION

(Cabinet Member with Special Responsibility Councillor Gilbert)

The Chief Executive submitted a report asking Members to consider how to take forward community cohesion within Lancaster District in the context of the Area Based Grant (ABG).

The options, options analysis, including risk assessment, were set out in the report as follows:

Option 1

That Cabinet agrees to support the cohesion action plan developed by the Valuing People group and allocates £23K to the group for this purpose

Option 2

To defer making any allocations from the ABG for community cohesion at this time

Option 3

That Cabinet allocate Area Based Grant for some other purpose.

The preferred option is Option 1 - to support the cohesion action plan developed by the Valuing People group and allocate £23K to the group for this purpose. This is in accordance with the earlier decisions of Cabinet to take forward development of a Community Cohesion Strategy through working with the LDLSP and the voluntary sector and ring fence the 2008/9 Area Based Grant awarded for community cohesion for supporting specific actions within Corporate Plan Priority 6.1.

It was moved by Councillor Gilbert and seconded by Councillor Blamire:-

"That the recommendations, as set out in the report, be approved."

(Councillor Barry joined the meeting.)

Members then voted:-

Resolved unanimously:

- (1) That the remaining £16,000 balance of the Community Cohesion Reserve, together with £7,000 from the Project Implementation Reserve, be allocated to support the

Lancaster District Local Strategic Partnership's (LDLSP) Valuing People Thematic Group to develop and implement a district wide Community Cohesion Strategy.

- (2) That the 2009/10 Revenue Budget be updated accordingly.
- (3) That the Head of Corporate Strategy become the Responsible Spending Officer for this £26,000 budget.

Officers responsible for effecting the decision:

Chief Executive
Head of Corporate Strategy

Reasons for making the decision:

The decision taken is in accordance with the earlier decisions of Cabinet to take forward development of a Community Cohesion Strategy through working with the LDLSP and ring fence the 2008/9 Area Based Grant awarded for community cohesion for supporting specific actions within the Corporate Plan.

165 LUNESIDE EAST REGENERATION PROJECT

(Cabinet Member with Special Responsibility Councillor Mace)

The Corporate Director (Regeneration) submitted a report updating Cabinet on progress on this key regeneration project, explaining why this development is currently stalled and to present proposals for how the Council might facilitate a satisfactory and timely project delivery.

The options, options analysis, including risk assessment, were set out in the report as follows:

Options:

Market conditions severely constrain what can reasonably be done. To make progress the only option available is

Option 1 is for the NWDA to grant the Council funding for it to clear and remediate the site and undertake essential infrastructure works and thereby ready the site for development when the market starts to recover. (The Developer costs such works at some £5.2 million).

The alternative, Option 2, is to do nothing.

Analysis:

Officers consider that option 1 is the only one available. Doing nothing is not realistic, not least because obligations on the Council under the JFA and its contract for ERDF funding put it at substantial financial risk until it delivers or at least can assure full development delivery. In total, funding for some £5 million of expenditures already made is at stake and, in the worst-case scenario, the Council would be left with expenditure to this amount unfunded.

In addition, doing nothing would have serious implications for regeneration and planning. The full potentials of this development in terms of the environmental improvements, homes and jobs that it should deliver will not be realised. There will be no significant inward investment into the wider Luneside area for years to come. Failure to develop out this site and, because of this, prospectively other sites, will also mean the Council's total housing delivery is lowered and developers will be in a stronger position to force the Council to release Greenfield sites instead.

A related point is that terminating the involvement of the Developer is neither sensible nor reasonable at this stage. The developer has undoubted capacity, knowledge, commitment and readiness to deliver and the Council can mitigate its risks significantly by keeping the Developer with it so it can draw on its knowledge and experience. Further, the reasons the Developer cannot proceed as planned are no fault of its own.

Option 1 is also deliverable (subject to a positive funding decision). The NWDA (and also the HCA) has the discretion to grant the Council sufficient funding to undertake the works described and a variation to the JFA would be the mechanism. The Corporate Director (Regeneration) has the delegated authority to apply for such external funding. The Council owns the whole site and therefore would have full site control. It is practised as an accountable body. Planning Services' Engineering Team has the capacity and expertise to act as client for the works. This team is well versed in mechanisms for managing and mitigating risk (including cost risk) in contract management. To maximise efficiencies and minimise costs the Council should secure services from the Developer's expert consultancy team to assist with the client role, most particularly from Entec UK Ltd as consultant advisors for the remediation works and RW Gregory for servicing and utility works. The Developer has consented to this. The necessary procurements could be made under the Council's procurement rules.

Critically, the Council would need to procure an expert remediation contractor. The Council could draw from the applicable NWDA Panel of pre-validated contractors and, after clarifying capabilities, tender. The Council should also take advice from Entec's given it tendered the remediation contract on behalf of the Developer. The Council's Engineering Team consider that the procurement process will take some 6-9 months to complete with a 2-3 month mobilisation period after this before the contractor could commence. Entec, for the Developer, has planned on a nine-month period for site works.

If it is assumed that that tenders for a remediation contract are advertised in late Spring 2009 then prospectively, the site works should commence in early 2010 and be completed by autumn 2010. Given that most commentators predict economic recovery to commence in 2010 this should time well with any market recovery and the need then to present the site as a compelling development opportunity.

Risk assessment:

Option 1 relies on the Council securing external funding to cover the costs of it undertaking site works and any grant secured would be capped. This would place the onus on the Council to manage costs and cost risks within the budget made available. Given the recession, the Council should be very well placed to secure very competitive tenders and to further mitigate out cost risk by drawing on the experience gained by Entec in its procurement for the Developer.

There are other risks including regulatory, technical and environmental risks but proper project management approaches and effective contract management should mitigate these to a satisfactory level. Again, the experience of Entec and also RW Gregory will assist. In addition, the continued involvement of the Developer itself in an advisory capacity would assist with risk management during site clearance and remediation works and enable the Council to tailor remediation standards and infrastructure provision very precisely to the first phase construction by the Developer. The Council could accommodate for this in its project management approach.

