



# TENDRING DISTRICT COUNCIL

## PROPERTY OFFICE PROCEDURES



M KNAPPETT  
CORPORATE DIRECTOR: CORPORATE SERVICES

## Contents

1.	GENERAL .....	4
1.1	Applicability of Procedures .....	4
1.2	Constitution .....	4
1.3	Delegation .....	4
1.4	Member Involvement .....	4
2.	ACQUISITION OF LAND AND/OR PROPERTY .....	5
2.1.	Initial Assessment, Research and Consultation .....	5
2.2.	Negotiation and Completion .....	6
3.	GENERAL MANAGEMENT OF LEASEHOLD LAND (COUNCIL AS LANDLORD) .....	7
3.1	Responsibility .....	7
3.2	Periodic Inspections .....	7
3.3	Rent Review .....	8
3.4	Rent or Licence Fee Collection .....	9
3.5.	Lease/License Enforcement .....	10
3.6	Lease Renewal.....	11
4.	GENERAL MANAGEMENT OF LEASEHOLD LAND (COUNCIL AS TENANT).....	12
1.1	Generally .....	12
1.2	Landlord Default .....	12
1.3	Break, Renewal or Termination .....	12
5.	TERMINATION OF LEASES (COUNCIL AS LANDLORD) .....	13
5.1	General .....	13
5.2	Surrender .....	13
5.3	Dilapidations.....	13
5.4	Taking Possession .....	13
6.	DISPOSAL OF LAND AND/OR PROPERTY .....	14
6.1	Initial Disposals Assessment .....	14
6.2	Disposal Plan .....	14
7.	DISPOSAL OTHER THAN AT BEST CONSIDERATION REASONABLY OBTAINABLE ....	15
7.1	General .....	15
7.2	Disposal Plan and Reporting .....	15
7.3	Rent Review .....	15
7.4	Securing Benefits .....	16
8.	GRANTING MANAGEMENT AND TERMINATION OF LICENCES AND TEMPORARY RIGHTS OR WAY ETC .....	17
8.1	General .....	17
8.2	Short term licences.....	17
8.3	Licences exceeding one month .....	17
8.4	Management of Licences.....	17
8.5	Termination .....	17
9.	GRANTING, MANAGEMENT AND TERMINATION OF TENANCIES AT WILL .....	18
9.1	General .....	18
9.2	Tenancy Agreement .....	18
9.3	Management of Tenancies at Will.....	18
9.4	Termination .....	18
10.	GRANTING, PROCUREMENT OR RELEASE OF COVENANTS, EASEMENTS AND OTHER MINOR INTERESTS .....	19
11.	MANAGEMENT AND MAINTENANCE OF COUNCIL OWNED LAND .....	20
11.1	General .....	20
11.2	General Risk Assessment .....	20
11.3	Routine Inspections .....	20
11.4	General maintenance .....	20
11.5	Planned Maintenance.....	20

11.6	Facilities Management.....	21
11.7	Encroachment .....	21
11.8	Travellers .....	21
12.	COMMUNITY ASSETS RENT OFFSETTING SCHEME (CAROS).....	22
12.1	General .....	22
12.2	Eligibility .....	22
12.3	Application.....	22
12.4	Annual Review .....	22
13.	Investment Property .....	23
13.1	General .....	23
13.2	Acquisition.....	23
13.3	Management .....	23
13.4	Re-letting.....	23
13.5	Monitoring and Review .....	24
14.	Key Specific Issues .....	25
14.1	General .....	25
14.2	Asbestos .....	25
14.3	Electricity.....	25
14.4	Legionella.....	25
14.5	Fire.....	26
15.	Definitions.....	27

# 1. GENERAL

Words in bold are defined, and the definitions can be found at the end of the document.

## 1.1 **Applicability of Procedures**

These procedures shall apply to the acquisition, control, management and disposal of all land within the ownership, occupation or control of the Council, except:

- disposal, letting, management or control of individual Council Dwellings, garages or other singly tenanted assets in the Housing Portfolio.
- Construction, letting or disposal of Individual beach huts.

In the case of each exception the Head of Housing and Head of Sport and Leisure respectively will establish appropriate separate procedures.

In special circumstances these requirements may be waived where and to the extent agreed by the Council's s151 and Monitoring Officers.

## 1.2 **Constitution**

This Procedure is supplemental to the Constitution in particular to section 5: Property Dealing Procedure. In the event of any conflict with the Constitution the Constitution shall take precedence.

## 1.3 **Delegation**

The **HoPS** may delegate any function in this procedure to any member of the Assets Team. The Chief Executive may nominate any Head of Department or Corporate Director to deal with any property matter. In the case of such delegation this Procedure will apply to the Delegate as if they were the **HoPS**.

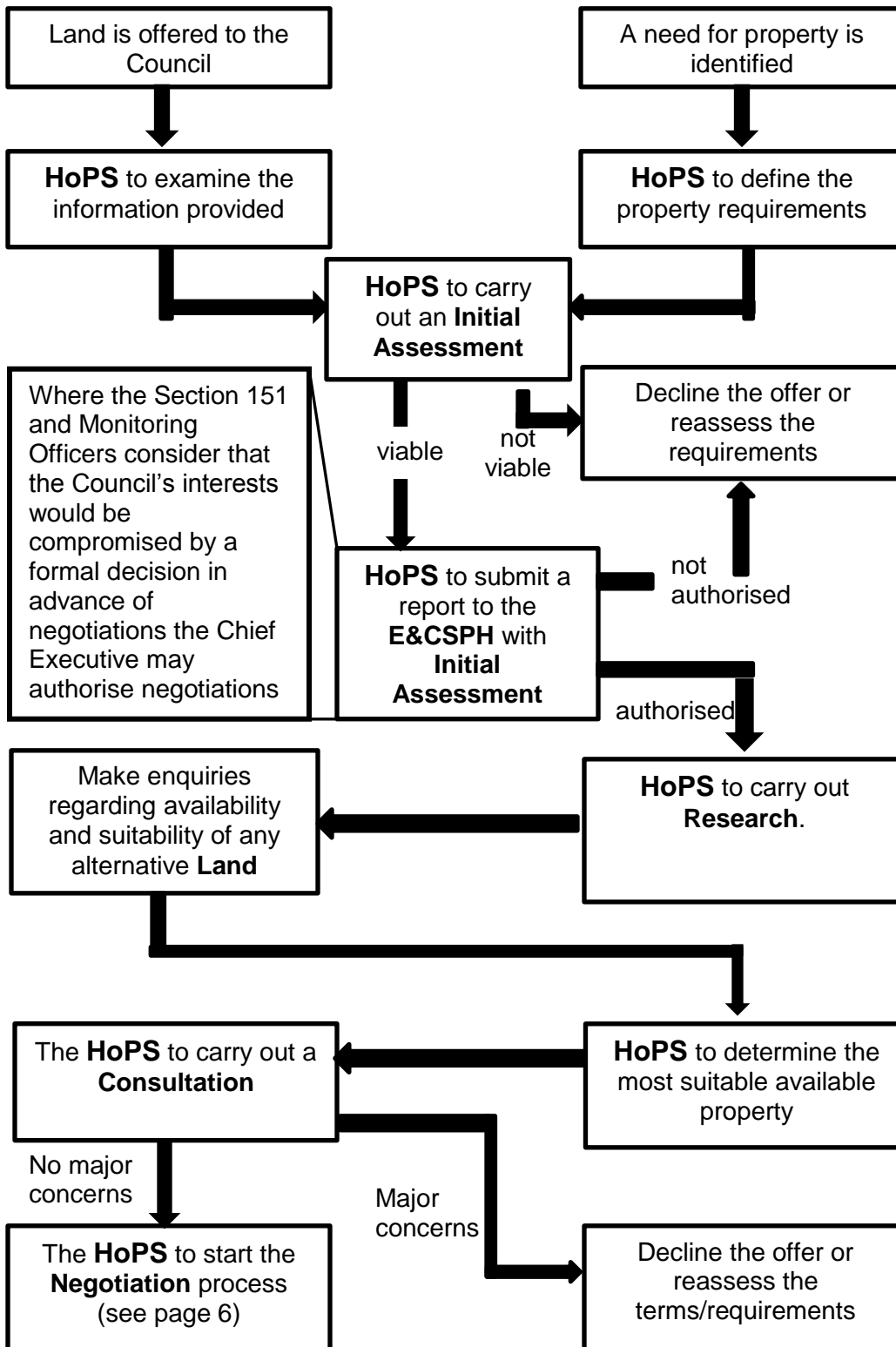
## 1.4. **Member Involvement**

Members must not engage in negotiations of any kind relating to any land transactions or proposed land transactions.

