



Fermanagh & Omagh  
District Council  
Comhairle Ceantair  
Fhear Manach agus na hÓmaí

# **Asset Acquisition and Disposal Policy**

Version Control			
Version	Officer	Date	Changes
V2	Director of EP	28/4/2022	Policy 3-yearly Review
V3	Head of PEP	29/01/2025	Policy Reviewed and Updated <ul style="list-style-type: none"> <li>• Leases, Licences and Short Tenancies added.</li> <li>• Appendix 2 updated.</li> <li>• Appendix 3 updated.</li> <li>• Appendix 4 &amp; 5 &amp; 6 &amp; 7 added.</li> <li>• Committee names updated.</li> <li>• Approved 5 February 2025 Paper B – ES Committee – Ratified Council Meeting 4 March 2025.</li> </ul>

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## 1. Introduction

- 1.1 Fermanagh and Omagh District Council property portfolio comprises a wide range of assets including land, buildings and other facilities, spread across the district of Fermanagh and Omagh.
- 1.2 The Council will seek to use these assets, or acquire new assets as appropriate, in order to achieve the strategic objectives set out in the Fermanagh and Omagh Community Plan and the Council's Corporate Plan, supported by the relevant Council Strategies underpinning these objectives.

## 2. Aim

- 2.1 The aim of the Council's Asset Acquisition and Disposal Policy is to set out and inform Members, Officers and other interested parties as to the principles and procedures by which the Council will acquire or dispose of land, buildings and facilities. The Asset Acquisition and Disposal Policy supports the implementation of the Council's Corporate Plan 2024-2028, the Estates Strategy 2020-2030 and other relevant strategies, policies and procedures, including the Options Appraisal Policy.

## 3. Objectives

- 3.1 To secure a transparent and consistent approach to the acquisition and disposal of Council owned land, buildings and facilities.
- 3.2 To ensure maximum benefit from the effective acquisition or disposal of Council's assets
- 3.3 To uphold the principles of accountability, openness and objectivity.
- 3.4 To ensure compliance with legal authority in respect of acquisition and holding of assets (see Appendix 1 Legal Authority).

## 4. Definitions

- 4.1 **"Acquisition"** means land or property procured or an acquired controlling interest by the Council either by: (i) agreement; (ii) gift; (iii) exercising its compulsory acquisition powers for the economic, social and/or environmental benefit, improvement or development of the district for the purposes of undertaking its statutory functions.
- 4.2 **"Asset"** means land, property or a building.
- 4.3 **"Community Asset Transfer"** means an agreed change in management and/or ownership of land or buildings, from councils to local communities, e.g. voluntary and community sector groups, faith-based organisations, community enterprises and social enterprises.
- 4.4 **"Disposal"** means to either sell the Council's freehold interest or to grant a long-term leasehold interest (normally in excess of 98 years) of land or property. Under accounting treatment of long-term leases granted, the asset will be removed from the Council's balance sheet.

- 4.5 **“Surplus”** means:
- (i) the asset makes no contribution to delivery of the Council’s statutory functions, or Council planned objectives, either directly or indirectly, or does not generate income and has no reasonably foreseeable role in known future service delivery, investment or regeneration purposes; or
  - (ii) an alternative site has been identified which would achieve more cost-effective service delivery and the existing asset has no potential for future alternative service delivery or regeneration purposes; or
  - (iii) the disposal of the asset is important for the delivery of the Council’s Corporate Plan objectives. The benefits of disposal may result in additional capital receipts to support delivery of other Council priorities and projects, along with the potential reduction of recurrent maintenance expenditure (e.g. maintenance, utility costs etc); or
  - (iv) better public value can be obtained by transfer of an asset to another public body; or
  - (v) if the asset comprises a building and site, and both elements are no longer required.
- 4.6 **“Under performing”** means:
- (i) part of the asset is vacant and likely to remain vacant for some time; or
  - (ii) the beneficial use or financial return (in terms of both revenue and capital growth) generated from the asset is below that which could be achieved from an alternative use or from a disposal which would provide an alternative investment opportunity; or
  - (iii) the asset presents a significant liability to the Council.

