



# ST HELENA GOVERNMENT PROPERTY DISPOSAL AND PURCHASE POLICY 2024

## Consultation Draft

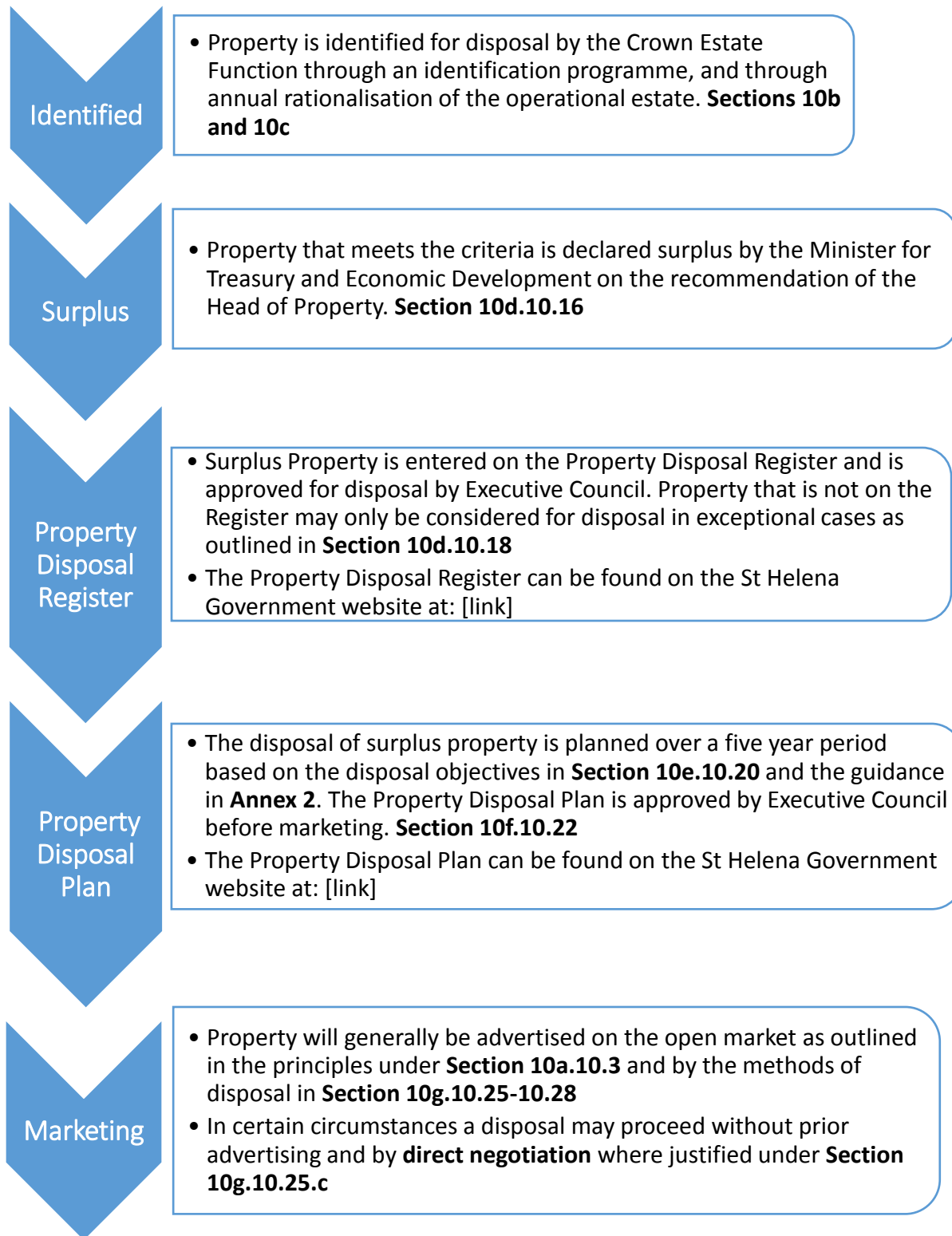
Version 9

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**Figure 1. The disposal process**



## 1. Introduction

- 1.1 This policy informs elected members, public officers, stakeholders, and customers of the overarching principles and processes by which the St Helena Government (SHG) will acquire and dispose of Crown land and buildings.
- 1.2 The Crown Estate is the Government's most valuable asset, accounting for approximately 80%<sup>1</sup> of all land in St Helena. Proactive asset management and estate rationalisation is key to improving organisational efficiency, meeting overarching strategic objectives, and enabling economic growth.
- 1.3 This policy aims to formalise the basis for identifying SHG's future need for land and buildings, and the considerations that will inform the means and principles of disposal, through transparent and customer focused processes.
- 1.4 The Economic Development Portfolio is responsible for implementing and overseeing the application of this policy, whilst the Minister for Treasury and Economic Development has responsibility for strategic direction and Policy review.
- 1.5 This Policy replaces the Land and Buildings Disposal Policy, 2016.

## 2. Interpretation

- 2.1 For the purposes of this policy the following terms shall refer to and include the following:

**Property:** for the purposes of this policy "property" will be taken to mean real property to include land and all immoveable objects attached to it such as structures and buildings.

**Disposal:** any transfer, sale, gift, exchange, or transaction that has the effect of creating an interest in property.

**Interest in property:** any ownership or possessory right with respect to real property, including ownership in fee, an easement, a lease, and any profit a prendre.

**Market value:** the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction after proper marketing where the parties had each acted knowledgeably, prudently, and without compulsion.

**Value for Money:** The most advantageous combination of cost, quality and sustainability that meets SHG requirements.

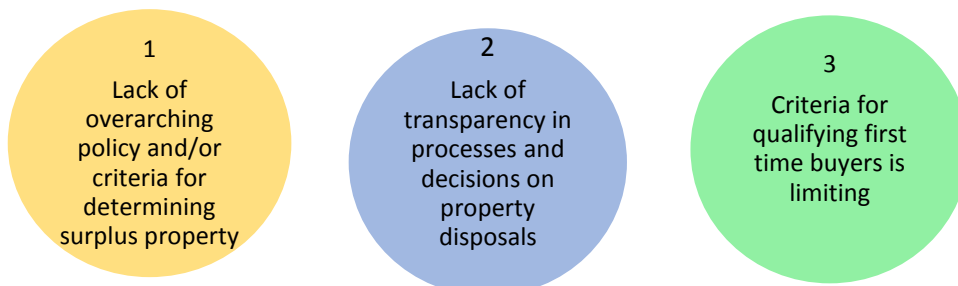
**Willing buyer:** someone who is motivated but not compelled to buy. The buyer is neither over-eager nor determined to buy at any price.

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<sup>1</sup> GIS analysis March 2024

**Willing seller:** neither an over-eager nor a forced seller prepared to sell at any price, nor one prepared to hold out for a price not considered reasonable in the current market.

### 3. Identification of the problem, challenge or opportunity



#### 3a. Key Issue 1

- 3.1 The lack of an overarching estate policy to guide decisions on disposal has led to the uncontrolled release of Crown property, impacting the value and future potential of parts of the Crown Estate.
- 3.2 As a result:
  - a) infill sites<sup>2</sup> in developed areas are not maximised;
  - b) green field<sup>3</sup> sites that are otherwise free from development are released for sporadic residential use; and
  - c) ill placed or poorly constructed infrastructure spoils and limits development potential.
- 3.3 Similarly, the absence of a rationalisation programme for the operational estate means that the current or future needs of buildings are not always known, with some underutilised, or empty for significant periods of time before being returned to the Property Service. This incurs maintenance costs for properties in various stages of decline.
- 3.4 A criteria establishing the process for identifying surplus property will ensure that the release of Crown Property is sustainable and that decisions on disposal are evidence based.

#### 3b. Key Issue 2

- 3.5 The intention of the Land and Buildings Disposal Policy 2016 was to “implement a transparent and fair process for disposal”, however the absence of policy guidance on the extent to which this is to be achieved, or the matters that are to be considered in property disposals has been open to interpretation, leaving decisions at risk of challenge and customer’s dissatisfied, with judicial review the only route of appeal.
- 3.6 The lack of accessible and documented information has made it difficult for customers to participate in the disposal process, in particular knowing what property is available, when,

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<sup>2</sup> Vacant land within built-up or urban areas

<sup>3</sup> An area of land that has never had buildings on it before, or buildings that have been put on this land for the first time

and by what process. This has been a long standing criticism of the current policy and has adversely affected public perception of “doing business” with SHG.

- 3.7 This policy seeks to address these issues by setting clear guidance and transparent processes for property disposals by:
- a) confirming the criteria by which property will become surplus;
  - b) publishing a register of all surplus property;
  - c) publishing a plan with timeframes of property intended for disposal;
  - d) reporting and publishing the details of all Crown property disposals;
  - e) providing for a right of appeal; and
  - f) expressly providing for declaration of interests.

### 3c. Key Issue 3

3.8 The Land and Buildings Disposal Policy 2016 provides discounts in land value ranging from 25-30% of land value (subject to means testing) to applicants meeting the “qualifying local resident” criteria, to encourage self-build owner occupied homes and develop an affordable housing market.

- 3.9 An applicant was a qualifying local resident<sup>4</sup> if:
- a) they do not own a habitable building and/or land in St Helena on which to build a home;
  - b) they are free from a criminal conviction carrying a long term custodial sentence for a period of at least five years prior to the date of application;
  - c) they have been a resident on St Helena for a period of at least five years at any point in time;
  - d) they have been resident on St Helena for at least one year prior to the date of application; and,
  - e) they have a total household income not exceeding two times the median income for St Helena for a multiple owner occupier, or one times the median income for a single owner occupier.

3.10 This criteria is limiting and does not align with Government objectives and other policy designed to encourage population growth. A criteria that incentivises a wider category of applicant with minimal restrictions on eligibility is necessary to achieve this, and support efforts in addressing the current population decline.