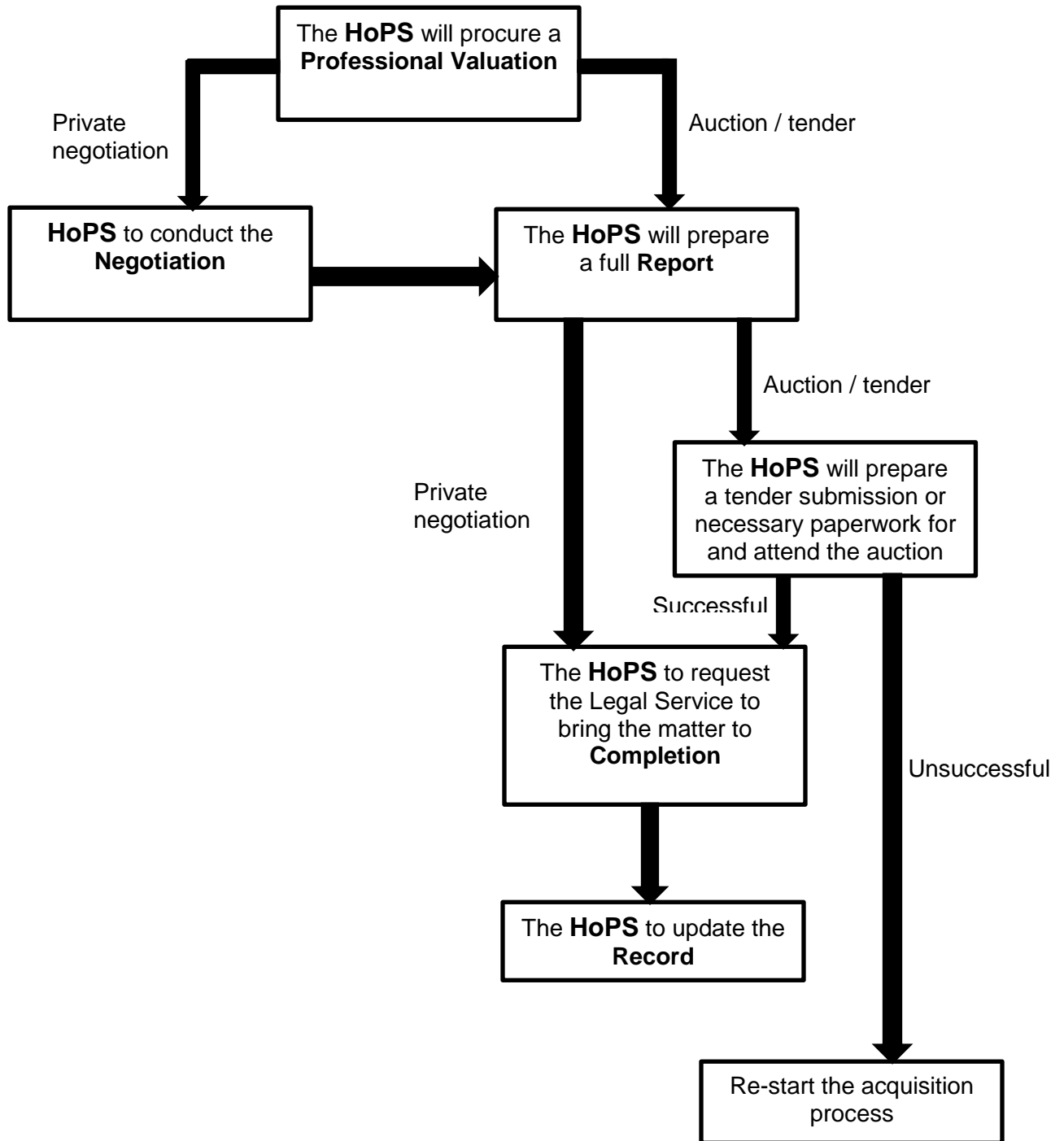
A Member may be the decision maker for a Property Deal in accordance with the Property Dealing Procedure and it is the Member's role to act as decision maker in accordance with the Constitution and all relevant policies and procedures.

ACQUISITION OF LAND AND/OR PROPERTY

2.1. Initial Assessment, Research and Consultation



2.2. Negotiation and Completion



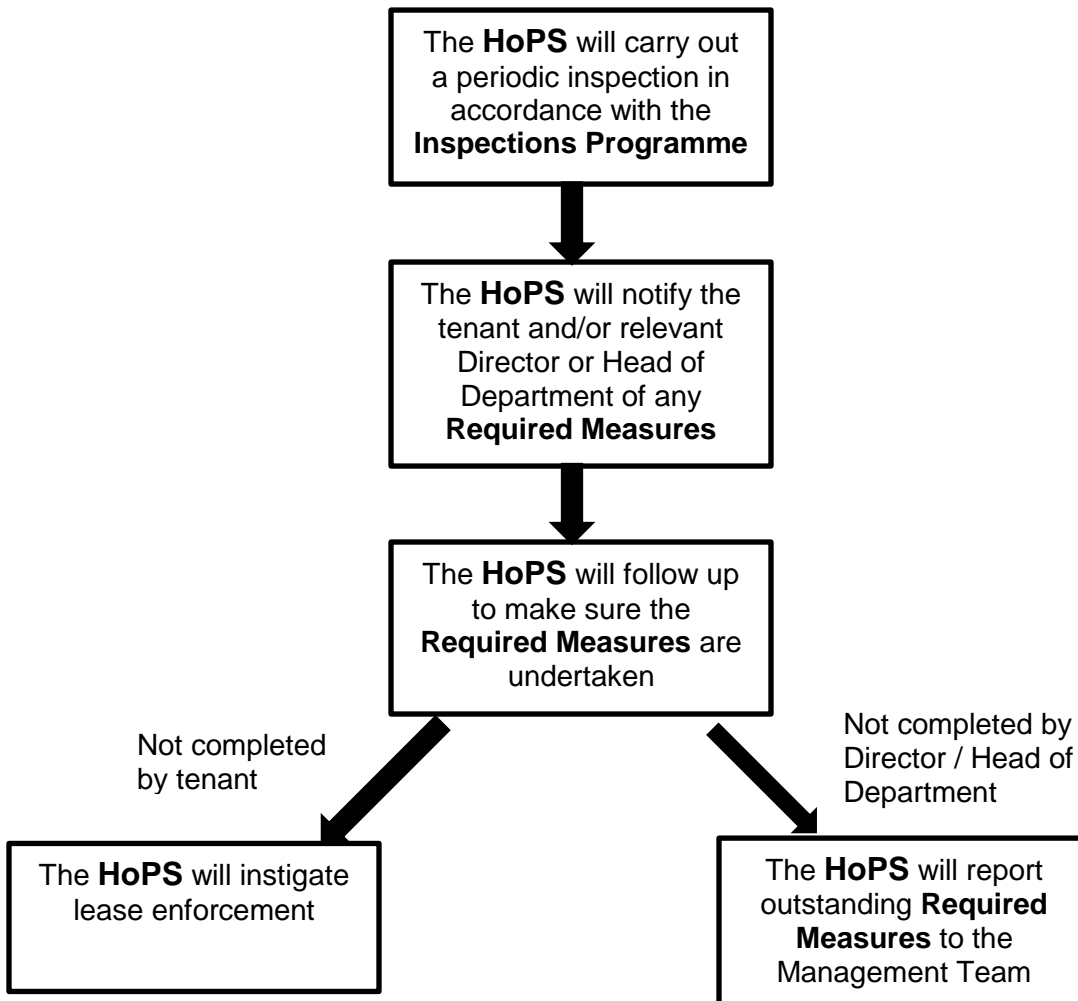
## 2. GENERAL MANAGEMENT OF LEASEHOLD LAND (COUNCIL AS LANDLORD)

### 3.1 Responsibility

Responsibility for the management of leased land will be:

Head of Property Services	Relevant Director or Head of Department
Periodic inspections	Landlord repair responsibilities
Rent reviews	Void costs and works
Rent Collection	Common areas
Lease Enforcement	General area management
Lease renewal	
Lease termination	
Re letting	
Formal lease variation	
Formal consents e.g. consent to works	
Lease assignments	
Keeping the Records up to date (on the basis of information provided by the Relevant Director or Head of Department or delegated officers)	

