

Thanet Council Corporate Property and Land Disposal Process

This document covers Thanet District Council's corporate property and land disposal process. The council disposal process supports the statutes that govern local authorities but the statutes will take precedence over this policy.

Residential property is outside the scope of this paper.

The laws regulating disposals are complicated and can be found in many statutes, see reference section within the strategy document. The key Acts refer to the principle of achieving "best value" and they include:

- Local Government Act 1972 – Section 123 & 127
- Local Government Act 1972 General Disposal Consent (England) 2000

There is no legal obligation for a council to dispose of land, but if they do decide upon disposal (the definition can be found in the 1972 Act) the starting principle for a local authority is that it may not dispose of land for a consideration of less than the best that can be reasonably obtained.

With Government funding to local authorities set to reduce in the next few years, Thanet District Council cannot lose sight of these principles as pressure increases to manage cuts in a challenging economic environment.

Furthermore, a disposal that does not satisfy the best consideration test is ultra vires and can be challenged by a third party through the judicial review process.

Before disposing of any land the authority must give adequate consideration as to whether or not this could be prudent and in line with all of its fiduciary duties and financial circumstances.

Therefore other significant considerations when considering disposals are the powers granted to a local authority under the Local Government Act 2000, which give the LA powers to do anything which they consider likely to achieve any one or more of the following:

- (a) Promotion or improvement of the economic well-being of their area
- (b) The promotion or improvement of the social well-being of their area and
- (c) The promotion or improvement of the environmental well-being of their area

A guide to understanding the meaning of the above can be found in the National Planning Policy Framework, 2014, as below:-

Economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;

Social role– supporting strong, vibrant and healthy communities, by

providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and

Environmental Role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.

Whilst the Local Government Act 2000 does not negate the importance of applying the principles of best consideration, it does recognise the important duties a local authority has to consider the wider benefits for the community when making disposal decisions and where the local authority can demonstrate an overriding benefit in this manner it may dispose for less than best consideration provided a proper and transparent process has been followed.

Procurement Considerations

Contract standing orders do not apply to contracts relating solely to the purchase or sale of interests in land. However, if there is an element of supply of services supplementary to the grant of an interest in land then procurement rules will need to be considered. Each case will need considering on its own merits through the Estates and Procurement Departments.

Scope of the Disposal Process

The Estates Surveyors retain delegated authority as per the Constitution for Governance of Thanet District Council to undertake the estate management function. Part of their function is to negotiate lease and licence applications on the investment portfolio for best consideration for terms up to 25 years.

Therefore this disposal process will apply where the Council holds a freehold interest in land with vacant possession and:

- (1) the intention is to grant an appropriation in land or
- (2) the intention is to grant a freehold sale of the property or land or
- (3) the intention is to grant a lease over 7 years at less than best value
- (4) the intention is to grant a lease over 25 years at best value.

Best value will be determined by a valuation surveyor accredited with membership of the Royal Institute of Chartered Surveying.

(Note: The Estates surveyors will bring to the CPAMG details of all lease negotiations/renewals to keep others informed of what is happening on the portfolio and where the group determine that a grant may be contentious they can vote to put it through the full consultation process.

Stages of the Disposal Process

Stage 1

All ideas to dispose or appropriate land within the scope of this process will be considered through the Corporate Property Asset Management Group (CPAMG). The requirement to consult the group does not negate other constitutional processes but is a means to ensure that there is sufficient breadth of consultation undertaken to support the corporate plan.

Ideas can be put forward by members of the public through their Council Member, the Cabinet Member for Finance and Estates or the Community Asset Manager. Senior Management Team will have input through the Director of Community Services and Officers will be encouraged to put ideas through their CPAMG departmental representative.

Cost, benefit and risk analysis tests will be undertaken by the CPAMG and a decision taken in principle whether to proceed or not, with the reasons for the decision recorded.

If the decision is to proceed in principle there will follow a process of due diligence checks on property and land including checking title, restrictive covenants and wayleaves.

Once the checks have been successfully completed the Estates department will prepare a report for Cabinet.

Stage 2

At the Cabinet meeting held to consider the report a decision will be made either to accept or reject the recommendations in the report. If Cabinet determine not to proceed with the disposal the outcome will be communicated back to the CAPMG.

Stage 3

If Cabinet give approval to proceed with the disposal a consultation process will commence for 21 days, through Ward Councillors. Depending on the nature of the disposal there may also be additional consultation, through the local press and through TDC public relations department.

The consultation process does not cover matters that are dealt with as part of the planning process.

The reasons for the consultation are to:-

Highlight to the community an asset is being disposed and in doing this give them an opportunity to express an interest (following the guidelines in the Localism Act 2011) and;

Where it is an appropriation in common land gain member of the public feedback on the plans.

