



Llywodraeth Cymru
Welsh Government

Guidance

Identification and Disposal of Welsh Government Non-Core Surplus Land and Buildings

Prepared on behalf of the
Corporate Asset Management
Strategy Group (CAMS)

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

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1. Introduction

The Welsh Government (WG) has reiterated a commitment to deliver real improvements in the every-day lives of the people in Wales in 'Taking Wales Forward' (2016) and Prosperity for All (2017). A key driver in delivering this commitment is to maximise the efficiency and effectiveness of every part of the organisation, including its land and property assets.^{1 2}

Statutory powers to acquire, hold and dispose of property assets were given to the Welsh Ministers in the Government of Wales Act 2006. Similar rights have been conferred under successive statutes where sponsored bodies and assets, such as those of the Welsh Development Agency, have been transferred to the Welsh Ministers.

The public estate is recognised as an important resource for delivering public services and supporting economic growth, health and wellbeing as well as protecting and enhancing the environment and biodiversity. Deriving public value³ from WG land and property assets requires a strategic approach to ensure that ownership⁴ is underpinned by business and policy need. Management of all assets should always be able to demonstrate value and be carried out according to the principals of good governance.⁵ Disposals of surplus land and property assets should also achieve wider public value outcomes.

The 2016-2021 Corporate Asset Management Strategy (CAMS)⁶, makes a commitment to strategic approach to the acquisition and management of property assets, in particular identifying and disposing of those that are surplus to needs. A key message from this good practice guide is that multiple positive outcomes may be achievable from this strategic approach, disposal of surplus assets supporting a range of policy areas.

This guidance is intended to provide a **high level framework** to steer officials through the process of identifying and disposing of non-core assets that no longer support policy and business needs to ensure that the greatest public value is obtained. This requires a clear recorded strategy for disposal for each asset, linked to outcomes and underpinned by sound information and due diligence. Departmental desk instructions and governance processes will supplement this framework.

The guidance within this document covers the Level 1 and 2 activities in Figure 1.

1 Taking Wales Forward 2016-2021 gov.wales/about/programme-for-government/?skip=1&lang=en

2 National Assembly Wales Finance Committee Inquiry into Asset Management in the Public Sector (2013)

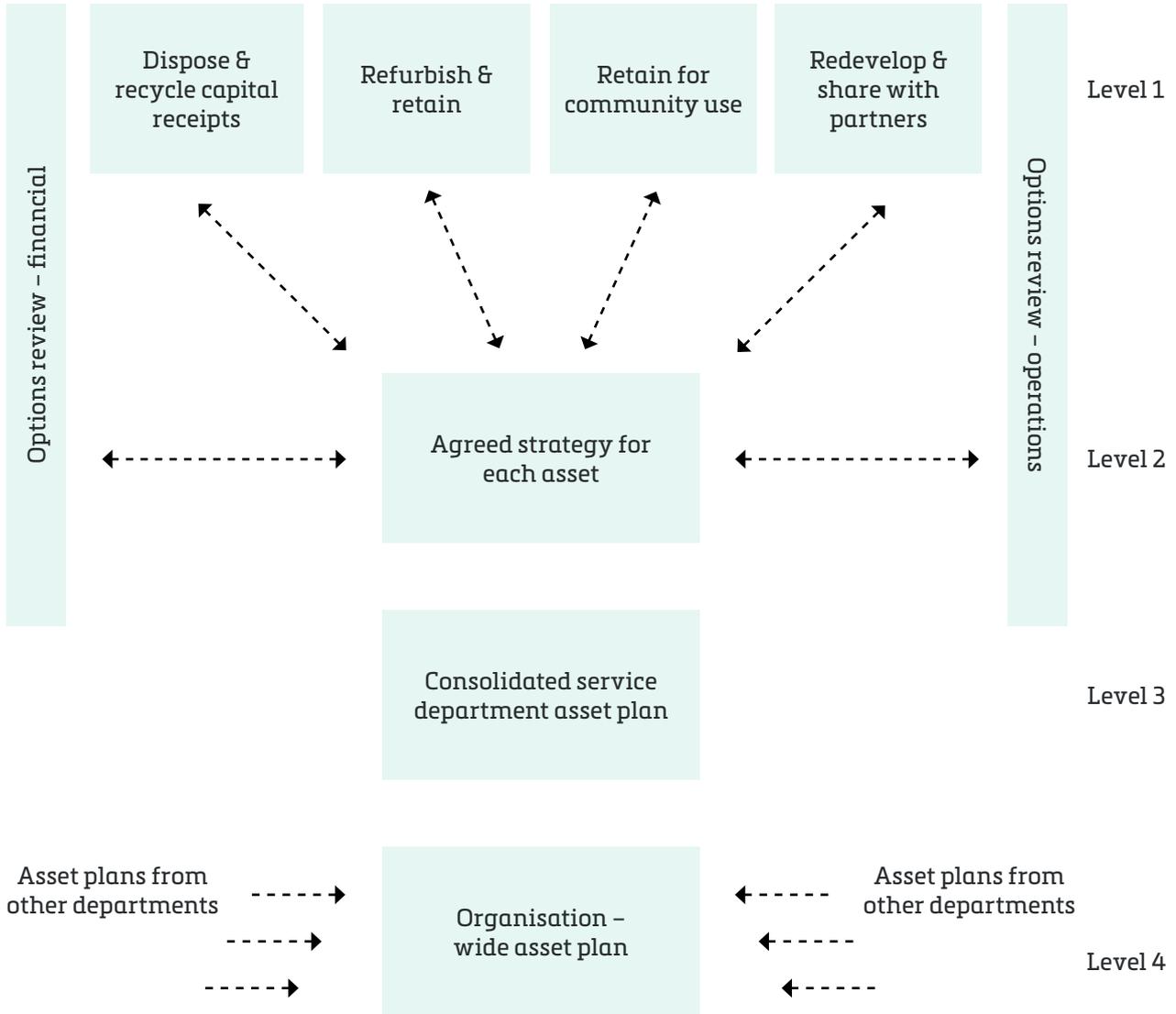
3 Public Value (Moore, 1995) is the value created when public money is translated into outputs and outcomes that improve people's lives and economic wellbeing.