### 3.2 Periodic Inspections

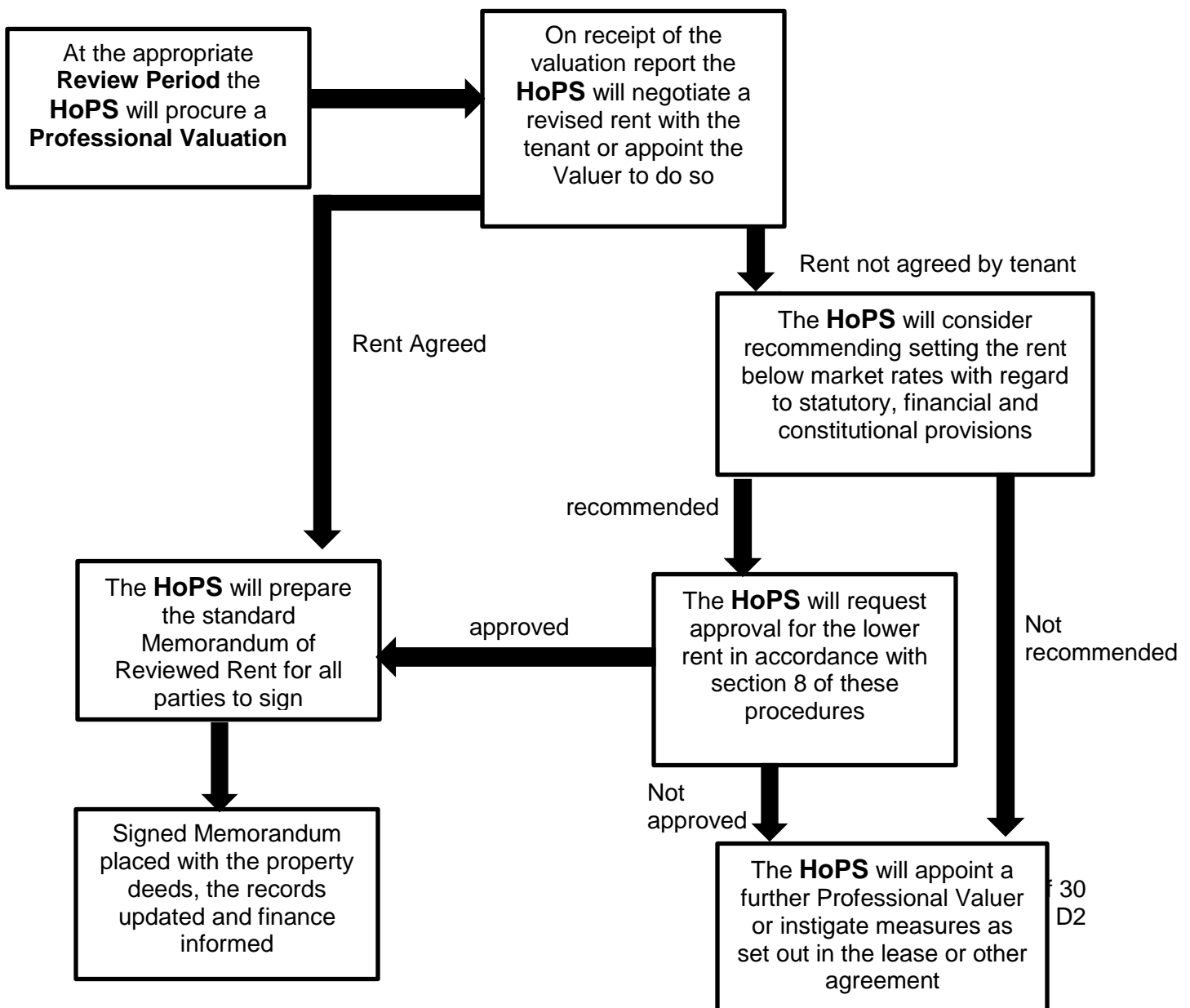


### 3.3 Rent Review

This procedure shall apply equally to leased premises and those subject to licence or other contractual arrangement where the review of rent or fee levels is provided for with the word “licensee(s)” substituted for “tenant(s)”; but shall exclude rents on Housing Revenue Account dwellings, garages and other associated domestic properties.

This procedure shall apply equally where the Council is tenant or licensee; with the exceptions that the word “landlord(s)” or “licensor(s)” shall be substituted for the word “tenant(s)” as applicable and that the **HoPS** will produce the memorandum of reviewed rent only in default of the landlord so doing.

At the discretion of (1) the Relevant Director or Head of Department and (2) the **HoPS**, acting jointly, the Council may suspend the review of specific rent or fee levels where it is in the interest of the Council to do so. A formal record of such decision will be made.





Any appointment of a further surveyor shall be at the discretion of the **HoPS** (in agreement, where required with the tenant or their representative).

In all cases the valuer, and **HoPS** shall be able to set a rent or fee above market rates where paid to the Council, or below market rates where paid by the Council.

### **3.4 Rent or Licence Fee Collection**

At the commencement of any lease or licence, at renewal, review or other change in the terms the **HoPS** will notify the Head of Finance of the rent/fee levels, insurance provisions, payment period or terms and any other payment matters related to the property in question. In addition the **HoPS** will provide the Head of Finance with a summary of all properties that are let or licenced and the rent or fee levels.

The Head of Finance will invoice tenants, licensees and others as applicable in advance of the due dates specifying: whether the amounts due are rent, licence fee, insurance premium or other amount(s), the quantum of the amount due, the date upon which it is due and the period to which that amount relates. The Head of Finance will maintain a sufficient account of invoices issued and amounts received in payment.

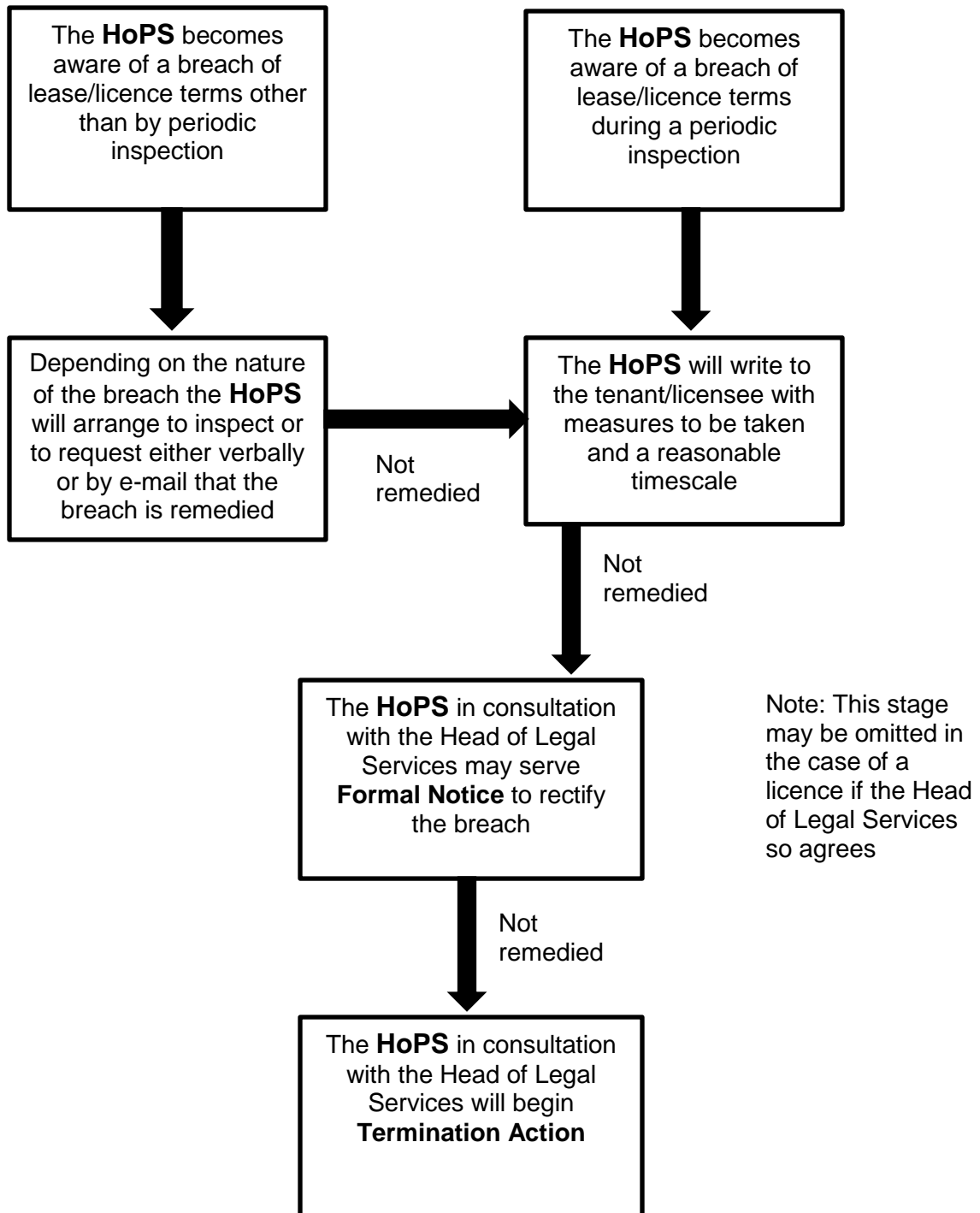
Where any payment is more than 30 days overdue the Head of Finance will issue a statement of account to the debtor and provide a monthly list of debtors to the **HoPS**. The **HoPS** will contact the lessee/licensee etc. requiring payment to be made except where a payment plan is in place and in effect.

