



COMMUNITY ASSET TRANSFER

A Guide for Voluntary
and Community Groups

Welcome

This guide is for all voluntary and community groups interested in acquiring assets owned by Aberdeenshire Council in order to develop and deliver services and generate benefits for their local communities.

This guide explains the scope of the Council's policy on community asset transfer, provides guidance to interested groups on how to apply for the takeover of an asset, and explains how the Council will process your application.

This information is also available on the Council's website, along with application forms at www.aberdeenshire.gov.uk/cat

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Introduction

This revised guidance for voluntary and community organisations (VCOs) updates that first issued in October 2011. It builds on the experience gained by Aberdeenshire Council in community asset transfers since the policy was first introduced in June 2011 and includes changes to the policy approved by the Policy and Resources Committee of the Council in April 2013.

The Council's Community Asset Transfer Policy recognises that handing over the ownership or stewardship of an asset can have a valuable role in supporting and sustaining local communities in Aberdeenshire. It can also provide communities with opportunities to deliver services that the Council can no longer afford to provide.

The policy recognises that VCOs across Aberdeenshire are at different stages of maturity and has made a commitment to promoting transfer options through awareness raising, outreach and support. Officers from a wide range of services are actively working with VCOs to build

capacity and to provide them with the confidence and skills to take on the management of an asset. Contact details for these officers are available from the Council's website.

The aim of the guidance is to explain what the CAT policy is, the scope of the policy and how VCOs can apply to take over responsibility for an asset under the policy.



Policy Statement

Aberdeenshire Council is committed to community asset transfer where that will bring benefits to communities and contribute towards achieving the Council's aims and objectives.

The Council recognises that community asset transfer can be a valuable part of supporting and sustaining local communities in Aberdeenshire and it wishes to ensure council assets can be owned and managed by the people who regularly use them.

The Council is fully committed to using council assets to form long-term partnerships with VCOs that meet the Council's criteria, in order to create stronger, more cohesive and more sustainable communities.

The Council will react positively to all enquiries from VCOs concerning the potential for community asset transfers and will support such groups when required to develop business plans and to put in place arrangements for managing the assets.

The Council will put in place a transparent process for community asset transfer and will adopt an agreed method of assessing requests.

The Council will consider transfer of an asset to any VCO that makes a credible application (supported by an appropriate Business Plan) and demonstrates that it has the skills and capacity to manage the asset.

Whilst transfer of full responsibility for an asset either through a long term lease or outright ownership are the preferred options, the Council will consider transferring management responsibility for an asset to a VCO whilst maintaining some revenue funding in support of its operation where there is merit in doing so.

Whilst fully supporting the principle of community asset transfer this policy also recognises that some assets must remain under Council ownership and management in order to support delivery of essential services, continue to provide an income stream to the Council or support economic activity in an area. In addition some assets may have title restrictions or burdens on them making them unsuitable for transfer whilst others may be required by the Council because of their potential to generate significant capital receipts if sold on the open market. The Council will consider as part of the initial assessment of an application whether an asset should be retained by the Council or could be transferred.

Assets Covered by the Community Asset Transfer Policy

Community asset transfer involves the transfer of responsibility for an asset from the Council to a VCO. This can be carried out either through short or long term lease arrangements or through the transfer of outright ownership.

The policy applies to land or building in the ownership of Aberdeenshire Council that are deemed to be under performing or surplus to requirements as well as to "community amenity assets such as town halls, village halls, community centres, bowling greens, public conveniences, country parks, etc.

Not all Council assets will be considered suitable for transfer. Assets that are required for the delivery of essential services or are generating an income stream for the Council will not be considered suitable for transfer. In particular assets on the Councils commercial and industrial portfolio which have a key role in generating rental income for the Council and supporting the economic development of the area will not be considered suitable for transfer.

The Council has an ambitious capital investment programme. To help fund projects such as new schools, care homes, libraries etc it is important that the Council generates capital receipts through the sale on the open market of surplus assets. Those assets which have the potential to generate significant capital receipts will not

be considered suitable for transfer either for lease or sale at below best consideration.

Assets which have title burdens or conditions on them may also not be suitable for transfer. Assets held on Common Good land will require Common Good Orders to be sought before transfer can take place and the granting of these ultimately rest with the Courts and not the Council.