4 Ownership includes freehold, leasehold and properties held under licence or other forms of tenure.

5 Managing Welsh Public Money (2016) gov.wales/funding/managing-welsh-public-money/?lang=en

6 Welsh Government Corporate Asset Management Strategy 2016-2021

Figure 1: Corporate Property Asset Planning Process



Source: RICS Public Sector Property Asset Management Guidelines (2nd Edition)

This guidance has been prepared by PSG Land Division on behalf of the CAMS Group. It firstly provides an overview of the principles and processes for identifying non-core property assets. It identifies the centralised resources that are available, provides an overview of the CAMS and Departmental Asset Plans (D-AMPS) and sets out the standard definitions for asset categories.

Guidance is provided on the key considerations for a disposal strategy and how to proceed through the disposal process. It concludes with some of the post-sale administrative actions to close the file.

The disposal of Heritage properties follows the same process as for other assets. Additional considerations are set out in the Annexes.

2. Identifying Assets for Disposal

CAMS (2016-2021) sets out the vision for improving the management and utilisation of land and property assets based on business interest.

The core principles established within the strategy are that:

there will be centralised resources to provide strategic oversight, scrutiny, guidance and assurance

assets will only be held or acquired necessary to delivering Government policy and priorities

each Department will produce and maintain a D-AMP, conduct an annual review of all assets held against current priorities and categorise each against one of three standard corporate definitions – core inflexible, core flexible and non-core surplus, and

assets categorised as non-core surplus will be actively disposed of in accordance with best practice.

Where assets do not fully align with business or policy objectives, care is needed to avoid adverse scrutiny arising from other and emerging policy areas, for example in respect of land banking and potentially vacant land tax.

2.1 Centralised Resources

Departmental governance and delegated authority for decision making varies across WG.

In accordance with the principles set out in CAMS, Land Division leads in coordinating and providing expert advice and resources on strategic asset management and property assurance across WG.

Ystadau Cymru is the WG gateway to tools and resources for best practice in asset management.⁷

This includes links to:

- Space Cymru – a portal for advertising public sector property available for sale or to let.
- Estate Co-ordination and Land Transfer Protocol for transfers between public bodies in Wales.
- Best practice guide for Community Asset Transfers (CAT) in Wales.
- Property Collaboration Toolkit.

⁷ gov.wales/ystadau-cymru

2.2 Departmental Asset Management Plans

Property assets are held under the control of the Welsh Ministers and managed for specified divisional strategic objectives, an overview of which is set out in Figure 2.

Figure 2: Departmental Asset Management Plans

Permanent Secretary's Group:

Administrative Estate comprising freehold and leasehold properties for the day to day business of WG. The Location Strategy 2020-25 sets the objectives, the APSG⁸ monitor the performance, and the annual State of the Estate Report publishes performance data for the operational estate.

Land Division, formed in 2020, holds a number of land assets with the initial aim of accelerating development to achieve housing and public value outcomes.

Economy Skills and Natural Resources:

Economic Development portfolio of properties with the objective of strengthening the conditions that enable businesses to create wealth, jobs and sustainable economic growth.

Infrastructure & Transport portfolios include operational and non-operational managed properties, and land held for strategic development. In addition to motorways, trunk roads and maintenance depots the Transport portfolio includes properties acquired for road, rail and broadband improvements including properties held pending disposal upon completion of schemes. Cadw hold a portfolio of historical monuments, held under statutory duties by Welsh Ministers as guardian of the historic environment. The primary objectives from holding this portfolio are conservation and education.

Education and Public Services:

Housing and Regeneration Group hold a small number of mixed use properties under management. These will be disposed of as part of regeneration of the respective locations.

D-AMPS are produced to a best practice template developed in collaboration with CIPFA⁹, the content of which is summarised in Figure 3. D-AMPS provide the overarching rationale for disposals, which can be referred to in the business case for disposal of the individual asset.

8 Administrative Estate Property Group has oversight of the delivery against the objectives of the Location Strategy.

9 Chartered Institute of Public Finance and Accountancy

Figure 3: Best Practice – Overview of Key Features of a D-AMP

63` Background	Information about the Department, aims objectives and priorities
Supply: The Current Estate	Quantity and quality of assets, location, costs, benefits, values, sustainability, effectiveness and efficiency
Demand: Asset Needs	How much and where, targets for efficiency, costs, benefits, sustainability. Effect of different ways of working
Gap Analysis	General differences, numbers and performance
Measures of Success	Targets, measures, data collection methods
Departmental Governance	Oversight, decision-makers and decision making processes, links to requirements of the Well-being of Future Generations (Wales) Act 2015
Projects and Programmes	Current and planned building or acquisitions
Action Plan	Direction of travel, timescales and actions

2.3 Categorisation of Assets

Assets held in the name of the Welsh Ministers are categorised as either core or non-core, depending upon whether they are required to deliver policy. Definitions of each are set out in Figure 4. Government Departments should not, however, hold property speculatively.¹⁰ The exception to this might be where there is benefit to the value or management of retained land or a ransom strip to additional development land.

Non-core freehold and leasehold assets will be surplus to business need and should be made available for disposal.

Figure 4: Definitions of assets held by WG Departments

Core – Inflexible: Buildings or land required to deliver core Departmental functions indefinitely or at least until the end of the policy period with a dedicated budget.

Core – Flexible: Buildings or land currently required to deliver Departmental programmes and projects. The requirement for this type of asset must be clearly identified in Programme or Project business cases. This category also includes assets ‘held pending use’ – awaiting a decision on construction or other scheme requiring land assembly. Core – flexible assets can generally be re-classified.