## 4. Policy Intention

- 4.1 The purpose of this policy is to:
- a) establish the criteria for identifying and declaring property surplus;
  - b) ensure that the acquisition and disposal of property is fair, timely, and customer focused;
  - c) provide direction for sound governance and oversight, by ensuring that authority and responsibility for decisions are documented through transparent processes;
  - d) align policy authority with Ministerial governance and reducing the need for Committees or Boards;

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<sup>4</sup> (St Helena Government, 2016)

- e) confirm the authority of the Head of Property when disposing and acquiring property on behalf of SHG; and
- f) ensure that the disposal and acquisition of property is appropriate and provides value for money for SHG.

## **5. Strategic Objectives**

- 5.1 The proposals of this policy supports SHG's 10 year plan by:
  - a) developing an effective property infrastructure, deriving wealth from the Government's assets, and contributing to the green agenda by promoting sustainable developments; and
  - b) contributing to the Economic Development Portfolio's focus on enablement, through simplified processes that will make doing business with SHG easier.
- 5.2 This policy is driven by the Sustainable Economic Development Strategy 2023-2033 and has links with the following policies:
  - The Immigration Policy 2024;
  - Stamp Duties Policy 2024;
  - The Policy for The Release of Forestry Land for Residential and Commercial Purposes and Agricultural Land and Buildings for Commercial Purposes;
  - Investment Policy 2021; and
  - Rents Fees and Charges Policy 2024.

## **6. Policy Outline**

- 6.1 The Property Disposal & Purchase Policy 2024:
  - a) identifies the current and future needs of the Crown Estate by introducing criteria for declaring property surplus;
  - b) improves transparency and customer services by publishing property information, and documenting the processes and considerations that inform property disposals; and
  - c) provides a framework for governance and oversight.

## **7. Scope**

- 7.1 This policy applies to all land and buildings forming the Crown Estate. It includes buildings used by the public service for offices and delivering public services, and land and buildings that are managed by other portfolios to further its strategic objectives.

## **8. Statutory Framework and Decision Making**

- 8.1 The Governor is authorised to dispose of 'land or other immoveable property' in St Helena that is vested in His Majesty under s31 of the Constitution for St Helena, Ascension and Tristan Da Cunha, and may by delegation authorise others to act in this capacity.
- 8.2 The public officers authorised by warrant of the Governor to dispose of property under this Constitutional provision for the purposes of this policy are:
  - The Head of Property; and,
  - The Attorney General for St Helena
- 8.3 Each disposal and purchase must comply with the approval and governance processes outlined in the Approvals Framework in Annex 1, the SHG Procurement Regulations v 1.4 April



2018, the Public Finance Ordinance 2010 and the SHG Financial Regulations 2019, as amended from time to time.

## **9. The Head of Property**

- 9.1 The post of Head of Property is a public office established by the St Helena Public Service, and by virtue of this employment the Head of Property is authorised to engage and represent the interests of SHG in the following activities:
- a) To oversee the appropriate management of the Crown Estate;
  - b) To oversee the rationalisation of the Crown Estate, and to identify the current and future property needs of the public service;
  - c) To recommend property for inclusion on the Property Disposal Register;
  - d) Planning the disposal of surplus property with reference to the Property Disposal Plan;
  - e) To enter agreements the disposal and acquisition of property in line with the provisions and considerations of this Policy;
  - f) To recommend market values for disposals; and
  - g) To monitor and enforce leasehold covenants on behalf the SHG.
- 9.2 The Head of Property is authorised by warrant of the Governor to execute disposals up to a value of £100,000, in accordance with the provisions of this Policy and the Approvals Framework.
- 9.3 In exercising these functions the Head of Property may consult and seek advice from Ministers, public officers, professionals, stakeholders and legal representatives, with knowledge and expertise in the relevant subject matter when applying the provisions of this Policy.
- 9.4 Where the Head of Property is absent for more than four consecutive weeks or wider organisational changes affect the post of the Head of Property, the Chief Secretary may recommend to the Governor that the powers to dispose be delegated to another suitably qualified and experienced officer, or revoked as the case may be. In all cases officers should be informed of the incumbent responsibilities of the delegation.
- 9.5 Delegations to public officers by the Governor under s31 of the Constitution should be reviewed biannually by the Portfolio Director.

## **10. Property Disposal**

### **10a. Principles for Disposal**

- 10.1 The disposal and acquisition of property must be in accordance with the Property Disposal and Purchase Policy 2024.
- 10.2 Property may be disposed of by freehold or leasehold sale and, where possible, on the basis of market value, promoting a competitive property market. However other established methods of valuation may be used for commercial property disposals in the interest of furthering a commercial agreement, or where there is limited comparable market evidence against which to assess the subject property.

- 10.3 All disposals should demonstrate value for money and be released onto the open market for sale, however other methods of disposal may be considered where value for money is not achieved, or unlikely to be achieved in unfavourable market conditions, or where there is special purchaser for a particular type of property. In these circumstances other methods of disposal may be considered to achieve value for money, such as: negotiated disposals, joint ventures, arm's length management organisations and landowner's development agreements. See section 10g.10.5-10.8.
- 10.4 All disposals should ensure that best value has been achieved, and tenders may not necessarily be awarded on the basis of the highest bid. The social or investment value of a proposal may also be considered alongside any financial offering, which should be quantified and measured against objective evaluation criteria determined during the tender process.
- 10.5 In furthering the duty to achieve best value, commercial disposals may consider ways of capturing any future uplift in property value after disposal, and consideration may be given to overage and clawback clauses, joint ventures and other mechanisms that will allow the SHG and tax payer to share in future profits of the disposal.
- 10.6 Executive Council shall consider and approve the Property Disposal Register and the Property Disposal Plan prior to disposal. Any amendment thereafter will be subject to the Approvals Framework.
- 10.7 Incentives may be offered on disposals where activities align with the Sustainable Economic Development Strategy 2023-2033 (SEDS 2023) and to encourage investment and business growth as provided for in the SHG Property Rents Fees and Charges Policy 2024. All transactions and incentives shall be reported to the Minister annually and published thereafter.
- 10.8 All disposals shall align with the disposal objectives, and the SHG reserves the right to refuse an offer or bid that doesn't align with the disposal objectives or the terms of marketing. Nothing in this policy compels the SHG to sell or dispose of its property.

### **10b. Identifying Surplus Property within the Operational Estate**

- 10.9 Identifying the current and future need for property should be an ongoing process that is essential to good asset management, operational efficiency, and ensures optimal use of assets.
- 10.10 Vacant and surplus property costs the public service money in ongoing liability for management, maintenance, repair and utilities. Once declared surplus the future of an asset should be determined in a timely manner to minimise ongoing costs, maximise economic productivity, and avoid structural decline.
- 10.11 In assessing whether property is surplus, portfolios should consider if:
- a) the property is in use, and is required to deliver its operational functions;
  - b) there is an evidenced plan to use the property to deliver its operational functions;
  - c) the property is an integral part of service delivery; and/or

d) the property is vital for business contingency in line with the portfolio's strategic and operational plans.

10.12 If any of the above criteria is met a property is not likely to be surplus.

10.13 Where property is assessed as surplus to portfolio requirements, the Portfolio Director with the approval of the Portfolio Minister will transfer the property to the Crown Estates Service Function, where it will be assessed to see whether it can be used beneficially by another portfolio, or otherwise entered on the Property Disposal Register.

### **10c. Identifying Surplus Crown Land**

10.14 Land may be identified as surplus either through an identification programme carried out by the Crown Estates Service Function, or by an application to have a parcel declared surplus in exceptional cases as outlined in section 10d.10.17-10.18 below.

10.15 Crown land may be considered surplus where land parcels:

- a) are no more than one acre;
- b) are within the intermediate planning zone for development;
- c) are surrounded by or within close proximity to other development, to avoid sporadic development that could adversely impact the environment;
- d) are not of ecological, cultural or social significance;
- e) do not possess any natural resources that are of value to SHG;
- f) are not encumbered by other commitments – e.g. options or required for future use by the SHG, subject to any overarching policy, strategy or plan; or
- g) are not required to provide access to Crown property

### **10d. Property Declared Surplus**

10.16 Where there is no interest for the reallocation of operational property within the public service, and where property is identified as surplus by the Crown Estates Service Function under Section 10c, the Head of Property shall seek formal approval from the Minister for Treasury and Economic Development to declare the property "surplus to requirements", and for the property to be included on the Property Disposal Register (the Register). The Register shall be approved for disposal annually by Executive Council.

10.17 Property that is not surplus will generally not be considered for disposal. However consideration may be given in exceptional cases where departure from the overriding principle is necessary to further the Government's Vision, strategic objectives or to support its social obligations.

10.18 Exceptional cases for the purpose of this provision include the following:

- a) proposals that offer significant additional social, environmental, economic, or health benefits;
- b) property that is swapped for consideration in an acquisition;
- c) disposals to charitable, religious or not for profit organisations; or
- d) disposals of small pieces of land to an adjoining land owner that is assessed by the Head of Property as being of no development benefit to the Crown.

10.19 Except for disposals falling under subsection 10.18.d above, all exceptional cases must be approved by the Minister, subject to the Approvals Framework.

### 10e. The Disposal Objectives

10.20 Each property disposal must align with the following Sustainable Economic Development objectives:

Objective 2 – A productive island – increase productivity, labour force participation and capital investment; economic development

Objective 3 – A breath of fresh air — preserve and celebrate what makes us unique: leisure and recreational use

Objective 4 – A united island: affordable, sustainable housing

Objective 4 – A united island: new social housing

Objective 6 – Better government – make SHG a facilitator of business: new commercial businesses

### 10f. The Property Disposal Plan

10.21 The timing of disposal should be considered in the context of each property, including the nature of the market for that type of property at that particular time, and any specific issues or special characteristics that may affect the timing of sale, as set out in Annex 2.

10.22 The Property Disposal Plan shall be compiled by the Crown Estates Service Function under the supervision of the Head of Property, and shall include all disposals occurring over a five year period, with detailed information for disposals intended in years one and two, and the remaining years updated according to the timeframes for disposal. The Property Disposal Plan shall be approved by Executive Council.