Assets such as houses, building and land held on the Housing Revenue Account are also excluded from this policy.

This is not a definitive list of exclusions. Each potential application will be considered on a case by case basis and if the benefits of the transfer outweigh the reasons for retaining the asset the Council will do what it can to make the transfer happen.

Types Of Transfer That Can Take Place

Transfer can take place in different forms, it can involve the transfer of management responsibility for an asset (land, building or structure) through a short or long term lease arrangement or it can involve transfer of outright ownership.

Lease Arrangements

These types of transfers will usually be on the basis of a long lease of between 25 and 99 years, assessed on a case-by-case basis. However, in special circumstances a lease at up to 175 years may be considered (the maximum possible under Scots law). The Council may grant an initial 3 – 5 year lease with a view to eventual transfer to allow an interested VCO to, for example, explore options for the management and refurbishment of the asset.

The Council may consider setting a rent for the asset below what could be reasonably obtained on the open market if the interested VCO is able to demonstrate in the supporting business case appropriate benefits to the community.

Transfer Of Asset At Full Market Price

Where disposal involves selling the asset at open market value, the Council will consider giving the VCO 'first refusal' on the asset by protecting the asset from the open market for an agreed period of up to 6 months. This could enable the group to raise the required capital to complete purchase.

Disposal Of Asset At Below Best Consideration

The Council has a statutory duty to obtain the "best consideration" from the disposal of any asset, whether by transfer of ownership or lease. In general terms the 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.

If the Council wishes to dispose of an asset at a consideration less than the best that can reasonably be obtained and the consideration at which it wishes to dispose is less than 25% below the best that can reasonably be obtained the Council can proceed with the disposal if it so wishes without having to meet any further criteria up to a cap of £10,000 e.g. if Value is £40,000 it could dispose of at any price between £30,000 to £40,000, however if value is £100,000, it could dispose of at any price between £90,000 to £100,000. Any discount above this cap must be justified.

Above the cap limit the percentage discount to be applied to the market value will be based on an assessment of the potential economic development or regeneration, health, environmental and social well being benefits of the transfer as set out in the business plan.

It will be the responsibility of the VCO to set out in the business case which supports their application the reasons why they think ownership of the asset should be transferred to them at a price below best consideration.



Description of Voluntary and Community Organisations Covered by The Policy

It is not possible to provide a comprehensive definition of the types of group covered by this policy. VCOs take many forms, e.g. church groups, community associations, development trusts, community councils, community forums, tenant organisations and community based housing associations, etc and can adopt different types of legal structures such as company limited by guarantee, unincorporated (voluntary) association, partnership organisation, company limited by shares, charitable status, community interest company status, etc. The key thing is not the precise model but that they are recognised in their communities as important, open organisations.

For the purpose of this policy a VCO will have the following characteristics:-

- » It is formally-constituted;
- » It has sound long-term management and governance arrangements and/ or the necessary expertise and experience;
- » It has its own decision-making system and accountability to independent trustees or its own members or constituents;
- » It does not distribute any surplus to owners or members but applies it to serving its basic purpose (excludes commercial concerns but includes organisations which charge users or the public for services or undertakes contracts for the Council);

- » It is non-political and is not engaged in supporting candidates for political office

- » It has an element of involvement of volunteers.

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

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.

How Community Asset Transfer Could Benefit Your Group

Under this policy the key requirement for the transfer of any asset is that it be used primarily by VCOs to create the widest public value possible. For local communities the process of community asset transfer can:-

- » Devolve power to neighbourhoods in an effort to encourage citizen involvement and community action.
- » Contribute towards the regeneration of communities and can act as a catalyst for social, environmental and economic regeneration (including the development of community enterprise).
- » Provide opportunities to extend the use of a building or the piece of land, increasing its value in relation to the number of people benefiting and the range of opportunities it offers and ensuring more effective and more intensive use of local resources.
- » Stimulate the involvement of local people in shaping and regenerating their communities, and can be a catalyst for local volunteering and increasing community cohesion.
- » Provide new opportunities for local learning and community capacity building and can support the creation of community leaders, and inspire others to improve their community.
- » Instil a heightened sense of civic pride and responsibility.