Non-Core – Surplus: Buildings or land no longer required to deliver current or known future Government policy or Departmental functions, and therefore available for disposal.

Although the D-AMP will underpin the business case for disposal, documenting the rationale behind each transaction is a key part of demonstrating value. The business case should demonstrate how financial and non-financial benefits and dis-benefits have been reflected in the decision making and disposal process. Best practice is that this business case is developed as an iterative process and is proportionate to the value and potential impact of the disposal.^{11 12}

10 Treasury Green Book p 72 www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government
Development assets may be held, for instance, within ESNR where they align with business objectives.

11 For instance the RICS Guidance on Public Property Asset Management (2nd Edition)

12 In this context the business case should be proportionate to the value of the asset. The form and content will comply with Departmental instructions.

3. Demonstrating Value

‘Prosperity for All’ embeds the seven goals of the Well-being of Future Generations Act and a definition of sustainable development that seeks to maximise public value over highest price. Demonstrating how the proposed disposal meets the goals and embeds the five ways of working will strengthen the ability to demonstrate value.

Figure 5: The Five Ways of Working



take an integrated approach so that public bodies look at all the well-being goals in deciding on their priorities



understand the root causes of issues to prevent them from occurring and examine whether how we currently deploy our resources should change



work with others in a collaborative way to find shared sustainable solutions



look to the long term so that we do not compromise the ability of future generations to meet their own needs



involve a diversity of the population in the decisions that affect them

The Ministerial priority for achieving public value from the disposal of assets considers the societal impact of government activities. Outcomes from disposals should aspire to improve people’s lives, economic wellbeing and protect or enhance the environment and biodiversity. Explicit identification of the direct and indirect contributions expected from the disposal, through the use of impact assessments, will assist in demonstrating value from the disposal.

4. Opportunities for Collaboration

Identifying opportunities for collaboration, particularly with other public sector bodies, can enhance public value outcomes from a disposal. Placemaking principles emphasise the importance of collaboration and stakeholder engagement. Disposal of an asset provides a prime opportunity for WG to integrate placemaking principles through collaboration and to demonstrate best practice.

Key benefits of collaboration on the disposal process include:

WG Departments classified as Crown can transfer assets between them without marketing, as there is no transfer of title. Cost savings should be achieved from this approach, but it also has the potential to deliver indirectly against other policy.

Public sector organisations are also permitted to transfer property assets between themselves without placing them on the open market.¹³ However, not all arms-length bodies have the power to acquire or hold property assets. Charities may also have restrictions on their activities that prevent them from holding property assets. It would therefore be prudent to confirm that appropriate powers exist at an early stage. Separate guidance is available on the transfer of assets to community groups.¹⁴ Annex 4 contains a link to the public bodies list for Wales and the accounting boundaries they fall within.

The WG Estates Coordination and Land Transfer Protocol advises that public sector collaboration opportunities should be fully explored. Where there is no other public sector interest, surplus land and property assets should be disposed of within three years, and residential assets 6 months.^{11 15}

4.1 Valuation for Public Sector Transfers

Public sector transfers should usually be at market value, in accordance with the RICS Red Book, and based upon a single independent valuation and be without clawback or overage provisions. Exceptions where overage/clawback provisions might be appropriate are:

- where the property is to be sold onto a private developer for housing development
- there is a realistic prospect that selling will improve the outcome for housing policy, e.g. by creating an aggregated composite site
- the accounting officers of the relevant public sector organisations are convinced that, in this transaction, overage offers value for money for the public sector as a whole, or
- the development gains are split equally between the original and prospective owners.

13 Managing Welsh Public Money (2016) pp117-119 gov.wales/sites/default/files/publications/2018-10/managing-welsh-public-money.pdf

14 gov.wales/community-asset-transfer-cat-guidance-applicants

15 Land Transfer Protocol gov.wales/ystadau-cymru

If assets are disposed of at less than market value, then the difference between sale price and market value will be treated as a gift which requires “authority to approve” set out in Departmental delegations. Accounting purposes require that such transfers are treated in a specific way¹⁶. State Aid rules should also be considered and accounted for.

Where assets are disposed of using a conditional contract or for a detailed specified purpose, then public procurement rules can apply.

16 Managing Welsh Public Money (2016) @ Annex 4.11 [intranet/English/Money/FinancialGuidance/Pages/ManagingWelshPublicMoney.aspx](#)

5. State Aid

The European Commission (EC) has developed the State Aid regime to prevent financial advantage being given to parties in a way that could distort competition. Financial advantage could arise from gifts or sales at less than market value or by imposing obligations or conditions that would be unacceptable to a private seller. State Aid rules apply to acquisitions and disposals of land and property assets.

To ensure that disposals are not likely to be interpreted as triggering State Aid, the process has to be transparent, non-discriminatory, unconditional and competitive. Sufficient evidence should be kept to demonstrate that these principles have been adopted.

Disposals should generally be made at market value, but can take place at a lower figure as long as value for money can be demonstrated. In such cases the costs and benefits (quantitative and qualitative) need to be clearly identified and documented.

The level of risk of challenge should also be considered and recorded. Support can be obtained from stateaid@wales.gov.uk or via the Legal Services NPS framework.

Although contingent contracts for disposal can create a binding commitment to deliver specific policy outcomes, they raise potential state aid issues as they can confer benefit in kind to the purchaser. An example would be an agreement for a sale where the proceeds were recovered at a later date (typically after completion of a development or scheme). This was a matter referenced by the Wales Audit Office during its review of the Regional Investment Fund Wales (RIFW).

Contingent contracts also require careful consideration of public procurement regulations, which can have an impact on the disposal strategy.

6. Public Procurement

Government Departments are contracting authorities and are subject to EU procurement directives. Specifying particular outcomes from the sale of an asset can cause the disposal to be classified as a public works contract. Public works contracts over the specified financial limits will require a full OJEU process to be conducted, therefore it is important that the correct advice is taken at the outset. OJEU processes can add significant time, resources and cost to the disposal process.