## **5. Acquisition**

- 5.1 The Acquisition process is set out in Appendix 2 Flow Chart.
- 5.2 A need may be identified whereby the Council requires land to fulfil one or more of its statutory functions and/or statutory priorities aligned to the Corporate Plan, Service Delivery Plans and other relevant Council strategies. The Council will take a strategic approach to land and property acquisitions.
- 5.3 Prior to commencing any acquisition process, consideration should be given to all other Council owned property and its potential suitability to deliver the objective. The acquisition of additional land and property should only be considered if there is no suitable existing Council owned property available.
- 5.4 Potential sources of land availability may be:
- Advertisement on open market
  - Offered by private individual/organisation
  - Approach made to landowner
  - Public sector trawl by Land and Property Services Central Advisory Unit
- 5.5 The options for an acquisition can take the form of:
- freehold,
  - long leasehold, or
  - lease of a land or property interest.

- 5.6 The need to acquire land will normally be addressed through the preparation of a business case setting out the purpose for which the asset to be acquired, the key objectives, evidence justifying the identified need and the timescale in which the asset is required. Where appropriate, this should also include whole life costs together with an assessment of options and other factors.
- 5.7 Other due diligence including valuation, legal and other statutory requirements should be considered at an early stage in the acquisition process.
- 5.8 It will also be necessary to ensure that capital funding is available and ongoing revenue costs are contained within an approved budget which has been confirmed as appropriate by the Director of Corporate Services and Governance and/or an appropriate budget is approved by the Council.
- 5.9 On completion of an initial project mandate, the matter will be referred to the Corporate Leadership Team for consideration of all relevant information, together with application of the Options Appraisal Policy, following which a recommendation will be made to the relevant Committee for consideration.
- 5.10 If the Committee is satisfied that the property should be acquired, a recommendation, in principle, to acquire subject to satisfactory valuation will be recorded. A valuer will be appointed and asked to provide a valuation and represent the Council during the negotiations.
- 5.11 Following satisfactory completion of negotiations and clarification of legal title, a final report will be presented to the relevant Committee.
- 5.12 Once appropriate approvals are in place, legal formalities and payment should be discharged in accordance with normal Council arrangements.

## **6. Disposal**

- 6.1 As the Council's service requirements evolve, this will present opportunities for the Council to rationalise its land and property asset base as improvements in service design and delivery are realised. A formal approach to the holding of assets is regularly challenged as part of its overall approach to asset management and will assist the Council in making best use of its resources by rationalising or disposing of surplus or under-performing assets in accordance with the principles of the Local Government Act (NI) 1972 (see Appendix 4).

### **6.2 Identification of surplus land or property**

Assets may be identified as surplus by the following:

- a) Regular review of the Council's Property Asset Portfolio by Parks, Estates and Property;
- b) Service areas declaring specific sites of no further use;
- c) Local Development Plan Redesignation;
- d) Direct enquiries to the Council (including community or third party requests).

The Council maintains a register of all assets that have been deemed to be surplus to the Council's requirements.

6.3 Disposal of built assets on retained land

Where the Council no longer requires a property but does not want it placed on the open market for sale, although would like it demolished and the cleared site retained by the Council, it will be classified as and held as an investment property on the basis of its potential to generate rental income and or a capital receipt.

6.4 Disposal of non-surplus or under-performing assets for community use

There are occasions where the Council may wish to dispose of property that is not formally classified as surplus or considered to be underperforming. Examples include possible disposal of an interest to an existing tenant or established group that is providing a function to the Council that would otherwise fall to the Council to provide. In this case there would have to be clear benefits to Council in terms of cost and resource savings to transfer an interest to a third party whether by way of leasehold or freehold with relevant safeguarding measures to ensure Council's intentions and interests are protected and sustained. Professional valuation and legal advice must be sought when considering appropriate measures.

6.5 Requests received from third parties to purchase Council assets

In view of the wide range and variety of requests received from third parties to purchase a piece of land or property from the Council, each submission should be dealt with on a case by case basis.

