

## 1.4 PROPERTY DISPOSAL POLICY

Date Adopted	Next Review	Officer Responsible
7 August 2020	1 August 2023	Property Manager

### Policy Purpose:

The purpose of this policy is to:

- Provide a consistent approach when considering the possible disposal of Council-owned properties.
- Provide a complete and robust process to clearly identify properties that may be considered for disposal.
- Manage Council's risk in determining whether to hold or dispose of a property.
- Ensure compliance with legal requirements.

### Policy:

Property disposal shall be in accordance with the flowchart process in Appendix 1 titled *Decision Process: Determining Whether a Property Asset Should be Considered for Disposal*. The flowchart process is to be read in conjunction with the explanatory notes in Section 3.0.

Properties that meet the definition and the criteria for being a Candidate for Disposal in accordance with this policy are to be the subject of a report to Full Council to inform the decision as to whether to approve them for disposal.

The report to Full Council is to contain recommendations on an exit plan aimed at maximising the net sale proceeds and, if applicable, information on the Financial Return being generated from the property, in accordance with the following explanatory notes.

### 1.4.1 Prioritising which properties are to be considered for disposal

This section provides guidance as to which properties will be given higher priority for selection to be considered by Council for disposal.

Properties matching the following criteria will be given priority for consideration for disposal:

1. Properties with the highest estimated net sale proceeds when all disposal costs are considered.
2. Properties attracting the highest ownership costs without correlating benefit.

3. Properties which it is expected can be taken to market within the shortest time and cost to Council.
4. Properties with the least number of complexities such as endowments, cultural matters or physical constraints such as significant natural or other hazards.
5. Properties which are not identified as being required for a current or future Core Purpose/Activity or operational need.
6. Properties which cannot meet three or more of the five Performance Criteria.

## 1.4.2 Determining whether a property asset should be considered for disposal

### Definitions

ITEM	EXPLANATION
<b>Business Case</b>	Means a robust case has been made by the operational department requiring the property to be retained which demonstrates an operational need for the specific property within a 5 year period.
<b>Core purpose/activity</b>	<p>The property is needed to support long term infrastructure and/or operational needs now or in the future as per Section 11A of the LGA 2002 (amended by the 2014 Amendment Act), which defines the following core services to be considered by Council in performing its role.</p> <p><i>In performing its role, a local authority must have particular regard to the contribution that the following core services it makes to its communities:</i></p> <ul style="list-style-type: none"> <li>(a) Network infrastructure:</li> <li>(b) Public transport services:</li> <li>(c) Solid waste collection and disposal:</li> <li>(d) The avoidance or mitigation of natural hazards:</li> <li>(e) Libraries, museums, reserves*, and other recreational facilities and community amenities.</li> </ul> <p>*There may be exceptions where land held for reserve is no longer actively used or required.</p>
<b>Immediate Family</b>	<p>Immediate Family for the purposes of this Property Disposal Policy means the:</p> <ul style="list-style-type: none"> <li>(a) child</li> <li>(b) grandchild</li> <li>(c) grandparent</li> <li>(d) parent</li> <li>(e) partner</li> <li>(f) partner's parent</li> <li>(g) sibling</li> </ul> <p>of any relevant person.</p>

ITEM	EXPLANATION
<b>Mana Whenua</b>	Mana whenua means territorial rights, power from the land, authority over land or territory, jurisdiction over land or territory - power associated with possession and occupation of tribal land.
<b>Maori Interests</b>	“Maori Interests” for the context of a Land Status Report include any other Maori Interests which are deemed relevant by Council.
<b>Property</b>	<p>“Property” in the context of this policy means any parcel of Council owned land, interest in land, dwelling, building, or structure on any land.</p> <p>The words “property” and “land” are used interchangeably throughout this policy and shall be read as one and the same and with no distinction.</p>
<b>Surplus Property</b>	Where a property is made subject to the property disposal decision process, such consideration of whether a property should be disposed of does not in any way constitute a decision or imply that it has been determined surplus to Council’s requirements.
<b>Mana Whenua Consultation</b>	<p>Mana whenua consultation refers to:</p> <ul style="list-style-type: none"> <li>(a) Consultation with mana whenua as deemed appropriate by Council.</li> <li>(b) Consultation in accordance with any joint management agreement, partnership agreement, protocol agreement, or other agreement, to which Council is a party.</li> <li>(c) Consultation with any other known tangata whenua who Council consider may have mana whenua over the land.</li> </ul>