Officer preferred Option:

Option 1 is strongly preferred. A specific short-term gain is that undertaking site works bring local benefits in terms of jobs and economic activity. Resolving the problems of land contamination will remove the main constraint on development of the site. This will transform the development opportunity in the perceptions of potential investors and house builders and should significantly advance final project delivery. There are no other practicable options.

It was moved by Councillor Mace and seconded by Councillor Charles:-

“That the recommendations, as set out in the report, be approved.”

Members then voted:-

Resolved unanimously:

That Cabinet:

- (1) Approve that, if the NorthWest Development Agency provide the Council with full grant funding for the purpose, the Council undertake all works necessary to clear and remediate (clean up) the site and put in place essential infrastructure in order to facilitate the subsequent development of the site by the private sector, subject to the Corporate Director (Regeneration) and the statutory officers being satisfied as to any conditions imposed by the NWDA.
- (2) Subject to Recommendation 1 being approved and the outcome of the funding bid, that the General Fund Capital programme and the General Fund Revenue Programme are updated accordingly.

Officers responsible for effecting the decision:

Corporate Director (Regeneration)
Head of Planning Services.

Reasons for making the decision:

A specific short-term gain is that undertaking site works bring local benefits in terms of jobs and economic activity. Resolving the problems of land contamination will remove the main constraint on development of the site. This will transform the development opportunity in the perceptions of potential investors and house builders and should significantly advance final project delivery. There are no other practicable options.

166 **DISPOSAL STRATEGY****(Cabinet Member with Special Responsibility Councillor Archer)**

The Corporate Director (Regeneration) submitted a report asking Members to consider adopting a Disposal Strategy for the Council as part of a Medium Term Corporate Property Strategy.

The options, options analysis, including risk assessment, were set out in the report as follows:

Option 1 – That the Disposal Strategy be adopted. This would build on the Corporate Property Strategy provide an improved framework for managing the Council's asset disposal process.

Option 2 - That the Disposal Strategy is not adopted. The existing guidance of the Corporate Property Strategy would be maintained although this is now out of date and does not meet the Council's current priorities.

Option 1 is the officer preferred option. The adoption of the Disposal Strategy provides an improved framework for managing the Council's asset disposal process.

It was moved by Councillor Archer and seconded by Councillor Kerr:-

“(1) That the Disposal Strategy as amended, (an amended version of the Disposal Strategy, with the amendments highlighted, was distributed by Councillor Archer at the meeting and is appended to these minutes) be approved, subject to the inclusion of a clause giving a commitment that the portfolio holder will be consulted on the disposal method to be adopted for any property disposal.”

Members then voted:-

Resolved:

(9 Members (Councillors Archer, Barry, Blamire, Bryning, Burns, Charles, Gilbert, Kerr and Mace) voted in favour and 1 Member (Councillor Fletcher) abstained)

(1) That the Disposal Strategy as amended, be approved, subject to the inclusion of a clause giving a commitment that the portfolio holder will be consulted on the disposal method to be adopted for any property disposal.

Officers responsible for effecting the decision:

Corporate Director (Regeneration)
Head of Property Services

Reason for making the decision:

Adoption of the Disposal Strategy provides an improved framework for managing the Council's asset disposal process.

167 EXCLUSION OF THE PRESS AND PUBLIC

The Chairman asked for any further declarations of interest from Cabinet Members regarding the exempt reports.

It was moved by Councillor Kerr and seconded by Councillor Archer:-

“That, in accordance with Section 100A(4) of the Local Government Act, 1972, the press and public be excluded from the meeting for the following items of business, on the grounds that they could involve the possible disclosure of exempt information as defined in paragraphs 1,2 and 3 of Schedule 12A of that Act.”

Members then voted as follows:-

Resolved unanimously:-

- (1) That, in accordance with Section 100A(4) of the Local Government Act, 1972, the press and public be excluded from the meeting for the following items of business, on the grounds that they could involve the possible disclosure of exempt information as defined in paragraphs 1,2 and 3 of Schedule 12A of that Act.

168 LANCASTER MARKET**(Cabinet Member with Special Responsibility Councillor Archer)**

The Corporate Director (Regeneration) submitted an exempt report updating Cabinet on the information requested in line with the resolutions made at the December 2008 Cabinet meeting.

The options, options analysis, including risk assessment and officer preferred options were set out in detail within the exempt report.

It was moved by Councillor Archer and seconded by Councillor Kerr:-

“(1) That options 1 and 2, as set out in the exempt report, be approved.”

Members then voted:-

Resolved:

(6 Members (Councillors Archer, Blamire, Bryning, Burns, Gilbert and Kerr) voted in favour and 4 Members (Councillors Barry, Charles, Fletcher and Mace) abstained)

- (1) That options 1 and 2, as set out in the exempt report, be approved.

Officers responsible for effecting the decision:

Corporate Director (Regeneration)
Head of Property Services

Reasons for making the decision:

The decision provides the greatest opportunity to remove some or all of the Council's deficit in the long term.

169 EMPLOYEE ESTABLISHMENT - VACANCY AUTHORISATION**(Cabinet Member with Special Responsibility Councillor Bryning)**

The Chief Executive submitted a report seeking Cabinet's approval to the filling of established vacancies where recommended and to note a decision taken under the Council's urgent business procedure.

The options, options analysis, including risk assessment, were set out in the report as follows:

The information contained within each form provides details related to the risks of not filling the related vacancy. Cabinet has the option of releasing funding on either a time limited or permanent basis or withholding funding. If funding is not released, there will be an impact on Service provision. If funding is time limited, it will be more difficult and possibly more expensive to fill a post.

Officer Preferred Option (and comments):

To fill those posts as recommended by Service Heads unless Cabinet identifies the work as being of a low priority.

It was moved by Councillor Kerr and seconded by Councillor Fletcher:-

"That the recommendations, as set out in the report, be approved."