Examples where disposals are likely to be classified as public procurement include:

- Disposal where the developer of a site also provides professional services to WG.
- Facilities are being provided on a disposal site for the WG.
- Conditions within a contract specify, for example, the number of dwellings to be built on a site, by a certain time or to specific standards.
- There is an obligation to provide infrastructure prior to development of the disposal site.

Each case should be considered individually, but if a disposal might be interpreted as a public works contract then early advice should be taken from either Corporate Procurement Services: CSPProcurementAdvice@gov.wales¹⁷ or external expert advisers.¹⁸ Public works contracts are also subject to the Public Services (Social Value) Act 2012.

Key points in relation to procurement and asset disposals include:-

6.1 Unconditional Process

The sale should be through an unconditional bidding procedure and be sufficiently well publicised. All interested tenderers should be equally and duly informed, information needs to be accessible and there should be clarity around the selection and award criteria.

Where land and buildings might attract international purchasers, then the disposal strategy and marketing must include exposure to those markets. Although it is not permissible to impose obligations beyond those that would be acceptable to private vendors, it is possible to include conditions or obligations that are acceptable within general law and those set out in decisions of a planning authority.

¹⁷ On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.'

¹⁸ [eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0719\(05\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0719(05)&from=EN)

6.2 Independent Valuation

There will be occasions where a disposal can occur without a comprehensive marketing campaign. However, an independent market valuation report should be obtained, supporting the price, before exchange of contracts. It should be commissioned from a registered Valuer and usually be carried out in accordance with the RICS standards (Red Book).

It is good practice to consider commissioning an independent opinion of value report even in disposals following open marketing (see also Valuation section within the Disposal Strategy section below).

7. Prior to Disposal

There are a number of high level matters to be considered prior to disposal that will inform the disposal strategy.

7.1 Crichel Down

Assets originally acquired by a public body under powers or threat of compulsory purchase, may need to be offered back to the former owner or their successors, at the current market value under the Crichel Down rules.¹⁹ A proposed disposal of a freehold interest or on a lease of more than 7 years brings the asset within these principles. The rules have other specific provisions relating to tenants.

Early legal advice should be obtained to identify potential Third Party Rights and discussions should be held with legal services as to whether any exceptions to the Crichel Down Rules and the time horizon to offer back property assets would apply, before moving on to consider a market disposal.

7.2 Internal – Alternative Use

Although property may have been identified as non-core surplus to the holding Department, it will not necessarily be surplus to the WG as a whole. Consulting with wider Departments to establish if the asset may be of interest is a necessary precursor to market disposal.

As an example, increasing the supply of affordable, low carbon, quality housing is a ministerial priority. Having determined that an asset with housing potential is surplus to the holding Department, its availability must be notified direct to the Land Division prior to the commencement any other disposal process.

7.3 Re-using Land within the Public Sector

Where there is no internal WG requirement for the asset, it should be made available to other public sector organisations. In this context the wider public sector includes Registered Social Landlords (RSLs), Welsh Government Sponsored Bodies (WGSBs), the UK Government, NHS, local government, national park authorities, police and fire authorities.

Key policy areas delivered outside of WG include health and wellbeing, housing and regeneration, gypsies and travellers, the foundational economy, biodiversity and carbon reduction. Collaboration with policy leads in WG can lead to indirect improvements in policy outcomes where the land is transferred elsewhere within the public sector.

¹⁹ welshgovernment.soutron.net/Library/Catalogues/CatView.aspx?ReturnUrl=http%3a

The mechanism for advertising the availability of the property is the electronic register of public sector land, ePIMS²⁰. The property asset should be registered as available to other public bodies for 40 days before being made available to the open market. ePIMS does not automatically notify users when new property becomes available, however Land Division can circulate to other public sector estates professionals via Ystadau Cymru.

7.4 Re-using Land to Support Wider Government Policy or Legislative Objectives

Government policy is not always delivered directly by government departments or other public bodies. If there is no requirement for the asset within WG or the wider public sector, then consideration should be given to whether the property might be suitable for supporting delivery of other objectives by non-public sector organisations.

Collaboration with policy leads within WG and Land Division will help to identify opportunities and contacts.

Guidance on sales/transfers between public bodies is contained within the Estate Coordination and Land Transfer Protocol published by Ystadau Cymru.

7.5 Market Disposal

Where the preceding options have been explored and rejected, the next step would be for disposal of the asset on the open market. The principles of transparency and fairness will need to be demonstrated throughout the process. The benefits of a timely disposal should be balanced against the intended outcomes from the disposal. Developing a strategy will provide a framework that will demonstrate how value has been achieved by:

- setting out clearly defined objectives and the anticipated benefits arising from the disposal
- identifying the resources needed to manage the process and deliver the objectives effectively and efficiently
- providing the rationale for the chosen disposal route
- considering the potential to enhance the marketability and value of the asset, and
- demonstrating how WG policy goals have been embedded in the process.

²⁰ Electronic property information mapping service. E-PIMS is due to be replaced in 2020.

8. Disposal Strategy

The Disposal Strategy will cover a wide range of issues to guide the entire disposal process. The strategy should be outcome led, but objectives need to be balanced against time and resources. The process of developing a robust strategy will be iterative.

8.1 Objectives and Benefits

Achieving value from the disposal of an asset requires a considered approach based on SMART, policy aligned objectives.

These might include:

- low or zero carbon development
- enhancements to environment or biodiversity
- supporting placemaking projects
- social and affordable housing
- town centre regeneration.

Objectives should be informed by impact assessments.

8.2 Impact Assessments

Corporate processes for advising Ministers on potential options and recommendations for disposal must reflect the requirements of the Wellbeing and Future Generations (Wales) Act [WFG].

Impact assessments support the business case and inform the disposal strategy. They demonstrate how the proposed disposal links to wider policy objectives and are an important element in demonstrating value.