Where the **HoPS** has contacted lessee/licensee and payment has not been received within 30 days the **HoPS** will, as appropriate:

- Agree a payment plan with the lessee/licensee.
- Consult with the Head of Legal Services for advice or taking enforcement action.
- Begin lease enforcement or lease termination action.

Where a licence agreement has been entered into by a Relevant Director or Head of Department the Head of Finance or **HoPS** will refer any outstanding amounts to the Relevant Director or Head of Department.

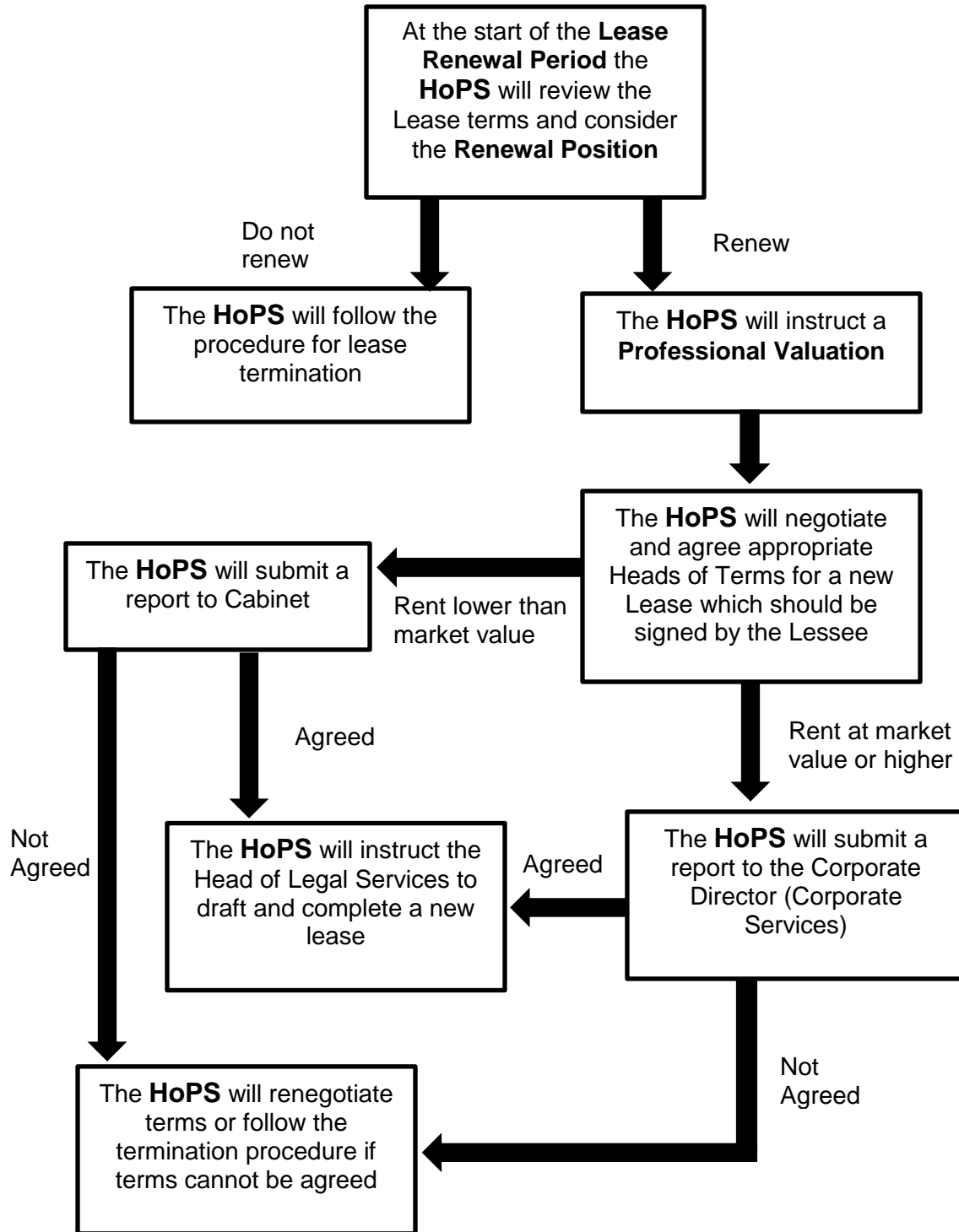
### 3.5. Lease/Licence Enforcement



At any stage the **HoPS** may agree revised measures or timescale with the lessee/licensee where this appears to be in the interest of the Council.

In cases where a licence agreement has been entered into by a Relevant Director or Head of Department these steps may be taken either by the Relevant Director or Head of Department or by the **HoPS**.

3.6 Lease Renewal



Where appropriate lease terms cannot be agreed the **HoPS** in consultation with the Head of Legal Services will serve formal notice including the terms for a new lease proposed by the Council. Following serving such a notice it may become appropriate to follow the procedure for lease termination or to return to the renewal procedure. Note: in any event that lease terms are determined by the Court a report to approve terms will not be prepared.

## 4. GENERAL MANAGEMENT OF LEASEHOLD LAND (COUNCIL AS TENANT)

### 4.1 Generally

The routine management of property used by the Council under a lease from any third party will generally be conducted by the Relevant Director or Head of Department in the same way as set out in section 11.

### 4.2 Landlord Default

Where a Relevant Director or Head of Department finds that there is a need for action by the landlord under the terms of the lease he/she will request action direct from the landlord in the first instance. In the event that the landlord still defaults on obligations in the lease, the Relevant Director or Head of Department will refer to the **HoPS** in consultation with the Head of Legal Services for formal action.

The **HoPS** may:

- Make a formal demand;
- Serve notice on the landlord;
- Agree other appropriate measures with the landlord, or;
- Propose works in default to be recharged to the landlord

The Head of Legal Services may:

- Take any of the foregoing steps, or;
- Initiate legal actions including proceedings where appropriate.

Where works in default are proposed the work and recharging will be arranged by the Relevant Director or Head of Department in the first instance. In the event of dispute over payment the matter will be referred to the Head of Legal Services for advice and formal action if considered appropriate.

### 4.3 Break, Renewal or Termination

Any notice in respect of a break provision, renewal or termination received by a Relevant Director or Head of Department will be referred to the **HoPS**.

On receipt of any notice, or 12 months in advance of any break date (or other period where break provisions so dictate) or any lease termination date, the Relevant Director or Head of Department will notify the **HoPS** whether he/she wishes to continue to occupy the property or not.

The **HoPS** will, as applicable:

- Renew the lease (see section 3.6);
- Oppose the breaking of the lease;
- Negotiate any dilapidations claim or other termination matters;
- Include the instruction of valuers and/or surveyors as required.
- Seek the advice of the Head of Legal Services where appropriate.
- Obtain any approvals necessary for settling any claims or other actions.
- Notify the Head of Finance

The Relevant Director or Head of Department will be responsible for:

- Timely vacation of property
- Arranging and funding any necessary works
- Funding any settlement or claim.
- Reading meters and notifying any suppliers, contractors or service providers of vacation

## 5. TERMINATION OF LEASES (COUNCIL AS LANDLORD)

### 5.1 General

On receipt of any notice from a tenant, or 12 months in advance of any break date (or other period where break provisions so dictate) or any lease termination date, the **HoPS** will consult any Relevant Director or Head of Department and determine whether it is in the interest of the Council to exercise the break provision, renew the lease or terminate it.

If the **HoPS** determines that lease renewal is in the interest of the Council it, the procedure at 3.6 will be applicable.

Where the **HoPS** considers that the termination of a lease at or after its contractual end date or the exercise of a break clause, is in the interest of the Council he will consult the Head of Legal Services and serve notice as appropriate.

Where the **HoPS** determines that termination of a lease is in the interest of the Council after following the procedure at 3.4, 3.5 or 3.6 he will ensure that steps identified in those procedures have been followed before instructing the Head of Legal Services to seek forfeiture of the lease as he/she considers fit.

### 5.2 Surrender

At any stage in the above processes the **HoPS**, subject to the agreement of the Head of Legal Services and Head of Finance, may agree terms for a voluntary surrender of the lease.