6.6 Appendix 3 sets out the considerations in relation to requests to purchase Council assets.

6.7 Methods of disposal

6.7.1 There are various methods of disposal that can be applied to assets depending on individual circumstances in order to obtain the best rent, price or terms for the Council. Below is a summary of options available which will be subject to guidance from Land and Property Services for consideration by the Council:

- Land and Property Services, Central Advisory Unit's Clearing House process:
- Sale by Private Treaty
- Sale by Public Auction
- Sale by Tender
- Sale to an adjoining owner
- Sale to an adjoining owner based on Equitable Value
- Disposal to a sitting tenant
- Developer Briefs/Joint Ventures
- Community-led projects

6.7.2 It is recognised that the Land and Property Service Guidance on 'Disposal of Surplus Public Sector Property in Northern Ireland' does not specifically apply to Local Councils and that some of the steps detailed in the Guidance are not required, however, it is recognised that it would be beneficial for the Council to adhere to its guiding principles, in particular for oversight when disposing of an asset to another public body.

### 6.7.3 Other considerations

In certain asset disposals the Council may wish to include additional provisions based on appropriate professional advice such as:

- (i) Restrictive covenants; dispose of land or property subject to a legal restriction such as permitted use.
- (ii) Retention of key land; retain a key section ('ransom strip') of an asset to retain physical restriction on the development of the asset.
- (iii) Option to purchase; option agreement to purchase in complex cases to afford the purchaser(s) time to enhance value, for example, with planning approval.
- (iv) Clawback/Overage provisions; clauses for refunds or additional payments if conditions of sale are not met.
- (v) Buy back options; retain ability to re-acquire the asset in the future if, for example, there was a change of use.

## 6.8 Disposal process

6.8.1 The Disposal process is set out in Appendix 4.

6.8.2 Although it is recognised that Land and Property Services Guidelines 'Disposal of Surplus Public Sector Property in Northern Ireland' (October 2018 or as updated) does not specially apply to local Councils, it is considered best practice to adhere to the guiding principles.

6.8.3 Whilst the Council uses the services of Land and Property Services (LPS) for valuation matters, the Council reserves the right to appoint an independent qualified valuer as its agent in the interests of expediency. The role of LPS (or independent valuer) will be to act on behalf of the Council in the sale of an asset.

6.8.4 Once a potential site has been identified for disposal, initial due diligence work should be carried out including:

- a) Ascertain if there are any rights, obligations or potential hindrances which could obstruct the sale.
- b) Any potential impact on the value or use of adjoining Council property should be considered.
- c) Planning input should be sought as to the impact on the value of the site.

6.8.5 The findings of the initial due diligence exercise will be presented to the Corporate Leadership Team for confirmation of surplus designation. Following this:

- i. Council approval for declaration of surplus status is sought through the relevant Committee.
- ii. Submission of form 'Disposal of Surplus Public Sector Property in NI' (D1) to LPS Central Advisory Unit to initiate the disposal process.
- iii. Central Advisory Unit will circulate details to other public sector organisations and if no interest is expressed, appropriate methods of disposal will be recommended to the Council.
- iv. The local LPS office will manage the disposal process on behalf of the Council, including the appointment of a selling agent, if required.

- v. Following satisfactory completion of negotiations, a final report will be presented to the relevant Committee for Council approval.
- vi. Once appropriate approvals are in place, legal formalities should be discharged in accordance with normal Council arrangements. In the case of third party requests, the purchaser will be required to pay the Council's reasonable legal and agent fees.
- vii. Following confirmation of surplus asset status by the Council and completion of necessary legal title checks, the disposal process should commence within a one-month period.

## **7. Leases, Licences and Short Tenancies**

### **7.1 Purpose**

There will be occasions when the Council will enter into agreements with third parties to either provide or take an asset on a short-term basis (non-exclusive use) for the provision of services. In these instances, a licence agreement or short tenancy is usually the most appropriate method as it confers limited rights and is more easily terminated. Licences, by and large, do not provide protection under the Business Tenancies Order.