10.23 As a minimum the Property Disposal Plan will include:

- a) the timeframes for disposal;
- b) method of disposal;
- c) tenure;
- d) restrictions on title;
- e) permitted use or permitted classes of use; and
- f) guide value

### 10g. Methods of Disposal

10.24 Open market tender is the preferred method of disposal promoting transparency and fairness. However where appropriate, other methods of disposal may be considered depending on the property or relevant circumstances, as outlined in this section:

- a) **Open Market Tender** – a process where property is advertised for sale with a deadline for submission of bids in accordance with the terms of the invitation to tender. Bids are assessed and awarded based on an objective criteria or the highest bid.
- b) **Informal Tender** – A process where property is advertised for sale with a firm closing date. Offers are invited by sealed bids to establish interest in a particular property. Where an offer is accepted the transaction is progressed subject to contract.

- c) **Negotiated Disposal** – In certain circumstances SHG may wish to dispose of property through direct negotiations with a single purchaser with or without prior market advertisement. A disposal by this method must be justified in all cases, and is only permitted where one of the following criterion is met:
- i) there is no interest in property after open marketing for a period of not less than six consecutive months at any one time;
  - ii) where bids fail to achieve minimum quality or output levels after open marketing;
  - iii) where expressions of interest are sought on a complex development and the terms are best concluded as a commercial agreement;
  - iv) where offers to purchase a small piece of Crown land generally no larger than 0.01 acres are made by an adjoining private land owner, and is assessed as presenting no development opportunity to SHG;
  - v) where the lease is for Crown commercial property and the considerations for a new lease to an existing tenant is met (Annex 3); or
  - vi) where property is transferred as consideration for an acquisition.

10.25 Negotiated Disposals will be progressed in line with the Approvals Framework.

10.26 Where unfavourable market conditions weigh against preferred methods of disposal, or it is difficult to realise the potential value of property through an outright sale, and there is a clear financial advantage to SHG, other disposal structures may be considered. However value for money must be achieved and the standard requirements on propriety and safeguarding the public interest must be met.

10.27 In these circumstances the following may be considered:

- a) **Landowner's Development Agreement** - where SHG may engage a developer to undertake the development on its behalf for the benefit of an end user. There is no requirement for property to be transferred under this arrangement, SHG may retain its title and transfer property directly to the end user whilst enabling the development under the agreement.
- b) **Collaboration Agreements and Joint Ventures** – can be used to bring in a partner organisation or a developer with suitable skills and expertise to take a disposal forward, allowing SHG to benefit from the growth in value where the development is successful.

10.28 Where these arrangements are considered, checks will be made to ensure the partner has adequate financial resources and is able to offer the best combination of financial status and proven track record of successful developments.

10.29 Care must be taken to ensure that any reduced payment at the outset is more than offset by a realistic estimate of later profits, and that the partner's costs and sale terms are realistic and can be professionally checked to ensure that the predicted profit share is likely to be achieved.

10.30 Advice and approval must be obtained from the Financial Secretary before proceeding with these types of agreement as required under the Public Finance Ordinance 2010.

## 10h. Disposal for less than Market Value

- 10.31 Where there are wider public benefits consistent with the principles of best value, disposing of property at less than market value can be considered only where a disposal promotes wider public value, such as economic and environmental benefits or social value factors that align with the Government's strategic priorities or social obligations.
- 10.32 Property may be disposed of for less than market value:
- a) to first time buyers looking to purchase property in St Helena to occupy as their primary home under Section 12;
  - b) where subsidies are applied to disposals that promote commercial activity in line with the SEDS 2023. See Section 17; or
  - c) to further social, or charitable purposes for the benefit of the community or a sector within the community as provided for in the SHG Property Rents Fees and Charges Policy 2024.
- 10.33 In all other cases where property is proposed to be disposed of at less than market value and is not supported by the provisions of 10.32 above, a report considering the wider public benefits alongside any financial implications must be prepared to inform a decision on disposal for approval by the Minister for Treasury and Economic Development and Financial Secretary, who may refer to Executive Council depending on the nature and value of the transaction.

## **11. Promoting Sustainable Development**

- 11.1 Each disposal for residential development comprising 10 or more homes should encourage features in support of sustainable developments (social, economic and environmental), in so far as this can be achieved on island, so that buildings are resilient and adaptable to changing needs, including the effects of climate change. These requirements may be a precondition of sale and included as a term of the subsequent agreement.

## **12. Disposals to First Time Buyers**

- 12.1 Preference will be given in residential disposals to first time buyers wishing to build their primary home in St Helena which they must occupy for at least 300 days in a calendar year.
- 12.2 To be eligible as a first time buyer applicants must:
- a) be at least 18 years of age;
  - b) not own a home (or land on which a home can be built) anywhere in the world;
  - c) be free from any criminal conviction carrying a sentence of 10 years or more for at least five years prior to the date of application; and
  - d) have St Helenian Status as determined by the Immigration Ordinance 2013, as amended from time to time
- 12.3 A first-time buyer is entitled to a discount of 30% of the market value on any property purchase to a maximum discount value of £20,000, and must commit to owning this property for at least 10 years after the date of sale, failing which the benefit of any discount shall be repaid in full to SHG at the time of sale, as follows:

- a) Where sale is to another first time buyer, the discount in value shall be passed on, including any inflationary increases on the discount, from the date of purchase to the date of onward sale based on the St Helena Retail Price Index (RPI%).
- b) Where sale is on the open market and not to a first time buyer the discount from the date of purchase to the date of onward sale shall be payable to SHG in full at the time of transfer, plus inflationary increases at the rate of RPI + 2%.

- 12.4 Sale to first time buyers shall be by way of a lease. The lease shall include a covenant to obtain a Certificate of Occupation within the first five years of the term, and an option to purchase the freehold on this being achieved.
- 12.5 SHG reserves the right to terminate the lease with reference to the lease provisions and the Registered Land Ordinance, where timeframes for achieving a Certificate of Occupation is not met.
- 12.6 Land for the construction of a single dwelling will generally be no more than 0.25 acres, however this will depend on the topography and features affecting the surrounding land, with a view of maximising land potential.

### **13. Leases for Crown Commercial Property**

- 13.1 Crown commercial property as identified in Appendix 1 will be offered specifically for non-residential investment opportunity. Some of these buildings are situated in prime strategic locations such as Jamestown and Ladder Hill, and others in areas better suited for agriculture or light industrial use.
- 13.2 Crown commercial property will be offered on a leasehold basis in line with the Disposal Objectives and Annex 3, depending on the nature of the property<sup>5</sup>.

#### **13a. Condition of Let**

- 13.3 Where Crown commercial property is let in less than tenantable repair this may be reflected in the rent charged with a schedule of dilapidations outlining tenants works. The extent of works shall be quantified and offset against the market rent to arrive at the rent payable, to ensure SHG receives adequate consideration for the lease. A commercial rent will be reinstated in line with the SHG Property Rents Fees and Charges Policy 2024 at an agreed interval during the term following completion of tenant's works.
- 13.4 Timeframes for tenant's works will depend on the extent of repairs required to bring each individual property into operational use for the intended purpose, which will be determined with reference to the Property Disposal Plan.
- 13.5 Where Crown commercial property is offered in good tenantable repair and offered on a short or medium term lease as outlined in Annex 3, the Crown Estates Service Function will

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<sup>5</sup> Business Units are included in this definition as shown in Appendix 1 and as provided for in Annex 3

assume the Landlord's obligation for repairs under the Registered Land Ordinance 1980, and a commercial rent will be charged. Maintenance should be planned with reference to a condition survey and maintenance plan, and funded from rent held in the Capital Receipts fund.

### **13b. Break Clauses**

- 13.6 Where the long-term intention for a Crown commercial property is not certain, or where there are known future plans for development that may affect the subject property, leases may be offered with landlord only or mutual break-clauses to allow the property to be recovered at a predetermined date.
- 13.7 Break-clauses should be advertised as a condition of sale and generally considered for property that is let in good tenantable repair to avoid the complexities of tenant investment costs that are more likely to be associated with full repairing leases.
- 13.8 Where a tenant gives notice to exercise a break clause, this may only be accepted by SHG where the tenant has complied with the terms of lease including rent payments. Failing which and in the event of surrender, the tenant may be responsible for compensating SHG for rent that is payable over the un-expired term of the lease, and any outstanding tenant covenants.

### **13c. Procedure for letting Crown Commercial Property**

- 13.9 A procedure shall be implemented for letting Crown commercial property, covering pre-let and end of term processes to include (but not limited to): condition reports, electrical safety certificates, inventory, confirmation of the condition of let, monitoring of covenants and inspection of tenant's works.

## **14. Commercial Development Sites**

- 14.1 Property may be sold for commercial development to further economic growth and development and to support housing initiatives, where there is an identified housing need.
- 14.2 Where property is sold for the development of 10 or more building plots, a minimum of 20% shall be allocated to affordable housing for first-time buyers, subject to first time buyer discounts and restrictions.
- 14.3 Where there is a lesser demand for social housing or first time buyer plots, SHG may choose to receive a financial offering calculated at 75% of the open market value, to fund social housing elsewhere when the demand arises.

## **15. Licences**

- 15.1 Licences will be used for the grant of a short term or temporary permission that allows "something to be done" on Crown property such as temporary storage, pop up vendors and stalls and the erection of stages and bandstands for events. A licence fee may be payable.



- 15.2 A licence does not convey any proprietary rights or interests in property and cannot contain terms obliging the licensee to repair or incur costs which may otherwise be construed a lease.
- 15.3 A licence should be used with caution, and should not be used as a replacement for a lease, easement or other legal vehicle that might require a more robust legal framework.

