

ABERDEENSHIRE COUNCIL

COMMUNITY ASSET TRANSFER (CAT) POLICY

APPROVED 9 JUNE 2016

Description of Community Asset Transfer (CAT)

CAT involves the transfer of responsibility for an asset from the Council to a Community Transfer Body or Community Organisation.

This transfer can be effected in different ways e.g. the transfer of management responsibility through short or long term lease arrangements or through the transfer of outright ownership. The key requirement for transfer is that the Community Transfer Body or Community Organisation has robust governance arrangements in place, a clear and shared community vision for the use of the asset and a viable business case.

The Council has a statutory duty to obtain the “best value” from the disposal of any asset. In general terms the current legislation provides that this should be the “market value” unless it can be demonstrated that the Council has appraised the advantages and disadvantages of the proposal, satisfied itself that the disposal for that consideration is reasonable and the benefits accruing to the community are such that a reduction in that value is justified.

In order for the Council to dispose of a property at a consideration less than the market value it must appraise and compare the costs, cost benefits and dis-benefits of the proposal. The Council must satisfy itself that disposal for less than market value is reasonable and the disposal is likely to contribute to any of the following purposes in respect of the whole or any part of Aberdeenshire: the ability to promote or improve economic development; regeneration; public health; social or environmental wellbeing.

It is for the Community Transfer Body or Community Organisation to make the case for any discount through the demonstration of these community benefits within its business plan.

Community Asset Transfer – Policy Statement

Aberdeenshire Council is committed to Community Asset Transfer and recognises that the community ownership of assets can make an important contribution to a range of innovative solutions which community groups can develop to address local needs.

Importantly, these solutions not only meet the needs of local people, they can also contribute to the delivery of both the Council’s Single Outcome Agreement and Scottish Government National Outcomes.

Aberdeenshire Council is committed to proactively promoting the use of asset transfer requests through awareness raising and outreach, supporting the transfer of assets and building the capacity of community transfer bodies or community organisations to engage in this process.

The Council recognises that community ownership of assets can:

- generate long term sustainable revenue streams for community organisations making them more sustainable.
- instill a heightened sense of civic pride and responsibility.
- provide local people with a meaningful stake in the future development of the place in which they live and/or work.
- contribute to more effective and more intensive use of local resources.
- be used as leverage to draw in new finance and expand the level of community activity.
- improve the quality of the relationship between individuals, the community and the Council.
- provide new opportunities for local learning and community capacity building.

Since the introduction of Aberdeenshire Council's Community Asset Transfer Policy the Council has experienced a growing and widening interest in community-led regeneration and, in partnership with a wide range of community groups, has used asset transfer as an important element of sustainable regeneration activity.

The aim of this revised policy is to ensure Aberdeenshire Council has in place a transparent process for the receipt and assessment of Community Asset Transfer requests. Although the presumption will be in favour of transfer, Aberdeenshire Council needs to be satisfied that the group is sustainable and has the ability and capacity to deliver the outcomes deriving from the transfer. In the event matters are not progressed by the Council, this policy includes a robust appeals process should a request be refused or delayed.

By no later than the 30 June following the end of the reporting year to which it relates Aberdeenshire Council shall publish an Annual Community Asset Transfer Report, setting out:

- the number of asset transfer requests received.
- the number of such requests which the Aberdeenshire Council has both agreed to and refused.
- the number of such requests which have resulted in the transfer of ownership of land to a community transfer body, a lease of land to such a body and the rights in respect of land being conferred on such a body.
- the number of appeals which have been allowed, dismissed or have resulted in any part of the decision of Aberdeenshire Council being varied or reversed.
- any action taken by Aberdeenshire Council to promote the use of asset transfer requests and to support a community transfer body or community organisation in the making of an asset transfer request.

The ambition of this policy is to align with the principles of the Community Empowerment (Scotland) Act 2015, whilst recognising that the Scottish Government will develop further secondary legislation and guidance prior to the Act coming into effect, which is estimated to be mid-2016.