### **7.2 Options**

The potential options for leases, licences and short tenancies are:

- 7.2.1 New Lease taken: Should there be no suitable Council owned property, consideration can be given (subject to a business case approval) to leasing a suitable property.
- 7.2.2 New Lease granted: There will be occasions when the Council has surplus property that can be leased to generate revenue income (subject to a business case approval) as an investment asset.
- 7.2.3 Existing lease: Any pre-existing leases that Council has granted will, in the majority of cases, have tenants which are protected under the Business Tenancies Order. They have a right to request a new lease when their existing agreement expires on similar terms at Market Rent. There are certain exclusions that Council can impose with a new tenancy, but they are limited, and professional legal advice should also be sought. The Council shall also avail of the provisions of the Business Tenancies Order, as appropriate and required, in terms of leases taken.
- 7.2.4 If entering a short-term licence, the conditions of same must be carefully monitored as a rolling term can, by virtue, constitute a lease which would fall under the Business Tenancies Order.
- 7.2.5 The key issue for the Council to carefully consider is the term and form of legal agreement, if a lease is entered into, as the Council's options to regain control and possession of the premises are very limited in such circumstances. Consideration should also be given to the long-term potential of the property before entering into legal agreements.



- 7.2.6 In terms of financial considerations, in addition to rental payments, the business case should also capture potential service charges, rates, and recurring maintenance expenditure as well as a provisional sum for dilapidations at lease end. There will also be additional costs to potentially factor in such as fit out, IT, furniture, parking etc,

### **7.3 Process**

- 7.3.1 In all cases, any proposed lease or licences taken, granted, renewed, or terminated will be managed by the Property team to ensure a consistent approach that aligns with relevant Corporate Asset Management plans.
- 7.3.2 The Property team, in conjunction with Legal Services, will undertake the necessary due diligence.
- 7.3.3 Any required marketing, negotiations and valuations will be carried out or verified by the Council's appointed valuer who will be a fully qualified member of Royal Institution of Chartered Surveyors with sufficient current local knowledge of the market together with the necessary skills and understanding to undertake/verify the valuation competently.
- 7.4.4 All proposed new leases and licences, whether granted or taken, will be reported to the appropriate Committee for approval and ratification by full Council. If agreement is granted to proceed, the Council's appointed valuer will be instructed to provide relevant professional advice.
- 7.4.5 Once the Council's appointed valuer concludes the negotiation process, they will provide the Council with a formal recommendation and the Property team will liaise with Legal Services to conclude the disposal as per the agreed heads of terms.
- 7.4.6 Appendix 5 sets out the procedure for granting a lease, licence or short tenancy.
- 7.4.7 Appendix 6 sets out the procedure for taking a lease, licence or short tenancy.

## **8. Resourcing**

- 8.1 The Policy will be implemented with resources approved through the Council's annual Estimates process. This is only undertaken when a Business Case is approved.
- 8.2 Training will be provided to raise awareness of the Policy among staff and to ensure its effective implementation.

## **9. Responsibilities**

- 9.1 The Director of Environment and Place will be responsible for implementation and review of the policy.

## **10. Monitoring**

- 10.1 The Director of Environment and Place will on an annual basis review and challenge the continued need for assets to support the delivery of the Council's corporate and statutory priorities in line with the Corporate Plan.

## **11. Linkages**

- 11.1 This policy is to be read in conjunction with the Estates Strategy (2020-30) and other supporting policies and procedures including, but not limited to, the Climate Change and Sustainable Development Strategy 2020-30.

## **12. Review**

- 12.1 The policy on Asset Acquisition and Disposal will, under normal circumstances, be formally reviewed every three years.
- 12.2 The policy will also be subject to routine scrutiny and, from time to time, updates and re-issues will be circulated.
- 12.3 The policy will be reviewed sooner in the event of any one or more of the following:
- A failure or weakness in the policy is highlighted
  - Changes in legislative requirements
  - Changes in Government/Council or other directives and requirements.