For VCOs community ownership of assets can:-

- » Generate long term sustainable revenue streams for the groups making them more sustainable.
- » Provide local people with a meaningful stake in the future development of the place in which they live and/or work.
- » Be used as leverage to draw in new finance and expand the level of community activity.
- » Improve the quality of the relationship between the citizen, the community and the Council.
- » Provide opportunities for the creation of new partnerships with access to resources not available to the Council.

Community ownership of assets can make an important contribution to the range of innovative, bottom up solutions which VCOs can develop to address local needs. Importantly, these solutions not only meet the needs of the local people, they can also contribute to the delivery of council and national strategic priorities.

How You Can Apply For An Asset

The Council is committed to processing any application for asset transfer in an open and transparent way in partnership with the group concerned.

In the first instance, VCOs are encouraged to discuss their options, their suitability and the scope of community asset transfer with their local Area Manager. These informal discussions will help to prepare for the process of making a formal application for transfer, which is set out in the following four stages:

Stage 1 - Initial Application

Interested parties can find a Stage 1 Application form on the Council's website at www.aberdeenshire.gov.uk/communityassettransfer

This initial application should not involve a huge amount of work, all that is required is enough information to show there is a potential business case for transfer. Forms should be sent to the local Area Manager who will organise a meeting of the local steering group to review the application.

If the application is approved, the applicants will be asked to submit a Stage 2 Application. At this time a member of the steering group will be assigned to act as the key contact for the VCO as they develop their application.

All available information on the asset, including details of its condition, running and maintenance costs, and title deed restrictions, will be

shared with the VCO to help them decide whether to submit a Stage 2 application.

Stage 2 – Detailed Assessment

This stage will require a fully detailed business plan to be developed, along with detailed plans for the management of the asset once in community ownership. If applying for an asset on terms below best consideration the business plan must set out the reasons justifying the level of discount to be applied.

This information is needed in order to complete the application form. The application should again be sent to the local Area Manager along with the business plan and any other appropriate supporting documentation.

The amount of information required at this stage will vary depending on the type of asset to be transferred, and the assigned officer for the group will be able to provide guidance on this.

The application will then be evaluated by the local steering group with a recommendation made to the Area Committee on whether to proceed with the asset transfer or not. Where the Area Committee decision is contrary to officers' recommendations or where it does not accord with existing Council policy the decision

will be referred to the Policy and Resources Committee of the Council for determination.

The decision on the outcome of the application will be conveyed in writing to the VCO as soon as possible.

Stage 3 – Implementation

For successful applications the local Area Manager will establish a joint project team consisting of members from the local steering group and representatives from the community group to manage the transfer of the asset. It is recognised that each transfer will have a unique set of considerations so timescales will vary.

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 joint project team.

The lease will set out the terms and

conditions for using the asset and will define the responsibilities of the VCO and Council with regards management and maintenance of the asset. The conditions of sale if transferring ownership will set out what the VCO can do with the asset and what restrictions may apply if the group wishes to sell on the asset. The VCO will require to have independent legal representation to complete the transfer

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

Stage 4 – Handover

At this point the asset transfer will be completed and the VCO will begin using the asset to deliver the benefits described in the business case. The Council will monitor the performance of the project and will provide appropriate support for as long as necessary to ensure the transfer is successful.



Things You Need To Consider

The Stage 2 Application

This must:-

- » Be based on a well-prepared business plan – this will include a review of potential options for meeting the identified need in different ways
- » Demonstrate a clear community/ social demand for the transfer
- » Show that there is community backing for the transfer and that consultation has taken place within the community
- » Demonstrate that the group has the capacity to manage the asset and has members who have the necessary skills and experience
- » Show the group has good governance and robust financial systems
- » Show how the group intends to manage and maintain the asset to ensure it continues to be fit for the purpose for which they acquired it
- » Show how the group's aims for a project will contribute to the achievement of the Council's corporate and strategic objectives
- » Prove that the proposed project will not duplicate activities, services or facilities already provided in the local community.



Securing external funding

There is a range of funding options available which can enable VCOs to purchase assets from the Council. These can involve grants, borrowing and fundraising and it is important that a group investigates these in full. If commercial borrowing is being considered the cost of repayments would need to feature in the business plan.

It is advisable that the VCO has in place an offer of funding before going through with a Stage 2 application. There have been examples within the Council of potential transfers falling through because anticipated external funding was not secured.

