

NORTH YORKSHIRE COUNTY COUNCIL
INFORMAL MEETING OF AUDIT COMMITTEE MEMBERS

20 September 2021

REVIEW OF THE PROPERTY PROCEDURE RULES

Report of the Corporate Director Strategic Resources

1.0 PURPOSE OF REPORT

- 1.1 To inform Members of the outcome of the review of the Property Procedure Rules (PPR) and to present to Members, for their consideration for recommendation to the Chief Executive Officer for recommendation to the Executive and ultimately full Council for approval, proposed changes to the PPR.

2.0 BACKGROUND

- 2.1 Under the Audit Committee's Terms of Reference, the Committee has power "To review, and recommend to the Executive, changes to Contract, Finance and Property Procedure Rules".
- 2.2 The PPR provide for periodic review of the application and effect of the PPR to ensure that they provide for efficient and effective management of property by the Council.
- 2.3 Officers have undertaken a detailed review of the PPR. This report identifies a requirement for the agreement and implementation of revised PPR to reflect revised and centralised arrangements for the management of all property and associated services established under the responsibility of the Corporate Director Strategic Resources. The proposed amendments to the PPR also seek to address issues within the existing Rules.
- 2.4 The current PPR are attached to this report at **Appendix 1** and the proposed PPR are attached at **Appendix 2**.
- 2.5 This report provides Members with a summary of the proposed changes to the PPR. Members' views and comments are welcome.
- 2.6 Following on from the expiry of the legislation permitting committee meetings to be held remotely, the County Council resolved at its meeting on 5 May 2021 that, for the present time, in light of the continuing Covid-19 pandemic circumstances, remote live-broadcast committee meetings should continue (as informal meetings of the Committee Members), with any formal decisions required being taken by the Chief Executive Officer under his emergency decision making powers and after consultation with other Officers and Members as appropriate and after taking into account any views of the relevant Committee Members and all relevant information. This approach is being kept under review.
- 2.7 Subject to any comments they may have, should Members of the Audit Committee at its informal meeting on 20 September, be minded to recommend the proposed

changes to the PPR for approval, these recommendations will need to be considered by the Chief Executive Officer, under his emergency delegated powers, for recommendation to the Executive and ultimately full Council for approval at its meeting on 19 November 2021.

3.0 KEY CHANGES

3.1 Coverage

- 3.1.1 The original coverage of the Rules was property contracts (because they started as an extract from the Contract Procedure Rules). Over time, it was modified and the scope was expanded to cover some property management issues.
- 3.1.2 Section 1 of the proposed PPR identifies clearly that all activities associated with the management of the Council's property portfolio, including repairs and maintenance and investment, are covered by the Rules. These responsibilities, with only a small number of exceptions, lie with the Corporate Director Strategic Resources in accordance with the centralised arrangements for the management of property that have been established. These arrangements were established in accordance with good practice to enable efficient and effective management of the property portfolio.
- 3.1.3 Most licences and hirings are now covered to ensure more effective management can take place of the use and costs of the Property portfolio.

3.2 Financial Provision and Delegated Authorities

- 3.2.1 One of the key principle established in the rules is that budget provision or funding source must be identified prior to any relevant decision being made under the rules. This will be undertaken by the Corporate Director Strategic Resources or officers authorised by him
- 3.2.3 As a result of the above it is proposed that values associated with some of the delegated authorities, to both the Deputy Leader and the Corporate Director Strategic Resources, are increased from those contained in the current rules.

The table below indicates the revised values for the Corporate Director Strategic Resources and Deputy Leader for acquisitions and disposals. Where values exceed those delegated to the Deputy Leader then it is proposed that the approval of the Executive will be required.

	Corporate Director Strategic Resources		Deputy Leader	
	Existing (£)	Proposed (£)	Existing (£)	Proposed (£)
Acquisition				
Freehold	250,000	500,000	1 million	1 million
Annual Rent / Licence Fee	25,000	150,000	100,000	250,000
Disposal				
Freehold	500,000	1 million	1 million	1.5 million
Annual Rent / Licence Fee	50,000	150,000	100,000	250,000

3.2 Specific Additions

3.2.1 The areas proposed to be added to the PPR include:

- a) Acquiring property by auctions and tenders. There are proposed new rules in Section 5.
- b) Signing of rent review memoranda. All of these will now be done within the Property Service rather than in Legal and Democratic Services. This will speed up the process.
- c) Restrictions on legal title to reinforce transaction terms. The imposition or amendment or removal of restrictions on title for this are not covered in the current Rules. Provision for this is set out in the proposed amendments, for absolute clarity.
- d) Management of investment in property. There are new sections to cover the changes to the management of investment in property, including maintenance.
- e) Mortgages. Provision has been made for the approval of mortgages. These are not covered by the current PPRs.

3.3 Specific Changes

3.3.1 Specific changes made in the proposed amendments include:

- a) Compulsory purchase. The structure of the section (Rules 5.12 – 5.13) and the wording have been simplified.
- b) Reallocation of property. The section in the current Rules is called Redeployment of property – other than for disposal. It has been replaced with a more straightforward section (Section 9) about re-using property. This reflects the centralisation of property management under the responsibility of the Corporate Director Strategic Resources.
- c) Property-related compensation payments. The section (Section 10) has been separated out, expanded and made clearer.
- d) Transactions at over value. This is now covered in more detail (Rules 5.8 – 5.10), tying in the issues around Subsidy Control. The wording has been better aligned with the wording for transactions at under value.
- e) Transactions at under value. The text has been expanded and made clearer (Rules 6.7 – 6.10).

3.4 Consequential amendments

- 3.4.1 Subject to any comments they may have, should Members be minded to propose the suggested changes to the Property Procedure Rules for approval, then certain consequential amendments will also be required to the Executive Members' Delegation Scheme, which references Executive Members' powers in relation to property matters. The proposed consequential amendments to the Scheme are set out by way of tracked changes on the version attached at **Appendix 3** to this report. Members will see that in order to 'future-proof' the Scheme as far as possible, the detail

of the delegations is not this time replicated in the Scheme but instead the delegation refers to the detail set out in the Property Procedure Rules.

- 3.4.2 In the event that the changes to the Property Procedure Rules are approved then consequential amendments will also be made to the Officers' Delegation Scheme.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are no significant financial implications arising from this report.

5.0 LEGAL IMPLICATIONS

- 5.1 There are no significant legal implications arising from this report.

6.0 ENVIRONMENTAL IMPLICATIONS

- 6.1 There are no significant environmental implications arising from this report.

7.0 CONCLUSION

- 7.1 Members of the Audit Committee are requested to note the contents of the report and to offer any observations on the proposed amendments to the Property Procedure Rules.

8.0 RECOMMENDATIONS

- 8.1 That, subject to any comments they may have, Members recommend the suggested amendments to the Property Procedure Rules set out at **Appendix 2** and the suggested consequential amendments to the Executive Members' Delegation Scheme set out at **Appendix 3**, to the Chief Executive Officer for recommendation, under his emergency delegated powers to the Executive and ultimately full Council at its meeting on 19 November 2021 for approval.

GARY FIELDING
Corporate Director Strategic Resources

Author of the Report: Jon Holden, Head of Property Service

12 September 2021

Property Procedure Rules

CONTENTS

1. [Interpretation](#)
2. [General](#)
3. [Compliance with Legislation](#)
4. [Signature/Sealing of Property Contracts](#)
5. [Role of Surveyor](#)
6. [Acquisitions](#)
7. [Redeployment of Property](#)
8. [Disposals](#)
9. Management
10. Mortgages
11. Compulsory Purchase and Compensation
12. Exceptions to Property Procedure Rules

These Rules constitute the Council's Standing Orders in relation to property contracts and the redeployment of property.