### Performance Criteria

PERFORMANCE CRITERIA	DETERMINATION
<b>1. Right Location</b>	<p>In terms of the purpose for which the property is held and utilised is the property in the right location?</p> <p>Answer: Yes or No</p>
<b>2. Appropriate size of land and improvements for purpose/use</b>	<p>In terms of the purpose for which the property is held and utilised, is it an appropriate size of land and improvements for that purpose/use as well as being in accordance with the District Plan?</p> <p>Answer: Yes or No</p>

PERFORMANCE CRITERIA	DETERMINATION
<p><b>3. Acceptable functionality/utility (vs. physical depreciation and/or obsolescence)</b></p> <p><b>Note that:</b></p> <p><b>“Depreciation” is loss in value from any cause. The two main components are physical depreciation and obsolescence.</b></p> <p><b>“Physical depreciation” is the result of deterioration of an asset due to age and wear from natural forces and use.</b></p> <p><b>“Obsolescence” is loss in value from causes other than physical decay or wear. It includes functional, economic, legal and technological obsolescence.</b></p>	<p>In terms of the purpose for which the property is held and utilised does it have acceptable functionality/utility?</p> <p>Answer: Yes or No</p>
<p><b>4. Acceptable % utilisation</b></p> <p><b>(or financial return if more applicable)</b></p>	<p>In terms of the purpose for which the property is held and utilised is there an acceptable level of utilisation?</p> <p>Answer: Yes or No</p> <p>Financial Return (if applicable)</p> <p>The question of whether a property is generating an acceptable commercial return and whether it should be retained to provide an income stream is a matter that is to be considered by Full Council at the time a property is put forward to Council for approval to dispose of it.</p> <p>The report should consider and make recommendations on such matters as to whether the financial return from the property is equal to or exceeds a fair market return for comparable properties.</p> <p>The report should also provide an exit plan which considers options to maximise the net sale proceeds so as to comply with section 14 (g) of the Local Government Act 2002 for consideration by Council.</p>
<p><b>5. Impractical to provide the function in an alternative, more cost-effective manner</b></p>	<p>Can the function be provided in a more cost-effective manner, and is it practical to do so?</p> <p>Answer: Yes or No</p>

**Recommended basis for determining that a specific property does not meet the essential performance criteria:**

There are various methods that could be used to determine whether a property meets or fails to meet the essential performance criteria. By way of example, one option would be to ‘fail’ properties that have any more than three “No” determinations under the above five performance criteria categories.

## Strategic Land Retention

<p><b>Strategic Land Retention for future use for a core activity/purpose</b></p>	<p>For the property to meet the criteria for Strategic Land Retention for a future core activity/purpose, the following needs to apply.</p> <ol style="list-style-type: none"> <li>1. The future need for the land/buildings has to be identified in an approved Council plan.</li> <li>2. There needs to be an approved Strategic Land Retention strategy for the specific property asset, in the form of a recommendation to retain the property, with supporting arguments and evidence, signed off by the relevant operational manager and approved by the CEO/Full Council resolution.</li> <li>3. If the Strategic Land Retention strategy is more than two years old, the relevant operational manager needs to confirm that it is still current/valid.</li> </ol>
<p><b>Strategic Land Retention to initiate or support future development</b></p>	<p>The basis for this category of Strategic Land Retention is to secure land to initiate or support development that will be beneficial for the community, but which is not otherwise being initiated by the private sector. It is envisaged that Council's role in this form of advance purchase would generally be one of initiation, support or facilitation on a case by case (usually short-term) basis.</p> <p>For the property to meet the criteria for Strategic Land Retention to initiate or support future development, the following needs to apply.</p> <ol style="list-style-type: none"> <li>1. There needs to be an approved Strategic Land Retention strategy for the specific property asset, in the form of a report and recommendation to strategically retain the property. As a minimum the report should contain supporting arguments, evidence and a risk assessment. The recommendation should be signed off by the relevant operational manager and be approved by the CEO/ Full Council resolution.</li> <li>2. If the Strategic Land Retention strategy is more than two years old, the operational manager needs to confirm that the strategy is still current/valid.</li> </ol>