Local Policy Context

This policy will positively assist Aberdeenshire Council to achieve the desired outcomes of other strategies and policies, namely but not exclusively:

- Single Outcome Agreement
- Council Plan
- Asset Management Strategy
- Asset Disposal Strategy
- Local Community Plans
- Community Action Plans

This policy is aligned to the Surplus Property Policy. It clarifies that where the Council has already started to market an asset for sale or lease; entered into negotiations to transfer or lease the land; or proceeds further with a proposed transfer initiated before an asset transfer request was made, the Council will continue this process and the asset may be disposed of prior to the conclusion of the CAT process. The Surplus Property Policy confirms that, except in the above circumstances, once a Community Asset Transfer request is received in respect of a property it will not be sold or leased to anyone else until the application is disposed of.

The Council will consider the transfer of outright ownership, lease of land and the transfer of rights in respect of land as is appropriate for the asset transfer.

The Council will consider transfer of any asset to a Community Transfer Body or Community Organisation that makes a credible application (supported by a robust Business Plan) and demonstrates that it has the skills and capacity to manage the asset and deliver the required sustainable benefits and outcomes. Aberdeenshire Council will support and engage with communities to build capacity.

Whilst fully supporting the principle of asset transfer this policy also recognises that some assets must remain under Council ownership and management in order to support the overall delivery of services, continue to provide an income stream to the Council or support economic activity in an area.

In addition some assets may have title defects, conditions or burdens on them making them unsuitable for transfer.

Although assets may be transferred at less than market value, subject to satisfying the terms and conditions of the Disposal of Land by Local Authorities (Scotland) Regulations 2010, Aberdeenshire Council will not dispose of assets at less than best consideration should the full capital receipt be linked to the business case for the delivery of other projects within the Capital Plan as otherwise it could have a detrimental impact on outcomes for the Council and the community.

Any transfers involving Housing Revenue Account property assets will also be subject to the approval of Scottish Ministers in terms of the Housing (Scotland) Act 1987.

Scope of the Policy

For the purposes of this policy an asset shall be considered to be land or buildings in the ownership of, or leased by, Aberdeenshire Council. The policy applies to all assets including “community amenity assets” such as town halls, village halls, community centres, bowling greens, public conveniences, country parks, caravan parks, etc.

Not all Council assets will be considered suitable for transfer. In particular, assets on the Council’s commercial and industrial portfolio have a key role in generating rental income for the Council and supporting the economic development of the area and may not be considered suitable for transfer.

The Council will determine whether or not an asset is suitable for transfer on a case by case basis, against the following broad criteria:

- Benefits to the respective parties.
- Potential loss of any existing income.
- Retention of assets for direct service delivery.
- Asset has been declared surplus by the Council or is already subject to a transfer request.
- Potential impact on the delivery of the Capital Plan.
- Savings to Community Planning Partners through service delivery.

Full transfer of ownership will only be agreed with community transfer bodies which the Council considers to have the capacity to succeed in the long term. Each request will have to demonstrate an ability to promote, deliver or improve economic development; regeneration; public health; social or environmental wellbeing.

Community Transfer Body or Community Organisation

For any interest which is not outright ownership, Community Organisations may take many forms, and may adopt different types of legal structures, for example community groups, voluntary organisations, charities, social enterprises and co-operatives. The main focus is not the precise model but that they are recognised within their communities as important, open and transparent organisations.

However, any Community Organisation wishing to utilise this policy (whether corporate or unincorporated) must have as a minimum, a written constitution or other constituting documents that include and can demonstrate the following basic principles:

1. A definition of the community to which the body relates.
2. That the majority of the members of the body are members of that community.
3. That the members of the body who are from that community have majority control of the body.
4. Provision that membership of the body is open to any member of that community.
5. A statement of the body’s aims and purposes, including the promotion of a benefit for that community.
6. Provision that any surplus funds or assets of the body are to be applied for the benefit of that community.

7. Provision that upon the winding up of the organisation and after satisfaction of its liabilities, its property (including any land, and any rights in relation to land, acquired by it as a result of an asset transfer request) passes: to another Community Transfer Body, a charity or another community body as outlined in the Community Empowerment (Scotland) Act 2015.