1.0 INTERPRETATION

1.1 These terms will have the following meanings in the Property Procedure Rules:-

ACE(LDS)	The Assistant Chief Executive (Legal and Democratic Services)
Acquisition	<p>The acquisition of Property by the Council by whatever means, including:</p> <ul style="list-style-type: none">• an option for a purchase or a lease• a new lease for a Property previously leased in (a lease renewal), including an option to renew contained in an existing lease• a Co-habitation Arrangement with another organisation in a non-Council Property• the surrender or assignment of a lease to the Council, including the operation of a break clause <p>but excluding:</p> <ul style="list-style-type: none">• a mortgage of Property owned by a third party in favour of the Council• a licence with a term of no more than one year and at a fee of no more than £15,000
Co-habitation Arrangement	An arrangement with a third party to use space in a Council Property or for the Council to use space in a third party's Property without a lease or licence or the payment of a rent or fee, but normally with payments for a share of running costs. This often relates to space shared by cross-organisation teams
Council	North Yorkshire County Council
CD-SR	The Corporate Director - Strategic Resources
Director	A Corporate Director of the Council including the Chief Executive
Disposal	<p>The disposal of Property by the Council by whatever means, including</p> <ul style="list-style-type: none">• the surrender or assignment of a lease by the Council including the operation of a break clause

- a Co-habitation Arrangement with another organisation in a Council Property
- the grant of a licence of all or part of a Property to a third party

but excluding

- the granting of a mortgage in respect of Property owned by the Council
- a licence with a term of no more than one year and at a fee of no more than £15,000

**Licence
from a third party**

An agreement for the non-exclusive use of property owned by a third party. This is usually limited by hours of operation or by sharing occupation

**Licence
to a third party**

An agreement for use of Council owned property by a third party. This is usually limited by hours of operation or by sharing occupation

Officer

A Council employee or other authorised agent

Property

Any estate or interest in land and/or buildings

Property Contract

A contract relating to Property including (but not limited to) transfers, leases, options, easements, (except easements for highway drainage granted under, or as a consequence of an agreement made under Section 38 (adoption of new highways) or Section 278 (development of existing highways) of the Highways Act 1980) tenancy agreements, licences, and variations and releases from restrictive covenants, user rights granted under local government reorganisation arrangements and wayleaves, but excluding those contracts entered into by school governing bodies under their delegated powers

Redeployment

The re-allocation of a Property by the Council for a purpose different to that for which it has hitherto been used including to disposal

Surveyor

A professionally qualified surveyor or valuer employed or otherwise retained by the Council to provide expert advice on Property Contracts

Tenderer

A person who has expressed an interest in tendering for a Property Contract or who has tendered for a Property Contract

1.2 References in these Rules to:-

- (a) any legislation (e.g. Act of Parliament, Statutory Instrument, EU Directive) include a reference to any amendment or re-enactment of such legislation;
- (b) the singular include the plural and vice versa;
- (c) the masculine include the feminine and vice versa;
- (d) Directors, the CD-SR and the ACE(LDS) shall be taken to include such Officers as are designated by them to undertake the duties and responsibilities set out in these Rules.

1.3 References in **Rules 6.1, 7.2 and 8.1** to values for the purpose of the approvals which are necessary for Acquisitions, Disposals and Redeployments of Property are to the values estimated at the time the approval is given; any such approval is not invalidated by the fact that the actual Acquisition or Disposal figure differs from the estimated figure. The value of any transaction shall be taken to be the Surveyor's opinion as to the open market value as between willing parties.

1.4 Where these Rules refer to approvals being sought or given for the Acquisition, Disposal or Redeployment of Property, such approval may relate to one particular Property or to a particular description or class of Property; but where it relates to more than one Property, the value shall be calculated as the aggregate value of all of the Property of that description or class.

1.5 **Key Principles of Property Procedure Rules**

1.5.1 Subject only to the exception in **1.5.4** responsibility for all transactions relating to Council Property vests in the Asset Management Section within the Corporate Directorate - Strategic Resources.

1.5.2 In nearly all respects, therefore, individual Officers outside Asset Management have no authority to enter into any commitment relating to Property, or to conduct any negotiations in connection with Property even on an informal basis. Officers must therefore inform Asset Management about any impending Property matter at the earliest stage practicable and, wherever possible, before any contact is made with the owner of a Property or with a person who wishes to use the Council Property.

1.5.3 The CD-SR is responsible for either granting or obtaining all approvals for property transactions.

1.5.4 The only exceptions to the key principle are set out in **Rule 4.4**.

2.0 GENERAL

2.1 These Rules are made by the Council on the advice of the CD-SR, in consultation with the ACE(LDS).

2.2 These Rules apply to all Property Contracts.

2.3 These Rules shall be applied in conjunction with the following documents:

- (a) Asset Management Planning Framework: Acquisition Process
- (b) Asset Management Planning Framework: Redeployment Process
- (c) Asset Management Planning Framework: Disposals

(d) Asset Management Planning Framework: Rent and Rent Reviews

- 2.4 The Council has made Financial Procedure Rules ('**FPR**') which apply to budgetary and other issues relating to property; the FPR shall be applied in conjunction with these Rules. The Council has also made Procurement and Contract Procedure Rules, but they do not apply to Property Contracts.
- 2.5 The CD-SR (in consultation with the ACE(LDS)) shall review the application and effect of these Rules and make an annual report to the Audit Committee recommending such amendments to the Rules as are considered appropriate.
- 2.6 Property Contracts and documentation and correspondence relating to them shall be retained for the periods prescribed by the Council's Records Retention and Destruction Schedule.
- 2.7 Every Officer shall comply with these Rules unless a waiver is granted under **Rule 11.1**. Failure to comply may lead to disciplinary action.
- 2.8 Each Director shall ensure that Officers within their Directorate, and contractors working for the Council, are aware of and comply with these Rules and the documents referred to in **Rule 2.3**.
- 2.9 The CD-SR shall be responsible for monitoring adherence to these Rules.

3.0 COMPLIANCE WITH LEGISLATION

- 3.1 Every Property Contract shall comply with all relevant applicable legislation and government guidance including:-
- (a) EU Law
 - (b) Acts of Parliament
 - (c) Statutory Instruments
- 3.2 The ACE(LDS) shall ensure that the Council has the legal power to enter into any Property Contract and that the Council does not purport to enter into any such contract which is ultra vires.

4.0 SIGNATURE/SEALING OF PROPERTY CONTRACTS

- 4.1 No Property Contract shall be completed unless proper approval has been given in accordance with these Rules.
- 4.2 Subject to **Rules 4.3 and 4.4**, every Property Contract must be: -
- (a) executed as a Deed by the ACE(LDS); or by a Legal and Democratic Services Officer authorised by her; or
 - (b) signed by the ACE(LDS); or by a Legal and Democratic Services Officer authorised by her (if the value is less than £50,000); or
 - (c) signed by the ACE(LDS); or by a Legal and Democratic Services Officer authorised by her and another officer authorised by ACE(LDS) (if the value is £50,000 or more).
- 4.3 The CD-SR is authorised to sign Property Contracts comprising wayleaves, agricultural tenancy agreements or agricultural licences provided that:-
- (a) the Property Contract is in a nationally recognised form or in a form prepared or approved by the ACE(LDS); and

- (b) two signatories are required if the value is £50,000 or more.

4.4 All Directors are authorised to approve and sign Licences to or from third parties provided that:-

- (a) the Licence is for a period not exceeding one year; and
- (b) the Licence is for a fee not exceeding £15,000.

5.0 ROLE OF SURVEYOR

5.1 The CD-SR shall instruct the Surveyor to act on behalf of the Council in connection with Property Contracts in accordance with these Rules.

6.0 ACQUISITIONS

6.1 Approval for Acquisitions

6.1.1 Subject to **Rule 6.1.4(a)** and **Rule 10** whenever it is proposed that Property should be acquired by the Council, the CD-SR is responsible for seeking the approval which is necessary in accordance with this **Rule 6.1**.

6.1.2 No approval shall be sought or given for the Acquisition of any Property unless there is adequate budgetary provision for the Acquisition and any expenditure consequent upon the Acquisition.

6.1.3 In respect of the Acquisition of Property **other than** by lease or licence or other agreement for a rent or licence fee or other annual payment or by option:

- (a) the CD-SR may approve any Acquisition up to £250,000 in value;
- (b) the Executive Member for Central Services may approve any Acquisition up to £1,000,000 in value;
- (c) the Executive may approve any Acquisition and must approve any Acquisition over £1,000,000 in value;
- (d) any Acquisition which is above market value in the opinion of the surveyor must be justified within the report which forms part of the approval process.

For the purposes of this Rule, the value in relation to the surrender of a lease to the Council is the capitalised value of the rent or licence fee foregone as a result of the surrender.

6.1.4.1 Subject to **Rule 6.1.4.2** in respect of the Acquisition of Property by lease or licence or other agreement for a rent or licence fee or other annual payment:

- (a) the CD-SR may approve any Acquisition where the annual rent or fee or other annual payment is £25,000 or less;
- (b) the Executive Member for Central Services may approve any Acquisition where the annual rent or fee or other payment is £100,000 or less;
- (c) the Executive may approve any Acquisition and must approve any Acquisition where the annual rent or fee or other annual payment is more than £100,000;
- (d) any Acquisition which is above market value in the opinion of the surveyor must be justified on the report which forms part of the approval process.

For the purpose of this Rule, the annual rent or fee or other annual payment means the initial rent or fee or other annual payment payable by the Council (but ignoring any discount or rent-free period).

6.1.4.2 In the case of the payment of a premium by the Council for a lease the approvals required shall be sought according to the value bands in **Rule 6.1.3**.

6.1.5 In respect of the Acquisition of Property by option:

- a) the CD-SR may approve the securing of an option providing that the anticipated total cost payable to secure the option does not exceed the available budget provision
- b) the Executive may approve the securing of an option and must approve the securing of any option for which the anticipated total cost payable to secure the option exceeds the available budget provision
- c) approval for the exercise of any option shall be subject to the same value bands as set out in **Rules 6.1.3 and 6.1.4.1**
- d) should it become necessary to vary the terms of an existing option, approval shall be sought subject to the same value bands as set out in **Rules 6.1.3 and 6.1.4.1**.