## LEGAL AUTHORITY

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:-

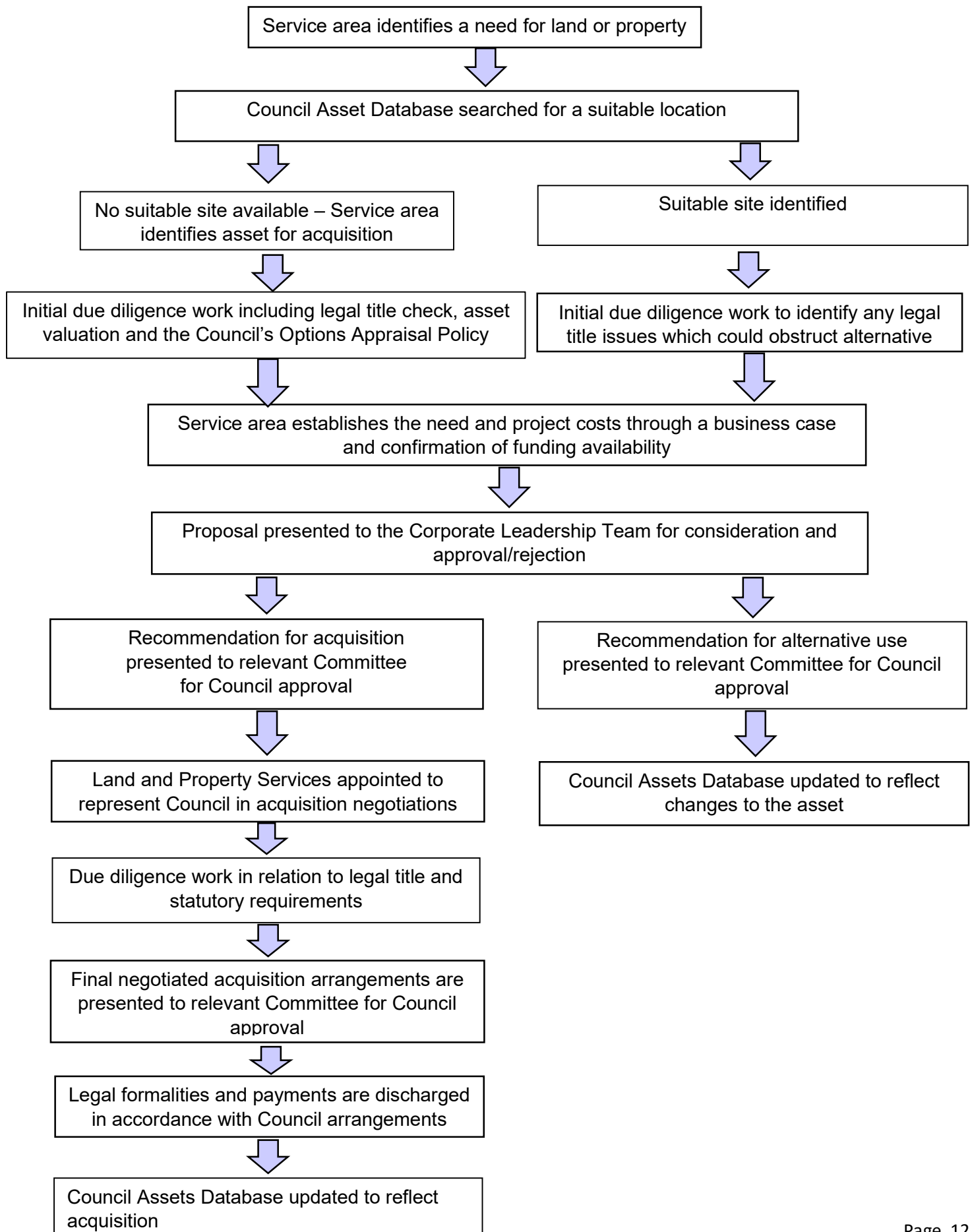
### "PART VII

### MISCELLANEOUS FUNCTIONS

#### *Land*

- 95 (1) A Council may provide and maintain offices, halls or other buildings to be used for 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)(a)(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 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 (Northern Ireland) 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."