<p><b>For properties that have been strategically retained to initiate or support future development, determining whether the sale of all or part of the property to a private party (subject to appropriate covenants) would achieve the purpose for which it is being held</b></p>	<p>There may be grounds to release land that has been strategically retained to initiate or support future development, if its sale would achieve the purpose for which it is being held.</p> <p>The test as to whether this applies is to determine the outcome that best achieves the “well-beings” described in Section 10(a) of the Local Government Act 2002:</p> <p><i>“to promote the social, economic, environmental and cultural well-being of communities, in the present and for the future”</i></p>
<p><b>Factors to be considered in determining whether it is practically, legally, socially, environmentally, culturally and economically feasible to dispose of a particular property</b></p>	<p>Factors to consider include (but are not limited to) the following:</p> <ul style="list-style-type: none"> <li>• Whether there are any issues with the underlying status of the land that may constrain or preclude disposal e.g. Land subject to the Reserves Act, endowments or trusts?</li> <li>• If subdivision is necessary to separate the part of the property that is surplus, whether this is legally, practically and economically feasible?</li> <li>• Whether the impact of Section 40 of the Public Works Act 1981 constrains the potential disposal?</li> <li>• Whether it is economic to dispose of the property? The costs of disposal need to be compared with the estimated sale price and the net present value of ongoing holding and administrative costs.</li> <li>• Whether there are any other physical matters that may constrain the ability to dispose of the property e.g. contamination or significant natural or other hazard.</li> <li>• Whether there are any consultation requirements that may constrain the ability to dispose of the property e.g. associated with road stopping and the disposal of strategic assets.</li> <li>• Whether there are any other social, environmental or cultural issues that may constrain the ability to dispose of the property or be benefited through disposal of the property.</li> </ul>

### 1.4.3 Relevant Legislation

Included for reference purposes is a Table of Legislation which is comprehensive but not exhaustive. There may be some cases when a specific statute or regulation applies to a particular parcel of land (*E.g. Reserves and Other Lands Act, Affiliate Te Arawa Iwi and Hapu Claims Settlement Act 2008, etc*). The table below

does not provide specific provisions and should merely be used as a guide by the officer tasked with disposal.

Any officer determining whether land is a candidate for disposal must ensure that a comprehensive land status report is carried as the first step of the land disposal procedure.

### Table of Legislation

STATUTE/REGULATION	DESCRIPTION
<b>Building Act 2004</b>	The Building Act 2004 is the legislation which governs the construction of buildings in New Zealand. There are several provisions in this Act which need to be considered upon the disposal of property.
<b>Land Act 1948</b>	Although largely applicable to Crown owned land, some provisions of the Land Act apply to Council owned land. Of particular note, is land that Council administers on behalf of Crown (i.e. some Reserves/Roads). In most cases reference will be made to the applicable provision of the Land Act on the title of the property.
<b>Land Transfer Act 2017</b>	The Land Transfer Act determines the manner, procedure, and rules of the transfer of any land in New Zealand. The officer disposing of any land should take into account the relevant provisions of this Act.
<b>Local Government Act 1974</b>	Although largely repealed, some provisions of the Local Government Act 1974 still apply. These provisions largely relate to the disposal of roads. There are several provisions regarding the stopping and disposal of different classifications of road, and the consultation and advertisement that must occur.
<b>Local Government Act 2002</b>	The Local Government Act is the empowering legislation for a territorial authority. This Act provides the Council with its ability to, amongst other things, dispose of land. It also provides restrictions upon the disposal of certain classes of land (E.g. parks, vested land, etc). There are provisions within the Act on how consultation should be carried out and guidance as to whether Council should be carrying out a particular activity. The provisions for guidance may also be applied to any land being retained by Council and when Council is considering disposing of a property. Schedule 7 contains the provisions which allow Council to dispose of property.
<b>Property Law Act 2007</b>	The Property Law Act governs the law of property within New Zealand. It is important that any officer disposing of land takes into account the provisions of the Act and the implications of those provisions on disposal (Eg. All agreements pertaining to land must be in writing).