For the purpose of this Rule, the relevant value for securing options is the cost of securing the option plus the value of the resulting transaction. The relevant value for exercising options is the value of the transaction to be entered into.

6.2 Terms of Acquisition

6.2.1 The Surveyor is responsible for negotiating the terms for the Acquisition of Property and for any subsequent rent reviews, if relevant.

6.2.2 The CD-SR is responsible for approving the terms for the Acquisition of Property, and shall report such terms to the ACE(LDS).

6.2.3 The ACE(LDS) is responsible for preparing and completing the documentation for the Acquisition of Property in accordance with the terms referred to in **Rule 6.2.1**, subject to any variations agreed with the CD-SR and subject also to such further terms as the ACE(LDS) considers appropriate in the best interests of the Council.

7.0 REDEPLOYMENT OF PROPERTY – OTHER THAN FOR DISPOSAL

7.1 As soon as a Director identifies the fact that a Property used by his/her Directorate is no longer required for its current use, the Director shall inform the CD-SR. The CD-SR shall then enquire whether the Property is of use to any other Director in connection with the service(s) for which they are responsible and subject to the response received shall apply the redeployment process in **Rule 7 or 8** as appropriate.

7.2 Approval for Redeployment – other than for disposal

7.2.1 Whenever it is proposed that Property should be redeployed other than for disposal by the Council, the CD-SR is responsible for seeking the approval which is necessary in accordance with this **Rule 7.2**.

7.2.2 In the case of any Redeployment of Property other than for disposal which is **not** held by the Council on a lease or licence:

- (a) the CD-SR may approve any Redeployment of Property up to £500,000 in value;
- (b) the Executive Member for Central Services may approve any Redeployment of Property up to £1,000,000 in value;
- (c) the Executive may approve any Redeployment, and must approve any Redeployment of Property over £1,000,000 in value.

7.2.3.1 Subject to **Rule 7.2.3.2** in the case of any Redeployment of Property other than for disposal which is held by the Council on a lease or licence:

- (a) the CD-SR may approve any Redeployment where the annual rent or fee is £25,000 or less;
- (b) the Executive Member for Central Services may approve any Redeployment where the annual rent or fee is £100,000 or less;
- (c) the Executive may approve any Redeployment and must approve any Redeployment where the annual rent or fee is more than £100,000.

For the purpose of this Rule, the annual rent or fee means the rent or fee payable by the Council at the time of the Redeployment (but ignoring any discount or rent-free period).

7.2.3.2 In the case of a property held by the Council on lease where a premium has already been paid the approvals required shall be sought pursuant to 7.2.3.1.

7.3 **Terms of Redeployment – other than for disposal**

7.3.1 Once approval for Redeployment has been given, the CD-SR is responsible for arranging the Redeployment in accordance with the Redeployment Process Guidance which forms part of the Asset Management Planning Framework referred to in **Rule 2.3(b)**.

8.0 **REDEPLOYMENT FOR DISPOSAL**

8.1 **Approval for redeployment for Disposal**

8.1.1 Whenever it is proposed that Property should be disposed of by the Council, the CD-SR is responsible for seeking the approval which is necessary in accordance with this **Rule 8.1**.

8.1.2.1 Prior to a decision to dispose of a property, it is necessary to confirm whether this was purchased using grant funding. If so, steps must be taken to ensure that the disposal and the allocation of proceeds complies with any grant conditions. Any grant conditions that conflict with the rules set out below will always take precedence. If this is the case, the advice of the CD-SR and the ACE(LDS) should be sought before any steps to dispose are taken.

8.1.2.2 Subject to **Rule 8.1.4**, in respect of the Disposal of Property **other than** by lease or licence or other agreement for a rent or licence fee or other annual payment:

- (a) the CD-SR may approve any Disposal up to £500,000 in value;
- (b) the Executive Member for Central Services may approve any Disposal up to £1,000,000 in value;

- (c) the CD-SR may approve any Disposal of land or property which forms part of the County Farms estate, irrespective of value,
- (d) the Executive may approve any Disposal and must approve any Disposal over £1,000,000 in value (subject to **Rule 8.1.2.2(c)**) shall be subject to the approval of the Executive.

For the purpose of this Rule, the value in relation to options means the value of the transaction resulting from the option and not the value of the option itself. For the purposes of this Rule, the value in relation to the surrender of a lease by the Council is the capitalised value of the rent or licence fee which would have been paid, but for the surrender.

8.1.3.1 Subject to **Rule 8.1.3.2** and **Rule 8.1.4**, in respect of the Disposal of Property by lease or licence or other agreement for a rent or licence fee or other annual payment:

- (a) the CD-SR may approve any Disposal where the annual rent or fee or other annual payment is £50,000 or less;
- (b) the Executive Member for Central Services may approve any Disposal where the annual rent or fee or other annual payment is £100,000 or less;
- (c) the Executive may approve any Disposal but any Disposal where the annual rent or fee or other annual payment is more than £100,000 shall be subject to the approval of the Executive.

For the purpose of this Rule, the annual rent or fee or other payment means the initial rent or fee payable or other payment to the Council (but ignoring any discount or rent-free period). For the purposes of this Rule in relation to options, the annual rent or fee means the initial rent or fee payable to the Council under the lease or licence resulting from the option.

8.1.3.2 In the case of the Disposal of property by lease where a premium is payable to the Council the approval required shall be sought pursuant to the value bands referred to in **Rule 8.1.2**.

8.1.4.1 Disposals at an Undervalue

Where the disposal of any property is being considered which is likely to result in either a sale or long lease (seven years or more) at an undervalue the following provisions shall apply subject to Rule 8.1.4.2:-

- (a) In respect of Disposal of Property other than by lease or licence or other agreement for rent or licence fee or other annual payment the relevant approvals shall be sought in accordance with the following:

Approver	Maximum market value	Maximum undervalue authority
Corporate Director – Strategic Resources	£50,000	100%
Corporate Director – Strategic Resources	£250,000	50%
Executive Member for Central Services	£250,000	100%

Appendix 1 Current Property Procedure Rules

Executive Member for Central Services	£500,000	50%
Executive	No limit	100% except where the undervalue is £2m or more
Secretary of State	No limit	No limit

- (b) In respect of Disposal of Property by lease or licence or other agreement for rent or licence fee or other annual payment the relevant approvals shall be sought in accordance with the following:

Approver	Maximum annual rental value	Maximum undervalue authority
Corporate Director – Strategic Resources	£10,000	100%
Corporate Director – Strategic Resources	£25,000	50%
Executive Member for Central Services	£25,000	100%
Executive Member for Central Services	£100,000	50%
Executive	No limit	100% except where the undervalue is £2m or more
Secretary of State	No limit	No limit

- (c) In respect of Disposal of Property by lease or licence involving the payment of a premium the approvals shall be sought according to the value bands in the table in paragraph (a) above.
- (d) For the purposes of this Rule, the undervalue is the difference between the unrestricted value of the property to be disposed of and the consideration for the disposal.
- (e) For all disposals of property at undervalue (except transfers pursuant to the Academies Act 2010, where Rule 8.1.4.2 applies), the purpose for which the property is to be disposed of must be likely to contribute to the promotion or improvement of the economic, social or environmental well being of the whole or any part of the Council's area, or of all or any persons resident or present in its area.

Academies Act 2010

8.1.4.2 In respect of the Disposal of Property by lease, licence, freehold, transfer or otherwise where such Disposal is made in accordance with a Transfer Scheme made by the Secretary of State pursuant to the Academies Act 2010 the relevant approval for the Disposal shall be sought from the Lead Executive Member for (Children's Act 2004), children's services, special education needs and youth justice by the Corporate Director – Strategic Resources; the Executive Member may give such approval regardless of the undervalue of the disposal.

The Right to Buy

8.1.5 Where right to buy applications are made to the Council under the Housing Act 1985 the ACE(LDS), in consultation with the CD-SR, shall be responsible for the admission

or denial of the application of the right to buy and, where the right to buy is admitted, the ACE(LDS) shall dispose of the Property in accordance with the said Act.

External Consents to Disposal

8.1.6 The CD-SR is responsible for obtaining such external consents (if any) as are required for a Disposal (except in relation to the disposal of school playing fields, for which the Corporate Director Children and Young People's Service shall be responsible for seeking any necessary approvals).

8.2 Terms of Disposal

8.2.1 The Surveyor is responsible for negotiating the terms for the Disposal of Property and for any subsequent rent reviews, if relevant.

8.2.2 The CD-SR is responsible for approving the terms for the Disposal of Property and shall report such terms to the ACE(LDS).

8.2.3 The ACE(LDS) is responsible for preparing and completing the documentation for the Disposal of Property in accordance with the terms referred to in **Rule 8.2.1** subject to any variations agreed with the CD-SR and subject also to such further terms as the ACE(LDS) considers appropriate in the best interests of the Council.

8.2.4 Except where an approval has been obtained in accordance with **Rule 8.1.4**, the CD-SR shall ensure that whenever terms for a Disposal of a Property are being determined, the best consideration for the Disposal shall be obtained by the Council pursuant to Section 123 of the Local Government Act 1972.