Guidance and examples of good practice on the preparation of integrated impact assessments can be found on the WG Intranet.²¹

Additional project specific impact assessments should be considered when confirming whether (and how) the value of the asset might be enhanced or risks mitigated.

The use of risk assessments should be appropriate and proportionate to the asset disposal project.

21 wales365uk.sharepoint.com/sites/Intranet-Policy-Making-Legislation/sitepages/Integrated-Impact-Assessments.aspx

8.3 Timeframe

'Managing Welsh Public Money' envisages that non-residential property assets should be disposed of within three years (six months for residential). Other considerations might suggest that public value is unlikely to be achieved within that timeframe. Budgetary constraints should not normally be a deciding factor where assets have the potential to create significant public value.

The disposal strategy should address the anticipated timeframe bearing in mind the desired objectives, time required to secure internal approval and market conditions for the category of asset.

Additional pre-marketing activities might improve value for money and could have a significant positive impact on the timing of any receipt, and will need to be incorporated into the timeframe within the disposal strategy.

8.4 Resources

Disposing of an asset requires resources and expertise from a number of parties, within and external to the asset holding Department. A well-developed strategy will align the need for those resources with the respective phases in the disposal process, which will in turn help to identify measurable milestones for monitoring and reporting.

8.4.1 Legal

Legal advice should be sought from WG Commercial Legal Services early in the disposal process to clarify the nature of the interest to be disposed of and to ensure that the title is registered in the correct name and the necessary powers to dispose exist. The correct identity of the current landlord, the right to sub-let or assign and the need for landlord's consent are all relevant early considerations for leasehold interests.

There may be restrictive covenants, rights of way, wayleaves, encumbrances or third party rights which prevent or impede the ability to sell or are likely to affect the value. It is important that these issues are identified before instructing external valuation experts. Once aware of any defects in title, legal advice can be obtained as to whether there are options to amend or remove, which might enhance the disposal price, but will also need to be reflected in the timeframe within the strategy.

Early engagement should also highlight whether there are any boundary issues that need to be clarified and whether Cichel Down rules apply.

The legal team will also deal with the legal aspects of sale or lease and can ensure, where appropriate, the correct 'overage' or 'clawback' provisions are registered against the asset upon completion of the sale.

Specialist legal support may be required where it is likely that disposal will be by way of conditional contract that might trigger Public Works Contracts regulations.

8.4.2 Valuation

The basis of value for disposal should generally be market value as defined by the RICS.

Although asset disposals can take place at less than market value, there will be a need to identify the difference between disposal price and market value. The market value will be made under a set of assumptions, one of which will be the objective(s) underpinning the disposal. Where assumptions reflect outcomes over and above market norms, these should be identified in any advice submitted to Ministers.

Valuations for assets expected to achieve in excess of £500,000 should be undertaken by an independent Registered Valuer not part of the disposing agency and comply with RICS Red Book requirements. Appointments should be made using either existing Departmental Frameworks, or the NPS Wales procurement framework for Construction Consultancy (Infrastructure).²² Advice and guidance on the content of instructions is at Annex 2.

The valuation should consider, where appropriate, whether the value could be enhanced by dividing the asset into separate lots, or a joint disposal with another party or asset. A range of values is acceptable at the early stages of strategy development, as the market may not have been tested. In these circumstances, confirmation that the price agreed represents market value must be obtained prior to exchange of contracts.

The RICS requires that any member providing valuation advice must be part of the valuation registration scheme and adhere to the standards required. It is worth noting that sales and letting agents are not necessarily RICS registered Valuers but can offer a view on price. However, the safeguards offered by a formal (Red Book compliant) written valuation will not be provided.

8.4.3 Marketing

Marketing of the asset should be procured in accordance with WG procurement policy. To ensure impartiality and in accordance with the principles of best practice, it is prudent that the agent marketing the asset be different to the organisation appointed as the Registered Valuer (see above). The marketing agent should advise on the initial guide price, manage offers and advise on the acceptability of offers received.

Where offers differ from the initial guide price, a registered Valuer should certify that the offer is the best that was obtainable after proper marketing.

²² As at May 2017 the current framework reference is NPS-PS-0027-15

8.5 Enhancing Value and Reducing Risk

The strategic objectives and the physical and legal characteristics of the asset will influence the market value. There may also be opportunities to enhance the value and reduce the risk of achieving a sale.

Clear disposal objectives will assist in determining whether such activities might be appropriate or beneficial, but there will need to be a robust appraisal of costs against benefits to ensure that there is a net benefit from the time and resources expended. Activities should be proportional to the asset, the potential value that can be created and resources available.

Independent professional advice or third party review can support internal assurance and governance arrangements.

Activities that might be considered to reduce the perceived risks prior to placing the property on the market might include:

8.5.1 Technical Assessments

Technical assessments that might enhance value or reduce risk include topographical surveys, flood risk assessments, ecological reports and ground and contamination investigations. Where the disposal strategy includes engagement with the planning system, additional reports may be required. If development of a site will necessarily include demolition of buildings, it may be beneficial to ensure appropriate permissions to demolish are in place prior to sale.

Potential benefits of obtaining transferrable technical assessments should be considered.

For existing buildings, EPCs and asbestos, radon, fire and other certificates and surveys might assist in de-risking a sale by providing comfort to prospective purchasers, although they should only be provided for information. Such reports are provided solely to WG to enable them to fulfil their statutory obligations and may not be transferrable.

8.5.2 Preparatory or Prior Works

Remediation, decontamination or demolition might enhance the value of the site, or may remove some of the risks to potential sale.

8.5.3 Planning

Engaging with planners at an early stage can enhance the disposal process and assist in speeding up the disposal, however should be proportionate to the potential to enhance overall value, balanced against the resources required.

Pre-planning discussions, preparing a development brief and securing planning permission are examples of planning activities that can enhance value and outcomes, improve the saleability and reduce risk, but may not be appropriate for every asset. This may not be appropriate where there are a number of potential uses for the site.