Members then voted:-

Resolved:

(8 Members (Councillors Archer, Barry, Blamire, Bryning, Burns, Fletcher, Gilbert and Kerr) voted in favour and 2 Members (Councillors Charles and Mace) voted against)

- (1) That Cabinet Members agree that the vacancies recommended for filling by Service Heads are filled as soon as possible.
- (2) That the action taken by the Chief Executive, in consultation with the relevant Cabinet Member and the Chairman of the Overview and Scrutiny Committee in accordance with the Scheme of Delegation, in respect of the following vacancy, be noted:-
 - (a) That the Conditions of Employment of the temporary holder of post PL0096 in Planning Services be amended to extend the fixed term contract on a reduction in hours to 18.5 on a temporary basis to accommodate a request

from the substantive post holder to work half time for a period of 12 months following maternity leave, under the Family Leave Scheme policy.

- (b) That the call in be waived in accordance with Overview and Scrutiny Procedure Rule 17 to allow immediate implementation.
- (3) That the Revenue Budget be updated accordingly, for any deleted or deferred posts.

Officers responsible for effecting the decision:

Chief Executive.

Reasons for making the decision:

The decisions enable the decision made at Cabinet on 11th November 2008, removing the delegated decision making to fill employee vacancies away from Service Heads to Cabinet, to be implemented. It was noted that, unless Cabinet decide otherwise, there will be no further reporting of employee vacancies after the April Cabinet meeting.

Chairman

(The meeting ended at 11.20 a.m.)

**Any queries regarding these Minutes, please contact
Debbie Chambers, Democratic Services, telephone 01524 582057 or email
dchambers@lancaster.gov.uk**

MINUTES PUBLISHED ON THURSDAY, 19TH MARCH 2009.

**EFFECTIVE DATE FOR IMPLEMENTING THE DECISIONS CONTAINED IN THESE MINUTES:
FRIDAY 27TH MARCH 2009.**

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1. INTRODUCTION

An owner of land is usually free to dispose of land as and when – in whatever manner – he or she chooses. But local authorities are subject to constraints when they come to sell land in their ownership. Some of these constraints are enshrined in law; others arise because of a general expectation that local authorities should be seen to act fairly when disposing of land as in other aspects of their work.

The Corporate Property Strategy 2005 recognised the impositions on Local Authorities when disposing of land and buildings, coupled with important service delivery considerations relevant to certain disposals. The approved policy identified a number of “key issues” for processing land sales. It further identified the preferred methods of disposal for the sale of different types of property where varying service objectives and marketing considerations are presented. This Disposal Strategy is an integral part of the wider Medium Term Property Strategy which in turn is linked to the Medium Term Financial Strategy.

2. CONSIDERATION OF CORPORATE POLICY OBJECTIVES

Property disposals contribute towards the achievement of several important Service objectives, namely:

To lead the regeneration of our District

Contribute to a safer society

To deliver cost effective services that provide value for money

These themes further flow through the Council's corporate planning process and strategies. Conducting a systematic programme of searching property review assessments to identify surplus properties for disposal is integral to the Asset Management Process.

Disposals guided by policy objectives, other than the simple generation of a monetary receipt, may be affected in two ways:

Disposal for preferred use may reduce receipt

It is possible on rare occasions when disposal for a preferred use, or restricted use, does not produce the highest receipt available. An example would be the promotion of a scheme to create greater employment opportunities on a site where retail development could also be obtained and give a higher land value.

Disposal to a preferred purchaser ("special purchaser") may conflict with equal opportunity and fairness principles

Disposal to a particular party without the property first being offered on the open market exposes the Council to the challenge that equal opportunity for others to submit an alternative scheme and/or higher price has been denied.

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The considerations and procedures to deal with these issues, within a legal and audit framework, are detailed in the following two sections of this report.

3. BEST CONSIDERATION ISSUES

Section 123 of the Local Government Act 1972 requires Local Authorities not to sell land for a "consideration less than the best that can reasonably be obtained". However, the Local Government Act 2000 provides Councils with a power to carry out any transaction provided they can prove social, economic or environmental well being. In 2003, the General Disposal consent was amended to allow Disposals to occur without Secretary of State Approval to assist to deliver the 2000 Act with the proviso that the disposal of the land where the difference between the unrestricted value of the interests to be disposed of and the consideration accepted ("the undervalue") is £2 million or less.

The Council's Disposal procedures fully reflect this fundamental legal duty. Although it is accepted that "best consideration" need not be best price, it is understandable that price is perhaps the most obvious criteria by which to measure the negotiated terms of disposal. It is acknowledged that as a small District Authority, the occasions when a property disposal is promoted to achieve non-monetary objectives will be rare, the circumstances in which other forms of consideration can apply and how they can be quantified is not always clear cut and a cautionary approach is required.

When a property disposal is promoted to achieve non-monetary objectives, the following procedures will be adopted – recognising that "best consideration" need not be best price.

Identify the relevant corporate policy objectives affecting the potential disposal and evaluate the depreciation in value it causes.

Consider the implications of implementing a policy objective via a proposed property disposal and seek the approval of Cabinet to earmarking Capital Resources in order to specifically achieve the particular policy objectives rather than contributing generally to the capital receipts balances. The provisions of the ODPM Circular 06/2003, Local Government Act 1972: General Disposal Consent (England) 2003, specifically require that Members approve accepting an undervalue.

Where the difference between open market value, and undervalue exceeds £2M, then Secretary of State Approval must be sought for the Disposal.

Circular 06/2003 provides for a general disposal consent only where the following circumstances are met:

(a) the authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident in its area:

(i) the promotion or improvement of economic well-being,

(ii) the promotion or improvement of social well-being,

(iii) the promotion or improvement of environmental well-being, and

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(b) the difference in the unrestricted value of the land to be disposed of, and the consideration for disposal, does not exceed £2,000,000.

In considering whether to rely on this General Disposal Consent and to sell land for less than the best consideration that could reasonably be obtained, the Council should consider the following aspects for each case:

Ensure that the legal basis is in line with the General Disposal Consent. In particular, the Council will need to consider what evidence is available as to whether and how the economic/social/environmental well-being objectives would be met by the proposed disposal of the land.