8.3 Method of Disposal

8.3.1 The CD-SR shall take such professional advice from the Surveyor as is necessary to ensure that the most appropriate disposal process is used.

8.3.2 The Surveyor's advice shall take account of all relevant factors relating to a Disposal including the following:-

- (a) the likely value of the Property;
- (b) the potential market for the Property;
- (c) the likelihood of obtaining alternative planning consents for the Property and their effect upon the valuation;
- (d) the costs of the Disposal process (including advertising and other marketing);
- (e) the time likely to elapse between offering the Property for Disposal and the projected completion date of the Disposal; and
- (f) all other relevant factors.

8.4 Disposals by Tender

8.4.1 This **Rule 8.4** applies to all Disposals of Property by tender whether the tender is subject to contract or is capable of immediate acceptance.

8.4.2 A tender may only be considered if:-

- (a) it has been received in a sealed envelope marked "Tender" and indicating the Property referred to in the tender; and
- (b) the identity of the Tenderer cannot be ascertained from the tender envelope; and

- (c) subject to **Rule 8.4.5**, the tender has been returned to the ACE(LDS) before the tender closing date (which shall be a time and date when County Hall is open for business).
- 8.4.3 The ACE(LDS) shall be responsible for the reception and safe custody of tenders until they are opened.
- 8.4.4 Tenders must be opened at the same time and in the presence of the ACE(LDS) who shall maintain a record of the tenders received. Such a record shall include the date and time of tender opening, the identity of the Officer present, the identities of Tenderers and the tendered amounts. A copy of such a record shall be provided as soon as practicable to the CD-SR.
- 8.4.5 If a tender is received after the specified tender closing date it may not be considered unless the ACE(LDS) is satisfied that the tender was posted or otherwise dispatched in sufficient time to be delivered before the specified time but that delivery was prevented by an event beyond the control of the Tenderer **and** that other tenders have not been opened.

Tender Evaluation

- 8.4.6 Tenders shall be evaluated by the CD-SR in consultation with the Surveyor. The CD-SR shall accept the tender which offers the best consideration for the Property in accordance with **Rule 8.2.3** above. The CD-SR shall ensure that the tender evaluation process is fair, and so far as consistent with the achievement of best consideration by the Council, that the basis on which tenders are to be evaluated has been established before tenders are opened. If all of the tenders are not submitted on the same basis (for example, if some tenders are conditional on planning permission being granted for a particular use of the property), then the CD-SR shall consult the Surveyor in relation to the evaluation of the bids, and a document will be produced by the CD-SR, setting out the reasoning which has been applied to determine which tender has been judged to offer the best consideration for the Property.

Alterations to Tenders

- 8.4.7 Tenders may not be altered by Tenderers after the tender closing date except where the CD-SR is satisfied that arithmetical errors having been inadvertently made by the Tenderer, the Tenderer can be invited to correct them.

Post Tender Negotiations

- 8.4.8 Post tender negotiation may be undertaken in accordance with the following conditions:-
 - (a) The CD-SR considers that added value may be obtained;
 - (b) the post tender negotiations are undertaken either with all Tenderers, or with such Tenderer(s) as the CD-SR considers it appropriate to invite having regard to the value of their tenders and any conditions attached to them;
 - (c) the post tender negotiations are conducted by a team comprising the Surveyor and suitably experienced Officers approved by the CD-SR and trained in post tender negotiations;
 - (d) a record of the negotiations and any added value obtained from them is kept by the CD-SR; and
 - (e) any such added value obtained by the post tender negotiations is incorporated into the Property Contract with the successful Tenderer.

Appendix 1 Current Property Procedure Rules

9.0 MANAGEMENT

Approval for Rent Reviews

- 9.1 The CD-SR may approve the completion of a rent review memorandum provided that the original lease included provisions for the rent review.

Variation of lease terms

- 9.2 The CD-SR may approve any variation to the terms of an existing lease or other agreement (including the grant of a licence to assign or sublet) except that, if the variation would result in a decrease to the rent or licence fee, **Rule 6.1.4** shall apply.

Dilapidations Claims

- 9.3 The CD-SR may approve the settlement of dilapidations claims where the Council is landlord or tenant, and to any value.

Release or variations of restrictive covenants

- 9.4 In respect of the release or variation of restrictive covenants:
- (a) the CD-SR may approve any release or variation up to £500,000 in value;
 - (b) the Executive Member for Central Services may approve any release or variation up to £1,000,000 in value;
 - (c) the Executive may approve any release or variation and must approve any release or variation over £1,000,000 in value.

For the purposes of this Rule, the value is the value of the payment to effect the release or variation.

Restrictions on Title

- 9.5 The CD-SR may instruct the ACE(LDS) to place or remove restrictions on the title of any property owned by the Council, or to place restrictions on the title of properties owned by third parties, provided that such restrictions are to secure a grant or other loan to or from the Council.

10.0 MORTGAGES

- 10.1 The CD-SR may instruct the ACE(LDS) to enter into a mortgage of property owned by a third party where it is considered appropriate for the Council to secure its interests in respect of a grant or loan made to such a third party.

- 10.2 In respect of mortgages of property owned by the Council:-
- (a) only the Executive may approve such a mortgage and
 - (b) the terms of the mortgage shall be determined by the CD-SR in consultation with the ACE(LDS).

The ACE(LDS) shall take such steps as are necessary to discharge a mortgage (whether the Council is mortgagee or mortgagor) upon the instruction of the CD-SR.

Appendix 1 Current Property Procedure Rules

11.0 COMPULSORY PURCHASE AND COMPENSATION

11. If a Director, in consultation with the CD-SR and the ACE(LDS), considers that it is necessary for compulsory powers to be exercised by the Council to acquire property in connection with a Council function then the Director shall seek all such approvals as are necessary (including, but not limited to, from the Secretary of State) to enable compulsory powers to be used but shall only do so after the Executive has approved the proposed exercise of such powers.
- 11.2 An approval given by the Executive to use compulsory powers shall be deemed to include the approvals necessary to acquire the Property the subject of the Compulsory Purchase Order, this shall apply regardless of:-
 - (a) the number of sites to be acquired; and
 - (b) the value of such sites subject to the Executive having first given budgetary approval to the proposed expenditure in connection with their acquisition.
- 11.3 **Rule 6.2** shall apply to the approval of terms for the acquisition of interests under Compulsory Purchase Orders.
- 11.4 The CD-SR shall also be responsible for instructing the Surveyor to agree claims for compensation made by third parties as a consequence of the Compulsory Purchase Order; once the terms have been agreed and approved by the CD-SR they shall be reported to the ACE(LDS) who shall be responsible for preparing and completing the documentation.

12.0 EXCEPTIONS TO PROPERTY PROCEDURE RULES

- 12.1 The CD-SR and the ACE(LDS) may agree specific waivers to the Property Procedure Rules, other than **Rules 6.1, 7.2, 8.1 and 10.2**.

Property Procedure Rules

CONTENTS

1. Introduction and Key Principles
2. Application
3. General Arrangements
4. All Property Transactions
5. Property transactions – Acquisitions – additional arrangements
6. Property transactions – Disposals – additional arrangements
7. Property transactions – Mortgages – specific arrangements
8. Property transactions – Restrictions on title – specific arrangements
9. Re-allocation of a property to a new use by the Council, including appropriation
10. Property-related compensation payments
11. Signature / Sealing of Property Contracts
12. Investment in Property

[Type here]

PROPERTY PROCEDURE RULES

These Rules constitute the Council's Standing Orders in relation to property contracts and the management of property.

1.0 INTRODUCTION AND KEY PRINCIPLES

- 1.1 The Property Procedure Rules (PPR) form part of the overall control framework within which North Yorkshire County Council operates. They aim to facilitate sound, innovative service delivery in the administration of all property matters throughout the Council, supporting effective property management that provides value for money and good decision-making.
- 1.2 The PPR should be read in conjunction with the Finance Procedure Rules and the Procurement and Contract Procedure Rules.
- 1.3 All decisions taken under the PPR must be in accordance with all relevant legal requirements and government guidance, including: -
1. Acts of Parliament; and
 2. Statutory Instruments
- 1.4 The PPR apply to all Property that is owned or occupied by the Council, subject to the following exceptions: -

Property type	Exception	Person / Body with Responsibility
Operational Landfill Sites	Day-to-day management.	Corporate Director Business & Environmental Services
Nursery schools Primary Schools Secondary Schools Special Schools Pupil Referral Units	Day-to-day management. Investment decisions.	Corporate Director Children & Young People's Service and Schools' Governing Bodies

The Rules apply to all activities associated with the ownership and occupation, and management of Property which include, but are not limited to: -

1. a future or current property transaction involving the Council
 2. the re-allocation of a Property to a new use by the Council
 3. the payment of Property-related compensation by or to the Council
 4. investment in a Property by the Council
 5. the strategic and operational management of Property used by the Council.
- 1.5 Where a decision is made under these Rules in respect of investment in a Property by the Council or the management of Property used by the Council and that decision necessitates a procurement of works or services then the Procurement and Contract Procedure Rules will apply.
- 1.6 All Property owned or occupied by the County Council is held and managed as a corporate resource. Responsibility for its management lies with the Corporate Director Strategic Resources (CDSR), and is delivered through the Property Service in accordance with arrangements determined by the CDSR.

