

EAST DUNBARTONSHIRE COUNCIL

STANDING ORDERS FOR THE DISPOSAL / LEASE OF HERITABLE PROPERTY

GENERAL

1. These Standing Orders are made to regulate the disposal of the Council's heritable property in accordance with Section 74 of the Local Government (Scotland) Act 1973, as amended from time to time, and the Disposal of Land by Local Authorities (Scotland) Regulations 2010 in order to ensure that land and/or buildings are disposed of for the best price that can reasonably be obtained. These Standing Orders also regulate all other statutory powers of disposal of heritable property.
2. Every contract made by or on behalf of the Council, and the processes leading to its conclusion, must comply with all relevant legislation and these Standing Orders, and be subject to the Council obtaining such statutory consents as may be required. In the event of any conflict between these Standing Orders and legislation, the legislation will prevail. No exception from any of the provisions of these Standing Orders shall be made except with the prior express authority of the Place, Neighbourhood & Corporate Assets Committee, or Council as appropriate, by a two-thirds majority. The Committee shall require to give reasons for such exceptions being made. Apart from the opening of tenders and taking decisions as part of the Place, Neighbourhood & Corporate Assets Committee, or Council as appropriate, Councillors shall take no part in any stage of the disposal or leasing of the Council's heritable property. Further, any canvassing of a councillor by a third party during the marketing of Council property or any other competitive process shall result in the disqualification of that third party from the competitive process and any bid or response shall not be considered by the Council.

TYPE OF DISPOSAL

3. As a general guideline, the Council will normally:-
 - i) Sell land for residential or commercial development.
 - (ii) Sell land to residential proprietors for use as garden ground and/or to facilitate the extension of their property.
 - (iii) Lease land for periods in excess of 25 years for commercial redevelopment or other long term non-residential purposes.
 - (iv) Lease land for periods up to 25 years, for commercial, agricultural or residential use.

Any decision to lease or dispose of heritable property for a use other than those specified above must be taken by the Place, Neighbourhood & Corporate Assets Committee, or Council as appropriate, following a report by the Depute Chief Executive – Place, Neighbourhood & Corporate Assets. All contracts for sale or lease of Council property shall contain time limits for the completion of any agreed conditions.

METHOD OF DISPOSAL

4. **Sale - Competitive Tender**

Competitive tendering shall be used where the Council wishes to dispose of land and/or buildings for which there is, or is likely to be a demand. The Depute Chief Executive – Place, Neighbourhood & Corporate Assets shall determine whether the demand, or likely demand, is sufficient to warrant the marketing of the subjects. The sale may or may not be constrained by a development or design brief or a specification of the Council's requirements. The Council will accept the best price, provided the other terms and conditions of the offer are in accordance with the brief or specification.

5. Sale or Lease - Design Competition

Where the Council wishes to see a very specific use of land and/or buildings, it may invite either by open competition, or by an invited list, appropriately sized schemes in terms of layout, design, use, mix etc. Schemes may be in outline or in detail, and financial terms may be requested or not. Once offers have been considered, the Council may shortlist the submissions and request further detailed proposals leading to one successful offer. Alternatively the Council may, in terms of the original brief, market the land and/or buildings at a fixed price, agree to receive financial offers, or agree the price through direct negotiation with one party. These procedures may be subject to such adjustments as may be necessary to comply with relevant legislation.

6. Sale – Garden Ground

Subject to compliance with relevant statutory procedures, the Council may, upon application, dispose of small areas of land to residential proprietors to facilitate extensions to gardens, driveways, house extensions, or for the purpose of constructing a garage. There shall be no requirement to market the sale of garden ground unless there is, or is likely to be a demand, under which circumstances competitive tendering shall be used.

The Depute Chief Executive – Place, Neighbourhood & Corporate Assets shall determine whether the demand, or likely demand, is sufficient to warrant the marketing of the subjects.

7. Lease – Direct Offer

The Council will offer to lease its land, commercial and residential property (but specifically excluding residential property held on the Housing Revenue Account) direct to interested individuals or Companies, with no requirement to invite offers.

The Depute Chief Executive – Place, Neighbourhood & Corporate Assets shall determine whether prospective tenants meet the necessary criteria to lease property, based upon the principles of good estate management. The assessment criteria shall include, but not be limited to, tenant mix, proposed use and tenant covenant/financial assessment.