## **16. Access**

- 16.1 Where land is released by SHG, access should be provided within the plot boundary to avoid spoiling or inhibiting the future use of surrounding Crown property. Where a disposal cannot be achieved without access hindering future construction, or reducing the value of Crown property, the disposal cannot proceed.
- 16.2 Where access rights are granted over existing access for the benefit of property sold by SHG, easements should be sufficiently defined with the grantee accepting the access in the condition 'as seen' at the time of grant.
- 16.3 New access for the benefit of property released by SHG will require development permission as a pre-condition of grant and may include conditions as to the standard to be achieved.
- 16.4 The Government is not obliged to grant access over Crown property for the benefit of private property, however where minded to do so prior consideration should be given to:
- a) the Government's intentions for the subject land;
  - b) the effect of an easement on the existing and future value of Crown land;
  - c) the benefits or dis-benefits of an easement to surrounding Crown property;
  - d) the environmental impact and the appearance of an easement to the amenity of the area especially for lengthy access ways; and/or
  - e) the potential for liability falling to SHG as the owner of the burdened land.
- 16.5 Where easements benefit multiple users including surrounding Crown property, the associated costs should be apportioned depending on the number of existing or potential users with reference to the SHG, Rents Fees and Charges Policy 2024.
- 16.6 The grant of easement shall include express repairing obligations for beneficiaries but shall not oblige SHG to maintain or repair, except where there is an obligation to do so in overriding policy or legislation.

## **17. Subsidy**

- 17.1 A subsidy may be applied to rents in support of business activities under the SEDS 2023 as may be recommended by the Head of Economic Development, with reference to the SHG Rents Fees and Charges Policy 2024.

## **18. Significant Buildings**

- 18.1 Property of cultural or historical significance should be conserved and enhanced in a manner consistent with its heritage value, whether or not it is protected by statutory designation.
- 18.2 Where property of historic or cultural significance is declared surplus, they may be disposed of for commercial opportunities to enhance investment by way of a leasehold interest.
- 18.3 The disposal of significant buildings should be handled carefully and in a sustainable way to preserve the island's built heritage.

## **19. Due Diligence**

- 19.1 Prior to entering a contract for a disposal due diligence must be done on all transactions over £50,000, and will include the following:
- a) ensuring the purchaser has the legal capacity or authority to contract;
  - b) confirming that the purchaser has the financial means and proven track record to proceed and complete on the agreed terms;
  - c) evidence of the source of funding ;
  - d) background checks to confirm good standing;
  - e) Anti-Money Laundering, Counter-Terrorism Financing Rules and Global Official List (Sanctions) checks; and
- 19.2 Where requested evidence is un-satisfactory or not provided the transaction cannot proceed.

## **20. Reporting**

- 20.1 The Head of Property shall report annually to the Minister for Treasury and Economic Development on the details and value of disposals for the year, including commercial property lettings and the amount of subsidy awarded in line with the SHG Property Rents Fees and Charges Policy 2024.
- 20.2 In addition to reporting to the Minister and in the interest of transparency, The Head of Property shall publish the details of all transactions for the year, to include:
- a) the parties to the transaction;
  - b) the date of transaction;
  - c) the value of the transaction;
  - d) the term and tenure;
  - e) the details of any overage or claw back provisions;
  - f) the size of the property; and
  - g) the permitted use
- 20.3 All transactions meeting the requirements of the Registered Land Ordinance are filed at the St Helena Land Registry, Essex House Jamestown, and are available for public viewing subject to the payment of a fee, as prescribed in the Second Schedule of the Registered Land Ordinance 1980.

## **21. Acquisition of Property**

### **21a. Acquiring Property on Behalf of SHG**

- 21.1 There will be times where it is necessary for the Government to acquire property to:
- a) improve public service delivery;
  - b) further or achieve a public or community purpose; or
  - c) facilitate development in line with the Governments strategic objectives.
- 21.2 Prior to the purchase or lease of property the Head of Property shall conduct a full asset and options appraisal considering all available options for delivering the objective, including an assessment of other appropriate Crown property.
- 21.3 Purchases should be acquired through negotiation and mutual agreement in the first instance, with legislative powers conferred on the Government a last resort, and only where there is a strong public interest justification.
- 21.4 The consideration for purchases need not be cash based and may include land swaps or part cash and part land swaps to the value of the acquired property.
- 21.5 Property will be acquired at market value which may be determined by mutual agreement, or by a jointly appointed Surveyor.
- 21.6 The Minister for Treasury and Economic Development will determine whether an acquisition is to be pursued and will approve the value on recommendation of the Head of Property and Financial Secretary, subject to the Approvals Framework.
- 21.7 Where there is a case for compulsory purchase, this must be approved by the Minister, subject to the Approvals Framework and progressed with the support and appropriate input of the Attorney Generals Chambers.

## **22. Duty to Declare Conflicts of Interest**

- 22.1 In addition to the duties and responsibilities conferred by this policy, Elected Members and Public Officers are obliged to comply with the provisions, directives and spirit of the Public Service Code of Management, Legislative Council Code of Conduct and Standing Orders when performing their respective roles under this Policy.
- 22.2 Public Officers must not advise or represent an applicant where doing so would involve a conflict of interest or a significant risk of a conflict of interest; other than with the prior informed consent of those who are, or may be affected.
- 22.3 Informed Consent may be sought only where the Head of Property is satisfied that proceeding despite a Conflict of Interest is:
- a) in the interests of all of those who are, or may be affected;
  - b) is not prohibited by law; and
  - c) is not affecting the judgement of the Public Officer and preventing them from providing competent and diligent advice.
- 22.4 At the outset of a disposal, acquisition or tender process, Elected Members and Public Officers must:

- a) identify and declare all direct or indirect conflicts of interest in accordance with Government or Public Service policies and procedures; and
- b) record conflicts of interest, and the decisions or measures adopted to manage the declared conflict.

22.5 If a Public Officer is in doubt as to whether or not a conflict of interest exists, this must be brought to the attention of Director of the Economic Development Portfolio in writing, who will determine whether or not there is a conflict.

22.6 In the case of a conflict these will be considered in line with the provisions of this section.

## **23. Appeals**

23.1 Applicants and customers shall have a right of appeal in respect of any decision by the Head of Property in the application of this policy.

23.2 Appeals must be made in writing to the Director of the Economic Development Portfolio within 10 working days of the date of the decision.

23.3 The Director may only review the complaint in line with the provisions of this Policy.

23.4 Complaints will be acknowledged within 48 hours of being received, with a timeframe of 28 working days to conclude the investigation. Customers should be advised if an extension to this time frame is required.

23.5 Where a complaint concerns matters outside of this Policy these must be dealt with under SHG's internal policies and procedures.

## Annex 1. Approvals Framework

Nature of Disposal or Acquisition	AUTHORITY		
	Financial Secretary	Portfolio Minister	Executive Council
Approval of the Property Disposal Register  Section 10d.10.16			
Approval of the Property Disposal Plan  Section 10f.10.22			
Approval to dispose of property that is not on the Property Disposal Register  Section 10d.10.19		up to £200K	£201K +
Approval to dispose of property for less than market value (not including approved subsidies)  Section 10h.10.33		Up to £200K	£201K +
Approval to acquire or swap property in support of an acquisition.  Section 21a.21.6		Up to £500K	£501K +

## Annex 2 - Guidance on Disposal and the Process for Disposal

1. The Head of Property has a duty of care to achieve value for money and comply with the SHG Code of Management, and the Nolan principles when releasing property to the market for disposal.
2. All property tendered for sale will require a deposit on an offer being accepted to confirm the parties' commitment to complete the transaction. Where the agreed terms for completion are not reasonably met, this may constitute a breach of the agreed terms and conditions and result in loss of the deposit. Where this occurs SHG is at liberty to advertise the property.

### 3. Preconditions

Property may be tendered with or without services, and subject to the purchaser satisfying pre conditions of sale. The following requirements will be pre- conditions of all disposals:

- a) obtaining development permission for the permitted use;
- b) stipulating timeframes for obtaining development permission;
- c) ensuring property is capable of being provided with utilities and vehicular access; and
- d) in the case of development sites where off site services and access, including off-site works such as highway improvements are required (and are not provided by SHG), developers may be required to enter into an agreement under Section 25 of the Land Planning and Development Control Ordinance 2013, for the provision of the necessary works. This agreement shall be a condition-precedent to the grant of development permission.

The provisions of this section does not preclude SHG from stipulating other pre-conditions that may be necessary or relevant to a particular disposal.

Setting timeframes for obtaining development permission as a pre-condition ensure that proposals for development are progressed, and can become operational within a reasonable timeframe when considering the nature and complexity of the development.

Applicants for a single residential development will have a period of 12 months to obtain development permission from the date the offer is accepted. Where an Applicant is not able to satisfactorily demonstrate reasonable efforts to obtain development permission within the agreed timeframe, the deposit will be lost and the property marketed.

### 4. Exchange and Completion

The Head of Property may agree timeframes for exchange and completion of transactions. Where contracts do not complete within a timeframe of six months from the agreed date for completion, a notice may be served on the buyer requesting completion to be achieved in a period of three months.

Where completion is not achieved within the extended timeframe the deposit may be retained by SHG, who may terminate the agreement and market the property.

### 5. 'Land banking'

Build completion is encouraged to avoid developments becoming abandoned and derelict. Terms in leases and other disposal agreements should include an appropriate timeframe for buildings to acquire a Certificate of Completion. In the case of a single residential dwelling, a certificate should be obtained within five years of the date of the lease. The Government shall have a right of remedy where timeframes are not adhered to, which may include possession of the property through appropriate legal measures.

To avoid incomplete property adversely impacting the environment, and to ensure that land remains economically viable, Crown property will not be sold to an applicant who has 15 or more undeveloped plots, or homes without a Certificate of Completion at any one time.

## **6. Marketing**

Property will be marketed locally and internationally, and where appropriate, the Head of Property may appoint a marketing agent for specialist or complex disposals, where the required skills are not available within the Property Service.

## **7. Options**

Options may be granted for commercial development to enable pre-contract enquiries, site investigations and outline development permission, particularly for large or complex developments. The option fee shall be no less than 10% of the market value of the subject property, but might be higher where there is a competitive market for that property. The option period should be relative to the nature of the proposal or a measurable trigger, and will lapse if not exercised within the option period.

Options should be exercised with caution, and exclusivity should only be granted where it is unlikely to fetter the Government's ability to transact in a more competitive environment.