[Type here]

- 1.7 The CDSR is authorised to acquire, manage and dispose of all Property held by the Council in accordance with the Council's budgetary and policy framework.

For the avoidance of doubt this authority includes, but is not limited to: -

1. Acquisitions and disposals, including leases and licences
2. Renewals of leases and licences
3. Management of all Property, including the allocation of operational space (including for both County Council and third party use) the management of associated facilities, the commissioning of all facilities services and the reallocation of Property
4. Repair and maintenance of all Property. This includes, but is not limited to, repair and maintenance obligations relating to property ownership, contributions to maintenance and repair carried out by third parties, service charge obligations and dilapidations
5. Investment in all Property. This includes, but is not limited to, the commissioning and delivery of construction projects and contributions to third parties.

The CDSR will exercise their delegated powers to ensure efficiency within the management of the Property Portfolio and the delivery of associated services.

- 1.8 The CDSR will ensure that arrangements are in place so that all decisions taken in accordance with these Rules are informed by Officers in the Property Service, or consultants commissioned by them, who are competent to do so. These decisions will take account of both future and contingent liabilities arising from the properties as such liabilities will be the responsibility of the Property Service.
- 1.9 Officers employed in Service Directorates or services other than the Property Service are not authorised to make the decisions referred to in these Rules except where stated explicitly.
- 1.10 The CDSR will maintain a forward schedule of decisions that are to be taken under these Rules.
- 1.11 The CDSR will also maintain a schedule of all decisions that have been taken under these Rules.
- 1.12 References in these Rules to:-
- (a) any legislation (e.g. Act of Parliament, Statutory Instrument, EU Directive) include a reference to any amendment or re-enactment of such legislation;
 - (b) the singular include the plural and vice versa;
 - (c) the masculine include the feminine and vice versa;
 - (d) Reference to the CDSR and the Assistant Chief Executive (Legal and Democratic Services) (ACE(LDS)) shall be taken to include such Officers as are designated by them to undertake the duties and responsibilities set out in these Rules.

[Type here]

2. APPLICATION

- 2.1 The Rules apply to Property which includes, but is not limited to, Property and legal and equitable estates and interests in land.

Land is the land surface, everything below the surface, buildings and other structures on or under the surface, and such airspace as is reasonably necessary for the ordinary use of the land.

Land also includes plant, equipment and other things fixed to a building that could not be removed without damaging the fabric of the building.

- 2.2 Under these Rules, a Property transaction is a transaction that affects a Property, including but not limited to: -

1. a freehold/ leasehold transfer
2. a lease or tenancy agreement
3. a licence to use
4. a recurring hiring in or a recurring hiring out or a one-off hiring out or a one-off hiring in
5. an option
6. user rights granted under local government reorganisation arrangements
7. a co-habitation arrangement with another organisation either in or out
8. a wayleave
9. an easement (except as excluded by Rule [2.4])
10. a mortgage
11. a legal charge
12. variations and releases from restrictive covenants

- 2.3 Under these Rules, a property transaction is not:

1. an easement for highway drainage granted under or as a consequence of an agreement made under Section 38 (adoption of new highways) or Section 278 (development of existing highways) of the Highways Act 1980
2. a contract entered into by a school governing body under its delegated powers including hirings out.
3. a one-off hiring in for a formal Council event.

- 2.4 A decision about a property transaction is a decision in respect of Property, which includes, but is not limited to, a decision to:-

1. acquire or dispose an estate or interest in property by any means
2. acquire or dispose a licence or hiring
3. surrender or accept a surrender of a lease or tenancy agreement or licence
4. operate / not operate a break clause in a lease or tenancy agreement
5. implement conditional terms contained within a property contract
6. vary or release restrictive covenants
7. change the terms of a transaction after it has been completed
8. implement and agree rent reviews under a lease or tenancy agreement
9. impose or accept or remove a restriction on title
10. provide or secure or discharge a mortgage

- 2.6 A property-related compensation payment is a payment made under the Land Compensation Act 1973 or other legislation covering highway schemes or other projects. It can be made either: -

[Type here]

1. by the Council to another party; or
2. to the Council by another party.

It includes payments in relation to claims known as 'Part 1' and 'Section 10'.

- 2.7 Under these Rules an investment in a Property is considered to be one that takes the form of capital or revenue expenditure that results in one of the following:-
1. responsive maintenance to a Property
 2. preventative maintenance to a Property
 3. planned maintenance of a Property
 4. a response to compliance issues at a Property
 5. the securing of an empty Property
 6. improvement of a Property (a project)
 7. addition of accommodation (a project)
 8. demolition of all or part of a building or structure.

3. GENERAL ARRANGEMENTS

Approvals

- 3.1 All decisions under these Rules will be made in accordance with the provisions outlined below and in accordance with the Access to Information Procedure Rules.
- 3.2 All decisions under these Rules must be made in writing and entered in the schedule of decisions (except where specified otherwise in these Rules) that will be maintained (here, 'writing' includes decisions recorded in the Asset Management System.)
- 3.3 The only exceptions to rule 3.2 are
1. a decision for a one-off hiring out; or
 2. a decision to commission investment in a Property, including individual responsive maintenance projects, where the value is £50,000 or less.

These decisions can be approved under other operational delegated authorities.

- 3.4 A proposed decision, and its approval, must comply with the Council's Access to Information Procedure Rules and any other relevant Constitutional provisions, including (but not limited to) the Finance Procedure Rules and the Procurement and Contract Procedure Rules.
- 3.5 A proposed decision and its approval must take into account, along with all relevant considerations, value for money to the Council, including in relation to any alternative options that are considered.

Compliance

- 3.6 All Property decisions must be taken in accordance with these Rules unless a waiver is granted under Rule 3.12.
- 3.7 Each Corporate Director or Assistant Chief Executive must ensure that officers within their directorate and consultants working for the Council are aware of the Rules and

[Type here]

must take all reasonable steps to ensure that officers and consultants comply with them. Failure to comply with the Rules may lead to disciplinary action.

3.8 The CDSR must monitor adherence to these Rules.

Waivers

3.12 The CDSR in consultation with the ACE(LDS) may grant a case-specific waiver to the application of the Rules, except in relation to Rules 1.6 and 9.2. A waiver must be recorded in writing.

Review

3.13 The CDSR, in consultation with the ACE(LDS), shall periodically review the application and effect of these Rules and report to the Audit Committee on the outcome, including any proposed amendments to the Rules.

4. ALL PROPERTY TRANSACTIONS

Identifying Need

4.1 Officers in a directorate may identify the possible need for a Property transaction from an operational service point of view.

4.2 Any report that is required covering changes to service delivery and associated decisions that necessitate a Property transaction may be arranged by the Corporate Director who manages the affected service. Where this is the case, the CDSR will provide confirmation for the report that the proposed transaction is appropriate and required.

4.3 Officers in a directorate must not:-

1. make contact with an owner or agent or possible tenant about a specific property;
2. discuss or negotiate or agree any terms for a property transaction with an owner or agent or possible tenant.

4.4 Officers in the Property Service may identify the possible need for a Property transaction or identify other decisions linked to a Property transaction from a strategic or operational point of view.

4.5 The CDSR must approve any identification of need for a Property transaction, in so doing taking account of, amongst other relevant factors, likely capital and revenue cost implications and must confirm that appropriate funds are available before any action is taken by the Property Service.

Approving in principle proposals

4.6 Only Officers in the Property Service can: -

1. submit a report with a proposed in principle decision for approval;
2. provide the property input to a report to the Executive that covers both service and Property transaction issues and provide the wording for a resolution related to a proposed property transaction.

[Type here]

- 4.7 The value to be used to determine the approval arrangement for a proposed decision is the value as estimated by an Officer in the Property Service or by a consultant appointed to provide property advice or services, at the time that the report about the decision is prepared. It is recognised that the actual value may differ from that identified in the in principle report.

Negotiating and instructing

- 4.8 Only Officers in the Property Service can instruct a consultant to negotiate terms for a proposed Property transaction.
- 4.9 Only Officers in the Property Service or in a consultancy appointed to provide Property advice or services can:-
1. negotiate the terms of a proposed Property transaction
 2. propose terms for approval.
- 4.10 Rule 4.9 does not prevent an in principle decision from setting terms that are critical to that decision.

Approving terms

- 4.11 The CDSR can approve the proposed terms of a property transaction (Heads of Terms).
- 4.12 Terms must be approved only if they are in accordance with the in principle decision. If they are not in accordance then a new decision is required.

