

Appendix 1



North East Derbyshire
District Council

Right to Buy – Buy Back Policy

(July 2019)

We speak your language

Polish

Mówimy Twoim językiem

French

Nous parlons votre langue

Spanish

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CONTROL SHEET FOR [Right to Buy Back Policy]

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1. Introduction

- 1.1 The Right to Buy scheme is a government incentive which gives eligible social housing tenants the right to buy their home at a discount on the market value, meaning lower than the price it would sell on the open market. To buy under this scheme applicants must have been a secure public sector tenant for at least 3 years.
- 1.2 The Housing Act 2004 introduced the Right of First Refusal by implementing The Housing (Right of First Refusal) (England) Regulations 2005 which came into force in August 2005.
- 1.3 The regulations became effective for people who received their offer notice for Right to Buy or Right to Acquire after 18th January 2005.
- 1.4 The regulation stipulates that Right to Buy owners who wish to resell or dispose of the property within 10 years from the date of the original purchase (whether freehold or leasehold) will in the first instance have to offer the property to the former landlord (or to another social landlord) at full market value, this being the Council. However a reduced purchase price may apply due to the owners discount repayment liability where applicable. (See part 5.9).
- 1.5 This document sets out the Council's policy for repurchasing homes bought from the Council either through a voluntary sale or under the provision of the Right to Buy, which includes the repurchase of properties offered to the Council under the Right of First Refusal obligation.
- 1.6 The policy also provides criteria that may be applied when considering purchasing former Council homes purchased outside the 10 year period or properties that were not former Council homes.
- 1.7 The policy and procedures outlined in this document have been split into two sections for ease of use, which are;
 - **Section A - Right of First Refusal policy and procedures**
(Properties brought under the Right to Buy scheme and are for resale within 10 years from the date of the original purchase)
 - **Section B – Former council properties outside the 10 year purchase period**
(Council properties purchased outside the 10 year period (or properties that were not former Council homes) and do not fall within the Right of First Refusal legislation)

2. Scope

- 2.1 The policy will provide a framework in delivering the Council's statutory duties under housing and related legislation when repurchasing properties that were bought under the Right to Buy scheme and will have due regard to the following, as an example;
 - Housing Act 1985 (s156A)

- Landlord and Tenant Act 1985 and 1987
- Housing and Planning Act 1986
- Leasehold Reform, Housing and Urban Development Act 1993
- Housing Act 1996
- The Housing (Right of First Refusal) (England) Regulations 2005

2.2 This policy may also be used when considering purchasing properties that were not originally bought through the right to buy scheme which will enable regeneration and housing growth in line with the Affordable Social Housing Acquisitions and Disposals Policy.

2.3 The procedures and the delegated decision making process in the policy will be adhered to when potential properties are offered for sale or identified by the Council or Rykneld Homes Limited including through a third party, for example estate agent, or property Auction.

3. Principles

3.1 The Council as a landlord is committed to meeting housing need within the district and strives to make best use of its housing stock, therefore the policy will help to fulfil the Corporate aims by;

- Enabling housing growth
- Providing good quality social housing
- Unlocking development potential.

3.2 The Policy will also have due regard to the Councils and Rykneld Homes policies and strategies, including the;

- Affordable Social Housing Acquisitions and Disposals Policy
- Empty Properties Strategy
- Housing and Economic Development Strategy
- Asset Management Strategy

4. Statement

4.1 **See Section A - Right of First Refusal policy and procedures**

For properties brought under the Right to Buy scheme and is for resale within 10 years from the date of the original purchase.

4.2 **See Section B – Former council properties outside the 10 year purchase period**

For Council properties purchased outside the 10 year period (or properties that were not former Council homes) and do not fall within the Right of First Refusal legislation.

Section A

5. Right of First Refusal

5.1 The Housing Act 2004 introduced the Right of First Refusal by implementing The Housing (Right of First Refusal) (England) Regulations 2005 which came into force in August 2005.