## **8. Variation of terms and restrictions on title**

Nothing in the policy prohibits the variation of lease terms by negotiation and agreement of the parties, provided the Disposal Objectives are met.

Freehold transfers may include conditions or restrictions on the title as deemed appropriate by the Head of Property or the Attorney General's Chambers, in accordance with relevant policies or legal processes.

## **9. Optimising land potential**

A holistic approach shall be adopted when demarcating land parcels, with the aim of maximising the land potential. Consideration should be given to the surrounding area, current and future property use, access, existing wayleave agreements, and utility provision.

## The Disposal Process

### 1. Disposal objectives

Once a property has been declared surplus for disposal the Head of Property will determine the most appropriate route to market; by consulting with relevant SHG Officers, technical and legal advisors, and stakeholders, to create an appropriate strategy for disposal that support the Disposal Objectives.

Open market tender is the preferred approach, however the disposal method should be considered in the context of the type of property offered for sale, the nature of the market for that type of property, and any specific issues or special characteristics, such as location, restrictions or topography.

### 2. Planning disposal

The Crown Estates Service Function shall prepare the Property Disposal Register with oversight of the Head of Property, based on assumptions and conclusions supported by advice.

When planning disposal consideration should be given to the available disposal routes and matters set out below:

- a) the tenure or interest;
- b) the characteristics associated with that interest, such as restrictive covenants or length of term;
- c) vacant possession;
- d) whether there is, or could be, a special purchaser for the property e.g. first time buyer, particular type of investor, niche market;
- e) opportunities for realising latent value, perhaps through a merger of interests or by obtaining planning consent for a change of use;
- f) constraints such as planning restrictions or the buildings characteristics (it may be listed or have an unusual structure);
- g) condition of property i.e. dilapidations;
- h) other considerations that may impact on the timeliness and value for money of disposal;
- i) access and easements;
- j) whether subsidies and discounts may apply;
- k) timing of disposal;
- l) pricing the market - to establish the value likely to be achieved;
- m) whether timing and price could be improved by undertaking any minor works to the subject property;
- n) the most appropriate disposal route(formal or informal tender, negotiated disposal, joint ventures and development agreements);
- o) available or most appropriate marketing and advertising avenues;
- p) the impact on the local property market if a large number of properties are to be placed on the market at the same time or in close succession;
- q) whether selling/letting property in a certain condition may impact on the price.

These considerations shall provide a clear approach and justification when planning the timing of sale/lease on the Property Disposal Plan.



### **3. Property due diligence**

Early due diligence is necessary to identify any rights of way, wayleaves, encumbrances, restrictive covenants, boundary difficulties, and the rights of other occupiers. Any issues identified should be investigated and either resolved or clarified prior to formally declaring the property surplus.

Failure to undertake sufficient checks at the outset may lead to protracted negotiations and inflated costs, and increases the risk of the transaction collapsing.

#### Legal

Title checks should discover any relevant legal facts or restrictions on title including third party rights. Time should be taken to ensure the disposal is permissible under the terms of any existing lease.

#### Physical

Physical due diligence should be carried out to ensure that the actual physical ground position matches the legal position, and will identify matters such as encroachments, site contamination, party walls, etc.

#### Financial

Financial due diligence will include establishing the book value and financial consequences if a disposal is undertaken.

#### Investment Prior to Disposal - De-Risking Sites

Investment prior to disposal (or de-risking) can provide more certainty for potential purchasers and deliver an increased capital receipt. Where investment is considered advantageous to sale, the case for investment prior to disposal should be considered as early as possible. De-Risking activity prior to disposal could include the following:

- a) Planning: engagement with the Planning Service to determine the nature and potential of the proposed development and the issues to be addressed, changing the use to the desired permitted use, securing outline development permission.
- b) Technical: producing technical reports and surveys such as ecology, topography and ground investigations.
- c) Prior works: works such as remediation, decontamination and demolition.
- d) Legal: resolving issues on title.
- e) Infrastructure: providing physical or social infrastructure (e.g. roads or community facilities).

The level of investment should be appropriate to the size and nature of the site and be driven by the Disposal Objectives. Consideration should also be given as to whether investment will reduce the conditionality of bids and increase the certainty of receipt. The final decision to invest should be based on an analysis of the 'return on investment' of a range of options and understanding of viability. Where investment is estimated to give a return of less than 10%, capital works will not be considered.

Advice should be sought from professional advisers when considering any investment prior to disposal.

### **4. Capturing Future Uplift in Development Value**

Consideration should be given as to how SHG and taxpayers might share in future profits, or increases in property value after disposal.

Where a property is sold with the benefit of planning permission, or where market conditions or other factors indicate that it would be beneficial to do so, provision to share in development profit should be made through overage or clawback clauses in sales or development agreements.

‘Overage’ means claiming back an element of improved development value where for example, there is a general uplift in the market, or where the market value of the end development is not known at the time of sale.

‘Clawback’ refers to claims for all or part of windfall gains resulting from for example, the purchaser obtaining planning permission for a change of use, or a greater volume of development than anticipated by the planning permission obtained prior to disposal.

Examples might include the following.

- a) Where it is difficult to gauge the commercial potential of a property.
- b) Where a developer can improve upon the original development permission obtained during the term of the lease e.g. future legislative changes in Planning that may give greater flexibility for development potential under change of use applications.

Overage and clawback clauses come with challenges such as monitoring property value and enforcing provisions especially where the freehold title is disposed, agreeing the increase in value that is due at an agreed date, ensuring that the uplift in payment is protected.

Clawback or overage clauses are specialised and may give rise to complex legal issues, and appropriate legal advice should be obtained at the outset, to determine the best way to achieve this. The calculation to be applied should be clear and explicit in the agreement.

Clawback levels are usually designed to diminish over time until they ‘expire’ and the purchaser is able to dispose of the property without reference to the SHG.

## **5. Controlling land for the benefit of the end user and Leases**

Where SHG wishes to ensure that a property is used for the purpose for which it is released, or where there is a requirement to monitor or report on post-sale activity, a freehold disposal may not be the most appropriate type of contract. In a freehold sale the seller is unable to control what is ultimately delivered, however it is possible for the freehold title to be retained by the seller until the contractual objective is achieved for the benefit of a third party.

For example in a housing development project a developer may be contractually obliged to complete the infrastructure, excavation and build of homes without the seller disposing of property. On the seller being satisfied that the developer has performed the contractual requirements the seller can transfer the freehold title directly to the home buyer.

Leases are most commonly used in the disposal of residential or mixed use property when there is a need to control the development in some way, or where a disposal is likely to include a procurement of works.

Equally the land value of a site with development potential may not be recognised through an outright sale. Special participation or profit sharing arrangements may yield a better return. These cases need a greater degree of legal expertise than straightforward sales, and it is essential that appropriate advice is obtained.

**6. Disposal Routes and Marketing**

When evaluating options to dispose of property, advice on the most appropriate disposal route should be considered including costs and associated lead times. Selecting the most appropriate method of sale is vital to achieving a successful value for money sale. The Head of Property reserves the right not to accept the highest - or any - offer if the offer does not meet the Disposal Objectives or reserved sale value.

Informal Tender

Informal market tender allows the seller to consider a number of bids simultaneously and make a judgement as to which bid to accept. Bids should be invited publicly with reference to the terms of the Property Disposal Plan.

This form of tender may also be used to invite bids from select individuals for small pieces of Crown land averaging 0.01 acres, where it adjoins private property and is assessed by the Head of Property as having no development potential to SHG.

Offers received will be ‘subject to contract’. A deposit will be payable once terms are agreed.

Method	Pros	Cons
Informal Tender	<p>Increased flexibility to the parties over the terms of the offer</p> <p>Gives the seller the opportunity to share in the future uplift in development value through overage and claw back mechanisms</p> <p>Permits full investigation and removes uncertainty</p> <p>Allows the market to determine the most valuable use for the property</p> <p>Allows the parties to clarify and negotiate final terms of the sale</p>	<p>The accepted offer may not complete as the bid may be subject to outstanding issues/conditions</p> <p>The purchaser is not bound to proceed</p>

Formal Tender

In a formal tender process the subject property must be given the fullest exposure to the market. Formal tenders are used to create certainty in terms of timescales but can be lengthy and costly for prospective purchasers.

In a formal tender the 'Conditions of Sale' should include all particulars and sales information and a sample of the proposed sales or lease agreement.

Once a bid is accepted the winning bidder is advised, and a deposit of 10% of the sale value or value of the lease is payable within 14 days of confirming the winning bid.

Bidders will be expected to carry out detailed investigations into the property prior to submitting an offer. Unless the market is very strong for the property on offer, the number of bids likely to be received will generally be fewer, than if offered by way of informal tender or private treaty.

Method	Pros	Cons
Formal Tender	<p>Promotes public accountability and demonstrates that the sale process has been fair, with the winning bid based on an objective criteria</p> <p>Provides certainty of timing</p> <p>Promotes sale to a wide market</p> <p>Sale above the estimated market value may be achieved</p> <p>Could promote a higher bid from a purchaser with a particular interest (special purchaser)</p>	<p>bidders will incur time and expense on detailed investigations without certainty of being successful</p> <p>Can deter potential bidders</p> <p>Is not a suitable method in a weak market.</p> <p>The tender procedure can involve large numbers of interested parties and can be time consuming and expensive</p> <p>Difficult to include overage or claw back provisions in a formal tender sale</p>

### Negotiated Disposal

Where there is a clear case that this will result in a better outcome for SHG, subject to the provisions of this Policy, it may be necessary to dispose of an asset on a non-competitive basis (negotiated) basis as provided for under Section 10g.10.24.c

Negotiated disposals should be at market value and Legal advice should be obtained.

### **7. Marketing - Securing Interest**

Where a disposal is complex it is important to appoint professional advisors i.e. technical, planning, investment, with relevant experience in transactions of this nature. Legal advice should be obtained.

The Head of Property should ensure that all advice received and decisions made are clearly documented, including the reasons why a particular sale method has been chosen.

In the case of specialist or heritage property or large areas of land for development e.g. 10 plots or more, consideration may be given to appointing an Agent to assist with marketing and disposal where resources are not available within the Property Service.