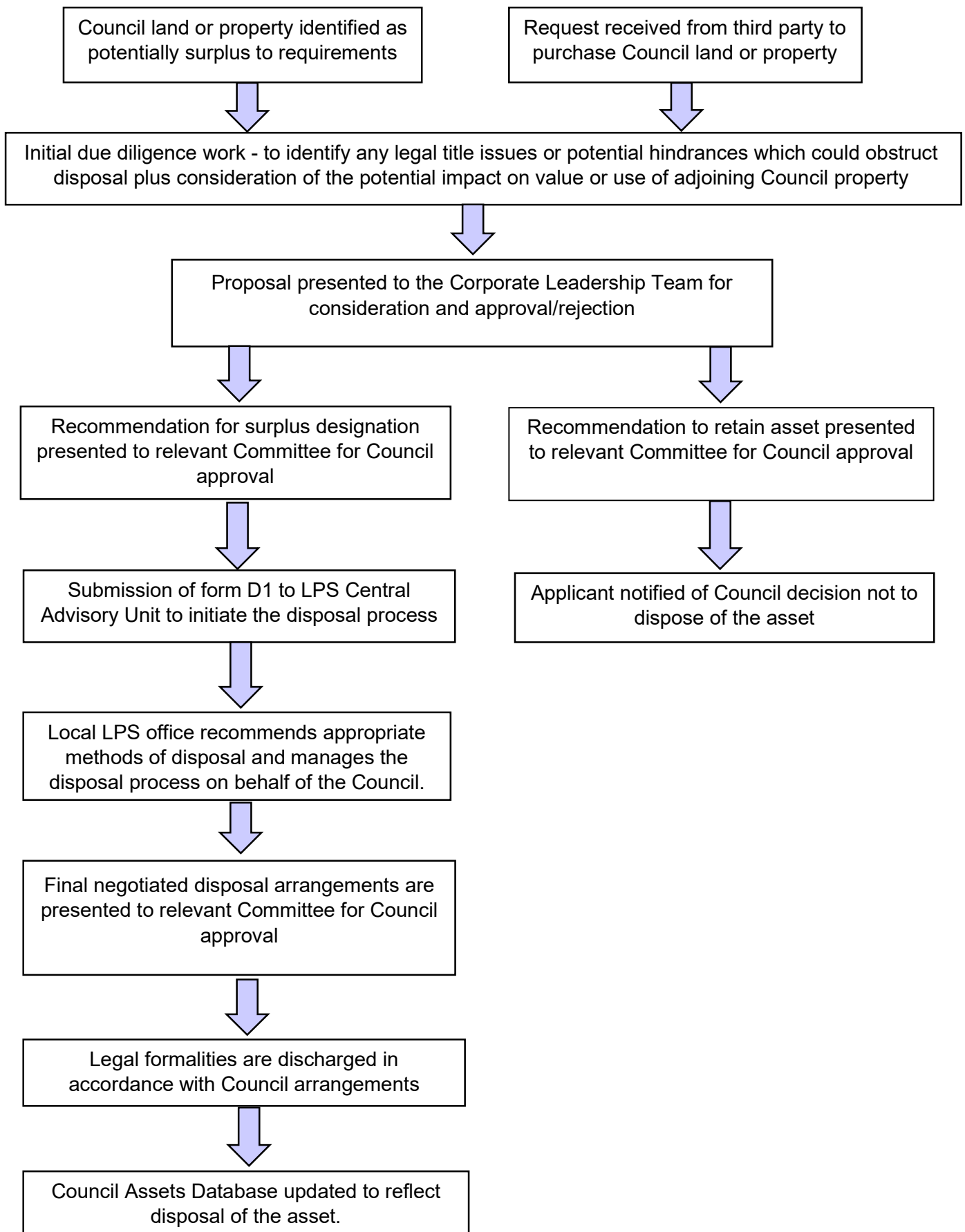
## ACQUISITION PROCESS FLOW CHART



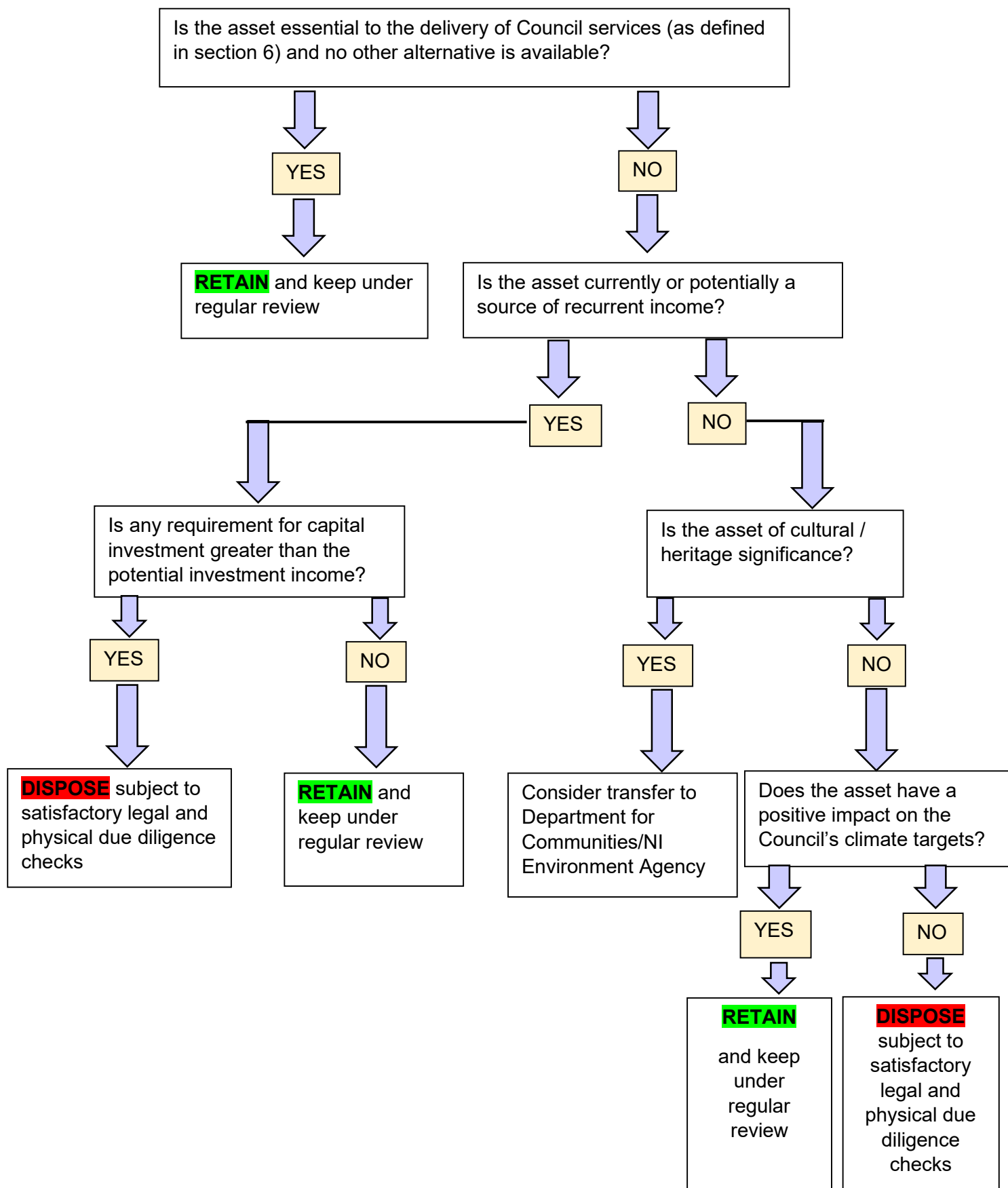
## **THIRD PARTY REQUESTS TO PURCHASE COUNCIL ASSETS - CONSIDERATIONS**

- a) Section 96 of the Local Government (NI) Act 1972 - Requirement to secure best price or best rent may require exposure to the open market.
- b) Any pre-emption rights.
- c) Can the land be designated as surplus?
- d) How is the land accessed? Can the applicant gain access to the land without going over Council property?
- e) What is the land required for? Does this complement or conflict with the values as outlined in the Council's Fermanagh and Omagh Community Plan?
- f) Is it key land or a ransom strip?
- g) Would disposing of the land have any impact on Council operations or services, including maintenance?
- h) Would the disposal have a detrimental impact on the remaining land, where only a portion has been requested?
- i) Are there any grant conditions/clawback provisions attached to the land?
- j) Is there any relevant historical background to the land?
- k) Should any restrictive covenants or special conditions be attached to the disposal?
- l) Would the disposal have any impact on any of the Section 75 groupings? equality, environmental or rural impacts?
- m) Is the land to be disposed of a revenue generating asset, e.g. car park?
- n) Are all maintenance liabilities/future liabilities being transferred?