Planning permissions, although not binding on the purchaser, can be used as a mechanism for achieving policy aims, such as affordable, low carbon and quality housing. Planning led conditions, would not necessarily bring the transaction under public procurement or state aid rules, however specialist advice should be sought, on a case by case basis.

8.5.4 Legal

Concerns with title, such as restrictive covenants, should be investigated as they may be redundant or could be extinguished by agreement. Legal advice should also be sought in respect of any overage or clawback clauses.

8.5.5 Infrastructure

Where appropriate the provision of physical and social infrastructure can benefit the value of a site.

8.5.6 Capturing Uplifts in Value

Overage and clawback conditions are important mechanisms in achieving value from asset disposals. WG holds assets to deliver and support policy objectives and in general is unable to use property assets speculatively. Where surplus assets with development value are disposed of using the market route, measures should be considered to ensure that some or all of any future financial profits or increases in value benefit taxpayers. The UK Government have used the following useful definitions:

‘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.²³

Overage enables WG to recover increases in value due to increases in market value whereas clawback is the gain arising from planning permission for development or a more intensive use. The amount that can be recovered may diminish with time and the amount of money that can be claimed will often be disputed. Expert advice legal and valuation advice should be obtained before placing undue reliance on such mechanisms to protect future increases in value of a property asset.

Prudent lotting may enhance value, and can be achieved by either by amalgamating an asset with adjacent property, or dividing the asset into separate lots. The timing of disposals will be a key factor in maximising receipts and specialist valuation advice should be taken to support a decision. Advice will need to be updated where lots are disposed of at differing times to reflect market conditions.

23 www.gov.uk/government/uploads/system/uploads/attachment_data/file/599778/Guide_for_the_Disposal_of_Surplus_Land.pdf
page 22

Retention of a ransom strip is another mechanism that can to ensure future uplifts in value are captured. Good practice is that they should not be used speculatively.

The clawback interest should be recorded and retained within the D-AMP action plan.

8.5.7 Special Purchaser

A special purchaser, such as an adjoining landowner, can enhance the sale proceeds. Due diligence checks should be made where there are potential special purchasers to avoid the risk that the transaction will not complete, the proposed use is lawful and the transaction is not likely to attract undue scrutiny of the Department or transaction.

Accepting bids that are materially different to the anticipated proceeds of sale may be an indication of money laundering or other criminal activity. The RICS has issued a professional statement to members on 'Countering bribery, corruption, money laundering and terrorist financing'.²⁴ This includes mandatory requirements and guidance to members and regulated firms. Officials should be mindful that only regulated firms are bound by the standard and would undertake due diligence in respect of their clients.

Welsh Government is at particular risk of reputational damage and it is recommended that appropriate due diligence is undertaken on the identity of purchasers to mitigate the impact of such a risk.

²⁴ www.rics.org/globalassets/rics-website/media/upholding-professional-standards/standards-of-conduct/countering-money-laundering-1st-edition-rics.pdf

9. Market Disposal Routes

Beyond the principles established for transfers and disposals between public bodies, it would be usual to contract professional support for the marketing and disposal of the asset. Estates consultancy services are available through existing Departmental frameworks, or the NPS Framework²⁵ and these should be used unless the business case justifies an alternative. Where an agent is not a Registered Valuer (RICS) the latter will need to certify that the eventual sale price represents market value.

The choice of disposal route will be influenced by the objectives set out in the business plan and disposal strategy. Key positive and negative features for each route are set out in Figure 6.

9.1 Private Treaty

This is the most common disposal route for freehold and leasehold properties in the UK. This is the primary agency route whereby parties are able to express an interest and negotiate terms and the vendor may be in discussions with multiple parties at the same time. Only once contracts are exchanged is there a firm deal in place.

Sales particulars are prepared for the property and are circulated, via agents, to publicise the details of the property interest being sold. To support maximisation of exposure to competition, the following centralised resources should also be used:

ePIMS

Government Property Finder²⁶

SPACE Cymru²⁷

Business Wales Commercial Property Database²⁸

Specialised or unusual properties may be targeted through advertising in particular markets, costs versus benefits should be considered. For external sales (outside the public umbrella) it is important to be able to demonstrate that the property has been exposed to competition to ensure value for money has been obtained.

25 Customer guidance notes p17 : 'Disposal (includes letting or other commercial arrangements) of freehold, leasehold or other interests in land and property'

26 www.gov.uk/find-government-property

27 gov.wales/finding-public-sector-property-available-let-or-buy

28 businesswales.gov.wales/property-database

Figure 6: Key positive and negative features of disposal routes

	Key Positive features	Key Negative features
Private Treaty	<p>Vendor sets asking price</p> <p>Some vendor control over timing and price</p> <p>Potential special purchaser premium</p> <p>Potentially lower marketing costs</p>	<p>Potential failure to expose to full competition</p> <p>Risk of failure to complete incurs costs and time delays</p> <p>Risk of delay where multiple uncertainties²⁹</p>
Public Auction	<p>Quick certain and transparent route to sale</p> <p>Appropriate for investment, tertiary and secondary properties where disparate markets difficult to cover</p> <p>Interest in the auction room generates competition</p> <p>Best possible price on the day is achieved</p>	<p>Specialist skills required – reserve price and in the sale</p> <p>Potentially lower bids from cautious purchasers</p> <p>May miss out on special purchaser bids</p> <p>Can fail to achieve a sale</p> <p>High marketing costs</p>
Formal Tender	<p>Vendor has some control over timing</p> <p>Purchaser bears risks</p> <p>Opportunity to include clawback or overage</p> <p>Potential to gain from special purchaser bids</p> <p>Successful bid is binding contract</p>	<p>Time and expense involved may deter bidders</p> <p>Unsuitable when markets weak due to costs</p> <p>Time and resource greedy for the vendor</p> <p>Difficult to ensure full market coverage</p>
Informal Tender	<p>More flexibility than formal tender</p> <p>Opportunity to include clawback or overage</p> <p>Opportunity to enhance value by clarifying uncertainties</p>	<p>Vendor or Purchaser not bound to proceed</p> <p>Risk of failure to complete incurs costs and time delays</p> <p>Time and expense involved may deter bidders</p>

29 See section on enhancing value for examples

9.2 Public Auction

The main advantage of a public auction is that the contract for disposal is in place as soon as the auctioneer has accepted the bid. Neither party has the opportunity to negotiate at that stage, although setting a reserve price will mitigate the potential of a sale at less than market value.