The need to ensure that the Council complies with normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer as to the likely amount of the under value. In particular, the requirements of the Technical Appendix to the Circular must be met.

The Council should have regard to its community strategy when considering the application of the well-being objectives.

Ensure that the Council's policy/corporate objectives are met.

Consider the Council's financial situation and the financial implications (including VAT) of disposing of the land at less than the best consideration that could reasonably be obtained. Use of the General Disposal Consent should not undermine or significantly increase risks associated with the funding of the Council's investment plans/Capital Programme.

Consider the feasibility of each proposal, i.e. robustness of business case / ongoing viability, supported where appropriate by a fully documented Business Plan

Consider alternative options for land / property in question, including uses and valuations

Consider the interests of the Council tax payers and proportionality; i.e

- The extent of any economic/social/environmental advantages that will arise from the disposal, balanced against the financial loss to the Council.
- Justification of the reasons for disposing of a particular piece of land at less than market value, whilst seeking the best consideration for other land.

Fairness in dealing with third parties who may have an interest in acquiring the land, or in acquiring other land for which full market value is to be sought.

Whether a sale at an under value would constitute state aid, and if so whether the “aid” is within any prescribed limits.

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Ensure that if the disposal is to be at less than best consideration, controls are in place to cover future disposal, so that the Council’s financial interests are protected.

Finally, a major consideration with regard to dealing with Corporate Policy Objectives relates to the Council’s financial position at any one time and its sometimes competing needs for both revenue income and capital receipts. Generally, the Council has recently been in the fortunate position of being able to achieve its capital receipts programme targets without seriously impacting on revenue income from property. In other words, most disposals have been of non-tenanted properties and this has fitted in well with the principal elements of the Corporate Property Strategy.

This position may change in future and the Medium Term Property Strategy seeks the maximisation of rental income and rental growth. Where the council may have a choice in whether a future stream of income is retained or a capital receipt is received, then maintaining that choice for as long as possible is important. Such a situation has arisen with the Canal Corridor Scheme, where terms have been agreed for either a capital receipt or a revenue stream with the Council having a choice when the scheme is completed. In other circumstances, a Property Review **will be undertaken** where the analysis of good and bad property performers is employed to advise the Council on which disposals are best brought forward in order to maintain the balance between conflicting requirements for income and capital receipts. Such a Review was most recently carried out in January 2008.

4. DEALING WITH SPECIAL PURCHASERS

The **normal** approach to disposing of Council properties **will be** to offer them for sale

on the open market and invite offers by way of tender. This method is usually chosen to ensure that a transaction is fair and transparent and that best consideration will be achieved.

However, the possibility of negotiation with a single (special) purchaser is not precluded. Indeed there will be occasions when the benefits to the Council lie

clearly in dealing with special purchasers. These benefits may relate to such matters as a policy of the Council, or the locality of an adjoining property already owned by the special purchaser. Where, for example, the Council is involved in a site assembly venture with other landowners, special purchaser arrangements are appropriate when the assembled site is sold to the scheme developer. The Special Purchaser is also relevant with the Housing Programme and the selection of preferred development partners such as Housing Associations. Circumstances vary considerably as to whether the grant of special purchaser status may be justified. However, typical tests to be applied include the following:

Identification of relevant policy objectives (if appropriate)

- ⌚ Assess degree to which objectives supported and identify any specific outputs/outcomes;
- ⌚ Identify linkages to other corporate policies/strategies;
- ⌚ Identify Partnership Working considerations.

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Assess any financial benefit to the Council

- ⌚ Determine premium price and/or marriage value;
Assess whether there is any general market for property
- ⌚ Determine whether property is of interest or value to one party only by virtue of its particular location, access availability or other characteristic (often relevant to purchase applications from adjoining land owners).

To aid the understanding of the application of the tests, it is perhaps worth considering a few examples.

1. In the West End of Morecambe, approval has been given to identify suitable specific sites for developments by individual Housing Associations. Under this policy Housing Associations have consequently been given special purchaser status at market value to ensure grant aid from the Housing Corporation can be secured. The rationale behind this was that it was envisaged that Housing Associations would be the only builders of social housing for the foreseeable future and the Housing Corporation did not wish to have different Housing Associations all competing for funds. This approach can continue under the existing proposals.

2. From a Regeneration viewpoint particularly in the area of Business Development, four main areas **may need** to be considered:

- a) Business expansion onto adjoining land;
- b) Inward investment from targeted sectors of industry or commerce;
- c) Business relocation, where the existing premises may be released for other objectives.
- d) Redevelopment schemes involving preferred sectors of activity, such as tourism, and the like.

When a Special Purchaser application is received and where time allows, a report **will** be submitted to Cabinet for consideration of justification for direct negotiations prior to their commencement. Once negotiations are underway, the Council's Property Service will determine, and endeavour to seek, the

best price and other non-monetary terms (as appropriate) for the property to be disposed of.

Where time is limited, or the transaction is relatively minor, a two part approval on the same report may be acceptable; i.e. consideration of award of Special Purchaser status in principle and then, if approval given, consideration of provisionally agreed disposal terms.

Best consideration rules apply to “special purchaser” transactions in the same way as other disposals. It is usual practice for the Council’s Property Service to undertake negotiations with confirmed Special Purchasers and report recommended terms. Where this cannot be achieved the parties could agree to appoint either the District Valuer or independent expert Surveyor to act as arbitrator to determine the matter and give the Council protection from future
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challenge. Alternatively, where it is thought that a Special Purchaser is seeking to take unfair advantage of the situation, it may be prudent to market the property generally to stimulate a serious offer from the applicant.

The District Valuer may have a role in special purchaser negotiations if he is not already acting on behalf of the Council or

Would-be purchaser (e.g. NHS Trust, Housing Association) in special purchaser negotiations. To demonstrate that the agreed terms

represent best consideration, and therefore protect the Council from challenge, it is good audit practice for the District Valuer to be asked *where practicable* to supply a “franking”

report for transactions of a significant/strategic nature.