5.2 The regulations became effective for people who received their offer notice for Right to Buy or Right to Acquire after 18th January 2005.

5.3 The regulation stipulates that Right to Buy owners who wish to resell or dispose of the property within 10 years from the date of the original purchase (whether freehold or leasehold) will in the first instance have to offer the property to the former landlord (or to another social landlord) at full market value, this being the Council.

5.4 Right to Buy Discounts for Context

5.5 Eligible tenants can purchase Council Owned properties under the Right to Buy Scheme at a discount which are set by law and cannot be changed by individual Councils. The discount is tapered therefore the longer the tenancy, the bigger the discount with a current (April 2019) maximum discount of £110,500 in London and £82,800 in the rest of England: discounts increase each year in line with any inflation.

5.6 There are different discounts for different properties, as of 1 April 2019, these were set at;

- Houses - 35% discount for a 3 – 5 year public sector tenant, after 5 years the discount will increase by 1% for every extra year up to a maximum of 70% – or £82,800 across England (whichever is lower)
- Flats - 50% discount for a 3 – 5 year public sector tenant, after 5 years the discount will increase by 2% for every extra year up to a maximum of 70% – or £82,800 across England (whichever is lower)

5.7 Owners Selling a Previous Right to Buy Property

5.8 Owners can sell their home at any time, however if they wish to sell within 5 years of the original purchase date then the Council will have a right to ask for repayment of all or part of the discount, this is at the Council's discretion. Regulations have been put in place for the discount proportion to be repaid and the actual price would depend on the current valuation of the property.

5.9 The discount proportion is as follows;

- 1st year - The whole discount will have to be repaid
- 2nd year - Four fifths must be repaid
- 3rd year - Three fifths must be repaid
- 4th year - Two fifths must be repaid
- 5th year - One fifth must be repaid

- 5.10 There is no legislation that states the Council must buy the property back, however this policy will be used by the Council in consultation with Rykneld Homes Ltd to consider repurchasing properties under this scheme.
- 5.11 The owner in the first instance should send an “Offer Notice” or write to the Council, either by letter or email, to make an offer of sale. This notice must include;
- The full postal address
 - State that the covenant on the property requires the Council to be offered the first refusal of purchase
 - The property type and size
 - The type of the property’s heating system
 - Specify any improvements or structural changes which have been made since the original purchase
 - Return address for the correspondence
- 5.12 The Council will send an “Acknowledgement of receipt of offer notice” which is a statutory requirement and must include the following:
- specify the date of receipt of the offer notice; and
 - explain the effect of regulations in simple terms, which are;
 - Acceptance notices
 - Rejection notices
 - Nomination of another person to accept an offer
 - Disposal of property and requirement for further offer notice
 - Time limit for completion of purchase
- 5.13 **Right of First Refusal Offer**
- 5.14 In line with legislation when an “Offer Notice” or letter is received requesting the sale of a property under the Right of First Refusal obligation the Council can either;
- Buy the property back
 - Refuse to buy the property back, in which case it can then be sold on the open market, however discount repayments may apply as per part 5.9.
 - Nominate another housing provider in the area to purchase the property i.e. a Registered Provider (RHL will be given first refusal) (see part 5.31)
- 5.15 A purchase under the Right of First Refusal obligation will be made in line with the requirements of the legislation which are;
- The Council must purchase a property at the full market value (if this cannot be agreed then an independent valuer will be assigned to value the property and both parties must agree).
 - The Council must accept the offer of the property within 8 weeks of receiving notification from the owner.
 - Acceptance of an offer must be by acceptance notice confirming that the Council wants to purchase the property.
 - Once the offer is accepted the Council has to enter into a binding contract with the owner within 12 weeks after the date on which the acceptance

notice is served on the owner or no later than 4 weeks after the receipt of written notification from the owner that they are ready to complete.

