

**Memorandum of Understanding between
the Department of Education & Skills and
the County & City Managers' Association
on acquisition of sites for school planning purposes**

Introduction

1. This Memorandum of Understanding between the Department of Education and Skills and the County and City Managers' Association is designed to codify practice in relation to cooperation between both parties in the acquisition of sites suitable for the construction and development of buildings for educational purposes.

2. This Memorandum has been agreed in the context of the urgent requirement for additional school sites in order to meet the demand to accommodate an additional 45,000 primary school pupils and almost 25,000 post primary school pupils forecast to be in the system by the start of the school year 2017/18. The level of increased demand requires over 40 new schools and many schools in temporary accommodation to be provided with permanent accommodation. Many of the permanent solutions are needed within three years.

3. The Ministerial Guidelines on the “Code of Practice for Planning Authorities and the Department of Education & Science” set out a range of activities required of both partners. These are set out as follows:
 - (i) Forecasting Future Education Demand
 - (ii) Planning for New Schools
 - (iii) Location of Schools – Planning Considerations
 - (iv) Site Development Standards – including site size
 - (v) School Development Proposals
 - (vi) School Site Identification & Acquisition

4. It is recognised that the Code of Practice, and in particular this Memorandum of Understanding on site acquisitions, represents an example of the need for “intra state agency” co-operation as called for in the OECD report “Towards an Integrated Public Service”.

5. It is assumed in this Memorandum of Understanding that all sites that are the subject of a request for acquisition have been the subject of the agreed actions set out at (i) to (vi) above.

6. Where Local Authorities are considering site designations for schools in a Development Plan or Local Area Plan, they should consult with the Department and obtain sign-off at an early stage regarding site suitability and adequacy.

7. It is recognised that schools are a key part of the social and community facilities available in an area and that schools act as an anchor to wider social and community facilities in many locations. The Department and Local Authorities are committed to a Partnership approach in the provision of educational services as part of the wider social and community facilities. Effectively, the Department and Local Authorities view the provision of schools as a partnership between them in the provision of facilities in a community.

8. A Steering Committee will be established to oversee and monitor the implementation of this Memorandum. The steering committee will be made up of representatives of the Department of Education and Skills, the City and County Managers' Association and the Department of Environment, Community and Local Government. Supporting this steering committee, the Department will meet collectively and individually with Directors of Services of relevant Local Authorities.

Operative Date

This agreement comes into effect on 1 June 2012 and will be reviewed periodically.

Key Actions

1. Initiation of Site Acquisition Process
<p>1.1 DES to initiate each site acquisition process by a written request from the Principal Officer, Site Acquisition & Property Management Section (SAPMS) as early as possible but, in normal circumstances, at least 12 months in advance of the date by which the site is required by the Department to commence construction.</p> <p>1.2 The request should confirm that site acquisition has been budgeted for by the Department.</p>
2. Site Identification and Suitability
<p>2.1 Following a request from DES for a site acquisition in an area where a site has been reserved, the LA shall revert to the DES with site details/a site report within a month. This site report will take account of any checklist of items that may be developed by both parties and will include a realistic estimate of likely development contributions and other related costs arising from the development of the site for education purposes, to allow the Department to confirm the suitability of the site under negotiation (if not already done).</p> <p>2.2 Following a request from DES for a site acquisition in an area where a site has not been reserved, the LA is to revert to the DES with a list of preferred sites in order to allow the selection of a suitable site for negotiation/acquisition.</p> <p>2.3 DES staff will interact with the LA during this site suitability assessment process with a view to both parties agreeing the most appropriate site/agreeing a preferred list of sites to advance based on the advice provided by the relevant LA officials.</p>
3. Process for Site Valuation
<p>3.1 A suitably qualified valuer to be appointed by the LA to carry out a valuation on behalf of LA and DES.</p> <p>3.2 The benchmark on which to base valuation e.g. average cost of land in the area over the previous 12 month period, to be agreed by both sides.</p> <p>3.3 Terms of reference for site valuation to be as in Appendix 1.</p>
4. Arrangements to Transfer Site to Minister's Ownership
<p>4.1 Where a site valuation has been agreed (see Section 3 above), and the site is in third party ownership, the Local Authority will then enter into negotiation with the landowner.</p>

4.2 Where the negotiations cannot result in agreement on a price at or below the valuation price, the LA will revert to the DES seeking confirmation to proceed to make offers above the valuation price. DES will confirm position in writing within 10 working days.