Agents can be expected to advise on the likely market(s) to target, the method of marketing and advertising costs so that a budget can be agreed. It is common place to use performance related fees to incentivise disposal– which is generally 5%-6% of the sale value achieved.

Agents must be procured in line SHG Procurement Regulations 2018.

## **8. Sale and Completion**

Prior to contract, adequate checks should be taken to ensure that:

- a) the agreed terms represent value for money as required by the principles of disposal in Section 10a.10.3;
- b) the sale meets the Disposal Objectives in Section 10e.10.20;
- c) the proposed purchaser is able to complete the purchase as agreed;
- d) the Financial Secretary has approved and agreed the value for the disposal as required by the Public Finance Ordinance 2010;
- e) completion due diligence checks (including anti money laundering) has been completed (if the transaction is £50,000 and over). See Section 19.

## **9. Sales Subject to Conditions**

As a general rule sales contracts should be kept as simple as possible. This minimises costs and reduces the risk of deterring potential purchasers with complex contract terms.

Where property sales are subject to certain conditions being this is commonly dealt with under a conditional contract.

## **10. Completion**

Legal advisers should usually handle exchange of contracts and complete on transfers for complex or high value disposals (over £100K).

The Crown Estates Service Function should track progress and ensure key activities are completed so that completion is achieved on time.

## **11. Post Transaction Monitoring**

Once property has been sold, the Crown Estates Service Function shall:

- a) update the Disposal Register and Disposal Plan
- b) inform the Treasury in writing of the sale, date, parcel number and value for updating the Asset Register
- c) make provision to monitor any sales contracts that include arrangements to share in any future uplift in the development value of the site (i.e. overage or clawback mechanisms).

Noting:

- all future payments and dates when payments are due;
- any conditions that may trigger a future payment;
- any rights or easements granted to SHG over the property sold, or to the purchaser that affect any retained land;
- any payments that relate to uplift in development value are received and paid into the Capital Receipts Fund.

- d) advise the GIS department of changes to the Crown Estate to enable updates of maps and boundaries
- e) provide a copy of the lease with a brief of the main terms and covenants to the Leasehold Manager for monitoring

**12. Reporting**

The Head of property shall report annually to the Minister and publish the details of disposals including the value of any offered incentives as provided for in this Policy.

## Annex 3 - Guidance on Leases

### 1. Leasing Crown Property

Crown property will generally be let by a competitive process for residential or commercial purposes, however a negotiated disposal may be considered in the circumstances provided for under Section 10g.10.24.c.v of this Policy.

Where leases are granted, they must comply with:

- (a) the principles and provisions of this Policy where relevant to the nature of the disposal;
- (b) Part V, Division 2 Sections 44-63 of the Registered Land Ordinance 1980 as amended from time to time; and
- (c) the SHG Property Rents Fees and Charges Policy 2024, for determining rent for Crown commercial property.

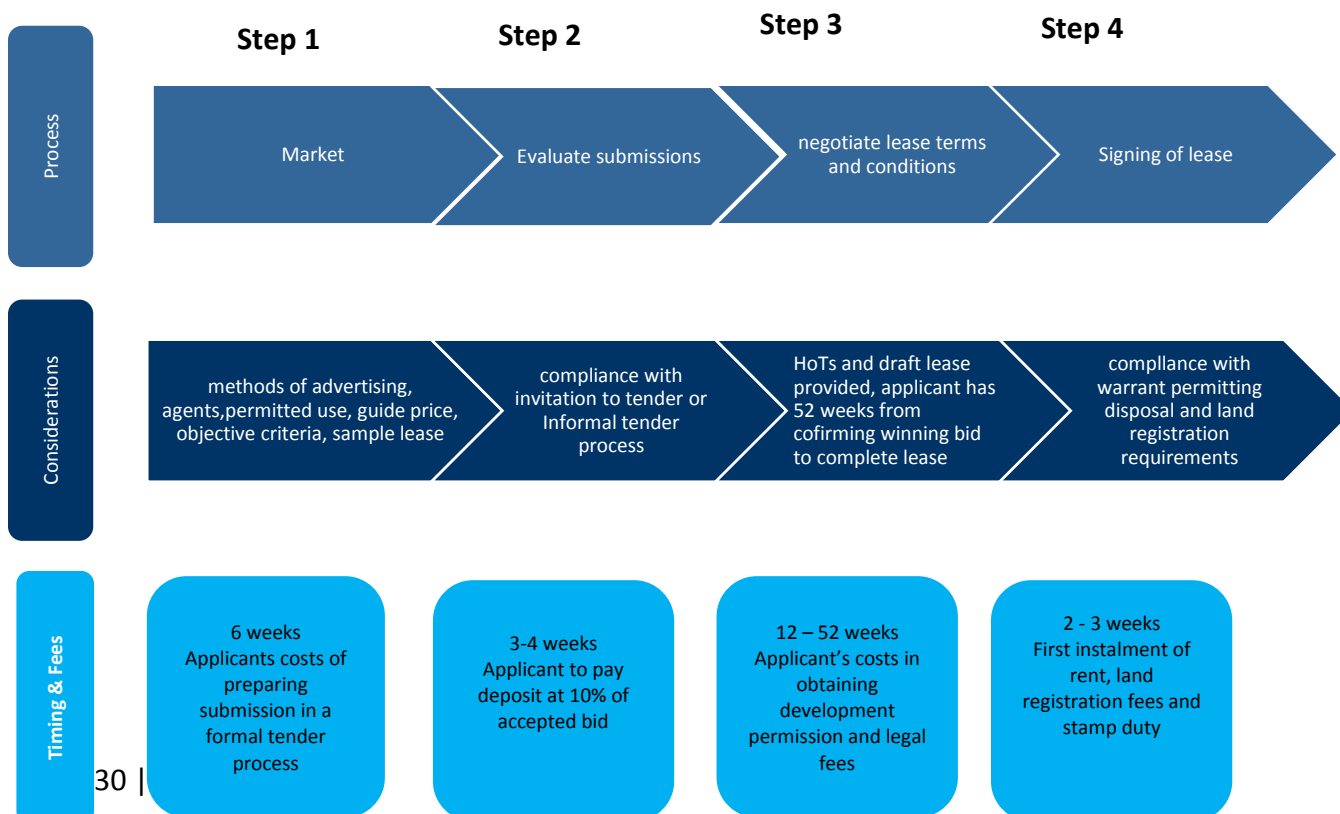
The processes in **figures 2 and 3** below can also be followed for freehold disposals subject to appropriate adjustment.

Business Units as identified in Appendix 1 are Crown commercial property but are specifically provided for in Paragraph 6 below. However with appropriate adjustment the processes and guidance can be followed for Business Unit lettings.

### 2. Leasing by Competitive Tender Process

The following procedure details the steps in granting a lease by a competitive tender process. Whilst the timeframes are representative of the process for most leases by this method of disposal, timeframes are likely to vary for commercial leases depending on the complexity of the offer and subsequent disposal.

**Figure 2. Process for leasing by a competitive process**



## **Step 1 - Marketing**

The Crown Estates Service Function will prepare an invitation to tender or invite bids seeking expressions of interest in an informal competitive process for the lease of Crown property.

Depending on the nature of the property or complexity of the disposal the competitive process may be directed through an agent.

### **Formal Process**

A formal process will require an invitation to tender setting out:

- a) the tenure/term
- b) permitted use
- c) operational timeframes
- d) evaluation criteria and weighting
- e) conditions of sale
- f) sample lease

The evaluation criteria for residential property will be based on the requirements of Section 12 where sale is to first time buyers, and the financial offer. Open market sales will be subject to the conditions of sale and evaluated against the highest bid.

The evaluation criteria for commercial land disposals will be based on the SEDS 2023 and the financial offer. Invitations to tender may require an outline business case and financial projections.

Where Crown commercial property is offered, the evaluation criteria will be assessed against the SEDS 2023.

Where sale is offered under a full repairing lease, tender information may include:

- a) condition surveys and maintenance plans;
- b) electrical safety certificates or reports;
- c) planning information;
- d) property information forms;

This information is intended to assist applicants on the condition of the property but does not obviate the need for applicants to make independent enquiries and/or obtain professional advice. Crown commercial property will always be offered on an "as seen" basis as required by the Procurement Regulations 2018.

### **Informal process**

An informal tender process will not require formal invitation documents, but may seek expressions of interest from the market for a specific property use/ development, or invite the market to determine the property use. Submissions should be made by the specified date and in an approved form, subject to contract.

Residential applications for market sales may be assessed by best financial offer.

For commercial bare land interests, applicants may be required to:

- a) present an outline business case for the proposal;



- b) present cash flow projections;
- c) confirm that they have the financial means or access to finances to fund the proposal;
- d) demonstrate a proven track record of previous development.

Offers by this method may be assessed by best financial offer or support to the economy by reference to the SEDS 2023, or both.

### **Step 2—Successful tenderer selected**

An evaluation panel shall be established to assess bids and submissions which shall consist of a representative from the Property Service, Treasury, and Trade and Investment, as determined by the Head of Service for each area. Professional advisors may be invited to the panel where a tender concerns a specialist subject.

All tenders shall be assessed against the invitation requirements, the Procurement Regulations 2018 and the conflict provisions as provided for in Section 22 of this Policy.

All decisions and scoring shall be recorded and placed on file for the subject disposal.

Once an offer is accepted in a formal tender process the deposit becomes payable within 14 days of written confirmation to the successful applicant.

In an informal process the deposit is payable on terms being agreed.

### **Step 3—Negotiation**

Parties shall agree the timeframes and stages until completion, and proceed to negotiate the final terms and conditions of the sale.

Where development permission is required this shall be a pre-condition of sale and in the case of simple transactions e.g. single residential dwelling, should complete within 1 year of the date of acceptance. Completion timeframes for large or complex developments will vary and are likely to require a longer timeframe which should be agreed at outset.

Following agreement of terms a draft lease or sales agreement shall be presented for the applicant's consideration. SHG shall reserve the right to amend the terms or covenants of the proposed lease to align with any relevant conditions of the decision notice.