Community Transfer Bodies and Community Organisations should also demonstrate effective management and governance arrangements ensuring:

- that the activities of the organisation are in keeping with its founding principles, objectives and values.
- that there is accountability to the membership of the organisation and other key stakeholders such as funders and donors, for everything the organisation does, including its spending and activities.
- compliance with all relevant legal and regulatory requirements, for example the Equality Act 2010 and seeks independent advice where required.
- that all money, property and resources are properly used, managed and accounted for. In order to be accountable, suitable systems must be in place and kept up to date.
- that it is non-political and is not engaged in supporting candidates for political office.

The Council will consider transfer of assets to long established, stable and secure organisations and will also consider transfers to newly formed organisations provided they can demonstrate they have the necessary expertise, experience, governance structures and business plan in place to manage the asset.

However, should the organisation seek full ownership of an asset, the Council will only deal with Community Transfer Bodies as defined in Section 80 of the Community Empowerment (Scotland) Act 2015. An important distinction is that the Body must have not fewer than 20 members.

Assets will not be transferred to individuals or businesses to be used as vehicles for commercial ventures. In addition, assets will not be transferred to individuals or groups for party political use.

Applying for an Asset – Informal Expression of Interest

Community Transfer Bodies and Community Organisations are encouraged to complete an Expression of Interest form in order to open up informal discussions regarding their asset needs and options with their Area Manager prior to making any formal application for an asset.

Once they are in a position to apply for an asset a three stage process will be followed. The timescales here reflect the previous experience of the Council in processing and completing CAT applications. It is recognised that upon implementation of the regulations under the Community Empowerment (Scotland) Act 2015 (est. mid 2016), the timescales may require to be reassessed.

Community Transfer Bodies and Community Organisations should note that where the Council has already started to market the asset for sale or lease; entered into negotiations to transfer or lease the land; or proceeds further with a proposed transfer initiated before an asset transfer request was made, the Council will continue this process and the asset may be disposed of prior to the conclusion of the CAT process.

The Community Transfer Body or Community Organisation must specify within their expression of interest:

- the land to which the request relates, providing a clear plan of the site/asset.
- whether the organisation is seeking full ownership of the asset, for the asset to be leased to the organisation or for the Council to confer rights in respect of the asset and the nature and extent of the rights sought (including, for example, rights to manage or occupy the land or use it for a purpose specified in the request).
- the reasons for making the request, including a description of the intended end use, any modifications to the asset the organisation intends to make, who will benefit from the project and the catchment area of the project.
- a demonstration of community support from the community within which the asset sits.
- the benefits which the Community Transfer Body or Community Organisation considers will arise if the Council were to agree to the request.
- the price that the Community Transfer Body would be prepared to pay for the transfer of ownership of the land having regard to the benefits it will bring in accordance with Paragraph 4.
- the amount of rent that the community transfer body or community organisation would be prepared to pay in respect of any lease resulting from the request (having regard to the benefits it will bring in accordance with Paragraph 4), the duration of any such lease, and any other terms and conditions that the organisation considers should be included in any such lease.
- any other terms or conditions applicable to the request.

The Community Transfer Body or Community Organisation must also provide:

1. a copy of the governing documents for the organisation demonstrating it is appropriately constituted. Specific details will be required in terms of the organisation's dissolution arrangements and approach to equalities.
2. a statement of accounts for the most recent 3 year period examined by an independent examiner who is reasonably believed by the organisation to have the requisite ability and practical experience to carry out a competent examination of the accounts. This is only applicable to organisations with a gross income in a financial year of less than £250,000 or companies limited by guarantee with a turnover of less than £500,000. Organisations with a turnover exceeding these figures must submit statements of audited accounts for the most recent 3 year period. For organisations which have not been established for a 3 year period, a one year financial statement may be considered.

This information will be validated prior to assessment against the criteria outlined within the policy.

The Council will then provide the applicant with advice regarding the suitability of the expression of interest. This is informal advice only. The applicant can decide at that point, based on the advice given, whether or not to progress with a full Community Asset Transfer application.