Considerable work is required at the outset, as all legal and supporting documentation needs to be published when the asset is marketed in the auction catalogue. Although there is usually a caveat that published details of assets and other supporting documentation do not form part of any contract, it is more difficult to make amendments as the particulars will form part of a catalogue for the entire auction. Ensuring accuracy and completeness will mitigate against the risk that late amendments will result in few or no bids being made with the consequential impact on costs and internal resources.

Independent professional advice should be obtained to support and justify any decision to dispose of a property asset by auction. Advice will also be needed to set an appropriate reserve price and policy in respect of range within which bids will lead to a binding sale.

9.3 Formal Tender

The formal tender route carries risks to both vendor and purchasers, but can provide strong evidence for public accountability and has some certainty on timing. Tender documents are published with an end date when tenders are opened and assessed. Bids are accompanied by the deposit, so the contract for sale is created when the vendor selects the successful bid.

Unless there is a strong market for the type of asset being disposed of, the number of bids received can be considerably less than using other disposal routes. In addition, potential purchasers carry the cost of due diligence up front, with no guarantee of success. However a formal tender approach can be beneficial where there is known to be a special purchaser with an interest in the asset.

The risk of a sale at less than market value can be mitigated by obtaining independent professional advice on a suitable reserve price. Clear assessment criteria for the selection of bids should be published, which might include financial references and/or proof of ability to complete at the bid price. It would also be prudent to reserve the right not to sell.

Tender documents form part of the contract, so significant work is required prior to marketing. Appropriate resources and professional support should be secured and allocated for the preparation and checking of tender documents and the opening, checking and assessment of the tenders on the appointed date.

9.4 Informal Tender

The informal tender disposal route provides a little more flexibility to both vendor and purchaser than the formal tender route. It might be appropriate for assets that have a limited market or where there is more than one alternative use. There are similarities to a private treaty sale, the difference being that a set period of time for marketing is set, after which bids are assessed.

Bids are invited, either publicly or from selected parties and are subject to contract. There is no compulsion to accept the highest bid or to proceed with the disposal. It is a disposal route suited to the negotiation of overage or clawback provisions.

There is potential for this route to lead to questions relating to competition and transparency. The disposal strategy should justify, supported by professional advice, the rationale for using this route and the proposed criteria and process for assessment of bids. Evidence will need to be provided to demonstrate how the asset has been subjected to competition. The independent assessment of market value is of particular importance in demonstrating that market value has been achieved.

10 Marketing

In most cases the marketing will be carried out by procured agents on behalf of the WG Department. Good practice is that marketing is undertaken by a different contractor to the Registered Valuer who has provided the market value. Welsh Government is subject to external scrutiny from audit and the general public, as a consequence of which the potential reputational risk should be clearly understood by consultants and agents.

Adopting principles of good contract management will help to achieve and demonstrate good value. Review meetings should take place regularly to include a review of the marketing activity, market responses and the outcomes should be fed back into the disposal strategy to provide a clear audit trail.

Where a strategy is materially altered, such as when there are unforeseen changes in the market, this will need to be clearly documented and appropriate authority recorded to ensure proper governance.

In line with State Aid rules, if the property is likely to attract interest from international markets, then the marketing strategy should include exposure to the appropriate market.

11 Sale and Completion

11.1 Negotiation and Agreement of Terms

The aim of a disposal is to achieve the best consideration for the asset in line with the stated objectives.

Good practice would be to have a strategy for negotiations and set out clear aims to achieve overall value from the disposal as well as parameters within which a sale price would be acceptable.

This information will be helpful to agents and can strengthen a negotiating position.

The extent of the role of agents should be clear upon appointment including the extent of their role in terms of assessing potential purchasers, particularly in respect of their track record, sincerity of intentions and commercial standing, and whether it is likely that State Aid or other risks are likely to arise. This will assist in ensuring a higher likelihood of reaching a successful completion.

There should be clarity within the WG Department around individual roles and delegated authority. Agreeing a process and timings for obtaining authority, including the required content of any reports and recommendations required and instructing legal teams will reduce risks and delays. Regular review meetings will assist in managing these risks and demonstrating appropriate governance.

Ideally unconditional offers to purchase will be received. However, where a conditional offer (for example dependant upon a successful planning application or a site investigation report) is the best offer, special consideration has to be given to the specific terms. Although each case should be examined on its merits, a time limit, minimum price guarantee and non refundable deposit would be important additions to the agreement. There may be occasions where a next best offer is unconditional and could offer better value and less risk but always seek legal and valuation advice.

11.2 Due Diligence

Once terms have been agreed, subject to contract, agents should undertake checks and report to WG to demonstrate that the agreement represents value for money, that the sale meets the stated objectives and that the proposed purchaser is able to complete on the terms agreed.

Updated anti-money laundering regulations came into effect in the UK on 26 June 2017.

Responsibility for countering money laundering rest with the vendor and their professional advisers. Real Estate transparency is part of a responsible business agenda and the RICS has issued a professional statement which includes a helpful “Red Flag” indicator table.

www.rics.org/uk/upholding-professional-standards/regulation/regulatory-support/money-laundering/

Due diligence actions should include checks in respect of existing or proposed clawback and overage provisions as well as restrictive covenants and other legal charges favouring the vendor.