- If the time limits are not met the owner can sell the property on the open market

5.16 **Financing**

5.17 There must be sufficient funding to proceed with the purchase which must be ascertained before any formal decision can be made and the owner notified.

5.18 If no funding is available then an offer of sale request will be denied and the owner will be notified in writing within 10 working days, the property then can be sold on the open market.

5.19 **Assessment Criteria Guidance**

5.20 The Council will consider all requests received from home owners and conduct an assessment in consultation with RHL, giving priority to properties that meet the Councils corporate aims.

5.21 The Council's procedure to implement the Right of First Refusal legislation is shown via a flowchart in Appendix 1.

5.22 A Right to Buy - Buy Back Request form will be forwarded to RHL by the Council's legal department, this will notify them of the request and will include the strict deadline that has to be met to comply with legislation. See Appendix 2.

5.23 When considering repurchasing a property a viability assessment will be conducted and how the use of the property will be determined, this can include, for example:

- to let within the Council's housing stock
- to let as specialist housing
- for Private Sector Leasing (PSL) in partnership with a Registered Provider
- to demolish for regeneration/development purposes
- to nominate to another housing provider to purchase

5.24 Properties within the following categories will be given priority:

- Properties located in high housing demand areas
- Properties that enable regeneration
- Properties that enable development opportunities
- Properties that are long term empty
- Properties that are suitable for current housing schemes such as PSL
- Flats within council owned blocks

5.25 The Council in consultation with RHL will determine if the property to purchase is a viable investment by assessing if the property is value for money when taking into consideration;

- Properties for housing stock, including;
 - the purchase price,

- the value of any repairs/improvements required to bring the property up to a lettable standard,
- the rent which the property would generate, and
- if there is any repayable discount by the owner.

- Properties for regeneration/development purposes, including;
 - the purchase price
 - how it will contribute to the wider scheme,
 - how it will contribute to the community,
 - how this would generate revenue, and
 - how this would enable housing growth.

5.26 Assessments will be carried out to each property on its own merit by the Council's Housing Strategy team in Partnership with Rykneld Homes Limited (RHL) using various resources to determine viability.

5.27 Each property will be fully inspected by Rykneld Homes Ltd to ensure value and any works required. The assessed cost of the works will be off set against the value of the property to assess viability of purchase, however the full market value must be offered if the purchase is to proceed.

5.28 The Council reserves its right to refuse to buy a property and each property will be assessed on its own merit using the assessment criteria as a guide, set out in this policy.

5.29 If the Council refuses to buy the property a rejection notice must be served as soon as the decision has been made not to purchase or nominate to another organisation (no later than 8 weeks). The rejection notice must;

- be in writing; and
- state that the Council is rejecting the offer to purchase the property.

5.30 Properties which are deemed to be of defective construction under the provision of the Housing Defects Act 1984 will only normally be considered for wider regeneration/development purposes, however in exceptional circumstances the Council may agree to a purchase if the property is structurally sound and it is financially viable. Where flats are of a non-traditional construction but in a Council owned block special consideration may be given.

5.31 **Nomination of Another Person to Accept an Offer**

5.32 Regulation 8 of the Housing (Right of First Refusal) (England) Regulations 2005 states that the Council can nominate another person to accept the offer of sale.

5.33 The Council will reserve its right to nominate "another person" to accept the offer of sale (RHL will be given first refusal), however the Council will stipulate that any nomination must be to the benefit the community to help with housing need, comply with current housing schemes or enable development/regeneration.

5.34 The Council will only nominate to organisations registered as a social landlord, including Registered Housing Providers or other bodies who fulfil the landlord condition set out in [section 80\(4\) of the Housing Act 1985](#).