5. MARKETING CONSIDERATIONS

The purpose of this section is to identify the marketing considerations which need to be taken into account before the Council makes its land available for disposal. This first distinction to be made is the difference between property that has significant development potential, and that which has not. Some of the property being dealt with will probably have little or no development potential because it is already fully developed, and planning consent is unlikely to be available for another use. A simple example might be a retail unit where there is no choice but to sell the unit as it stands.

Properties with development potential might range from an existing building where planning consent might be available to change to a more valuable use, to a vacant site which is ripe for development. It is essential to identify development potential before the sale process gets underway. Sometimes the potential is obvious; sometimes it needs seeking out. Within the Lancaster District, the number of sites available in council ownership where there is development potential is extremely limited. Should such a site be available for disposal, it may be easily be marketed, or may require careful handling before marketing can be contemplated. When a site is ready for the market, there are two considerations that need attention. Firstly, what is the level of demand, and when should a particular property be sold to maximise capital receipts.

Secondly, which sites and property should be actively promoted to benefit the perception of the City Council to the outside world, so that inward investment can

be targeted. Both of these considerations are not dissimilar in the sense that they relate in the need to phase the release of land prudently to maximise potential.

The capital receipts programme is scheduled for a 5 year period meaning that some sites and premises will be dealt with in future financial years. **When** properties may be vacant for a long period of time, consideration **will** be given to a number of important issues. Firstly, an assessment of which vacant properties are most vulnerable to vandalism and damage, and potential erosion of the capital value. This will enable the formulation of a priority action list in the disposal programme. Clearly, vacant buildings would be at the top of the list in such circumstances. Secondly, having identified land or property that is likely to be unsold for a lengthy period of time, temporary treatment of those properties should be pursued in order to positively promote **positive** perception of the City and its surrounds. This may involve such action as making sites and premises secure in the interest of public health and safety, and generally keeping property in a neat and tidy condition. Where long term disuse of land in particular is envisaged,

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action should involve the exploration of funding sources to create temporary landscaping schemes.

As such matters relating to temporary treatment of land and buildings depart from the Disposal Strategy issues, this is dealt with by way of a separate section under the Medium Term Property Strategy.

In the current Local Authority environment, any disposal policy would not be complete without reference to financial considerations. Capital controls have essentially linked the Council's disposal programme to its capital programme. Whilst the phasing outlined above may generate one approach, the aspirations of the Authority in one particular year may force an alternative approach. The Medium Term Property Strategy is a flexible Strategy and where possible, will help to attain these **potentially conflicting** objectives.

6. MARKETING OF STRATEGIC SITES

Land disposals are undertaken by the Council's Property Service, although it may be prudent in certain circumstances to enlist the help of specialist agents if it is felt that this may result in a greater capital receipt to the Council due to their more detailed knowledge of the market for that property. The marketing strategy for each piece of land will reflect the outputs required from the disposal and each project will be taken on its merits.

7. MINOR LAND ENQUIRIES

The Council regularly receives enquiries about the purchase of small areas of miscellaneous land. These enquiries can have an impact on service delivery as they can be quite time consuming yet result in minimal financial reward to the Council.

From time to time it is necessary to advise potential purchasers that if the disposal is not in line with Corporate Plan priorities, then it will not be possible to prioritise the work involved in the process. Where enquiries relate to miscellaneous sites of relatively low value (£5,000 or less) that may be of

interest to more than one party but are not currently on the property review programme, in the interest of overall value as opposed to an individual's aspirations, it **will be** appropriate for Property Services to defer consideration of a case, albeit by placing the site at the lower end of the review list. Such enquiries should be deferred **by more than** 1 year, unless exceptional circumstances cause a dramatic increase in value. At the expiration of the 1 year period, the position shall be reviewed.

8. DISPOSAL PROCESS

The appendix accompanying this document provides guidance for the treatment of transactions through the disposal process. It consolidates and updates best practice gained through the development of previous disposal policies and draws on experience in processing transactions over many years.

The preparation work required for a **successful** disposal is outlined, together with an analysis of the available methods of disposal (particularly the tender mechanism). Topics relating to the grant **of** property options and the monitoring of disposals are further discussed.

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Where property disposals take place, each case should be considered and supported by the Asset Management Working Group. The property disposal programme for each year should also be considered by the Asset Management Working Group as part of its requirements to look at all investment decisions and to inform the Medium Term Financial Strategy. Any opportunity disposals that arise outside of this programme should be the subject of an officer recommendation to Cabinet in the first instance following full consideration by the Asset Management Working Group.

Where appropriate, Development Agreements should **normally** be used that ensure that

the Council can retain control over major development schemes and yet ensure that maximum consideration is received as required under s123 of the Local Government Act 1972, as amended.

APPENDIX

PREPARATION FOR DISPOSAL

The key to a successful disposal of any sort is preparation. To assist in meeting the corporate targets set for capital receipts/regeneration projects/service delivery, a strict timetable should be set for the sale process, since the proceeds of sale will be required as quickly as possible. The stages of preparation for disposal **will** be clearly defined and carefully followed, so that misconceptions and delay are kept to a minimum. These stages **will normally** include

the following:

(i) Internal circulation

Under normal circumstances, Property Services will be aware of all Departments' strategic needs for property in the future, via their Service Asset Management Plans. In circumstances where operational requirements are identified by Services and are included in the Capital Programme with

funding available, there may be a need to provide a safety net, by advising that Service of the availability of the property, subject to a strict timescale for, say, one month. However, such circumstances are very rare and it is envisaged that this will **normally** occur before the property is formally “declared surplus” to the Council’s requirements and, once this latter trigger point has been passed, progress must be rapid.

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(ii) Inspection

This is an obvious, but sometimes neglected stage. The purpose will be to spot any matter that is likely to hinder the disposal. This may be some physical defect in a building or, perhaps, evidence of encroachment by a neighbour. These matters will be dealt with before the property comes onto the market. The property to be sold should be as “clean” as possible. The inspection should bring to light any potential for development about which the Council is not already aware. For clarity, the inspection particulars and report to senior managers should be in a form which indicates that all necessary steps have been taken.