Day To Day Running Costs

In some instances it may be the case that the business plan for a project is only viable if there is continuing revenue funding from the Council. The application must therefore show the support that may be required from the Council and the duration of this support.

The Council will consider transferring management responsibility for an asset to a VCO whilst maintaining some revenue funding in support of its operation where there is merit in doing so.

Refurbishment Costs

Some of the assets that might be considered suitable for transfer are currently in poor condition. The business plan proposed by the VCO should set out how the group intends to refurbish the asset to make it fit for the purpose for which they require it.

In some circumstances the Council may be able to make a contribution towards the refurbishment costs. There is no specific budget available for community asset transfer. However the Council may be prepared to invest in the asset prior to any transfer with monies taken from current revenue. Such investment will be on a spend-to-save basis and will only be made if the business case for the transfer shows potential savings to the Council. The aim of this investment would be to make the asset suitable for use by the VCO as soon as the transfer takes place.

Procurement Of Works

The VCO must ensure that any works commissioned for the asset are procured in accordance with UK and EU procurement practices. The group must also ensure that due diligence is applied in drawing up the contracts for such works.

As necessary the Council will advise the VCO on the form of contract to use in order to protect the interests of the Council and the group.

Other Costs Associated With The Transfer

In general the Council will not seek to recover its costs from the VCO (for example Legal fees, Energy Performance Certificates, Building Surveys etc). However the group should have in place the resources to cover the costs of its own independent advice and support during the transfer process. The Council may be able to help with some of the costs associated with the transfer, however the level of support will need to be established at an early stage.

EU State Aid Rules

The EU State Aid rules are wide reaching and apply to not-for-profit organisations and activities as well as to commercial businesses. It is not the type of organisation which receives support that is important but the nature of the activities that they carry out.

Although the Council will obtain legal advice on whether the State Aid rules apply, VCOs should seek their own, independent legal advice. If State Aid rules do apply both parties will need to agree what actions should be taken to ensure compliance.

Assets Held On Common Good Land

Assets held on Common Good land will require Common Good Orders to be sought before transfer can take place. The Council will bear the cost of making Common Good Orders but in circumstances where a dispute arises which may result in significant costs further discussions will be required with the VCO involved before matters are progressed.

Transfer of Undertakings (Protection of Employment) Regulations (TUPE)

TUPE will be a consideration when the VCO contracts with the Council to deliver a service that was previously delivered by Council staff.

The purpose of TUPE is to protect the rights and preserve the contracts of employment of staff where an organisation transfers the contract to provide services from one supplier to another. The staff assigned to that contract transfer automatically to the new provider.

The issue of TUPE will need to be addressed by the VCO and Council before any asset transfer involving a transfer of service can take place.

Resale of The Asset

With transfer of ownership the Council may consider imposing a covenant on the asset limiting whether, when, how and to whom the asset may be sold on. This will protect the Council's position in the event of failure of the enterprise. The VCO should consider the impact of the covenant of their ability to raise money against the asset.

The Council may also consider imposing a claw-back to ensure the money invested in refurbishing the asset prior to transfer is recovered.

The Appeals Process

Stage 1

If a Stage 1 application is rejected on the grounds that the VCO is not properly constituted or that the outline proposal for the use of the asset does not appear to be well thought through, they will be given the opportunity to resubmit their application at a later date once the issues have been addressed.

As required officers from the Council can provide advice and guidance on the development of a constitution and governance arrangements or on the development of an outline business case.

If a Stage 1 application is rejected on the grounds of suitability the VCO can write to the Chair of the Corporate Community Asset Transfer Steering Group asking that the decision be reviewed. The Group will be notified the outcome of this review within 30 working days.

Stage 2

The decision on the community asset transfer will be made by the appropriate Committee of the Council. The VCO will be informed of the decision in writing and if their application is rejected, the reasons for the refusal. The group will be given the opportunity to address concerns raised by Committee and resubmit their application at a later date.