### **Step 4 —Signing and registration**

Where development permission is required, a copy of the decision notice should be sent to the Crown Estate Service Function, and the Head of Property will consider whether further amendment is required to the sale terms.

Once parties reach agreement, arrangements will be made for signing at the Land Registry. At the date of signing any rent payments due at the date of the lease should be paid, and evidence of payment provided.

In addition to rent, land registration and stamp duty fees are payable as provided for by the Second Schedule of Registered Land Ordinance 1980, and Schedule 2 of the Stamp Duties Ordinance 1987, as amended from time to time.

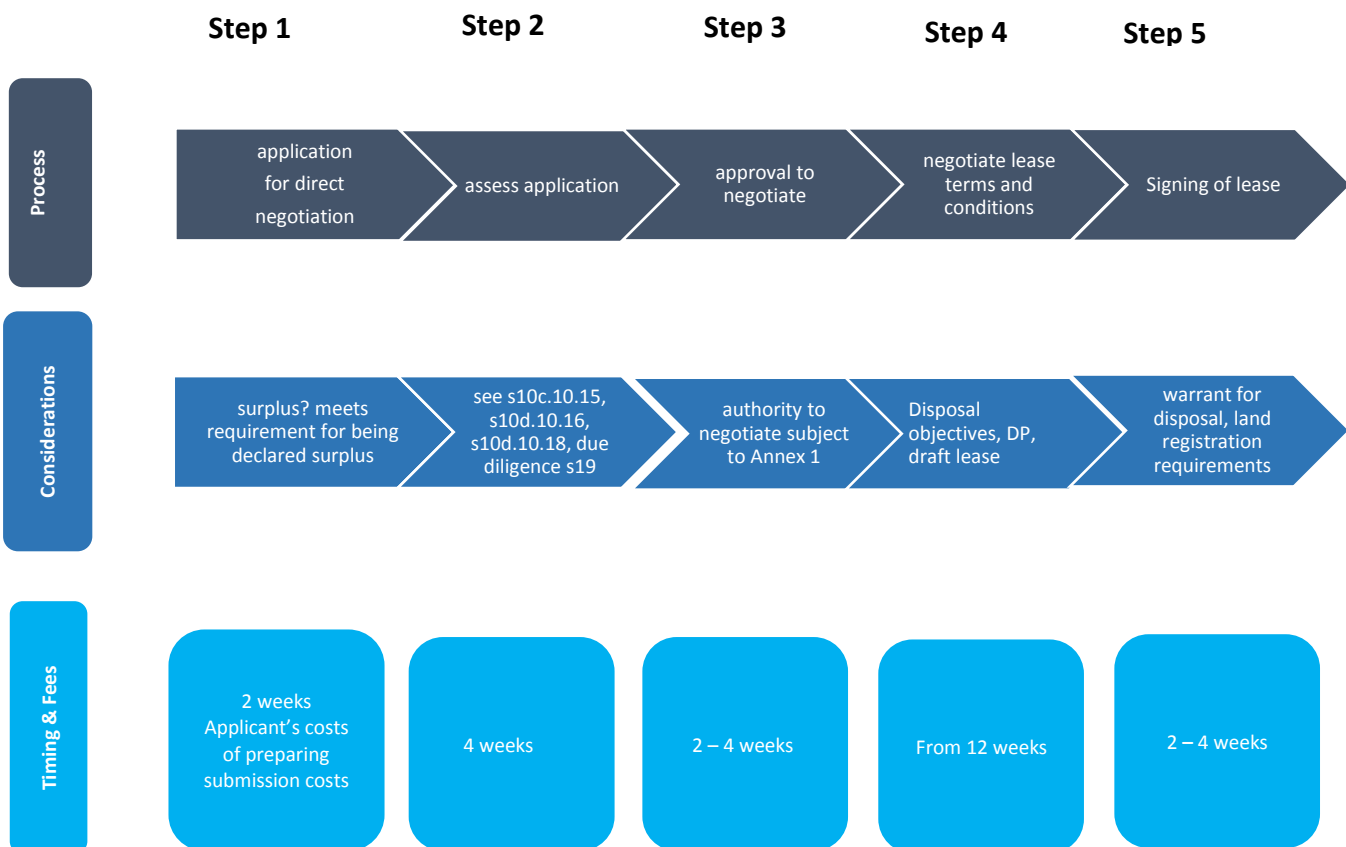
The tenant will have access to the property at the date of the lease, however earlier access may be granted by way of a licence where this is favourable to the permitted use, and does not adversely affect the rights of SHG, subject to approval by the Head of Property.

The post transaction and monitoring process as outlined in Sections 11 and 12 of *The Guidance on the Process for Disposal*, Annex 2 shall be followed post completion.

### **3. Leasing by Direct Negotiation**

Timeframes are variable for this method of disposal and are indicative of the timeframes that the Property Service will endeavour to meet. Final timeframes and completion will depend on the complexity of the offer, the processes in the Approvals Framework being met and the timing of information provided to the Crown Estate Service Function.

**Figure 3. Process for leasing by direct negotiation.**



**Step 1—Direct negotiation (application to lease)**

A proposal for direct negotiation must be made by the applicant in Form x. Where property is required for commercial purposes the application should be accompanied by an outline business case and cash flow projections.

On receiving the application the Crown Estate Service Function shall check whether:

- a) the property is surplus, or meet the criteria in Section 10d.10.18 - exceptional cases where property may be considered surplus;
- b) there any legal restrictions affecting the property preventing it from being declared surplus;
- c) sufficient information is included in the application and may request the applicant to provide further information where necessary.

**Step 2 – Assessing the application**

The Application shall be assessed by the Crown Estates Manager and the Head of Trade and Investment (where commercial proposals are submitted) to see whether the proposal is viable and justifies a direct negotiation under Section 10g.10.24, or meets the criteria for being declared an exceptional case (where applicable)

Further information may be requested from the applicant where appropriate.

A discounted cash flow analysis model may be used as an assessment tool in commercial applications where appropriate to do so, to:

- a) test the financial feasibility of a proposal using standard financial analysis methodologies and assumptions
- b) determine a reasonable lease term to provide a satisfactory return on equity that will allow the payback of any capital investment, and the payment of a market-based rental to SHG.

The Crown Estate Service Function shall notify the applicant in writing of the outcome of the application, and where the criteria is met, request the applicant to provide the due diligence information required in Section 17 of the Policy where the value of the disposal is over £50,000.

On satisfactory due diligence checks the Crown Estates Manager shall recommend the application to the Head of Property to seek approval to enter direct negotiations.

### **Step 3—Approval to enter into direct negotiations**

The Head of Property shall present an appraisal of the proposal, detailing justification for a direct negotiation and proposed Heads of Terms for consideration by the Minister.

Where the Minister is satisfied that a direct negotiation is justified, the Head of Property shall be given authority to negotiate, subject to the Approvals Framework.

The applicant shall be informed in writing of the outcome.

### **Step 4—Negotiation of lease**

The Head of Property shall agree heads of terms to include preconditions, completion timeframes and a deposit. The payment of the deposit confirms the parties' commitment to enter a lease.

Lease terms and conditions shall be agreed and a draft lease prepared for final consideration and signing once the applicant has obtained development permission.

A copy of the decision notice should be sent to the Crown Estate Service Function and the Head of Property will consider whether further amendment is required to the lease terms as a result.

### **Step 5—Signing and registration**

Once agreement is reached, arrangements shall be made for signing at the Land Registry. At the date of signing any rent payments due at the date of the lease shall be paid and evidence of payment provided.

In addition to rent, land registration and stamp duty fees are also payable as provided for by the Second Schedule of Registered Land Ordinance 1980 and schedule 2 of the Stamp Duties Ordinance 1987, as amended from time to time

## **4. Leasing Principles**

Types of lease

The Head of Property may grant the following types of lease.

- Residential – ground lease or in the case of a residential building a full repairing lease.
- Commercial – ground lease, internal repairing lease or a full repairing lease.

Internal repairing lease – the tenant is responsible for internal repairs e.g. plaster, flooring, internal decoration, maintaining and replacing fixtures and fittings. The landlord is responsible for maintaining the exterior and structure e.g. roofs, gutters, foundations.

Full repairing lease – the tenant is responsible for repairing and maintaining some or all of the building.

Applicants should be properly informed of the implications of a full repairing lease, and should inspect the property to check what repairs are necessary before signing. A condition report and a schedule of dilapidations should accompany tender information to assist applicant's understanding as to the condition of the property and to plan the maintenance over the term. Applicants should be advised to conduct their own enquiries and form their own opinions as to the condition of the property and extent of the required works.

Leases should include clauses to allow the landlord to undertake works in the interest of preserving the property, or in the interest of the landlord's surrounding property, where the tenant is in default of its repairing obligations. The tenant will be charged for all costs incurred in undertaking repairs.

Leases will be granted in the standard form as shown in Appendix 3, subject to the necessary modification required to reflect the agreed terms and special conditions for the various types of letting.

### **Terms and conditions**

All leases are subject to terms and conditions detailing:

- a) rent
- b) permitted use
- c) landlords right of re-entry
- d) landlords reservations
- e) tenants' rights and covenants
- f) the tenants works in respect to the property (where applicable)
- g) insurance (where applicable)
- h) special provisions (where applicable) e.g. break clauses, measures to ensure the benefit of the end user, claw back, overage, options to purchase.

All leases are subject to sections 44-63 of the Registered land Ordinance that are inferred by law in all leases unless expressly removed by the terms of the lease.

Tenants are expected to comply with lease term and conditions that will be monitored and enforced where necessary by the Leasehold Manager under the authority of the Head of Property.

### **Term of lease**

Residential bare land leases – will be offered for a term of 25 years. These leases will contain an option to purchase, however where the option is not exercised by the applicant, the lease term will be renewed for a period as agreed by the parties subject to market value and rent reviews.