(iii) Special Purchaser (refer also to Special Purchaser Section in main body of Policy document)

At an early date, it should be established whether the balance of advantage **will** lie in dealing with a special purchaser . In some cases, the decision is marginal. However, there will be situations where the adjoining owner wishes to acquire the Council’s land, or where he may own an overriding interest over it, such as a right of way. Dealing with this party direct may produce a marriage value which would enhance the capital receipts above that which would be paid in the general market. In such circumstances, it may be prudent to deal with the special purchaser against a strict time limit with contingency plans having been made to go to the market if negotiations cannot be progressed. If the special purchaser does not already have an interest in the property, it can sometimes be advantageous to let him bid in open competitions, particularly if this is by sealed tender.

(iv) Asset Vehicle

Where the Authority chooses to use its assets to procure modern methods of delivering regeneration projects, it may be appropriate to put land within an asset **vehicle** which will have a 10-15 year timescale on return and investment but will secure sustainable regeneration projects.

(v) Legal Matters

The Legal Service should be instructed as early as possible to report fully on the Council’s title and any rights or obligations which might affect it. Typical examples could include restrictive covenants, rights of way and reversion clauses. It is often too late if any problems become apparent once marketing and negotiations are underway, as these tend to prejudice the Council’s position. In addition, where it is intended to include covenants or conditions, it is essential to obtain legal advice at an early stage to ensure that these can be fulfilled in practice, prior to negotiations.

(vi) Physical Constraints

Certain physical constraints (e.g. electricity pylons) will be obvious from inspection; others (e.g. underground cables, adverse ground conditions) may not be. It will be necessary, therefore, to check the Council's own records, and also to check with statutory undertakers. Opinions differ about the validity of carrying out site condition surveys, as these are expensive

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and often may not relate directly to a particular developer's own intentions. The merit of undertaking such a survey will be considered in relation to each site, and the extent of the restrictions which the Authority intends to place on the development activity.

(vii) Define Development Potential

At this stage, a view will have been formed on any development potential which might exist, and any matters affecting potential value will have been brought to light. It will be necessary to decide if some, or all, of any identified constraints should be removed before marketing takes place. For those properties with development potential, it is essential, in order to maximise the realisation from disposal, to give potential purchasers the most detailed possible guidance. In straightforward cases, the equivalent of an "outline planning consent" for the most valuable use available should be secured. Where definite scheme criteria are to be met, or a range of development options is possible, a "development brief" could be agreed which gives scope for the "flair" of individual developers. Where the Council wishes to consider ensuring a desired use of property to achieve its policy objectives, appropriate clauses or covenants **will be introduced**.

It is Council policy to include a clawback provision on disposals.

METHODS OF DISPOSAL

In view of the potential scale and sensitivity of land transactions, a high standard of probity is necessary to avoid any possible allegation of corruption. The chosen method of disposal must therefore be fair and consistent, entirely transparent and primarily in accordance with Standing Orders.

Where the property is marketed, as opposed to negotiations with a special purchaser, there are four principal methods of disposal available:

- (i) Private Treaty
- (ii) Informal Tender (sealed bids)
- (iii) Formal Tender (contractual bids)
- (iv) Auction

Clearly, each method of disposal engenders varying degrees of ensuring fairness and transparency with the sale by formal tender probably being the most likely to avoid any criticism of the authority's dealings. However, it is not always appropriate or convenient to adopt the formal tender route, nor does it always guarantee best consideration when potential purchasers are put off by the sometimes complex and lengthy procedures. The Property Service **will** recommend to the Council which other method of disposal is appropriate provided that best consideration can be achieved.

Council's Constitution

It is important that the appropriate sections of the Council's Constitution are strictly adhered to, in particular the Contracts Procedure Rules and Financial Regulations.

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It will also be noted that the decision on the method of any disposal will be taken in accordance with the principles and guidelines set out in this policy document. The characteristics and constraints of each method of disposal are as follows:

(i) Private Treaty

This is probably the most widely used method of disposal in the property market, as it is the simplest to adopt, and the asking price can be at a predetermined

figure. Further advantages are that it allows a flexible approach, time pressures are seldom imposed and it is widely understood and accepted by the general public. However, it is also acknowledged that the main disadvantage is that proceedings cannot always overcome allegations of unfairness, and it is therefore a method to be used sparingly and with caution in the local government field. Difficulties have arisen where individuals have anticipated that, where they are first to apply, they will receive an option to acquire, and this has caused some concern, both to Council Members and, more importantly, to the market in general. To overcome such potential problems, unless a special purchaser situation applies, all properties to be sold under this method **will** be advertised for sale, in any event, so that all interested parties have an opportunity to enter into the discussions.

In applying this method, it should be remembered that this approach is satisfactory in the case of properties whose sale value is reasonably easy to predict, and therefore settlement of an asking price is straightforward, e.g. dwellinghouses. It is difficult to engender competition on price because an indication of what will be acceptable is generally given at the outset. It should be considered bad practice to try and play offerers against each other to build up their offers of the asking price, and could damage the Local Authority's reputation in the market (although **it may achieve** an acceptable price).

Development sales **will** not **normally** be conducted by this method, since it leaves little scope for the flair and interpretation which may lead to the unexpectedly favourable offer. It is worth noting that the procedure can be time-consuming since time limits are difficult to fix, and there may be many individual negotiations before a satisfactory transaction takes place. It is the method with the least openness and, therefore, the most susceptible to abuse.

To ensure the greatest possible transparency in this type of transaction, proposals have been put forward with regards to recommended procedures. Primarily, there is a need to ensure segregation of duties i.e. one person should not be able to undertake all the fundamental stages in the sale process. This might involve one person preparing a valuation and another

carrying out the negotiations although it is considered technically unsatisfactory to do this. More practical measures are already in place, and will continue to be so, where an independent person (usually a manager) reviews the valuation of another. In any event, the “asking and settling” figures should be approved by the Head of Property Services at the outset, and should be reviewed in line with progress.