STATUTE/REGULATION	DESCRIPTION
<b>Public Works Act 1981</b>	<p>The Public Works Act applies to all land taken under that Act for the purposes of undertaking a public work (E.g. a road, depot, other Civic building, etc). The Act also applies to land purchased for the purposes of a public work on the open market.</p> <p>Section 40 of the Act provides that upon the declaration that any land taken/acquired for a public work is surplus and is no longer required for:</p> <ul style="list-style-type: none"> <li>(a) That public work.</li> <li>(b) Another public work</li> <li>(c) Any exchange under s 105 of the Act.</li> </ul> <p>That the land shall be offered back to the former owner at market value or lesser on the date the land is declared surplus.</p>
<b>Reserves Act 1977</b>	<p>The Reserves Act governs the process which is required to be followed when considering/undertaking the disposal of any reserve land. The process for disposal depends on the classification of a reserve (Recreation, Local Purpose, Scenic, Scientific, etc). The Act follows the rationale that there is a higher community consultation threshold required to dispose of reserve, as it has generally been provided to/vested in/created by Council or the Crown for a community purpose. There are some special consultative provisions provided for in this Act which the officer recommending disposal should be familiar with.</p>
<b>Te Ture Whenua Maori Act 1993</b>	<p>The provisions of the Te Ture Whenua Maori Act (in conjunction with any other applicable statute/decision) may in some cases apply when undertaking consultation with tangata whenua.</p>



## 1.4.4 Decision Making Process

The decision making process will follow Council delegations, policies, and procedures. For the avoidance of doubt, at the time of this policy, the escalations/decision making process for approval to dispose of land is outlined in the table below.

**Decision Making Table**

<b>DECISION MAKER</b>	<b>AUTHORITY</b>
<b>Chief Executive</b>	The Chief Executive will, usually along with the Executive Leadership Team, check that any recommendation to dispose made by any officer delegated to make such a recommendation is in accordance with all policies, procedures, and is aligned with the strategic objectives of Council as an organisation. The chief executive will ensure the relevant expertise has been engaged.
<b>Committee of Council</b>	A committee of Council has the authority to make a recommendation for full Council to make a resolution to dispose. The committees of Council have representation from Te Tatau o Te Arawa, Lakes Community Board, and the Rural Community Board. The committee makes a recommendation based on the information it is provided by officers of Council. The committee may also make recommendations to the Chief Executive regarding the subject matter of any recommendation to dispose.
<b>Full Council</b>	Full Council has the ultimate and only authority to approve/make a resolution for the disposal of Council owned property. Council is required to make the final decision for disposal based on the information it has been provided by its officers. Full Council may also resolve to pass directions to the Chief Executive regarding the subject matter of any recommendation to dispose.

## 1.4.5 Delegations

In accordance with Schedule 7 of the Local Government Act 2002, Council shall retain full authority to make any final decision as to the disposal of any land.

Delegation to make recommendations for the disposal of land shall be provided by virtue of approval of this policy from full Council to the Chief Executive with the ability to sub delegate as they see fit.

## 1.4.6 Method of Disposal

Unless otherwise resolved by full Council, or provided for by any statute, regulation, or Order in Council, any land shall be disposed of by either public auction, public tender, or private treaty. A market valuation should be obtained at least two months prior to the sale date. The market valuation should be used as a guideline for the reserve or sale price.

In any case, any officer tasked with the disposal of property shall dispose of that property on a “highest value and best use” basis.

Unless otherwise resolved by full Council, or provided for by any statute, regulation, or Order in Council, any officer tasked with disposal of property shall determine in conjunction with their Group Manager:

- (a) The method/duration of advertising
- (b) Whether a real estate agent is to be used
- (c) Which real estate agent is to be used
- (d) Whether the property is to be publically auctioned or tendered
- (e) The reserve/sale price
- (f) The particulars of any marketing campaign (including open homes)

If a real estate agent is to be used, then that real estate agent shall not be a member of the immediate family of any conflicted person outlined in clause 8 of this policy. The real estate agent and their immediate family shall also be considered to be conflicted persons.

## 1.4.7 Conflict of Interest

Unless otherwise allowed by a statute, regulation or Order in Council, any officer or member of Council or any Council Controlled Organisation, including any immediate family\* of that officer or member (‘conflicted person’), or any trustee of any trust, company, or incorporated society, controlled or owned by any conflicted person, who has an actual or apparent Conflict of Interest shall declare that conflict of interest prior to the purchase of any Council owned property.

Except in the case that Council has resolved otherwise, the Chief Executive may choose at their sole discretion to exclude any conflicted person, trustee of any trust, company, or incorporated society, controlled or owned by any conflicted person (actual or apparent) from the purchase of any Council owned property.