Commercial bare land leases– these will generally be offered for a period of 30 years, however longer terms may be agreed on a negotiated basis, where the following will be considered:

- a) the level of committed capital investment
- b) the applicant’s ability to fund, resource and manage the lease over the proposed term
- c) the purpose of the proposed activities
- d) the demonstrated public, social, economic and environmental benefit
- e) the market rent as a return for SHG

Crown commercial property – these buildings will be offered on short or medium term lease of up to 15 years at a time.

Business Units - these are offered on short term leases for periods of up to five years at a time.

### **Rent**

A market-based rent will be applied subject to the discounted categories as provided for under this Policy and the subsidies offered under the SHG Property Rents Fees and Charges Policy 2024.

Rent for Crown commercial property which includes Business Units will be fixed in accordance with the calculations under the Rents Fees and Charges Policy 2024.

### **Rent reviews**

Rent reviews will be carried out at five yearly intervals for leases with a term of more than 10 years, and biannually for short terms leases. However reviews may be applied more frequently to achieve a market rent within a certain period of time where Crown commercial property has previously been let for less than market value.

Tenants should be sufficiently consulted with adequate notice and insight as to how the rent is arrived at, and the increases to be applied over the term.

Rent reviews will be based on the St Helena Retail Price Index with the base date at two months before the date of the lease.

Tenants will be given at least three months’ notice in writing of the impending review.

## **5. Process for Letting Crown Commercial Property**

**Step 1** - At least 12 months before the expiry of a lease the Leasehold Manager shall inform the Crown Estate Service Function of the impending expiry.

**Step 2** - The Crown Estate Service Function shall prepare for disposal.

Although there is no automatic right of renewal implied or expressed in any lease, consideration may be given to negotiating with an existing tenant where:

- a) the tenant has consistently met all obligations under the lease, including rent payments
- b) the tenant’s use or business activities are consistent with the Disposal Objectives
- c) there are no future plans by SHG to development the property or surrounding area that may be restricted by the grant of a new lease
- d) the tenant will pay a market rent

**Step 3** - When there is at least six months remaining of the existing lease term, the – Crown Estate Service Function shall subject to Step 2 above, negotiate new lease terms with the existing tenant – subject to contract, or plan the process for disposal, with oversight of the Head of Property.

In the meantime, the Leasehold Manager shall:

- a) notify the existing tenant of the lease expiry regardless of whether a new lease is intended
- b) confirm the remaining obligations under the lease
- c) plan timeframes for inspection of tenants works
- d) conduct an inspection
- e) inform the tenant of any outstanding matters
- f) conduct the final inspection and arrange for vacant possession (if the lease is not being renewed).

### **Step 5**

A new lease is granted pending satisfactory compliance with the remaining lease terms, or the property is marketed subject to the Property Disposal Plan.

The Head of Property reserves the right to discontinue negotiations with an existing tenant in the event they fail to meet their remaining obligations to the end of term and shall arrange for the property to be marketed.

## **6. Selection Criteria for Business Units**

Business Units are Crown commercial property that are let subject to the principles and guidance of this policy.

Where business units are advertised for let, Applicants may submit their interest to the Head of Investment in the approved Form by the closing date given.

Submissions for business units are assessed against a criteria linked to the SEDS 2033as shown in Appendix 2, where the details of each submission is placed in a matrix and scored according to the weighting.

## Appendix 1 - Crown Commercial Property

Parcel No	Property Description	Location
DPRR0139	Ex Sandy Bay School	Sandy Bay
FP0068	Scotts Mill	Francis Plain
HTH0284 (part of)	Gym	Half Tree Hollow
HTH0651	Colonnade, Ladder Hill	Half Tree Hollow
HTH0685	Colonnade, Ladder Hill	Half Tree Hollow
JT010007/22/23/24	The Wharf	Jamestown
JT010010	The Wharf	Jamestown
JT010012	The Wharf	Jamestown
JT010013	The Wharf	Jamestown
JT010017	The Wharf	Jamestown
JT010021	The Yacht Club, The Wharf	Jamestown
JT010025	Boat Shed, The Wharf	Jamestown
JT010026	Boat Shed, The Wharf	Jamestown
JT020006	Mule Yard, The Wharf	Jamestown
JT020013	The Wharf	Jamestown
JT020032/34	Leisure Park	Jamestown
JT020035/36	Leisure Park	Jamestown
JT020045	Kiosk 2 - Customs Terminal, The Wharf	Jamestown
JT020045	Kiosk 1 - Customs Terminal, The Wharf	Jamestown
JT030022/31	The Museum	Jamestown
JT030030	Former Unallocated Store	Jamestown
JT030035	New Horizons Group	Jamestown
JT040008	Public Gardens	Jamestown
JT040047	Broadway House	Jamestown
JT050052	The Wharf	Jamestown
JT070016A	The Canister	Jamestown
LWN0091	Bertrands Cottage	Longwood
LWN0280	Near Longwood Dairy	Longwood
LWN0285	Near Longwood Dairy	Longwood
LWS0024	St Helena Golf Club	Longwood
LWS0270	Bradleys Garage	Longwood
<b>Business Units</b>		
<b>The Market</b>		
JT080017	Unit 1	The Market, Jamestown
JT080017	Unit 2	The Market, Jamestown
JT080017	Unit 3	The Market, Jamestown
JT080017	Unit 4	The Market, Jamestown
JT080017	Unit 5	The Market, Jamestown
JT080017	Unit 6	The Market, Jamestown
JT080017	Unit 7	The Market, Jamestown
JT080017	Unit 8	The Market, Jamestown



JT080017	Unit 9	The Market, Jamestown
JT080017	Unit 10	The Market, Jamestown
JT080017	Unit 11	The Market, Jamestown
JT080017	Unit 12	The Market, Jamestown
JT080017	Unit 13	The Market, Jamestown
<b>Longwood</b>		
LWN0487	Unit 1	Enterprise Park, Longwood
LWN0487	Unit 2	Enterprise Park, Longwood
LWN0487	Unit 3	Enterprise Park, Longwood
LWN0487	Unit 4	Enterprise Park, Longwood
LWN0488	Unit 5	Enterprise Park, Longwood
LWN0489	Unit 6	Enterprise Park, Longwood
LWN0490	Unit 7	Enterprise Park, Longwood
LWN0487	Unit 8	Enterprise Park, Longwood
<b>Ladder Hill</b>		
HTH1053	Unit 1	Business Park, Ladder Hill, HTH
HTH1054	Unit 2	Business Park, Ladder Hill, HTH
HTH1055	Unit 3	Business Park, Ladder Hill, HTH
HTH1056	Unit 4	Business Park, Ladder Hill, HTH
HTH1057	Unit 5	Business Park, Ladder Hill, HTH
HTH1058	Unit 6	Business Park, Ladder Hill, HTH
HTH01053	Unit 7	Business Park, Ladder Hill, HTH
HTH01053	Unit 8	Business Park, Ladder Hill, HTH
HTH01053	Unit 9	Business Park, Ladder Hill, HTH
HTH01053	Unit 10	Business Park, Ladder Hill, HTH
HTH01053	Unit 11	Business Park, Ladder Hill, HTH
HTH01053	Unit 12	Business Park, Ladder Hill, HTH
HTH01053	Unit 13	Business Park, Ladder Hill, HTH
HTH01053	Unit 14	Business Park, Ladder Hill, HTH
HTH01053	Unit 15	Business Park, Ladder Hill, HTH
<b>New Ground</b>		
	Unit 1	Industrial Units, New Ground
	Unit 2	Industrial Units, New Ground
	Unit 3	Industrial Units, New Ground

## Appendix 2 – Criteria for Awarding Business Units

Rental Prioritisation Matrix - Business Units				
	Business Unit Location	0		
	Guide Price	0		
	What is the reason for application?			
Weighting	Criteria	Score	Score x Weight	Score Guidance
15%	Has the applicant access to sufficient funds?		0	3 - applicant demonstrates all necessary funds are available, or is an existing tenant who has paid on time; 2 - applicant demonstrates funds available plus loan/mortgage has been offered if relevant; 1 - applicant demonstrates partial funds available but loan or mortgage for the rest not yet agreed if relevant; 0 - applicant does not demonstrate that funding is available.
15%	When does the applicant plan to start business?		0	3 - Within the next 6 months; 2 - Between 6 months and 1 year; 1 - Between 1 and 2 years; 0 - Greater than 2 years
25%	Is this business assisting development of a sector identified in the Sustainable Economic Development Plan?		0	3- Yes, the business is for tourism, fisheries, coffee, liquor, shipping registry, sailing, honey cultivation, satellite ground stations or digital, call centres, bottled water, academia/research, food production, timber retail or other sector identified by the SEDP; 0- No [Note that residential use should be scored 0]

<b>25%</b>	Is the business providing a new good or service to the market, or it is adding to an already saturated market?		0	3-The business provides new goods or services that no other private sector entity on island provides, and therefore enhances the private sector offering; 2- The goods or services provided are not new, but supply does not exceed demand for the good or service; 1-The market for these goods or services is saturated (the supply of this kind of good or service exceeds demand). <i>[Note that differentiated goods or services within a saturated sector may be considered as a 'new' good or service. Note that residential use should be scored as 2]</i>
<b>2%</b>	Has the applicant been a resident on St Helena and/or Ascension for at least five years at any point in time?		0	3- Resident for the last five years; 2- Resident for five years at any other point in time; 1- Resident for between 1 and 5 years; 0- Not resident.
<b>3%</b>	Does the applicant already own or lease commercial property?		0	3- Applicant currently does not own or lease land for commercial use on St Helena or abroad; 2- Applicant leases land for commercial use on St Helena; 1- Applicant does not own or lease land for commercial use in St Helena but owns or leases land for commercial use abroad; 0- Applicant currently owns land for commercial use on St Helena.
<b>10%</b>	How many people will be employed in your business		0	3- 5 or more; 2- 3 to 4; 1- 1 to 2; 0- just employer
<b>5%</b>	Has the applicant ever leased a business unit?		0	3- No; 0- Yes
<b>100%</b>		<i>Max score is 3</i>	0	

**Appendix 3 - Standard Forms - Leases** (NB: to be added once legal review complete on current forms)