In view of recent market conditions, it is considered prudent that the Council **will normally** set a time limit against potentially tardy prospective purchasers, and that they are made aware of the Council’s firm view on this prime point at Page 40

the outset of negotiations. It is also worth noting that the Council must satisfy itself as to the financial ability of the prospective purchaser to complete, before negotiations become too advanced.

(ii) Informal Tender (sealed bids)

Procedures which need to be adopted are similar to those as set out below for the Formal Tender. However, tenderers may put forward conditional offers which will only become binding once that conditions have been resolved. It will, therefore, be open to the Council to pursue discussions with more than one tenderer in order to achieve the most advantageous transaction. Since considerable time and effort may be spent on such discussions, it is essential that *bona fide* shortlisted tenderers should be established at the outset, and guarantees that finance for a particular scheme is available.

As it is possible to hold discussions, there is more opportunity to arrive at a deal which suits both parties. Some conditions may not be capable of fulfilment for a considerable time, but there is an opportunity to build in provisions for the Council to take advantage or, say, a better than expected planning consent or better receipts above an agreed threshold.

For more complex development schemes, it is commonplace for interested parties to be interviewed and outline development schemes presented, before the tender procedure starts. This is in line with the three key criteria that have been long established in progressing major schemes, i.e. quality of the scheme, deliverability and the financial bid. It may be appropriate for a selected list of purchasers/developers to be asked to take part in the tender procedure itself. This approach saves wasted effort from potential purchasers, and cuts down the possibility of abortive negotiations being pursued on receipt of tenders. An important **aspect of** the Informal Tender procedures, adopted by the Council, is that the Council should not seek to increase the basic tenders put forward, nor accept increased offers from unsuccessful tenderers. However, it will be permissible for the Council to seek increased rewards from the fulfilment of conditions which would create more value than the original offer envisaged. In comparison with the Formal Tender, the Informal Tender lacks the advantage of speed, since post-tender negotiations can be protracted. It also lacks the certainty of the Formal Tender procedure, since negotiations may not be successful. There is a much greater burden on the

professionals' skills of the Council's advisers, as the requirement to negotiate raises some of the disadvantages of a sale by private treaty. For this method to be a success, the rules for Informal Tenders must be laid down very clearly and followed to the letter by the Council and external advisers. The main advantage of the Informal Tender process is that the most advantageous terms for the Council can be formulated even in very complex cases. Notwithstanding the advantages and disadvantages, the Informal Tender route is presently the most commonly used method of disposal by this authority.

Generally, the rules to ensure transparency, fairness and consistency outlined above in the sale by private treaty method should be applied to informal tendering where practical.

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(iii) Formal Tender (contractual bids)

The Formal Tender (otherwise known as Contractual Tender) procedure requires a great deal of preparation, as the tender document forms the contract for sale. A full appraisal of the transaction **will** be carried out in order to have a baseline against which to assess the tenders when they are returned, and may, indeed, provide a guide price during the course of marketing. For sound legal reasons, the Council will indicate in the tender documents that it is not bound to accept the highest or any tender. In addition, tenderers must be required to provide evidence, on return of the tender, that finance is available to proceed. In order to ensure fairness and the best chance of an acceptable offer, the tender **opportunity** will be widely publicised,

and all interested parties given the chance to participate.

The advantages of the Formal Tender procedure are that it can be concluded quickly where it is unconditional, it avoids tentative time-wasting enquiries, the Council does not need to accept any tender if the offer is not satisfactory, the tender procedure should guarantee complete fairness and, as bids are not public, tenderers should put forward their best offer, rather than, as at auction, a figure marginally more than the second bid. However, this method does have its disadvantages: some potential purchasers may be put off by the procedure whereby they commit themselves contractually upon making the financial offer. All matters must be completely clear before the procedure starts. There is little room for discussion about the scheme itself although to some extent this could take place with prospective purchasers during the marketing preparation provided care is taken not to compromise the transparency of the transaction.

This method of disposal is, therefore, inappropriate for straightforward transactions where conditions of substance remain to be overcome before the bid can be finalised. In development situations, it could, for example, be effective in the sale of cleared sites for residential development where planning consent is available and the density of development is not in question. It may also be appropriate where several development schemes might be possible where negotiations with various parties will not be

required to achieve the best scheme. On the other hand, it is now becoming more common in residential land sales for Formal Tenders to take place conditional upon detailed planning consent where outline consent has been previously obtained.

The rules for formal tenders for sale cover, inter alia:-

- advertising that tenderers are to be sought;
- procedure for pre-tender shortlisting of applicants, where appropriate;
- evidence of financial standing required from tenderers, either on receipt of tenders or at the pre-tender selection stage;
- the principal contents of the tender package, including a clear indication of the date before which the tender must be returned;
- inclusion of a pre-addressed envelope clearly indicating details of a tender and the date on which it is to be opened;

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- how receipt of tenders should be recorded and arrangements for safe keeping prior to the opening date;
- the constitution of the Council's team which should be present at opening of tenders and if an independent witness is necessary;
- arrangements for listing and witnessing tenders on opening;
- the form of the officer's report to Committee recommending which tender(s) should be accepted or pursued further in discussion;
- rules for informing successful tenderers;
- instructions not to solicit or accept increased basic offers after receipt of tenders;
- Members should not engage in negotiations under any circumstances;
- the external advisers should not be bound by similar rules.

Tenders – Dealing with Late Bids

Whilst best efforts are made to ensure that policies and procedures are watertight and completely fair and transparent, there are occasional circumstances that, if not handled with great care, can lead to challenges against the Council of maladministration. In the context of sale of land and property by tender, the issue of dealing with late bids is one such area of concern.