- 5.35 Before an organisation can be nominated to accept a particular offer of sale, the organisation must give their permission to be nominated in writing.
- 5.36 Any nomination decisions will be based on a property by property basis, including which suitable housing provider to nominate to.
- 5.37 **Delegation**
- 5.38 Once the assessment is complete the evidence will be presented to the Joint Strategic Director – Place, in consultation with the Council’s Portfolio holder for Housing (or Leader of Council), who will make the final decision to approve or refuse the sale offer or nomination to another housing provider.
- 5.39 **“Notice” Criteria**
- 5.40 All notices can be served either by post or by personal delivery.
- 5.41 **Appeals Procedure**
- 5.42 Appeals must be received within 28 days from the date of the decision notification and will be considered against how the policy or procedure has been implemented.
- 5.43 Where an applicant is appealing against how the policy and/or the procedures have been applied a Senior Officer will investigate the case and respond accordingly. If the owner is not satisfied with the decision the normal Council procedure will be implemented and the owner can appeal to the Local Government Ombudsman.
- 5.44 Under these circumstances the Council will still not be obligated to repurchase.

Section B

6. Former council properties outside the 10 year purchase period

- 6.1 Former Council owned properties that were originally purchased through the Right to Buy scheme but more than 10 years from the original purchase date are not obligated to the Right of First Refusal legislation. (See Section A).
- 6.2 These properties may be identified by correspondence (including email) being sent from owners offering to sell their property back to the Council, however properties may also include those identified by the Council or Rykneld Homes Limited including via a third party, for example through an Estate Agent or property Auction.
- 6.3 Once a property has been identified a Buy Back Request Form for properties outside the 10 year period (not subject to the Right of First Refusal) will be completed by RH to start the assessment process. See Appendix 4.
- 6.4 Properties under these circumstances are not governed by strict timeframes and legal notices associated with the Right of First Refusal legislation, therefore this is a more relaxed approach, including the price of the property which can be mutually agreed with the seller through negotiations.
- 6.5 The Council's Legal department will only need to be notified if a purchase has been agreed which will commence the sales procedure using the usual legal structure.
- 6.6 The Council's procedure to assess and purchase properties outside the 10 year purchase period (not subject to the Right of First Refusal legislation) is shown via a flowchart in Appendix 3.
- 6.7 **Financing**
- 6.8 There must be sufficient funding to proceed with the purchase which must be ascertained before any formal decision can be made.
- 6.9 If no funding is available then the owner will be notified by the Council that it does not wish to purchase the property.
- 6.10 **Assessment Criteria Guidance**
- 6.11 The assessment criteria for properties not originally sold within a 10 year period of resale will slightly differ from that in section A.
- 6.12 The Council will consider all offers of sale received and conduct an assessment in consultation with RHL, giving priority to properties that meet the Councils priorities.
- 6.13 The Council's procedure for properties offered for sale outside the 10 year timeframe is shown via a flowchart in Appendix 3.
- 6.14 When considering purchasing a property a viability assessment will be conducted and how the use of the property will be determined, this can include, for example:

- to let within the Council's housing stock
- to let as specialist housing
- for Private Sector Leasing (PSL) in partnership with a Registered Provider
- to demolish for regeneration/development purposes

6.15 Properties within the following categories will be given priority:

- Properties located in high housing demand areas
- Properties that enable regeneration
- Properties that enable development opportunities
- Properties that are long term empty
- Properties that are suitable for current housing schemes such as PSL
- Flats within council owned blocks

6.16 The Council in consultation with RHL will determine if the property to purchase is a viable investment by assessing if the property is value for money when taking into consideration;

6.17 Properties for housing stock, including;

- the purchase price,
- the value of any repairs/improvements required to bring the property up to a lettable standard,
- the rent which the property would generate, and

6.18 Properties for regeneration/development purposes, including;

- the purchase price
- how it will contribute to the wider scheme,
- how it will contribute to the community,
- how this would generate revenue, and
- how this would enable housing growth.

6.19 Assessments will be carried out to each property on its own merit by the Council's Housing Strategy team in Partnership with Rykneld Homes Limited (RHL) using various resources to determine viability.