8 Sale – Direct Negotiation with One Party

Notwithstanding the terms of Standing Orders 4, 5 and 6 above, where demand is, or is likely to be sufficient to invite offers for the sale of heritable property, the Council may

none the less choose not to invite offers and instead consider direct negotiation with one party, only in the following circumstances:

- (i) Where the prospective purchaser is in a unique or unusual position, e.g.
 - is an existing Council tenant (land and commercial property only).
 - is the owner of an adjoining property and is in a position to develop the combined property interests in a way in which the Council considers to be in the better interests of the community.
 - is a bona fide developer who will bring a significantly large economic development/regeneration opportunity to the area which other developers could not.
- (ii) Where the property is required by another Statutory Authority to fulfil its statutory obligations.
- (iii) Where the property has been marketed previously without success.
- (iv) Where the property can be developed by a Housing Association or Registered Social Landlord (or other similarly constituted bodies) in pursuit of Scottish Government and Local Government priorities with respect to the provision of affordable housing of any tenure.

In any of the above circumstances, the Place, Neighbourhood & Corporate Assets Committee, or Council as appropriate, may specifically authorise the Depute Chief Executive – Place, Neighbourhood & Corporate Assets to either:

- conclude the transaction with the prospective purchaser based upon the negotiated terms and conditions, to be advised at the Place, Neighbourhood & Corporate Assets Committee.
- reject proposals to negotiate direct with one party, and instead request that offers for the sale of the subjects are invited through open tender.

METHOD OF TENDERING

9. (a) The placing of public advertisements and the issue of development briefs to interested parties shall be made on behalf of the Council by the Depute Chief Executive – Place, Neighbourhood & Corporate Assets .
- (b) The Depute Chief Executive – Place, Neighbourhood & Corporate Assets shall issue acceptances or qualified acceptances only with the prior express authority of the Place, Neighbourhood & Corporate Assets Committee or the Council. The Chief Executive may use his/her delegated authority to authorise the Depute Chief Executive – Place, Neighbourhood & Corporate Assets to issue an acceptance or qualified acceptance but not in the circumstances where it is proposed to accept any offer which is not on the face of it, the highest price.
- (c) The Depute Chief Executive – Place, Neighbourhood & Corporate Assets shall have the power to instruct that an offer be qualified only to conform to normal

conveyancing practice or to conform to the design brief or specification. He/she shall have no power to seek to alter the price offered. With the express authority only of the Place, Neighbourhood & Corporate Assets Committee, or Council as appropriate, the Depute Chief Executive – Place, Neighbourhood & Corporate Assets may negotiate with the successful Offerer to take the purchase price in cash, or in kind, or in a combination of cash and kind. He/she shall obtain a valuation of the "in kind" part of the price appropriate to the circumstance of each transaction.

10. Where offers are invited, no offer will be considered unless contained in a plain envelope which shall be securely sealed and shall bear an approved label, provided by the Council, which shall bear the word "Offer", followed by the subject-matter to which the offer relates. The offerer shall not place on the envelope any distinguishing mark other than an address to which the offer may be returned if it is not submitted in accordance with the Council's directions. Prospective offerers shall be notified in advance of these requirements. Such envelope shall be addressed impersonally to the Chief Solicitor & Monitoring Officer in whose custody it shall remain until the time appointed for the opening of offers. Late offers will not be considered.
11. Offers shall be opened at one time by the Convener of the Place, Neighbourhood & Corporate Assets Committee or his/her nominee and by the Depute Chief Executive – Place, Neighbourhood & Corporate Assets or his/her nominee. A list of all offers received and the price offered shall be drawn up and signed by the parties present at the opening.
12. The Council shall not be obliged to accept the highest or any offer. If the Place, Neighbourhood & Corporate Assets Committee, or Council as appropriate, decides to dispose of heritable property for anything other than the best price it shall, comply with the provisions of Section 74 of the Local Government (Scotland) Act 1973, and the Disposal of Land by Local Authorities (Scotland) Regulations 2010, obtain the consent of the Scottish Ministers or follow such other statutory procedures as may be appropriate.
13. The Depute Chief Executive – Place, Neighbourhood & Corporate Assets shall advise all those unsuccessful in their Offers in writing.