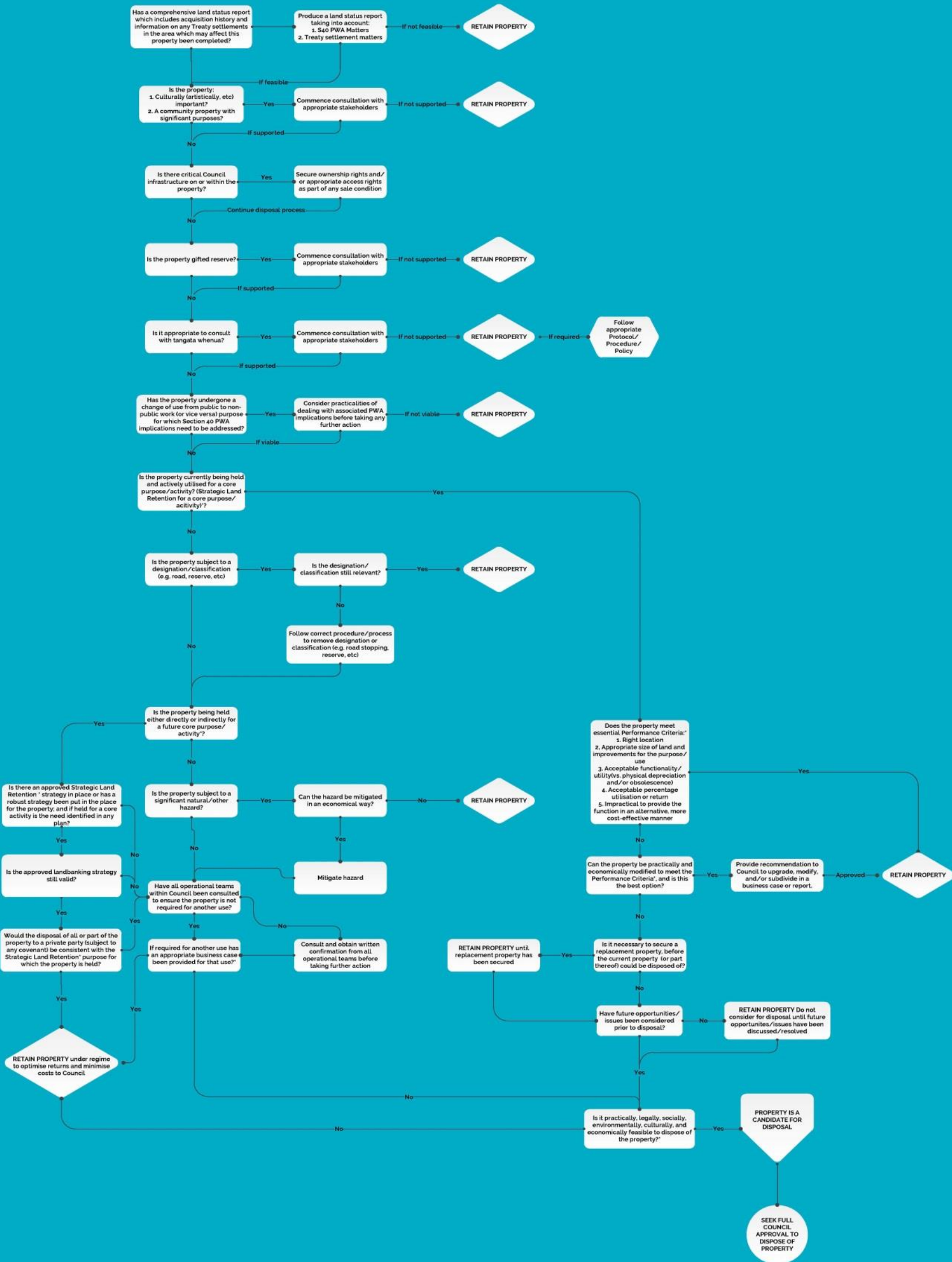
For the avoidance of doubt, at the time of this policy the following officers or members of Council are considered to be conflicted by virtue of position:

- (a) Mayor
- (b) Deputy Mayor
- (c) Councillors
- (d) Community Board Members

- (e) Te Tatau o Te Arawa Board Members
- (f) Chief Executive
- (g) Executive Leadership Team
- (h) Any officer recommending/involved in the disposal of land

# Appendix 1

## Decision Process: Determining whether a property asset should be considered for disposal



Notes:  
 \* Refer to Explanatory Notes. These are to be read in conjunction with the Decision Process.