Entering into a property contract or documenting the implementation of the decision

- 4.13 A Property contract can be completed only if approval has been given to the transaction in accordance with these Rules.
- 4.14 The ACE(LDS) shall ensure that the Council has the legal power to enter into a specific Property contract and that the Council does not enter into a contract which is ultra vires.
- 4.15 The ACE(LDS) must prepare and complete the documentation for a Property contract in accordance with the approved terms, subject to:
1. any variations agreed with the Corporate Director Strategic Resources
 2. any further terms as the ACE(LDS) considers are appropriate and in the best interests of the Council
 3. the specific arrangements set out in Rule [\[4.18\]](#).
- 4.16 A Property contract must be signed or sealed in accordance with the provisions of Section 11 of these Rules

Management of Property transactions after their completion

Approval for Rent Reviews

- 4.18 The CDSR may approve the completion of a rent review memorandum provided that the original lease included provisions for the rent review.

[Type here]

Variation of lease terms

- 4.19 The CDSR may approve any variation to the terms of an existing lease or other agreement (including the grant of a licence to assign or sublet) except that, if the variation would result in a decrease to the rent or licence fee, Rule 5.2 shall apply.

Assignment or Sub-Letting of a Lease In

- 4.20 The CDSR may approve any assignment or sub-letting associated with a lease provided that the proposal would result in the Council's rent or licence fee being static or decreasing. In the event that the Council's rent or licence payment were to increase then the approvals identified at Rule 5.3 will apply

Assignment or Sub-Letting of a Lease Out

- 4.21 The CDSR may approve any assignment or sub-letting associated with a lease provided that the proposal would result in the Council's rent or licence fee being static or decreasing. In the event that the Council's rent or licence payment were to increase then the approvals identified at Rule 5.4 will apply

Dilapidations Claims

- 4.20 The CD-SR may approve the settlement of dilapidations claims where the Council is landlord or tenant, and to any value.

Release or variations of restrictive covenants

- 4.21 In respect of the release or variation of restrictive covenants:-
- (a) the CDSR may approve any release or variation up to £500,000 in value;
 - (b) the Executive Member for Finance and Assets may approve any release or variation up to £1,000,000 in value;
 - (c) the Executive may approve any release or variation and must approve any release or variation over £1,000,000 in value.

For the purposes of this Rule, the value is the value of the payment to effect the release or variation.

Restrictions on Title

- 4.22 The CDSR may instruct the ACE(LDS) to place or remove restrictions on the title of any Property owned by the Council, or to place restrictions on the title of properties owned by third parties, provided that such restrictions are to secure a grant or other loan to or from the Council.

County Farms Management

- 4.23 The CDSR may approve any transaction associated with the management of the County Farms Portfolio provided that the proposal is in accordance with, or not in conflict with, the County Farms Portfolio.

Other approvals

[Type here]

- 4.24 A decision that is required to change the status of land from being highway maintained at the public expense in order to allow the land to be used for another purpose by the Council or for disposal is made under separate arrangements under the Constitution. Such a decision must be taken before a decision is taken under these Rules about the future of the site.

5. PROPERTY TRANSACTIONS – ACQUISITIONS – ADDITIONAL ARRANGEMENTS

Approvals

- 5.1 In respect of the Acquisition of Property other than by lease or licence or other agreement for a rent or licence fee or other annual payment or by option:-
- (a) the CDSR may approve any Acquisition up to £500,000 in value;
 - (b) the Executive Member for Finance and Assets may approve any Acquisition up to £1,000,000 in value;
 - (c) the Executive may approve any Acquisition and must approve any Acquisition over £1,000,000 in value;

For the purposes of this Rule, the value in relation to the surrender of a lease to the Council is the capitalised value of the rent or licence fee foregone as a result of the surrender.

- 5.2 Subject to Rule 5.3 in respect of the Acquisition of Property by lease or licence or other agreement for a rent or licence fee or other annual payment:
- (a) the CD-SR may approve any Acquisition where the annual rent or fee or other annual payment is £150,000 or less;
 - (b) the Executive Member for Finance and Assets may approve any Acquisition where the annual rent or fee or other payment is £250,000 or less;
 - (c) the Executive may approve any Acquisition and must approve any Acquisition where the annual rent or fee or other annual payment is more than £250,000;

For the purpose of this Rule, the annual rent or fee or other annual payment means the initial rent or fee or other annual payment payable by the Council (but ignoring any discount or rent-free period).

- 5.3 In the case of the payment of a premium by the Council for a lease the approvals required shall be sought according to the value bands in Rule 5.1
- 5.4 In respect of the Acquisition of Property by option:
- a) the CDSR may approve the securing of an option providing that the anticipated total cost payable to secure the option does not exceed the available budget provision
 - b) the Executive may approve the securing of an option and must approve the securing of any option for which the anticipated total cost payable to secure the option exceeds the available budget provision
 - c) approval for the exercise of any option shall be subject to the same value bands as set out in Rules 5.1 and 5.2
 - d) should it become necessary to vary the terms of an existing option, approval shall be sought subject to the same value bands as set out in 5.1 and 5.2

[Type here]

For the purpose of this Rule, the relevant value for securing options is the cost of securing the option plus the value of the resulting transaction. The relevant value for exercising options is the value of the transaction to be entered into.

Funding

- 5.5 No approval must be sought for the acquisition of a Property unless budget provision has been made for the cost of acquisition and any one-off or recurring expenditure as a result of the acquisition.
- 5.6 If a directorate is funding the cost of an acquisition that will form part of the Property Portfolio then it must transfer base budget to the Property Service Budget for day-to-day running costs (for the avoidance of doubt this includes, but is not limited to, rent, service charge and insurance rent) and for repair and maintenance in the event that liability will be incurred.
- 5.7 The availability of the funding referred to at 5.5 and 5.6 must be confirmed by the CDSR.

Transactions at over value

- 5.8 A transaction may be approved at a price that is above the Market Value or at a rent that is above the Market Rent if it would be in the Council's best overall interest and in line with the Council's fiduciary duty to the taxpayer. The opinion as to the Market Value or Market Rent is that of an Officer of the Property Service or in a consultancy appointed to provide Property advice or services.
- 5.9 If the likelihood of such a transaction is known when the report for the in principle decision is being written then the report must include:
1. A detailed justification for the transaction on this basis.
 2. An assessment of the legal implications by the ACE(LDS) associated with Subsidy Control; and
 3. A statement about how any Subsidy Control issues have or will be resolved by the directorate wishing to acquire the property.
- 5.10 If the best terms that can be agreed for a transaction are above the Market Value or Market Rent then before the terms are approved:
1. The CDSR must be informed.
 2. Any Subsidy Control issues must be identified by the ACE(LDS).
 3. Any Subsidy Control aid issues must be resolved by the directorate wishing to acquire the property.

Auction or tender

- 5.11 If the Council wishes to acquire a property that is for sale or for lease by an auction or by a formal tender exercise or an informal tender exercise then:
1. An in principle decision must be sought as with any other acquisition.

[Type here]

2. A valuation of the property must be obtained from an Officer of the Property Service or a consultancy appointed to provide property advice or services.
3. An upper limit upon the value for a bid must be agreed by the CDSR.
4. The bid must be placed by an appropriately qualified officer in the Property Service or in a consultancy appointed to provide property advice or services.

Compulsory purchase

5.12 If a Corporate Director, in consultation with the CDSR and the ACE(LDS) considers that it is necessary to use compulsory powers to acquire property in connection with a Council function then the Corporate Director must seek:

1. all necessary approvals in respect of the cost of the acquisition.
2. approval from the Executive to the proposed exercise of the powers
3. all other approvals as are necessary to enable the compulsory powers to be used, including approvals from the Secretary of State.

5.13 An approval given by the Executive to use compulsory powers is deemed to include the in principle approval to acquire the Property that is the subject of the Compulsory Purchase Order using the powers or by negotiation regardless of: -

1. the number of sites to be acquired
2. the value of the sites to be acquired.

Hirings in – recurring

5.15 A recurring hiring in is a sessional booking that occurs on a repeat basis.

5.16 Recurring hirings in are handled in the same way as any other acquisition transaction.

6 PROPERTY TRANSACTIONS – DISPOSALS – ADDITIONAL ARRANGEMENTS

General

- 6.1 The CDSR is authorised, in accordance with the Council's budgetary and policy framework, to implement all processes required in accordance with good practice to ensure that all Property disposals comply with all relevant legislation, codes of practice and guidance.
- 6.2 The best consideration must be obtained for a disposal in order to meet the requirements of Section 123 of the Local Government Act 1972 – subject to the provisions set out in rules 6.7 to 6.10.
- 6.3 If a Property was purchased or improved using grant funding then the disposal and allocation of proceeds must comply with any grant conditions. Any grant conditions that conflict with these Rules take precedence. If there is a conflict then the advice of the Corporate Director Strategic Resources and the Assistant Chief Executive (Legal & Democratic Services) must be sought before an in principle approval is given.