6.20 Each property will be fully inspected by Rykneld Homes Ltd to ensure value and any works required.

6.21 The assessed cost of the works may be off set against the value of the property and a purchase price can be negotiated.

6.22 For the purpose of this policy, a definition in this instance is to restore to a good condition or replace something damaged, faulty, or worn.

6.23 The Council reserves its right to refuse to buy a property and each property will be assessed on its own merit using the assessment criteria as a guide, set out in this policy.

6.24 Properties which are deemed to be of defective construction under the provision of the Housing Defects Act 1984 will only normally be considered for wider regeneration/development purposes, however in exceptional circumstances the

Council may agree to a purchase if the property is structurally sound and it is financially viable. Where flats are of a non-traditional construction but in a Council owned block special consideration may be given.

6.25 Delegation

6.26 Once the assessment and negotiation is complete the evidence will be presented to the Joint Strategic Director – Place, in consultation with the Council’s Portfolio holder for Housing (or Leader of Council), who will make the final decision to approve or refuse the purchase.

6.27 Purchase Agreed or Refused

6.28 If the delegated decision is to agree to the purchase, at the negotiated price, the seller will be informed of the decision and the Council’s Legal department will be notified to start the purchase through the usual legal process.

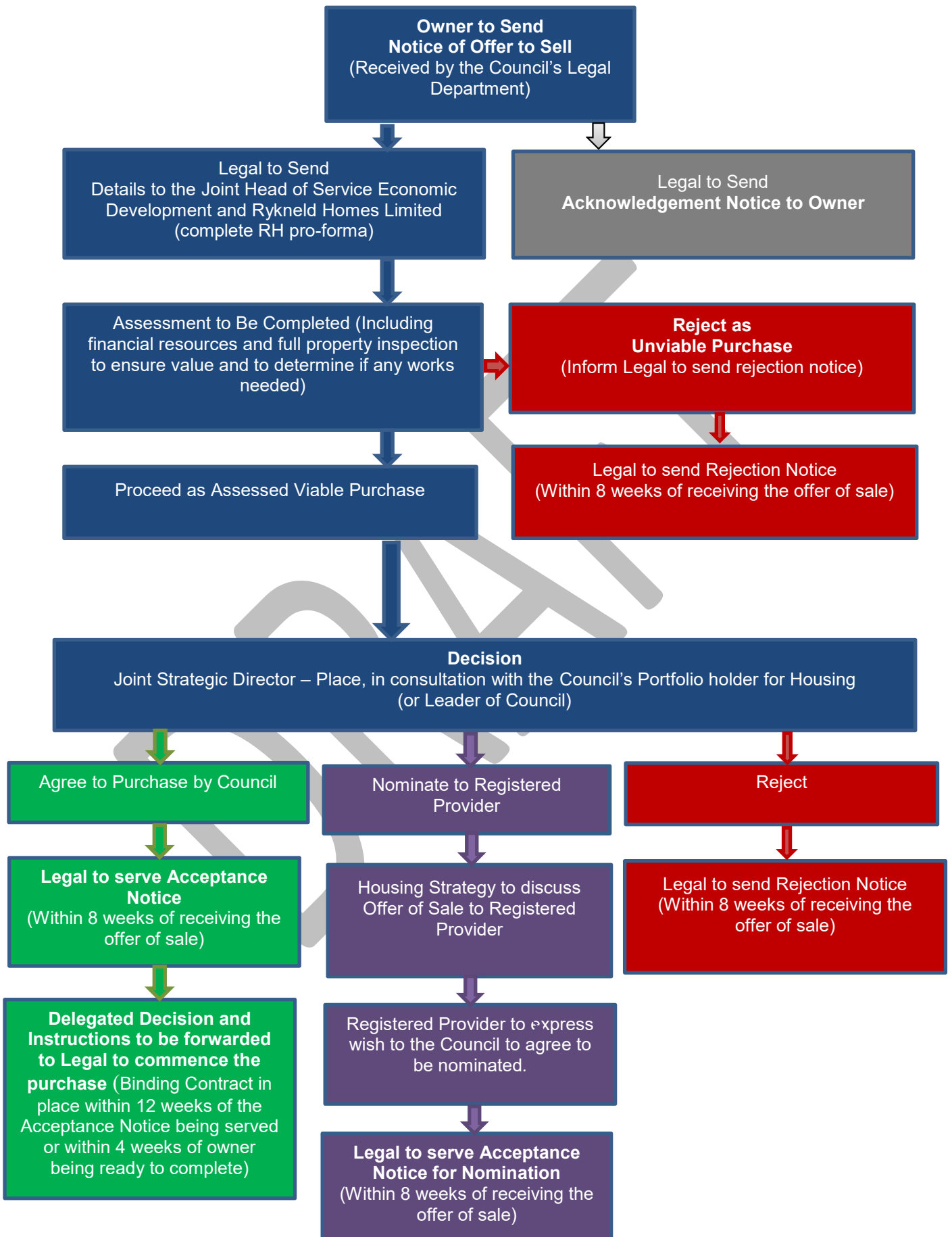
6.29 If the delegated decision is to refuse the purchase the seller will be notified and no further action is required.