In reaching its recommendation, the Council will take into consideration the following matters:

- a) the reasons for the request,
- b) any other information provided in support of the request (whether such other information is contained in the request or otherwise provided),
- c) whether agreeing to the request would be likely to promote or improve:
 - economic development,
 - regeneration,
 - public health,
 - social wellbeing, or
 - environmental wellbeing,
- d) whether agreeing to the request would be likely to reduce inequalities of outcome which result from socio-economic disadvantage,
- e) any other benefits that might arise if the request were agreed to.
- f) any benefits that might arise if the Council was to agree to or otherwise adopt an alternative proposal in respect of the land to which the request relates and how such benefits would compare to any benefits such as are mentioned in paragraphs (c) and (e). An “alternative proposal” includes another asset transfer request or a proposal made by the Council or any other person.
- g) how any benefits relate to other matters the Council considers relevant (including, in particular, the functions and purposes of the Council),
- h) any obligations imposed on the Council, by or under any enactment or otherwise, that may prevent, restrict or otherwise affect its ability to agree to the request, and
- i) such other matters (whether or not included in or arising out of the request) as the Council considers relevant.

The Local CAT Operational Group will then provide a recommendation whether or not the asset is suitable for disposal and whether the Community Transfer Body or Community Organisation has the required governance arrangements in place to progress. This work will be undertaken within 10 weeks of receiving an Expression of Interest.

The Local CAT Operational Group reserves the right to decline to consider certain Expressions of Interest or asset transfer requests where:

- (a) an asset transfer request relating to land is made which relates to matters that are the same, or substantially the same, as matters contained in a previous asset transfer request made in relation to the land,
- (b) the previous request was made in the period of 2 years ending with the date on which the new request is made, and
- (c) the Council refused the previous request (whether following an appeal or not).

Where the Council declines to consider a new request, this will not be treated as a refusal for the purposes of appeal. It is irrelevant whether the body making a new request is the same body as, or a different body from, that which made the previous request.

The Local CAT Operational Group will advise the Community Transfer Body or Community Organisation of its recommendation, and the reasons for the recommendation.

The Local CAT Operational Group shall consist of a minimum of the Area Manager, Finance, Legal, Property, Economic Development officers and a representative of the service using the asset. Other appropriate specialist officers will provide support as and when required.

Stage One - Community Asset Transfer – Detailed Assessment

Should the applicant submit a formal Community Asset Transfer request a detailed assessment will be required. Aberdeenshire Council will:

- confirm that the land is within the ownership of the Council, albeit the Community Transfer Body or Community Organisation will require to seek independent advice on validity and suitability of the titles for their intended use, or, if leased by the Council, whether the land can be made available by the Council's landlord.
- provide the Community Transfer Body or Community Organisation with Aberdeenshire Council's opinion of the market value of the asset. Where a property has been already leased to a community organisation, which then subsequently applies to buy it, the lease will be disregarded for the purposes of determining the market value of the property for the sale.
- highlight any Common Good implications. Assets held on Common Good land may require Common Good Orders to be obtained before transfer can take place. Should there be a requirement to seek a Common Good Order, these costs will be met by Aberdeenshire Council. However, in circumstances where significant costs may be incurred the Council reserves the right to review its funding position. There will also be a requirement for the Community Transfer Body or Community Organisation to provide evidence of formal consultation with the community and the relevant Community Council for that area. It is recognised that upon implementation of the Community Empowerment (Scotland) Act 2015 (est. mid 2016), there will be an obligation to consult Communities and Community Councils upon plans for Common Good assets, so the policy may require to be adjusted later to take account of this.
- where appropriate, provide information it has available in relation to running costs, maintenance costs etc.
- provide any information the Council has available in relation to the condition of the asset and will provide an estimation of the cost of any identified repairs and maintenance. However, the asset will be transferred in its condition as at the date of transfer. There is no commitment from the Council to bring assets up to a specific standard prior to transfer. It is therefore important that Community Transfer Bodies and Community Organisations seek independent advice regarding the condition of assets, the cost of which should be met from their own funds.

Aberdeenshire Council will provide the above information within a 6 week period from the date the organisation submits an application and will absorb the costs of the provision of the information. The Community Transfer Body or Community Organisation has a maximum period of 6 months from that date to submit a complete and valid application. Aberdeenshire Council will not sell, lease or otherwise dispose of the asset to which the request relates within that 6 month period, unless the circumstances detailed at **Applying for an Asset** above apply. Should a valid application be received within the required timescale, the Council will not dispose of the asset until the CAT process has been exhausted. However, should no valid request be received, the Council reserves the right to dispose of the asset.