### 5.3 Dilapidations

In all cases the **HoPS** will inspect the property at an appropriate time before termination and where appropriate will serve a schedule of dilapidations and any notice(s) required in order to address any breach of the lease terms.

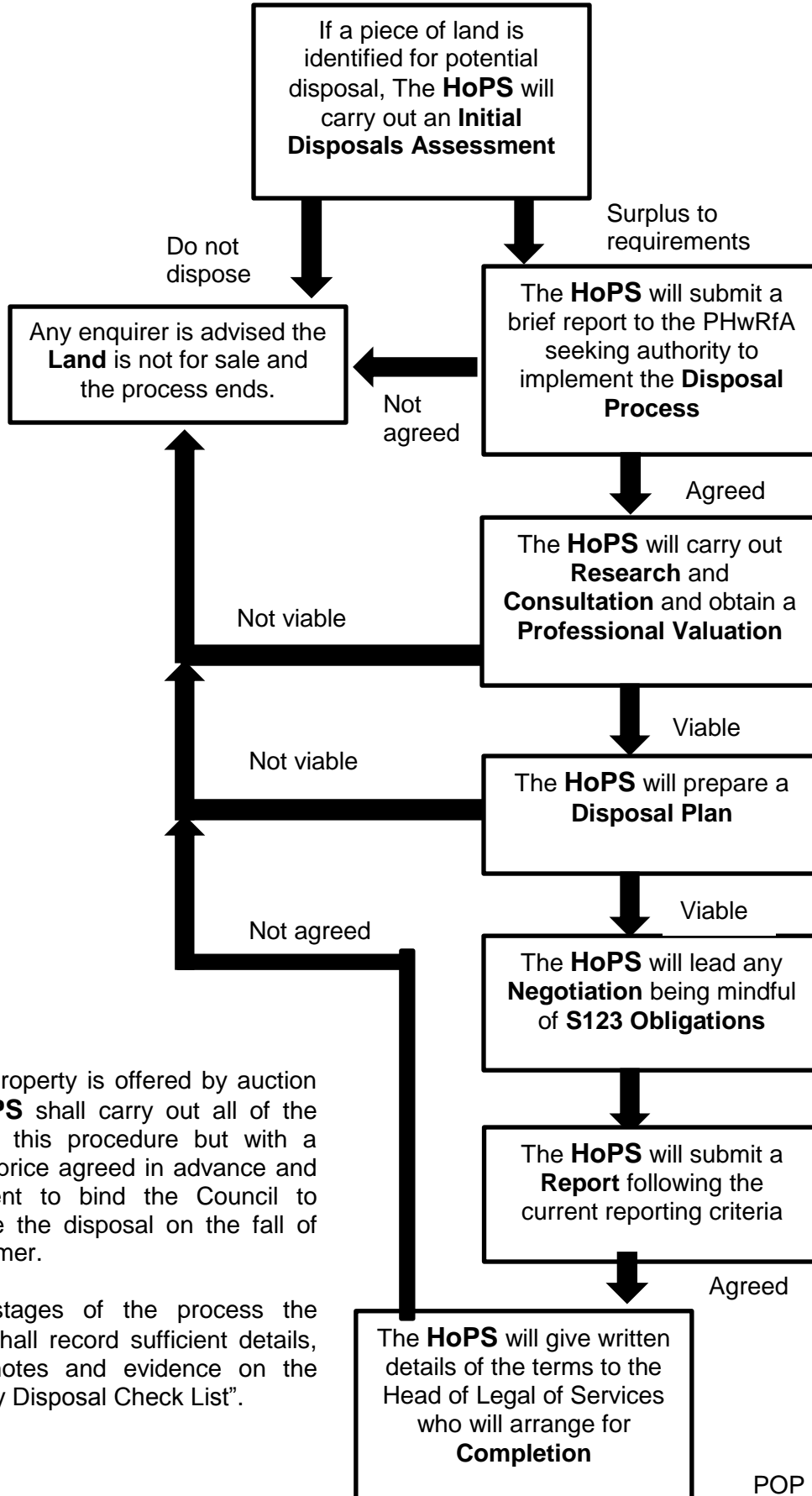
The **HoPS** will ensure that all works or measures are completed or, subject to the agreement of the Head of Legal Services and Head of Finance, may agree terms for a compensation settlement in lieu.

### 5.4 Taking Possession

The **HoPS** will liaise with the tenant and ensure that timely and secure vacation of the premises is achieved. The **HoPS** will ensure that meter readings are taken, utility providers notified, keys, documents and all necessary property or information is handed over and that the Head of Finance, is notified.

The **HoPS** will ensure that the property is secure at the time of handover. Further security measures or works of any kind will be the responsibility of the Relevant Director or Head of Department. Once vacated management of the property will be undertaken by the Relevant Director or Head of Department as procedure 11.

## 6. DISPOSAL OF LAND AND/OR PROPERTY



Note

Where property is offered by auction the **HoPS** shall carry out all of the steps in this procedure but with a reserve price agreed in advance and agreement to bind the Council to complete the disposal on the fall of the hammer.

At all stages of the process the **HoPS** shall record sufficient details, dates, notes and evidence on the "Property Disposal Check List".

## 7. DISPOSAL OTHER THAN AT BEST CONSIDERATION REASONABLY OBTAINABLE

### 7.1 General

The procedure set out below is proposed for the setting of consideration levels for all transfers and new leases including reviewed rental levels during the currency of leases. The procedure should be read in conjunction with the **Community Asset Transfer Policy**. In the event of discrepancy the Community Asset Transfer Policy will take precedence.

There shall be a general presumption that every purchaser of a land interest shall pay at least the full market value for any interest in land or other property and that in all disposals the **HoPS** will seek to obtain the best consideration reasonably obtainable including where appropriate optimising land values by the seeking of planning consent or other measures and by not imposing restrictive conditions on the transaction.

### 7.2 Disposal Plan and Reporting

In every case where a Relevant Head of Service and the **HoPS** consider, having regard to the guidance in ODPM circular 6/2003<sup>1</sup> or other legislation at the time being, that there are sufficient potential grounds to relax or waive the requirement to obtain best consideration reasonably obtainable:

- The **HoPS** will include, where identified, the potential for the granting of an interest in land at below market rates in the Disposal Plan,
- the **HoPS** in consultation with relevant Head of Department shall submit a report as required at section 6 above; additionally setting out the following:
  - The nature and term of the interest proposed.
  - The assessed market consideration for that interest.
  - The proposed level of reduced consideration.
  - The reasons for which it is proposed to grant the interest at below market rates having regard to the requirements of circular 6/2003.
  - Any additional consent that may be required in order to give effect to the decision.
  - A recommendation that the Cabinet approves, subject to any additional consent required by statute, the setting of the consideration level at the proposed level.

### 7.3 Rent Review

The **HoPS** may agree any revised or continuing rent level as set out at procedure 3.3 or any revised or continuing rent level within the bounds of a previous Cabinet decision to lease land or property at a predetermined proportion or other amount of the full market rent.

The **HoPS** may agree a rent at less than the full market rent as part of a transitional measure where:

- Historic rent level is substantially below the market rent, and;
- The stepped arrangement brings the rent up to the full market level prior to the next review or expiry, and;
- The tenant and use of the land meet the general criteria of the Community Asset Rent Offsetting Scheme.

The **HoPS** may agree a rent at less than full market value during a review of rent within a lease or other agreement of fewer than seven years duration provided that he is satisfied that the rent level is consistent with the Council's general fiduciary duties and the use of the land/property generally in line with the guidance in ODPM circular 6/2003.

---

<sup>1</sup> relating to the promotion or improvement of economic, social or environmental well-being

#### **7.4 Securing Benefits**

In every case where a rent or other consideration is set or agreed at less than the Best Consideration Reasonably Obtainable the **HoPS** will include in the negotiations the securing of benefits to support that level of consideration by reasonably enforceable means. The Head of Legal Services will ensure that relevant leases, transfers or other disposals or grant of interests in land contain appropriate provisions in accordance with instructions and terms approved.



## 8. GRANTING MANAGEMENT AND TERMINATION OF LICENCES AND TEMPORARY RIGHTS OR WAY ETC

### 8.1 General

All Relevant Directors and Heads of Department may grant a licence to use property within the control of that department or to access other land for a period not exceeding twelve months. In the case of any uncertainty the Relevant Director or Head of Department must seek the advice of the Head of Legal Services or **HoPS**.

### 8.2 Short term licences

In simple very short term arrangements<sup>2</sup> the licence may take the form of a letter or email to the licensee. Such email or letter must include the **Standard Licence / Tenancy Information**

### 8.3 Licences exceeding one month

In any case where the use of land or property may exceed one month but not exceeding 12 months the Relevant Director or Head of Department must ensure that a specific licence agreement is made. Such agreement should include provisions as above and be in a form approved by the Head of Legal Services or the HoPS.