4.3 When the negotiations lead to agreement on a price, the LA to revert to DES for confirmation of the availability of funding for the negotiated cost of site. DES to revert in writing within 10 working days.

4.4 Where the site is in Local Authority ownership, it will be acquired by the Minister from the Local Authority for an agreed price (See Section 3 above).

4.5 The formal process of acquiring the site will be as follows:

- The Local Authority will appoint legal advisors to interact with the vendor's solicitor in relation to agreeing contracts and bringing them to a point where they are ready to be signed by the Department.
- The Local Authority's solicitor will work in accordance with CSSO guidelines on title and other legal requirements.
- The Department will sign off on contracts following due diligence.
- All contracts will be subject to good and marketable title being furnished.

Note: In both circumstances, the contract for acquisition will, generally, be subject to planning permission being granted on the site for educational development. The price to be negotiated should be expressed as being inclusive of VAT (at the rate applicable on the date of closing), where VAT applies.

4.6 Title should transfer directly to the Minister's name (except in instances where a CPO process is initiated. In such circumstances, the property will transfer to the relevant Local Authority in the first instance – See Section 6 below). The Chief State Solicitor will act on behalf of the Minister in the conveyancing of land.

5. Recovery of Costs

5.1 The written request from the Department to acquire a site will confirm that funding is in place.

5.2 Where a site is being purchased by agreement with landowner the DES will pay costs (to be fully inclusive of all professional fees and local authority own costs) to LA based on bands shown below:

<p>Site Value 0 - €3 Million €3 - €5 Million Over €5 Million</p>	<p>Fee incurred €60,000 +3% of value 5% of value 4% of value</p>
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6. Acquisition by CPO

6.1 In the event that a negotiation process is fully exhausted and the landowner refuses to sell the site/fails to agree an acceptable price, the LA will consult with

the Department (SAPM) to determine if it is necessary for the Local Authority to acquire a suitable site by compulsory order (within 3 months of the original request to acquire being issued).

6.2 The LA need not initiate procedures for CPO unless it considers, in consultation with the Department, that it cannot otherwise acquire a suitable site and that the requirement for such a site continues. In that event, the decision-making and procedures for CPO shall proceed in line with statute and the LA's legal duties.

6.3 It is envisaged that additional time will be required to acquire a site by CPO.

6.4 Full cost recovery for the LA in relation to costs arising as a result of the CPO process will apply. The DES will put the LA in funds for the acquisition of the site. All other costs arising will be refunded to the LA quarterly in arrears. Itemised cost details shall be agreed in advance with the DES.

Memorandum of Understanding signed on 30th day of May 2012



Ruairí Quinn, T.D.
Minister for Education and Skills



Michael Walsh
County and City Managers'
Association

Basis of valuation

1. Market Value

Market Value should be primarily derived using comparable market transactions in the area over the previous 12 month period¹ and in accordance with the relevant parts of the current RICS Valuation Standards.

2. Assumptions and Features

Assumptions regarding the property and features of the property shall mean facts, conditions or situations affecting the subject of, or approach to, a valuation that, by agreement, need to be verified by a valuer as part of the valuation process e.g. that the subject lands are zoned for educational use.

The valuer should provide details of any assumptions which have been made and features which might have been taken into account in valuing the property e.g. title, rights of way or easements, restrictive covenants etc

3. VAT

Where applicable, the valuation should include VAT, at the rate applicable on the date of valuation.

4. Brief Summary of the Property

Details of size, location, distance from nearest town/city, configuration of site, proximity to services, and all access routes, easements, restrictive covenants etc. to be provided in the report. Additional information detailing what surrounds the site, adjacent features or any other relevant information should also be provided.

5. Statutory requirements and planning.

The valuation should take account of any statutory requirements and relevant planning considerations.

¹ If no comparable transactions have taken place in the previous 12 months, the period can be extended on the request of the Valuer and with the agreement of the Local Authority and the DES.

Key Actions under MOU