7. Responsibility for Implementation

7.1 For both sections A and B the Council working in partnership with Rykneld Homes Limited will be ultimately responsible for the implementation of this policy, however nominated Housing Providers will also have due regard and follow the procedures outlined in section A to comply with legislation.

8. Appendices

- Appendix 1 - Right of First Refusal Procedure
- Appendix 2- Right to Buy - Buy Back Request form
- Appendix 3 - Procedure for Purchasing Properties outside the 10 year timeframe Period
- Appendix 4 - Buy Back Request Form - for properties outside the 10 year period



Section A - Right of First Refusal - Buy Back Request Form

Legal to Complete			
Address of Property			
Name of Owner			
Contact Tel No		E-mail Address	
Property Type		Number of Bedrooms	
Date of RTB		% Discount Received	
Date decision of acceptance/rejection to be notified to Legal			

Rykneld Homes to complete			
Property and Structure Type			
Offer Notice Received from Legal		8 Week Deadline	
Valuation and Repairs Estimate Requested – joint visit with RHL		Valuation and Repairs Estimate Received	
Demand Profile Received from Housing Strategy			

Date Legal advised of decision	
Decision received	
If approved Sale Price Negotiated	
Negotiated Sale Price Confirmed @	
Delegated Decision completed and forwarded to NEDDC Joint Head of Service Economic Development for signature	