The **HoPS** may grant a licence agreement likely to exceed 12 months. This must always be on specific terms approved by the Head of Legal Services .

### 8.4 Management of Licences

Following the granting of any licence the Relevant Director or Head of Department must ensure that appropriate measures are established to follow **Licence / Tenancy Management Guidelines**

### 8.5 Termination

The Relevant Director or Head of Department must ensure that at the end of any licence the use of the land/property ceases and that appropriate notice is given to any licensee. The Relevant Director or Head of Department must ensure that any property or items are removed and that any keys are returned and any damage fully reinstated by the licensee.

---

<sup>2</sup> For instance for ground tests or for temporary works access

## 9. GRANTING, MANAGEMENT AND TERMINATION OF TENANCIES AT WILL

### 9.1 General

The **HoPS** may grant a tenancy at will to occupy and use property owned by the Council. Any such agreement must be in a form approved by the Head of Legal Services.

### 9.2 Tenancy Agreement

In simple very short term arrangements the licence may take the form of a letter or email to the licensee. Such email or letter must include **Standard Licence / Tenancy Information**

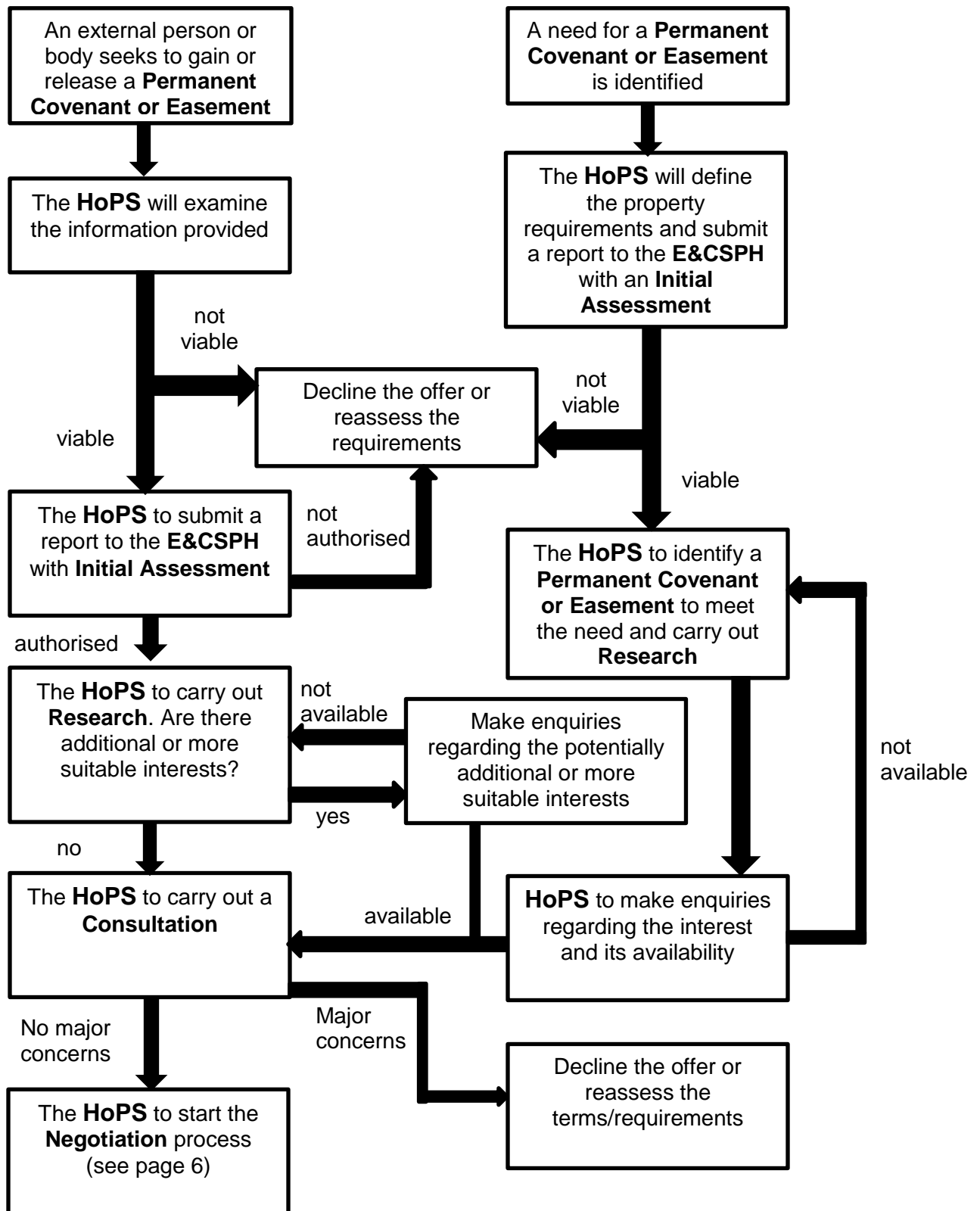
### 9.3 Management of Tenancies at Will

Following the granting of any licence the **HoPS** or where applicable Relevant Director or Head of Department must ensure that appropriate measures are established to follow **Licence / Tenancy Management Guidelines**

### 9.4 Termination

The **HoPS** must ensure that no less than one month notice, or longer period appropriate to the tenancy, is given to the tenant prior to the end of any tenancy. At the end of the tenancy at will the **HoPS** must ensure that the use of the land/property ceases, that rent is paid up to date and that all terms are complied with. The **HoPS** must ensure that property items are removed and that any keys are returned and any damage fully reinstated.

## 10. GRANTING, PROCUREMENT OR RELEASE OF COVENANTS, EASEMENTS AND OTHER MINOR INTERESTS



## 11. MANAGEMENT AND MAINTENANCE OF COUNCIL OWNED LAND

### 11.1 General

The Relevant Director or Head of Department will be responsible for the general management and maintenance of all land and property owned or used by the Council. Relevant Directors or Heads of Department should allocate responsibility for each piece of land or property to a specific service unit Head/Manager.

### 11.2 General Risk Assessment

Relevant Directors or Heads of Department should ensure that every piece of land or property or, where applicable, class<sup>3</sup> of land or property has been subject to a **General Risk Assessment**.

### 11.3 Routine Inspections

Relevant Directors or Heads of Department must ensure that all land or property within the control of their department is subjected to a schedule of Routine Inspections as identified in the General Risk Assessment for that land or property or class of land or property. Routine Inspections should encompass checks for:

- Boundary condition
- Potential encroachment or unauthorised use(s)
- General condition including safety
- Presence of any invasive species
- Works to be scheduled in the maintenance plan
- Any additional matters arising from the General Risk Assessment or from any specific risk assessment

### 11.4 General maintenance

Relevant Directors or Heads of Department should ensure that all land or property within the control of their department is subject to arrangements to carry out routine repairs and maintenance within appropriate timescales having regard to potential third party claims and prevention of disproportionate damage.

### 11.5 Planned Maintenance.

Relevant Directors or Heads of Department should ensure that all land or property within the control of their department is subject to Routine Inspections and further surveys as required in order to ensure that cyclical works are scheduled, preventative and large scale works are appropriately recognised, prioritised and funded. Typical items to be included are:

- Electrical fixed installation testing, upgrading or renewal
- Asbestos management and removal
- Plant Servicing, upgrading and renewal
- External painting/treatment and associated repairs
- Resurfacing
- Roofing
- Concrete repairs
- Gutter and downpipe clearance
- Fire doors and equipment
- Internal decorations
- Flooring renewal
- Other works as highlighted in the Risk Assessments or by surveys or inspections.

A normal proportion of reactive to programmed maintenance should be 30% to 70% respectively

---

<sup>3</sup> E.g. office or highway verge

## **11.6 Facilities Management**

Relevant Directors or Heads of Department should ensure that all land or property within the control of their department is subject to a suitable management regime reflecting the nature and use of the land. Such regime should include such matters as:

- Security
- Periodic appliance testing
- Cleaning and waste removal
- Control of use
- Grounds maintenance
- Payment for utilities and other services and supplies
- Bookings, lettings, hire and use fees.
- Furniture and fittings
- Fire drills and safety
- Use specific requirements<sup>4</sup>
- Any other management required to ensure the safe, efficient delivery of services as applicable or as highlighted in the risk assessments.

## **11.7 Encroachment**

In the event that Relevant Directors or Heads of Department identify encroachment or unauthorised use they should in the first instance request that the use is ceased and/or land returned. In the event that the encroachment or unauthorised use is not ended the Relevant Directors or Heads of Department should refer to the Head of Legal Services or **HoPS** for assistance.