Departments will have their own specific due diligence processes, for example ESNR uses the Property Leadership Team as assurance within their governance framework.

11.3 Completing the Deal

Legal advisers, usually WG Commercial Legal Services, will advise on contracts, legal charges and completion processes. Case officers should track progress and ensure key activities are completed on time, liaising with legal and agency contractors on a regular basis.

An internal assurance review will test the readiness to proceed to final completion and will highlight any areas where there are evidence deficiencies for assessment of value for money, or where there is insufficient information to obtain final approval for the completion of the disposal. For more complex projects external assurance should be considered.

12 Post Transaction

Once sold, there are a number of post completion actions that estate managers need to be taken:

- Ensure rent collection ceased, insurance cancelled etc.
- Update ePIMS database to record the sale and mark the record as historic.
- Update any asset register or estate terrier.
- Set up monitoring processes where the disposal has been via a conditional contract or includes clawback and/or overage mechanisms.
- Ensure that the D-AMP is updated.

Annex 1: Further Guidance Links

Integrated Impact Assessment:

<intranet/English/PolicyDelivery/AppraisingPolicy/Pages/Integrated-Impact-Assessment.aspx>

Ystadau Cymru:

gov.wales/ystadau-cymru

Managing Welsh Public Money:

<intranet/English/Money/FinancialGuidance/Pages/ManagingWelshPublicMoney.aspx>

Community Asset Transfer Guidance Wales:

gov.wales/community-asset-transfer-cat-guidance-applicants

Estate Co-ordination and Land Transfer Protocol:

gov.wales/ystadau-cymru

Value Added Tax:

<intranet/English/Money/FinanceSS/VAT/Pages/VAT.aspx>

State Aid:

wales365uk.sharepoint.com/sites/Intranet-Money/SitePages/State-aid.aspx

StateAid@gov.wales

Contacts:

Land Division Mail Box.

Yrls-adranTir.LandDivision@gov.wales

E&I Property Leadership Team Mail Box

PLTProjectApprovals@gov.wales

VAT enquires Mail Box

VATEnquiries@gov.wales

Annex 2: Advice and Guidance for the Instruction Independent Registered Valuer

In requesting an RICS standards compliant valuation report you should expect the appointed organisation to confirm the instruction and in so doing identifying a case reference, set out the terms of the instruction giving the name of the appointed values, contact details, an estimated cost for the work and a provisional time scale for delivery.

You should ensure the Valuer has indicated any past involvement with the property and is duty bound to declare any conflict of interest.

Check list for instruction to valuer

1. Full address of property.
 2. Copy of Ordnance Survey (OS) extract plan indicating location and extent of property.
 3. Confirmation that this is a request for an RICS Report for a disposal value.
 4. Description of property (e.g. land, house, flat, factory etc.).
 5. Area of site or area of building.
 6. Confirmation of transaction tenure (e.g. may envisage granting a lease over property held as Freehold).
 7. Supply information on any inferior interests (e.g. easements, rights of way, exiting tenancies etc.).
 8. Provide means of access (contact details if appropriate) for inspection.
 9. If any condition or investigation reports exist supply copies to Valuer.
 10. For buildings provide copy's of available statutory information such as EPC, DEC and if available any Asbestos information etc.
 11. Provide details of any planning consents available on completion. (Include any known restrictions or proposed section 106 planning agreements).
 12. Supply the Valuer with any information relating to known restrictions such as statutory or other listings, conservation area status, and tree preservation orders etc.
 13. Give details of any proposed voluntary restriction to use.
 14. Provide information regarding any service connections if known (gas, electricity, mains drainage & water).
 15. Indicate if the transaction will be subject to VAT.
 16. Provide date when property will be available for marketing.
-

Annex 3: Heritage Assets

Cadw are currently working on internal desk instruction of their own. However, Heritage Assets have special historical, architectural or archaeological interest. Such assets are likely to be of greater value to the historic environment than their highest price as they need to continue to be conserved in an appropriate manner to their significance after disposal. 'Best value' of the asset will reflect the long term viability and sustainability. In many cases the transferring Department will have an ongoing interest in the asset through their business and statutory functions.

Specific guidance is available for the disposal of heritage assets from English Heritage³⁰.

Cabinet Office³¹ outlines some of the specific considerations for Heritage Assets which need to form part of the disposal process.

Prior to marketing	<ul style="list-style-type: none"> Ability to dispose, for instance is the property freehold, leasehold or under a guardianship agreement Continuing protection through inspection and maintenance The options for re-use Sites need to be considered holistically- separating into several lots is likely to be inappropriate Overall costs may be increased due to the costs and risks associated with a vacant property after disposal Feasibility of adaptation or alternative use Planning use and potential Regulatory and Statutory restrictions on use Whether disposal to a charitable trust might be appropriate
During Marketing	<ul style="list-style-type: none"> Interest to be disposed of – especially the potential advantages of long leasehold over freehold disposal Potential purchasers need to be fully aware of the significance and condition The most appropriate method for a sale bearing in mind disposal objectives Whether a sale should be conditional, which conditions are appropriate to the significance and condition of the asset Whether a phased transfer might be appropriate – licence – short term lease – longer lease – freehold to ensure transferee has the capacity and capability to take on a long term commitment Whether there should be overage or clawback
Post Disposal	<ul style="list-style-type: none"> Inspection regime Maintenance Permissible works and change notices

Case studies are available from the Cabinet Office Guide for the Disposal of Surplus Land.

30 <https://www.historicengland.org.uk/images-books/publications/disposal-heritage-assets/> Published 31 May 2010

31 Guide for Disposal of Surplus Land 2017 p.39

Annex 4: Public and Welsh Government Sponsored Bodies

wales365uk.sharepoint.com/sites/Intranet-PPM-Governance-Assurance/SitePages/Public-Bodies-and-Welsh-Government-Sponsored-Bodies-WGSBs.aspx

gov.wales/atishn13942

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