Signed Delegated Decision sent to Legal (and Rykneld Homes)	
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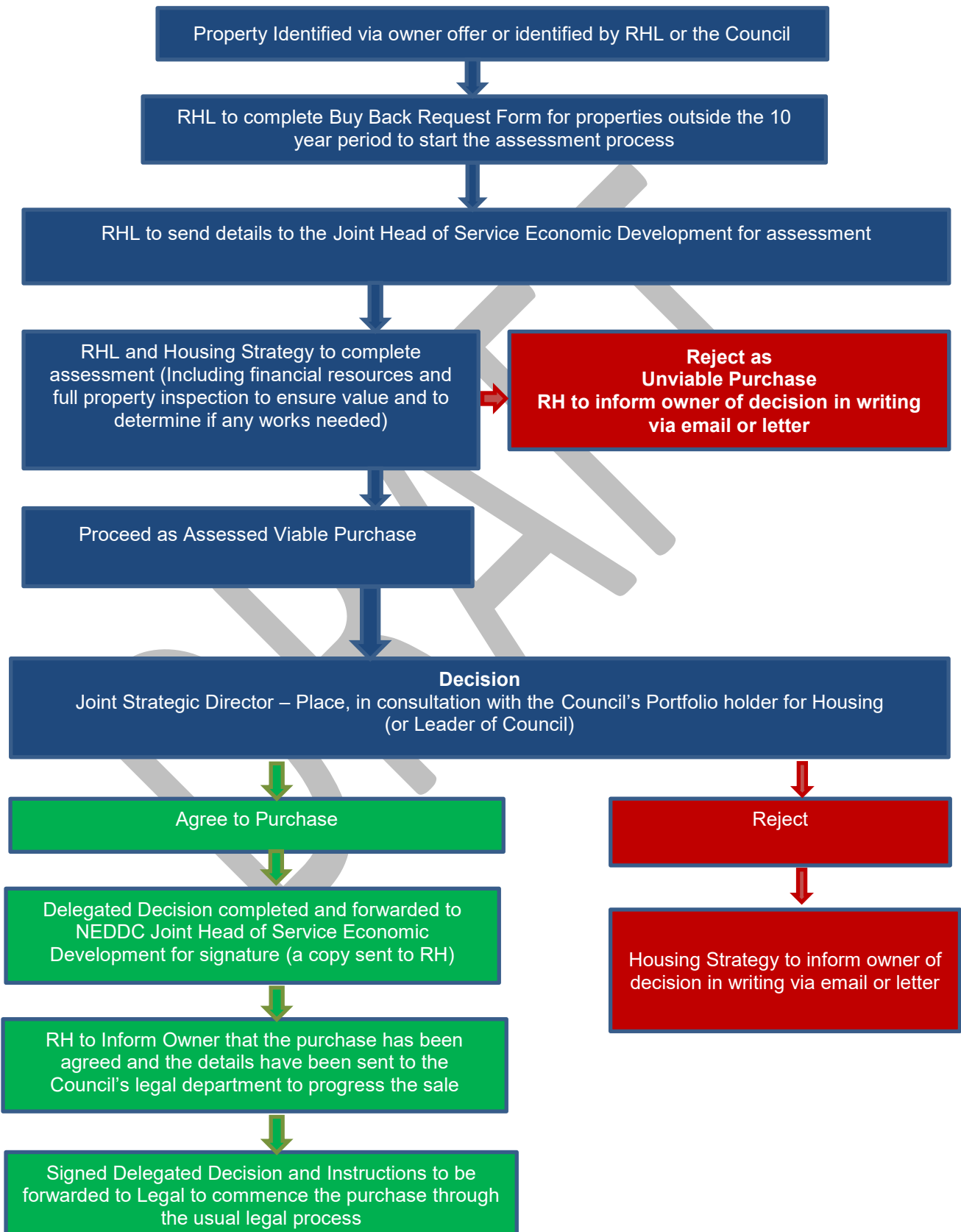
Legal advised for Heads of Terms to be issued.	
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Following receipt of signed DD and confirmation of acceptance of offer price advise following Internal Departments that Buy Back is progressing: Voids Team IT Team Customer Services Housing Patch	
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NOTES:

Section B - Procedure for Purchasing Properties outside the 10 year Timeframe Period

(Not obligated to the Right of First Refusal legislation)



Section B - Buy Back Request Form - for properties outside the 10 year period (not subject to the Right of First Refusal)

To be completed by Rykneld Homes Limited			
Address of Property			
Name of Owner			
Contact Tel No		E-mail Address	
Property Type		Number of Bedrooms	
Date of RTB			

Property and Structure Type	
Valuation and Repairs Estimate Requested – joint visit with RHL	
Valuation and Repairs Estimate Received	
Demand Profile Received from Housing Strategy	
Decision received	
If approved Sale Price Negotiated	
Negotiated Sale Price Confirmed @	
Delegated Decision completed and forwarded to NEDDC Joint Head of Service Economic Development for signature	
Signed Delegated Decision sent to Legal to progress with sale	
Signed Delegated Decision sent to RH	
Following receipt of signed DD and confirmation of acceptance of offer price advise following Internal Departments that Buy Back is progressing: Voids Team	