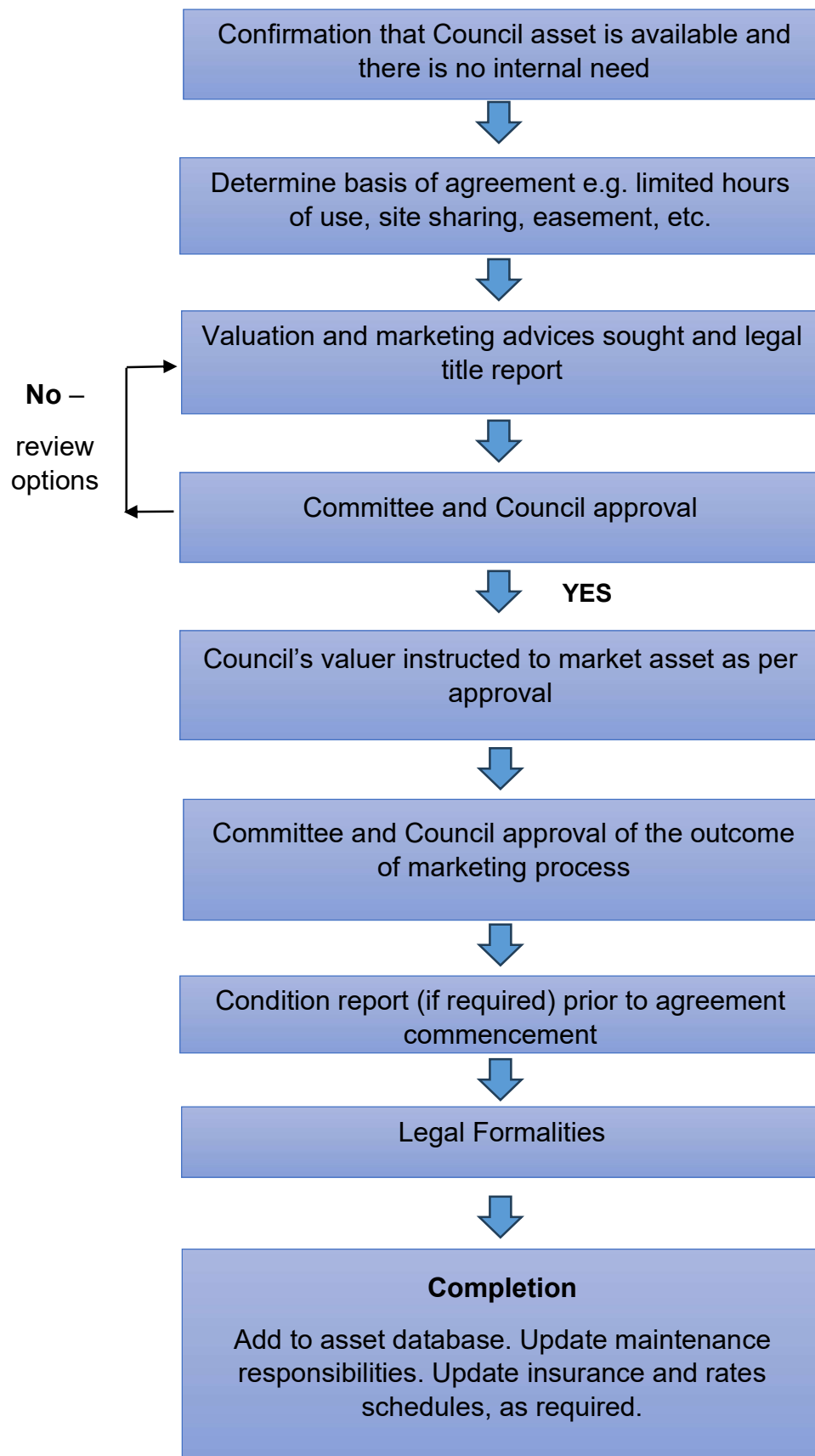
## DISPOSAL PROCESS FLOW CHART



## ASSET CHALLENGE PROCESS



## LEASE PROCEDURE - GRANTING





## LEASE PROCEDURE - TAKING