Approvals

[Type here]

- 6.4 Subject to rule 6.7 in respect of the Disposal of Property other than by lease or license or other agreement for a rent or license fee or other annual payment: -
- (a) the CDSR may approve any Disposal up to £1,000,000 in value;
 - (b) the Executive Member for Finance and Assets may approve any Disposal up to £1,500,000 in value;
 - (c) the CDSR may approve any Disposal of land or Property that forms part of the County Farms estate, irrespective of value
 - (d) the Executive may approve any Disposal and must approve any Disposal over £1,500,000 in value subject to Rule 6.4(c)

For the purpose of this Rule, the value in relation to options means the value of the transaction resulting from the option and not the value of the option itself. For the purposes of this Rule, the value in relation to the surrender of a lease by the Council is the capitalised value of the rent or licence fee which would have been paid, but for the surrender.

- 6.5 Subject to Rule 6.6 and 6.7 in respect of the Disposal of Property by lease or license or other agreement for a rent or license fee or other annual payment: -
- (a) the CDSR may approve any Disposal where the annual rent or fee or other annual payment is £150,000 or less;
 - (b) the Executive Member for Finance and Assets may approve any Disposal where the annual rent or fee or other annual payment is £250,000 or less
 - (c) the Executive may approve any Disposal but must approve any Disposal where the annual rent or fee or other annual payment is more than £250,000

For the purpose of this Rule, the annual rent or fee or other payment means the initial rent or fee payable or other payment to the Council (but ignoring any discount or rent-free period). For the purposes of this Rule in relation to options, the annual rent or fee means the initial rent or fee payable to the Council under the lease or licence resulting from the option.

- 6.6 In the case of the Disposal of Property by lease where a premium is payable to the Council the approval required shall be sought pursuant to the value bands referred to in Rule 6.4.

Transactions at under value

- 6.7 A transaction may be approved at a price or rent that is at less than best consideration if it would be in the Council's best overall interest and in line with the Council's fiduciary duty to the taxpayer and providing that it is permitted under a general consent issued by central government.
- 6.8 A report proposing such a transaction must include:
- 1. the justification for undertaking the transaction at less than best consideration
 - 2. the authority that is to be used
 - 3. an assessment of the legal implications about any Subsidy Control from the ACE(LDS)
 - 4. a statement about how any Subsidy Control issues have or will be resolved.

[Type here]

- 6.9 In respect of Disposal of Property other than by lease or licence or other agreement for rent or licence fee or other annual payment the relevant approvals shall be sought in accordance with the following:-

Approver	Maximum market value	Maximum undervalue authority
Corporate Director Strategic Resources	£50,000	100%
Corporate Director Strategic Resources	£250,000	50%
Executive Member for Finance and Assets	£250,000	100%
Executive Member for Finance and Assets	£500,000	50%
Executive	No limit	100% except where the undervalue is £2m or more
Secretary of State	No limit	No limit

- 6.10 In respect of Disposal of Property by lease or licence or other agreement for rent or licence fee or other annual payment the relevant approvals shall be sought in accordance with the following:-

Approver	Maximum annual rental value	Maximum undervalue authority
Corporate Director Strategic Resources	£25,000	100%
Corporate Director Strategic Resources	£50,000	50%
Executive Member for Finance and Assets	£25,000	100%
Executive Member for Finance and Assets	£100,000	50%
Executive	No limit	100% except where the undervalue is £2m or more
Secretary of State	No limit	No limit

In respect of Disposal of Property by lease or licence involving the payment of a premium the approvals shall be sought according to the value bands in the table in Rule 6.7 above.

[Type here]

For the purposes of this Rule, the undervalue is the difference between the unrestricted value of the Property to be disposed of and the consideration for the disposal.

Academies

- 6.11 Where a disposal arises pursuant to the Academies Act, 2010 the relevant approval for disposal shall be sought from the Executive Member for Education and Schools.

External consents

- 6.12 The Corporate Director Children and Young People's Service, or person nominated by him, must seek any external approvals required in the relation to the disposal of school Property that falls under Section 77(1) of the School Standard and Framework Act 1998 and or Schedule 1 under the Academies Act 2010
- 6.13 The CDSR must seek all other external consents that may be required for a transaction.

Hirings out – one-off and recurring

- 6.14 The CDSR may enter into agreements with individuals and organisations to hire out properties, or parts of properties, on both one-off and recurring bases.

Right to Buy under the Housing Act 1985

- 6.15 The ACE(LDS), in consultation with the CDSR, may admit or deny the application of the right to buy to a Property.
- 6.16 If the right to buy is admitted then the ACE(LDS) must dispose of the Property in accordance with the Housing Act 1985.

Method of disposal

- 6.17 All relevant factors must be taken into account in selecting the most appropriate method of disposal of a Property, including, but not limited to:-
1. the likely value of the Property
 2. the potential market for the Property
 3. the likelihood of obtaining alternative planning consents for the Property
 4. the effect of alternative planning consents upon value
 5. the costs of interim management (including security) and of disposal (including advertising and other marketing)
 6. the likely time required to reach completion.

Disposal by Tender

- 6.18 This Rule 6.16 applies to all Disposals of Property by tender whether the tender is subject to contract or is capable of immediate acceptance.
- 6.19 A tender may only be considered if:-

[Type here]

- (a) it has been received in a sealed envelope marked "Tender" and indicating the Property referred to in the tender; and
- (b) the identity of the Tenderer cannot be ascertained from the tender envelope; and
- (c) subject to Rule 6.20, the tender has been returned to the ACE(LDS) before the tender closing date (which shall be a time and date when County Hall is open for business).

6.20 The ACE(LDS) shall be responsible for the reception and safe custody of tenders until they are opened.

6.21 Tenders must be opened at the same time and in the presence of the ACE(LDS) who shall maintain a record of the tenders received. Such a record shall include the date and time of tender opening, the identity of the Officer present, the identities of Tenderers and the tendered amounts. A copy of such a record shall be provided as soon as practicable to the CD-SR.

6.22 If a tender is received after the specified tender closing date it may not be considered unless the ACE(LDS) is satisfied that the tender was posted or otherwise dispatched in sufficient time to be delivered before the specified time but that delivery was prevented by an event beyond the control of the Tenderer and that other tenders have not been opened.

Tender Evaluation

6.23 Tenders shall be evaluated by the CDSR. The CDSR shall accept the tender which offers the best consideration for the Property in accordance with Rule 6.4 above. The CDSR shall ensure that the tender evaluation process is fair, and so far as consistent with the achievement of best consideration by the Council, that the basis on which tenders are to be evaluated has been established before tenders are opened. If all of the tenders are not submitted on the same basis (for example, if some tenders are conditional on planning permission being granted for a particular use of the Property), then the CDSR shall produce a report setting out the reasoning which has been applied to determine which tender has been judged to offer the best consideration for the Property.

Alterations to Tenders

6.24 Tenders may not be altered by Tenderers after the tender closing date except where the CDSR is satisfied that arithmetical errors having been inadvertently made by the Tenderer, the Tenderer can be invited to correct them.

Post Tender Negotiations

6.25 Post tender negotiation may be undertaken in accordance with the following conditions:-

- (a) The CDSR considers that added value may be obtained;
- (b) the post tender negotiations are undertaken either with all Tenderers, or with such Tenderer(s) as the CDSR considers it appropriate to invite having regard to the value of their tenders and any conditions attached to them;
- (c) the post tender negotiations are conducted by suitably experienced Officers approved by the CDSR and trained in post tender negotiations;
- (d) a record of the negotiations and any added value obtained from them is kept by the CDSR; and

[Type here]

- (e) any such added value obtained by the post tender negotiations is incorporated into the Property Contract with the successful Tenderer.

6.26 The basis on which tenders are to be evaluated must be established before tenders are opened, in so far as this is consistent with the achievement of best consideration.

6.27 If all of the tenders that are received are not submitted on the same basis (for example, if some tenders are conditional on planning permission being granted for a particular use of the Property) then Officers in the Property Service must set out and then apply the approach that is used to determine which tender offers best consideration.

Surrender of a lease or a licence

6.28 The surrender of a lease in or a licence in, whether by the operation of a break clause or by negotiation, is a disposal to which the Rules in this section apply.

7. PROPERTY TRANSACTIONS – MORTGAGES – SPECIFIC ARRANGEMENTS

Property owned by others

7.1 The CDSR may instruct the ACE(LDS) to enter into the mortgage of a Property owned by another party, provided that the mortgage is to secure the Council's interests linked to a grant or loan made to another party.

Property owned by the Council

7.2 The CDSR may instruct the ACE(LDS) to enter into the mortgage of a Property owned by the Council.

Terms

7.3 The CDSR must set the terms of a mortgage in consultation with the ACE(LDS).

Discharge

7.4 The CDSR may instruct the ACE(LDS) to discharge a mortgage.

8 PROPERTY TRANSACTIONS – RESTRICTIONS ON TITLE – SPECIFIC ARRANGEMENTS

8.1 The CDSR may instruct the ACE(LDS) to place or remove restrictions on the title of a Property owned by the Council.

8.2 The CDSR may instruct the ACE(LDS) to place or remove restrictions on the title of a Property owned by another party.