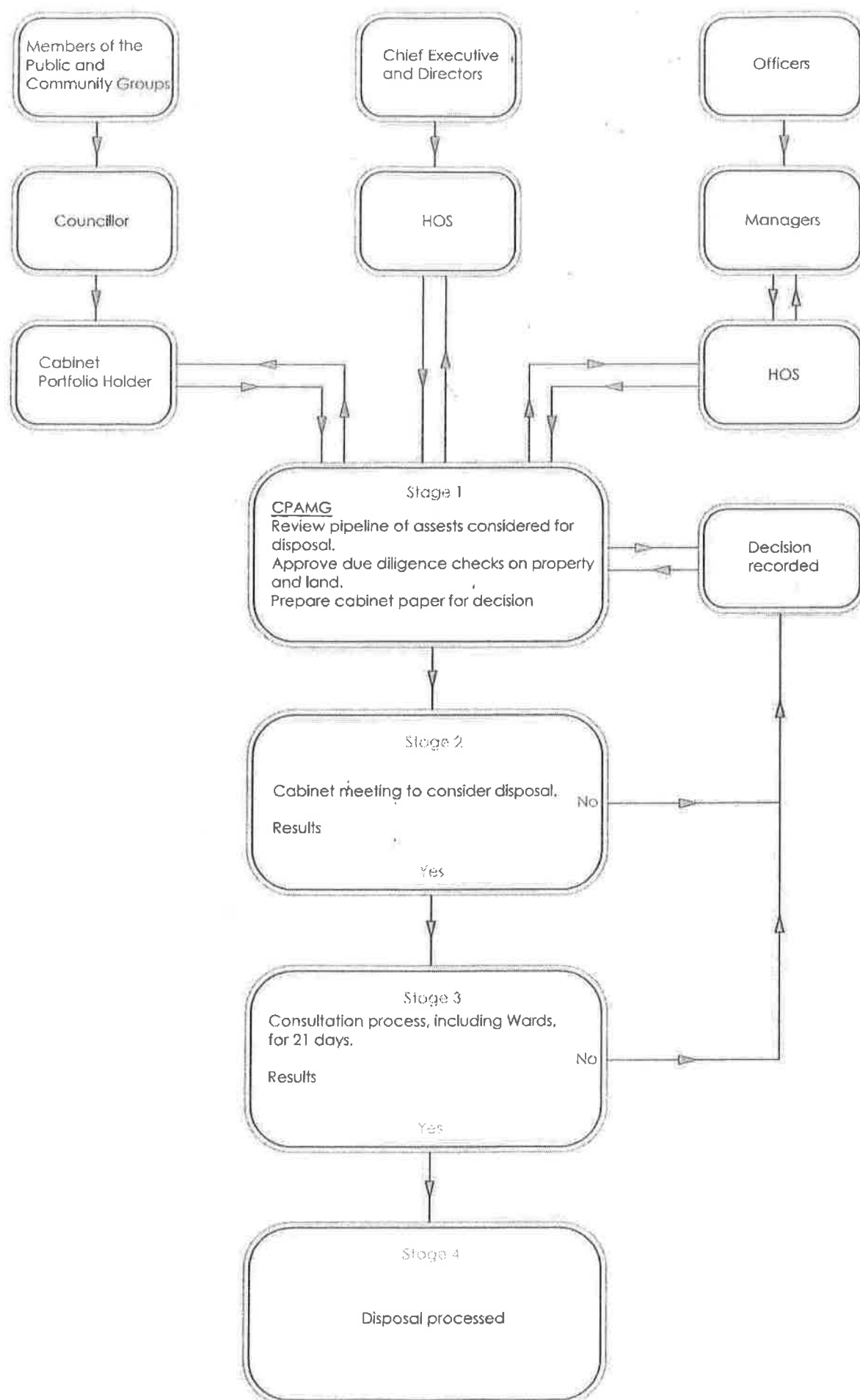
The results of the consultation will be collated by Estates and fed back through to the Cabinet Member for Finance and Estates and the Head of Economic Development and Asset Management for review, and where there is a valid case for the disposal to be reconsidered the matter will be referred back to CPAMG for decision and then back to Cabinet if the previous decision requires review.

Stage 4

If Cabinet agree to the disposal it will be progressed by the Estates department using the policy and processes documented in the Constitution for Governance of Thanet District.

The current principle methods of disposal undertaken by the Council (and documented in the constitution are competitive tender, public auction and private treaty).

Schematic Diagram – Disposal Process



Overview and Scrutiny Committee

The Overview and Scrutiny Committee is able to challenge an individual asset disposal decided by Cabinet by calling the decision in. It can review whether the disposal process set out here has been followed correctly in a particular case, but it would not be appropriate to seek to vary the process itself for individual assets.

For further information please see Constitution for Governance of Thanet District Council.