At this stage the Community Transfer Body or Community Organisation will be required to submit a valid application form, outlining the detailed business case for the transfer. The business case must provide the following information:

- confirmation that the organisation has effective governance and management arrangements.
- details of any service the organisation wishes to take over from the Council.
- Information on how the organisation intends to use the asset.
- demonstration of a clear community/social demand for the transfer and the community benefits to be derived from the transfer.
- evidence that there is community backing for the transfer and that consultation has taken place within the community.
- evidence of engagement with Elected Members for that Ward in relation to the transfer.
- demonstration that the group has the capacity to manage the asset and has members who have the necessary skills and experience.
- demonstration that the organisation has the ability to conclude the transfer within 9 months of the date of the decision notice.
- confirmation that the organisation has considered its responsibilities in terms of State Aid rules and any implications the transfer may have. The EU State Aid rules are wide reaching and apply to not-for-profit organisations and activities as well as commercial businesses. It is not the type of organisation which receives support that is important but the nature of the activities that it carries out.
- financial information in relation to both capital and revenue costs, including cash flow projections for the first 3 years of the project. The Council recognises that many capital funding streams are dependent on full asset transfer. The provision of unsecured funds within the business plan will be considered within this context.

Within 6 weeks of receipt of a valid application, the Local CAT Operational Group will review the application against the criteria outlined within this policy and will formulate a recommendation on whether to proceed with the asset transfer or not. This recommendation will be formally reported on the next appropriate Area Committee date.

In line with Aberdeenshire Council's Scheme of Delegation, where the Area Committee decision is contrary to officers' recommendations or where it does not accord with Council policy, the decision will be referred to Aberdeenshire Council's Policy and Resources Committee for determination.

The Community Transfer Body or Community Organisation will be informed of the decision in writing and if the application is rejected, the reasons given for the refusal.

Community Asset Transfer – Appeal Process

If an application is refused the Community Transfer Body or Community Organisation can write to the Chief Executive of Aberdeenshire Council within 28 days asking that the decision be reviewed.

The Community Empowerment Appeal Committee will review the decision and convene an appeals hearing within 6 weeks of receiving a valid letter of appeal. The Committee's decision will be verbally communicated to the Community Transfer Body or Community Organisation at the end of the hearing and will be followed up in writing within 10 working days.

It is recognised that upon implementation of the Community Empowerment (Scotland) Act 2015 (est. mid-2016), Community Transfer Bodies and Community Organisations will have the right of appeal to Scottish Ministers. This policy will be reviewed to incorporate this process at an appropriate time.

Stage 2 - Implementation

For successful applications the Council will set out the terms of any proposed transfer. The Local CAT Operational Group will oversee the transfer of the asset. The Community Transfer Body or Community Organisation must seek independent legal advice, the cost of which must be borne from its own funds.

It is recognised that as each transfer will have a unique set of considerations so timescales will vary. However the Council will endeavour to transfer the asset within 9 months or such period as agreed with the Group. In the event that the transfer is not concluded within this timescale the Council reserves the right to bring matters to an end.

If the group taking on an asset will be providing a service to the Council a Service Level Agreement will be required to safeguard the requirements of service users. This will be discussed if necessary by the Local CAT Operational Group.

Any lease will set out the terms and conditions for using the asset and will define the responsibilities of the Community Transfer Body or Community Organisation and Aberdeenshire Council with regard to insurance, repair, management and maintenance of the asset.

If transferring ownership, the conditions of sale will set out what the Community Transfer Body can do with the asset and what restrictions may apply if the group wishes to sell on the asset to ensure continued delivery of the community benefits to be derived from the transfer.

At any stage in the process, a Community Transfer Body or Community Organisation can cancel a transfer if their circumstances change and they no longer wish to pursue the issue.

Stage 3 - Handover

At this point the asset transfer will be completed and the Community Transfer Body or Community Organisation will begin using the asset to deliver the benefits described in the business case.