9. RE-ALLOCATION OF A PROPERTY TO A NEW USE BY THE COUNCIL, INCLUDING APPROPRIATION

General

[Type here]

9.1 This section covers all re-allocations of a Property to a new use by the Council, except for a proposed decision to:-

1. dispose of a Property (to allocate it to the For Sale Property type)
2. grant a lease out or a licence out
3. surrender a lease in or a licence in.

The exceptions listed above are covered by section 6.

9.2 A decision to reallocate a Property to a new use represents a decision to appropriate the Property to the new use where such a decision is required under S123 of the Local Government Act 1972 or other legislation. Any report on which a decision is based will carefully identify this.

9.3 The specific arrangements set out in S122 of the Local Government Act 1972 or other legislation that requires appropriation or sets out specific arrangements for an appropriation must be followed alongside the Rules in this section. If there is any conflict between the Rules and the legislation then the legislation takes precedence.

9.4 The CDSR will be responsible for seeking the required approval for the reallocation of Property.

Approvals

9.5 In the case of any Reallocation of Property other than for disposal which is not held by the Council on a lease or license: -

- (a) the CDSR may approve any Reallocation of Property up to £1,000,000 in value;
- (b) the Executive Member for Finance and Assets may approve any Reallocation of Property up to £1,500,000 in value
- (c) the Executive may approve any Reallocation of Property, and must approve any Reallocation of Property over £1,500,000 in value

9.6 Subject to Rule 9.6 in the case of any Reallocation of Property other than for disposal which is held by the Council on a lease or license: -

- (a) the CDSR may approve any Reallocation of Property where the annual rent or fee is £150,000 or less
- (b) the Executive Member for Finance and Assets may approve any Reallocation of Property where the annual rent or fee is £250,000 or less
- (c) the Executive may approve any Reallocation of Property, and must approve any Reallocation of Property where the annual rent or fee is over £250,000

For the purpose of this Rule, the annual rent or fee means the rent or fee payable by the Council at the time of the Reallocation (but ignoring any discount or rent-free period).

9.7 In the case of a Property held by the Council on lease where a premium has already been paid the approvals required shall be sought pursuant to Rule 9.4.

9.8 The value to be used to determine the appropriate approval arrangement for a proposed decision is the value, as estimated by an Officer of the Property Service or in a

[Type here]

consultancy appointed to provide property advice or services, at the time that the report about the decision is prepared. It is accepted that the actual value of the Property or other action may differ from the estimated figure.

10 PROPERTY-RELATED COMPENSATION PAYMENTS

Financial provision

10.1 A Corporate Director must make financial provision for the payment of Property-related compensation for any project that may result in compensation becoming payable.

Negotiating and instructing

10.2 Only an Officer of the Property Service or in a consultancy appointed to provide Property advice can negotiate the terms for a proposed Property-related compensation payment.

10.3 Only an Officer of the Property Service can instruct a consultant to negotiate terms for a proposed Property-related compensation payment.

Approving terms

10.4 The CDSR can approve the terms of a property-related compensation payment (in the form of Heads of Terms).

Documenting the implementation of the decision

10.5 The ACE(LDS) must prepare and complete the documentation for compensation payments linked to Compulsory Purchase Orders and other activity that triggers statutory property-related compensation payments.

Making a payment

10.6 The ACE(LDS) must arrange the actual compensation payment.

11. SIGNATURE / SEALING OF PROPERTY CONTRACTS

11.1 No Property Contract shall be completed unless proper approval has been given in accordance with these Rules.

11.2 Subject to Rules 11.3 and 11.4, every Property Contract must be: -

1. executed as a Deed by the ACE(LDS);
2. signed by the ACE(LDS) (if the value is less than £50,000); or
3. signed by the ACE(LDS) and another officer authorised by the ACE(LDS) (if the value is £50,000 or more).

11.3 The CDSR is authorised to sign Property Contracts comprising wayleaves, agricultural tenancy agreements or agricultural licences provided that:-

1. the Property Contract is in a nationally recognised form or in a form prepared or approved by the ACE(LDS); and

[Type here]

2. two signatories are required if the value is £50,000 or more.
- 11.4 All Directors are authorised to approve and sign Licences to or from third parties provided that:-
1. the Licence is for a period not exceeding six months; and
 2. the Licence is for a fee not exceeding £15,000.

12 INVESTMENT IN PROPERTY

General

- 12.1 The CDSR is authorised, in accordance with the Council's budgetary and policy framework, to implement all processes required in accordance with good practice to ensure that all property remains safe and fit for the purpose of service delivery, and complies with all relevant legislation, codes of practice and guidance.
- 12.2 For the avoidance of doubt this includes, but is not limited to: -
1. responsive maintenance to a property
 2. preventative maintenance to a property
 3. planned maintenance of a property
 4. works required to secure an empty property
 5. a response to compliance issues at a property
 6. improvement of a property (a project)
 7. addition of accommodation (a project)
 8. demolition of all or part of a building or structure.

Identifying Need

- 12.3 Officers in a directorate may identify a requirement for investment in a property from an operational perspective to either address a maintenance issue or meet a service requirement.
- 12.4 Only Officers in the Property Service are authorised to commission and instruct either contractors or consultants to undertake work in respect of the investment in property.
- 12.5 Officers in the Property Service may identify the possible requirement for investment in a property from an operational or strategic perspective.
- 12.6 The CDSR must approve the identification of the need for investment in property, in so doing taking account of the likely capital and revenue cost implications; and must confirm that such funds are available before any work is commissioned or undertaken by the Property Service.

Commissioning of Consultants and Contractors

- 12.7 Only Officers in the Property Service can commission and instruct and manage consultants to provide advice and other services associated with investment in property.

[Type here]

- 12.8 Only Officers in the Property Service, or consultants commissioned by the Property Service, can commission and manage contractors to undertake work in respect of investment in property.

Approvals

- 12.9 An approval related to financial or contractual matters must be given in accordance with the Finance Procedure Rules and / or the Procurement and Contract Procedure Rules and the terms of any contract or framework.
- 12.10 For the avoidance of doubt, where approvals are required under the Finance Procedure Rules and / or the Procurement and Contract Procedure Rules, and these Rules, then these approvals can be obtained contemporaneously.
- 12.11 Officers in the Property Service are responsible for ensuring that all necessary approvals have been obtained before the commencement of any work or project.

Executive Members Delegation Scheme

Each individual member of the Executive has the following responsibilities and powers:

1. Developing a detailed understanding of the services which fall within their area of responsibility, and accounting to full Council for them (see Council Procedure Rules 2.3(x), 2.4, 9 and 10).
2. Working with the appropriate Chief Officer(s) to develop policy proposals for submission to the Executive (and subsequently to the Council if they relate to, or are intended to form part of, the policy framework approved by Council).
3. To authorise consultation on proposed new policies/policy changes.
4. To approve proposals for service development which relate to individual services, do not have wider implications for other County Council services and are consistent with the budget and policy framework.
5. To make a formal response on behalf of the County Council, following appropriate consultation, to any White Papers, Green Papers, Government Consultation Papers or other consultative document where it is appropriate that the response should be a member response.
6. In respect of grant or other external funding:
 - (a) Following consultation with the relevant Corporate Director and the Corporate Director – Strategic Resources, to authorise the submission of bids for grant or other external funding in excess of £100,000; and
 - (b) Following consultation with the relevant Corporate Director, the Corporate Director – Strategic Resources and the Assistant Chief Executive (Legal and Democratic Services) to authorise the Corporate Director – Strategic Resources to accept any offer of grant or other external funding in excess of £100,000 in line with the requirements of paragraph 8.4 of the Financial Procedure Rules;

subject, in all cases, to the implications for the Council being consistent with the budget and policy framework, and subject also to the requirements of the Financial Procedure Rules in relation to Partnerships and Accountable Bodies at Rule 8.0 et seq.

7. Following consultation with the relevant Corporate Director and with the approval of the Corporate Director – Strategic Resources, to authorise the disposal of any asset(s) for which the estimated disposal value is greater than £10,000 but less than £100,000 (NB this excludes land and buildings ie “property” – please see the delegation to the Deputy Leader in relation to property matters, set out below).
8. To receive reports from scrutiny reviews; to report to the Executive about such reviews (in the light also of Overview and Scrutiny Committee views) and to authorise such action in respect of those reviews as the Executive may direct.
9. To determine any action required following assessments of outcomes against standards and targets set out in Service Performance Plans.

10. Representing North Yorkshire County Council on outside or joint bodies which are relevant to their area of responsibility.
11. [Not used]
12. The power to approve changes to children's centre provision (where no objections are received) is allocated to the appropriate Executive Member.
13. To authorise non-recovery of overpayments in respect of amounts of £5,000 and above.
14. After consultation with the relevant Chief Officer to determine any Executive matter which is of such urgency that it is not practicable to refer it to the Executive for determination.
15. The Deputy Leader (or in his/her temporary absence such other member of the Executive as he/she may nominate) has the specific responsibilities and powers in relation to property set out in the Council's Property Procedure Rules.
16. The Executive Member with responsibility for Stronger Communities (or in his/her temporary absence the Leader) has the power to determine County Councillor Locality Budget grant recommendations.