Timescales

Indicative timescales for the application and assessment process are as follows:

Stage 1

Acknowledge receipt of application	- 5 days
Assess suitability of application	- 6 weeks
Notify community group of outcome	- 1 week from date of decision

Stage 2

Acknowledge receipt of application	- 5 days
Assess suitability of application	- 6 weeks
Seek decision from relevant Committee	- 3 – 6 weeks
Notify community group of outcome	- 1 week from date of decision

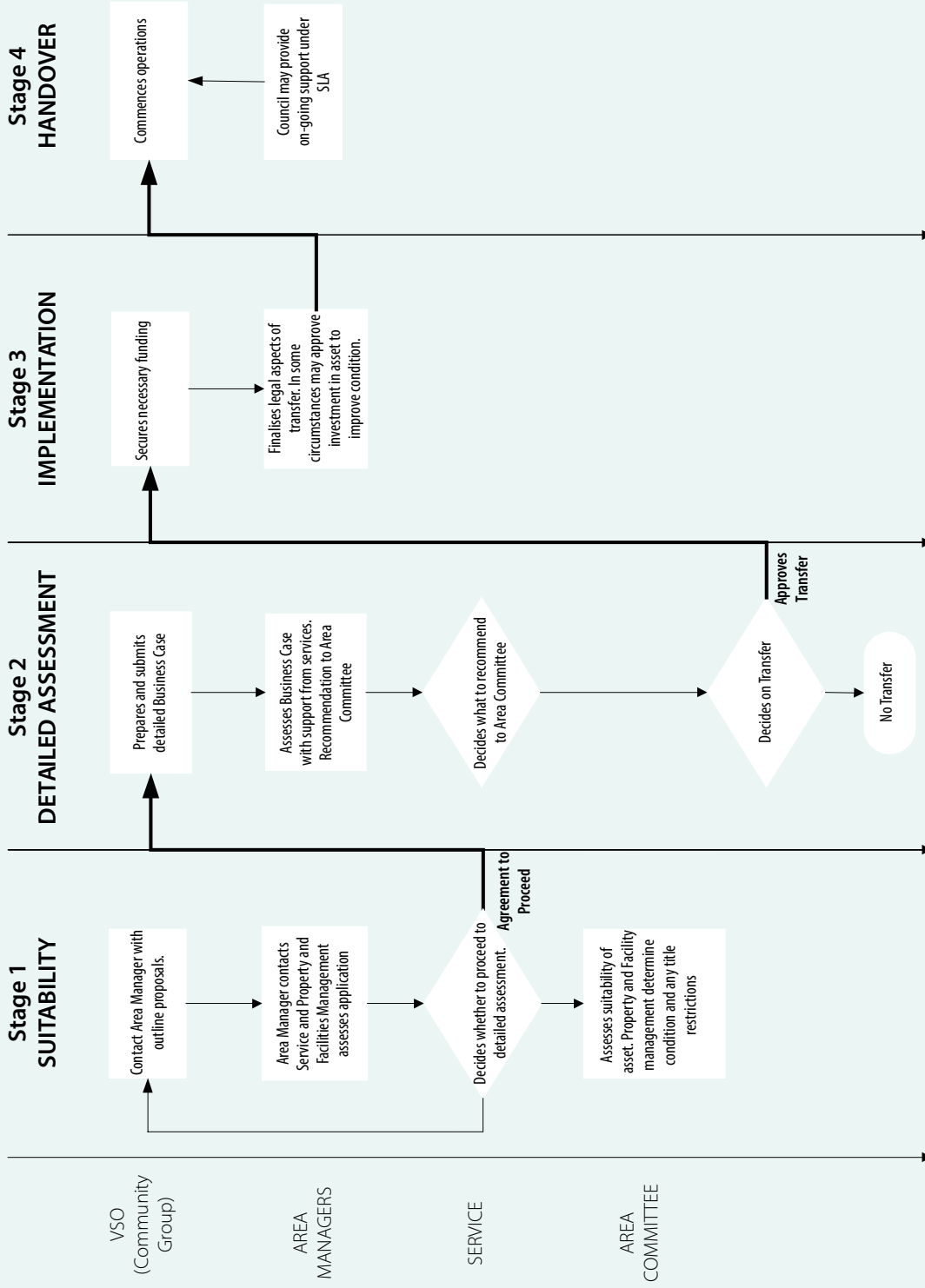
Stage 3

As long as necessary to complete negotiations and put funding in place. For the outright purchase of an asset a VCO will be given a minimum of 6 months to put the required funding in place.

Stage 4

The business case should make clear the duration of the project. The aim is for the group to be self-sustaining in managing an asset over the long term.

Summary of Community Asset Transfer Process





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