The potential dilemma is that whilst it may be appropriate to maintain a policy of disregarding any late bids in a tender exercise, the Council may find itself missing the opportunity to secure best consideration where a late bid substantially exceeds bids received on time. Indeed, case law referred to in the Legal Framework confirmed that Councils could be found to fall short of achieving best consideration if rival bids are not fully investigated. Presumably in the light of this case law, the Local Government Act 1972 General Disposal Consents were widened in 1998 to effectively give authorities the discretion to disregard late bids in a formal tender exercise. Unfortunately no guidance was given as to whether using this discretion would defeat a challenge of the actions of the Council if taken to Court. As far as this Council is concerned, where it is decided that the tender route for the sale of land and property is the right approach, there are very good

reasons for laying down strict rules of compliance with the procedures, particularly time-scales. This is to ensure that all interested parties are treated equally and that the Council operates in an efficient and cost effective manner by reducing uncertainty and delay. Above all, the principle that parties should not benefit from the tactic of an intentional late bid is paramount. Nevertheless, there may be, at times, genuine late bids and where the proposed disposal involves a substantial capital receipt the Council must be able to make decisions that avoid foregoing significant increases in sums achievable.

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The policy of the Council in respect of late bids will be as follows:

Where a land and property disposal is to be effected by way of tender, whether informal or formal, any bids received after the specified closing date will not be accepted.

This will at all times be made quite clear in the tender documentation.

In the case of a tender exercise where the highest bid opened in accordance with the rules and procedures is less than £50,000, the Head of Property Services will proceed to report for approval all bids received on time and exchange contracts with the approved bidder accordingly.

In the case of a tender exercise where the highest bid opened in accordance with the rules and procedures is £50,000 or more, the Head of Property Services will proceed to report for approval all bids received on time. If, however, at any time before approval or exchange of contracts a higher bid is received, the Head of Property Services will bring such a bid, or bids, to the attention of Council.

Where late bids are brought to attention of the Council, the recommendation of officers will invariably be that a re-tender exercise should be undertaken, unless the late bid is less than £5,000 above the highest valid bid, in which case best consideration as a whole would be compromised by a re-tender exercise.

It is recognised that dealing with late bids would be less of an issue where the period between receipt of tenders and exchange of contracts is minimised. The Council's Property Services will, therefore, use all practical means to reduce the time taken to complete transactions after receipt of bids, notwithstanding delays that can be encountered when dealing with a cautious purchaser.

It is interesting to note that in the case *R v Pembrokeshire C.C. ex parte Coker* (1999), the rejection of an offer by the Council owing to it being late and lacking certainty of monetary worth (offer dependent on success of further negotiations), it was held on this point that the Council has acted reasonably. The conclusion was that it was common sense for the Council to accept the bird in hand offered by one party in contrast to an alternative offer that was "a bird in a faraway bush".

(iv) Public Auction

To achieve success with this method of disposal, external auctioneers will inevitably be used. It will be advisable for the auctioneer to be briefed at an early stage, and fully involved in preparing conditions of sale and fixing the reserved price. The reserve should be approved by the Council and conveyed to the auctioneer immediately before the auction. Sale by auction requires preparation of all contractual details beforehand in order that a binding contract may be affected immediately a bid is accepted.

The advantages of an auction are complete openness and swift completion of the transaction if an acceptable bid is generated. However, there are disadvantages with this method. Firstly, the principle of sale by auction falls in and out of favour with the market, and there are times when auction should not be considered as the interest from the market will be low.

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Secondly, success of an auction will depend on the atmosphere generated in the sale room which, in its own right, may depend on the quality of other lots on offer, over which the Council may have no control, and a great deal will rest with the skill of the auctioneer. Thirdly, as a binding contract must be entered into immediately a bid is accepted, funds to meet the sale price must be available within 28 days, and this may exclude most purchasers who need to raise finance. Fourthly, there is little time for potential purchasers to consider the transaction, and no opportunity to discuss alternative ways to structure the deal. Finally, the winning bid need only be marginally more than the second highest bid, and need not represent the maximum the purchaser would have been willing to pay.

In view of the current financial constraints illustrated above, auctions are only considered appropriate for property where they do not hold any major strategic influence.

9. OPTIONS

A further matter, which needs to be considered under this heading, is the question of options. In relation to land and property, these are rights, usually created by contract, enabling a party to acquire property at a future date if certain pre-conditions are satisfied. Normally, in this Council's experience, options are used to assist industrialists with long term business planning and expansion or to give developers an opportunity and comfort to work up expensive development proposals on complex schemes. The latter can sometimes be linked to a "Lock Out" agreement whereby the Council would agree to withdraw a piece of property from the disposal market for a fixed period of time, usually of short term duration.

In the past, the City Council has rarely used this process, but that does not mean to say that it does not have a place in the disposal process, especially where market conditions were to seriously deteriorate, and they were need to bring confidence to future investment. In any event, there is invariably a potential value to an option, and in the right commercial circumstances, the Council should negotiate a suitable consideration before granting an option on land or property.

MONITORING DISPOSALS

Disposals of land and property obviously play a key role in both the Council's

realisation of policy objectives, and in maintaining an acceptable capital programme through the generation of capital receipts. The Property Review process has helped to bring forward substantial capital receipts in recent years, but, as time goes by, it is proving more difficult to identify opportunities, as assets reduce. Nevertheless, important links have been established with the Head of Financial Services via the Asset Management Working Group, to successfully monitor the situation and, with the limitations of capital controls, the free flow of up-to-date information is always important.

To assist in the monitoring role, the Head of Property Services reports on a regular basis on progress with disposals through the Asset Management Working Group and through the PRT process.

As resources become tighter, it has become clear that this monitoring process needs to stretch through to completion, as the availability of capital receipts greatly affects the flexibility of the Council's actions. In addition, where disposals
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at restricted values are agreed, it **is** important for the Council to monitor the position on the ground to ensure that its intended objectives are achieved, and, where developments change, to seek clawback. Similarly, post-disposal monitoring also extends to checks to ensure that purchasers comply with any conditions of sale or covenants (usually within stipulated time periods) specifically imposed in order to achieve Council Policy objectives. As part of wider property management best practice, post-monitoring procedures are followed to ensure that the Council does not miss any opportunities created in the past or near future.

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