## **11.8 Travellers**

In the event that Relevant Directors or Heads of Department identify the unauthorised presence of **Travellers** they should note relevant details including date time, location, numbers etc and refer the matter to the Head of Housing for advice and further action.

---

<sup>4</sup> Such as pool temperature or dosing monitoring

## 12. COMMUNITY ASSETS RENT OFFSETTING SCHEME (CAROS)

### 12.1 General

The **HoPS** will be responsible for the running of the Community Assets Rent Offsetting Scheme (CAROS).

### 12.2 Eligibility

Organisations will be eligible for the scheme if they:

- Are based in the District;
- Are not commercial or public sector organisations;
- Provide significant public services or activities within the District in line with the Council's Corporate Plan objectives
- Lease land or buildings or both from the Council with a term starting or agreed prior to 01 April 2017.

### 12.3 Application.

Organisations can apply to join the scheme via the Council's web site. The **HoPS** will consider whether the application meets the scheme criteria.

If the application does not meet the criteria the **HoPS** will notify the applicant or invite the applicant to submit further details as applicable.

If the application meets the criteria the **HoPS** will notify the applicant and the Head of Finance accordingly. The Head of Finance will issue any invoices for rent showing the full rent, level of CAROS grant and the resulting net payable amount.

### 12.4 Annual Review

The **HoPS** will (unless a wider review is under way) carry out an annual review of the scheme and report to the **PHwRfA** in March of each financial year. The review will include:

- Each beneficiary's full rental amount and amount of grant
- Any statement or information from beneficiaries setting out the use made of the financial support.
- A list of potentially eligible organisations that may apply to join the scheme in the approaching financial year.
- A statement of the total amount of grant given during the financial year in question including prediction of the position at year-end

The Portfolio Holder will determine whether to continue with the scheme or whether to revise or continue the existing eligibility criteria or financial threshold for the scheme.

The **HoPS** will notify the Head of Finance and all beneficiaries of the scheme of any change in the scheme as soon as practicable.

## 13. Investment Property

### 13.1 General

- Decisions on the acquisition of investment property, management and re-letting are delegated to officers.
- The steps taken under this procedure in respect of investment property will be clearly documented.
- Any decision to dispose of the freehold of a property or to alter or extend it will be subject to the standard procedures set out in this document and the Commercial Property Investment Policy.

### 13.2 Acquisition.

- The **HoPS** will identify potential acquisitions and evaluate them against the criteria and targets in the Commercial Property Investment Policy.
- Where required the **HoPS** will commission surveys or investigation as he/she sees fit.
- The Head of Legal Services will consider relevant deeds and prepare a report on title at the request of the HoPS.
- The Head of Finance will advise on the financial stability of the tenant(s) including procuring credit ratings and the like where necessary.
- The **HoPS** will consider what future options may exist to enhance the returns from the property or to dispose of it if it fails to meet expectations.
- The **HoPS** will conclude negotiations where necessary and report all of the foregoing to the Corporate Director (Corporate Services).
- When the Corporate Director (Corporate Services) is satisfied that acquisition of a property is in the interests of the Council having regard to the objectives of the portfolio he will seek the concurrence of the **PHwRfA** to acquire the property on the terms proposed and such other terms as considered appropriate by the Head of Legal Services.
- Where a potential property is to be sold at auction the foregoing steps will be taken save that the decision in consultation with the Portfolio Holder will include a price limit for the acquisition of the property and the **HoPS** will then bid for the property up to the limit determined.

### 13.3 Management

- The responsibility for managing the properties and the portfolio will reside with the **HoPS**.
- The **HoPS** will put in place appropriate periodic checks and inspections to monitor property condition and compliance.
- The **HoPS** will commission further surveys, serve notices and take any other steps necessary to maintain returns from the properties and manage risks to the Council.

### 13.4 Re-letting

- Where an investment property becomes vacant the **HoPS** will carry out an assessment of options to re-let or dispose of the property or carry out other measures and evaluate them against the criteria and targets.
- Where required the **HoPS** will appoint agents or market the property for re-letting. Note: any decision to invest in, alter or dispose of the freehold of the property would be subject to the Council's general rules and procedures.
- The Head of Finance will advise on the financial stability of prospective tenant(s) including procuring credit ratings and the like where necessary.
- The **HoPS** will conclude negotiations where necessary and report all of the foregoing to the Corporate Director (Corporate Services).
- When the Corporate Director (Corporate Services) is satisfied that re-letting of a property is in the interests of the Council having regard to the objectives of the portfolio he will seek the

concurrence of the **PHwRfA** to let the property on the terms proposed and such other terms as considered appropriate by the Head of Legal Services.

### **13.5 Monitoring and Review**

Annually the **HoPS** will report to the Corporate Management Committee including following aspects in such report:

- i. The number and nature of properties in the investment portfolio
- ii. How each asset is performing against the targets?
- iii. Whether the risk profile of the portfolio has changed
- iv. Whether the portfolio remains sufficiently well balanced and diverse to limit the risk to the Council
- v. Whether the portfolio is performing satisfactorily against the overall financial target



## 14. Key Specific Issues

### 14.1 General

This section does not pretend to be comprehensive or exhaustive. There will be other issues that property managers, Heads of Service and Directors need to consider, particularly with regard to specialist properties such as dwellings, the theatre or swimming pools.

### 14.2 Asbestos

It is the duty of those responsible for workplaces (please assume that this is every building except individual dwellings) to identify and manage asbestos in those buildings. The intention of the law is to ensure that asbestos and asbestos containing materials are identified, recorded and monitored in such a way that those involved in working in or on those buildings are not exposed to asbestos fibres. Detail on these requirements is available on the HSE Web site: <http://www.hse.gov.uk/asbestos/>.

#### **Key Points:**

- Survey
- Risk assessment
- Sampling and analysis
- Recording of results and actions
- Marking and site held log
- Informing workers
- Updating records

Managers should ensure that they are familiar and up to date with the requirements and ensure that procedures are in place to maintain the safety of all connected with the Council's property.

### 14.3 Electricity

It is the duty of those responsible for buildings to ensure that electrical installations and equipment are safe. The intention of the law is to ensure that people using or working on buildings are safe from electrical injuries. Detail on these requirements is available on the HSE web site: <http://www.hse.gov.uk/electricity/>.

#### **Key Points:**

- Use of qualified electricians
- Risk assessment
- Regular fixed installation testing
- Regular portable appliance testing (PAT)
- Additional inspections of high risk equipment
- Programming of repairs/improvements
- Recording of results and actions

Managers should ensure that they are familiar and up to date with the requirements and ensure that procedures are in place to maintain the safety of all connected with the Council's property.

### 14.4 Legionella

It is the duty of those responsible for buildings to ensure that installations and equipment are safe. The intention of the law is to ensure that people using or working on buildings are safe from legionnaires disease. Detail on these requirements is available on the HSE web site: <http://www.hse.gov.uk/legionnaires/>

**Key risk areas:**

- Air conditioning with water based cooling
- Showers, spas or any other form of water spray
- Domestic (hot and cold) water systems
- Air handling systems
- Any point that water can be static, warm, and/or made into a spray

**Key Points:**

- Risk Assessment
- Regular testing
- Designing out of risk
- Chemical treatments and cleaning
- Temperature monitoring
- Recording

Managers should ensure that they are familiar and up to date with the requirements and ensure that procedures are in place to maintain the safety of all connected with our property.

**14.5 Fire**

It is the duty of those responsible for buildings to ensure that electrical installations and equipment are safe. The intention of the law is to ensure that people using or working on buildings are safe from fire and explosion. Detail on these requirements is available on the HSE web site: <http://www.hse.gov.uk/fireandexplosion/> and on the Government web site at: <https://www.gov.uk/workplace-fire-safety-your-responsibilities> .

**Key Points**

- carry out a fire risk assessment of the premises and review it regularly
- tell staff or their representatives about the risks you've identified
- put in place, and maintain, appropriate fire safety measures
- plan for an emergency
- provide staff information, fire safety instruction and training

Managers should ensure that they are familiar and up to date with the requirements and ensure that procedures are in place to maintain the safety of all connected with The Council's property.

**14.6 Other**

It isn't practical in this document to attempt a full list of risk and management areas. Directors, Heads of Service and Managers should ensure that they are familiar with their buildings and other land and that a competent person carries out a suitable general risk assessment that adequately identifies risks and the need for further risk assessments and control measures where appropriate. In the case of any doubt advice should be sought from the Council's Health and Safety Advisor or Head of Property Services as applicable.

## 15. Definitions

**Acquisition Report** A full report including specific details of the property, the terms and conditions of the proposed transaction any other relevant provisions. With regard to acquisitions, the report should also include the source of funding and seek authority to complete an acquisition on those terms.

The **HoPS** shall include as much information as possible in a public report to determine whether to progress with the proposals. Concurrently a confidential report, if necessary, should also be prepared dealing with all confidential elements of the transaction e.g. personal or financial data, etc.

**Completion** The **HoPS** will provide instructions to the the Legal Services Department to prepare all necessary documentation and to complete the acquisition. The HoPS will ensure that appropriate meter readings are taken and any other handover matters are addressed and all relevant internal departments are informed of the completion (Director or Head of Department as the user of the Land, Property Records Assistant, Insurance and Finance Section and the Rates Department).

**Community Asset Transfer Policy** The policy on Community Asset Transfers adopted by the Council dated June 2014 or any later edition thereof.

**Consultation** The **HoPS** should consult with the Department that currently uses or manages / will use or manage the Land, the Ward Councillor/s, the Head of Finance and where any other officer is leading the matter they should consult the **HoPS**.

**Disposal Plan** The **HoPS** will formalise a plan for the disposal defining the extent of land/property and nature of interest to be disposed of. It will also include the method of disposal and any marketing or other processes to be adopted (in consultation as necessary with the professional valuer). Any necessity to advertise public open space disposal or any other legal requirement should be noted.

**Disposal Process** The steps identified in section 6 following the authority of the PHwRfA to proceed.

**Disposals Report** The **HoPS** shall prepare a full report on specific terms and conditions for the disposal and any other relevant provisions and authority to conclude the acquisition.

In preparing the above report, the **HoPS** shall include as much information as possible into a public report to determine whether to progress with the proposals. Concurrently, if necessary, a confidential report should also be prepared dealing with all confidential elements of the transaction e.g. personal or financial data, etc.

**PHwRfA** Portfolio Holder with Responsibility for Assets

**Formal Notice** Should be in the form approved by the Head of Legal Services or the HoPS and include a suitable timescale. In all cases the Notice should identify whether costs or compensation is to be charged

**General Risk Assessment** must identify:

- The piece (or class) of land or property
- The users of the land or property
- Potential hazards risk levels and control measures

- Potential need for specific risk assessment(s)<sup>5</sup> survey(s)<sup>6</sup> or plans<sup>7</sup>
- Appropriate period for Routine Inspections
- Appropriate period for the review of the General Risk Assessment

## **HoPS** Head of Property Services

**Initial Assessment** All sale particulars and background information to be examined and a basic feasibility appraisal carried out to include details on how the acquisition/disposal could meet the Council's corporate objectives, any legal obligations or operational needs that are relevant to the acquisition/disposal and whether or not the acquisition/disposal is in the Council's financial interest.

**Initial Disposals Assessment** The **HoPS** will determine if he considers land or property to be surplus to requirements. This could be at the request of a member of the public to purchase such land, or generally land that would be in the interest of the Council to dispose of.

**Inspections Programme** The **HoPS** will establish a programme of periodic inspections. The programme will reflect the levels of risk associated with individual properties and tenants or occupiers. Details of inspections will be recorded on a periodic inspection record sheet and in other documents as required.

**Land** In this policy Land shall have the meaning defined by common law and will include all interests in land, buildings or structures thereon or any legal estate or interest therein. For avoidance of doubt, Land includes land covered by water and any estate, interest, easement, servitude or right in or over land (Ref: Schedule 1 – Interpretation Act 1978. [1<sup>st</sup> January 1979]).

**Lease Renewal Period** 12 months in advance of their contractual end date or at a later time for any leases or licences of 1 year or less duration as determined by the agreement terms

**Licence / Tenancy Management Guidelines** In order to correctly manage a licence / tenancy you should:

- Monitor and control third party use
- Prevent exclusion of the Council's access or use (in the case of a Licence)
- Collect fees / rent
- Ensure the Council's procedure for management of land is continued and adjusted as required to take account of any additional requirements or matters delegated to the Licensee/Tenant in the agreement.
- Ensure that licence / tenancy terms are adhered to
- Prevent use or occupation extending beyond the identified land or periods

**Negotiation** All negotiations or bidding should be led by the **HoPS**, fully documented and "subject to contract" or, if applicable, "without prejudice" and any agreement should stipulate it is subject to such other terms as the Head of Legal Services considers appropriate and necessary. Any face-to-face meetings as part of the negotiations should be attended by the **HoPS** and at least one other Officer who should keep contemporaneous notes.

**Permanent Covenant or Easement** A permanent covenant in this context means greater than seven years). A Permanent Covenant or Easement in this case also includes any other right or obligation affecting the Council's land or property.

---

<sup>5</sup> E.g. Legionella

<sup>6</sup> E.g. Asbestos

<sup>7</sup> E.g. Asbestos or Fire Safety

**Professional Valuation** The **HoPS** to appoint a professional valuer on terms as he sees fit to provide a professional valuation and advise how best to minimise costs or maximise value to the Council. Where appropriate to consult on negotiations, tendering, preparations for auction and carry out any other actions or provide any other professional advice necessary, advisable, or in the Council's interest.

**Property Dealing** Property dealing refers to the acquisition or disposal by the Council of any interest in land, including freehold, leasehold, by way of tenancy, any rent review, lease variation, lease renewal or any other dealing or proposed dealing with an interest in land or licence to use land and Property Deal is to be construed accordingly.

**Record** Progress throughout any Property Dealing should be recorded on a check sheet suitable for the transaction. Other details, dates, notes, evidence of research and negotiations should be recorded and retained in line with the Council's retention policy. The relevant check sheet should be passed to the Property Records Assistant to be included in the electronic record.

**Relevant Director or Head of Department** Where referred to in this policy the Relevant Director or Head of Department shall mean the Direct or Head of Department responsible for the day to day management or operation of the Land at the time being. The Chief Executive may authorise any other office to carry out functions within these procedures as if they were a Relevant Direct or Head of Department. In default of an allocated Head of Department the function shall be carried out by the **HoPS**.

**Renewal Position** The **HoPS** will consider whether it would be in the interests of the Council to renew any such agreements and whether appropriate grounds and authority to do so or not. In certain circumstances it may be appropriate to allow an existing lease to hold over for a period.

**Required Measures** Any measures required in order to comply with health and safety, the lease or other agreement requirements. The tenant and or relevant Director of Head of Department will be notified formally and given a reasonable timescale in order to undertake any work.

**Research** Carry out a site inspection to check boundaries, services and any physical constraints that may affect the value or usage and identify any adjoining property that could potentially be acquired/disposed of to increase the overall benefit to the Council. In the case of an acquisition, identify whether any alternative land would more affectively meet the Council's needs and compare, appraise and document the results. Seek input from the Planning Department with regard to the planning position of the Land and Legal Department with regard to the deeds, plans and any restrictive covenants, easements wayleaves or any other agreements or restrictions that may affect the Land

**Review Period** Between three and six months prior to the date due for any review (or other period prescribed by any lease or other arrangement).

**S123 Obligations** Any disposal should have regard to statutory and other requirements and should ensure that the best consideration reasonably obtainable is achieved unless, a lower consideration is approved by Cabinet under the General Disposal Consent (England) 2003 or other statutory provision – see section 7. If the land is designated as public open space, the **HoPS** will procure advertisement of its disposal in the local newspapers in order to comply with S.123 (2A) of the Local Government Act 1972 (as amended). All resulting objections to the proposed sale should be considered by the **HoPS**. If there are considered to be sufficiently material comments to warrant consideration of retention of the land, the issues raised will be included in the **Disposals Report**

**Standard Licence / Tenancy Information** This includes:

- The full name and address of the person(s) granted the licence or tenancy, including particularly all company details and number if applicable.
- The specific land or property included including a plan
- The permitted use(s)
- Indemnity against third party losses, damage or claims
- Prohibition of damage or any unlawful act or nuisance
- Commencement and termination dates
- Provision for termination in the event of breach
- Where appropriate fee level and payment
- Where appropriate public liability insurance
- Other provisions where appropriate to the proposed use(s) or user(s)
- Reservation of Council use and access in general
- Statement that no lease is created (in the case of a Licence)
- Statement excluding the provisions of Part II of the Landlord and Tenant Act 1954 (in the case of a Tenancy and for a licence if considered necessary by the HoPS or the Head of Legal Services)
- Reservation of Council access for inspection etc in detail for any specific requirements.

**Termination Action** The **HoPS** in conjunction with the Head of Legal Services will re-enter the premises or arrange for agents to re-enter the premises on behalf of the Council in order to terminate the lease/licence or begin other termination action as specified in the lease/licence agreement

**Traveller(s)** Gypsies or travellers or travelling showpeople as further defined in the Annexe 1 to the Department for Communities and Local Government document Planning Policy for traveller Sites.