

## APPENDIX A

### **COMMUNITY ASSET TRANSFER** **FINAL DRAFT FOR APPROVAL BY POLICY AND RESOURCES**

#### **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, 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**

##### **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.
- instil 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 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.

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.

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:

1. the land to which the request relates, providing a clear plan of the site/asset.

2. 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).
3. 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.
4. a demonstration of community support from the community within which the asset sits.
5. the benefits which the Community Transfer Body or Community Organisation considers will arise if the Council were to agree to the request.
6. 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.
7. 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.
8. 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.

## **Supporting Documentation**

The following requires development in line with the policy:

Internal procedures document for officers only

Easy Read Guides for Community Transfer Bodies and Community Organisations

Procedure For Disposal at less than Best Consideration (recognising the need for transparency around the discount model)

Expression of Interest Form

Community Asset Transfer Application Form

## APPENDIX 1

### ASSET REVIEW PROCEDURE

#### 1 Introduction

- 1.1 Asset Management is the mechanism to support decisions made in regard to the assets the Council holds. As part of Aberdeenshire Council's approach to Asset Management it regularly reviews its assets to determine their suitability for current and future service delivery. This Procedure sets out the process by which the Council reviews its assets.
- 1.2 The objective of the process is to implement the Council's requirement to only hold assets that meet the Council's objectives for operational, socio-economic or investment estates. Identifying surplus property will enable actual and latent capital value tied up in potentially surplus assets to be realised. It will reduce liabilities, unlock the benefits of regeneration, enable Local Community Development Plan policies to be realised, and maximise the proceeds or land use benefit from particular disposals for the benefit of the Council and its communities.
- 1.3 Each service within the Council is responsible for producing strategies which identify the key assets required to fulfil its objectives within the Single Outcome Agreement, the Aberdeenshire Community Plan (and its community planning themes) and the Council Plan, as well as meeting the need for additional community infrastructure within areas of population growth.
- 1.4 The Corporate Asset Management Plan approved by P&R in January 2015 is developed in line with CIPFA guidance and is an umbrella plan incorporating service-specific asset management strategies covering Property, Open Space, Roads, Housing, Fleet and ICT assets. This plan informs the development of the Capital Plan which sets out the investment priorities for the Council over the next 15 years.
- 1.5 The Property & Facilities Management (P&FM) Service challenges the need for services to retain properties used by them that fall within the definition of under-performing assets.
- 1.6 Services are expected to review and update their asset management strategies at regular intervals to ensure the validity of future requirements and investment. In addition, P&FM works with services to challenge the use of assets. Assets that are identified as surplus to the needs of the Council as a result of these reviews are disposed of in accordance with the associated Surplus Property Procedure.

#### 2 Definitions

- 2.1 *Under-performing assets* are those assessed in the Asset Management Plan as poor or bad (i.e. rated C or D) in two or more categories, namely, condition, suitability, sufficiency, environmental factors, energy consumption and running costs. In addition a property should be deemed to be under-performing if any of the following apply:-
  - (i) Part of the property is vacant and likely to remain so for some time.
  - (ii) The alternative use value is greater than the existing use value and relocating the service elsewhere results in a net capital receipt.
  - (iii) The beneficial use or financial return (both revenue and capital) generated from the property is below that which could be achieved from an alternative use, or a disposal and alternative investment opportunity.

2.2 A property should be declared *surplus* if any of the following circumstances apply:-

- (i) It makes a relatively poor contribution to delivery of the Council's services, either directly or indirectly, does not generate appropriate income and has little or no potential for future service delivery or community regeneration purposes. This is dependent upon identification of alternative facilities/method of service delivery if service continues to be required.
- (ii) An alternative site has been identified which would achieve a lower cost and/or more cost effective service delivery i.e. has a lower opportunity cost.
- (iii) It has no viable potential for future alternative service delivery or for regeneration.
- (iv) Its condition, suitability, sufficiency and environmental factors result in high running costs that cannot be rectified through reasonable capital investment.
- (v) A change in service delivery methods results in the property being no longer required.
- (vi) A decision has been taken to replace the asset with a new build facility.

### **3 Identification of Surplus or Under Performing Property Assets**

3.1 Through the asset management process led by Property & Facilities Management

3.1.1 All property is held centrally and managed as a corporate resource. Consequently, property decisions must be taken at a strategic level rather than at an individual service level. As a result, the Council's land and buildings are managed by the P&FM Section within Infrastructure Services.

3.1.2 As part of its asset management function P&FM is responsible for reviewing the property assets required to support service delivery. This includes consideration of the requirement for current and future service delivery, the suitability of the assets from which services are currently delivered, the need for enhancement or replacement of those assets, whether services can be delivered from alternative assets and whether any existing assets should be declared as surplus to requirements to the delivery of services and, if appropriate, to the requirements of the Council. As part of any review, consideration should be made by Services to review alternative methods of service delivery.

3.1.3 P&FM is responsible for the collection of Core Fact data covering Property Assets. This Core Fact data extends to condition, suitability, backlog maintenance and Energy Performance Certificate information, along with utilisation/sufficiency being collected for specific asset groups. On a regular basis Core Fact data is refreshed and under-performing assets identified.

3.1.4 P&FM, in conjunction with the relevant service, examines the reasons for under performance. In addition, a review of the asset's overall contribution to fulfilling defined criteria for service delivery is carried out, e.g. the asset fulfils a statutory requirement; contributes to the Council's Strategic Priorities, etc. Should the asset prove to be essential to service delivery, a business case and option appraisal is prepared to address the under-performance issue.

3.1.5 Options may include:-

- (i) Targeted investment in the under performing asset to address matters of condition, suitability, energy performance, etc.
- (ii) Relocation of the service to another suitable asset, or colocation of Services to the asset by either the Council, a Partner Agency or 3<sup>rd</sup> Sector Partner, to improve the asset's sustainability/utilisation. This action may also permit release of an alternative asset.
- (iii) Procurement of a new asset.

- 3.1.6 When the asset proves to be non-essential, alternative proposals are to be considered, both in terms of asset requirements and service delivery methods. In addition, a business case is prepared recommending disinvestment for the existing, under-performing asset. Should the service delivered from the asset no longer be required, or alternative options for service delivery are preferred and implemented, the location of the asset under review is assessed for its strategic importance within the settlement for future service delivery or regeneration. The outcome of this analysis determines whether the asset is retained or declared surplus to the requirements of the Council.
- 3.1.7 In addition to reviewing an asset on the basis of its performance, a review also takes place where there is a perceived opportunity to develop or dispose of the asset in partnership with neighbouring proprietors or as part of a comprehensive redevelopment which can offer substantial capital and/or revenue returns to the Council, along with regeneration opportunities.
- 3.1.8 If a conclusion is reached that there is no longer a need for the asset then the process as outlined in Surplus Property Procedure should be followed.
- 3.2 Through strategic review of service priorities by the service
  - 3.2.1 Each service within the Council is responsible for periodically reviewing and refreshing its asset management strategies to take account of changing service priorities or changes to the way services are delivered. These reviews can take place outwith the timescales for reviewing and updating Core Fact data and can identify assets which are surplus to their requirements.
  - 3.2.2 P&FM supports these reviews through the provision of data on assets being used to deliver the services and undertakes assessment studies as required to help develop the business case for new or replacement facilities.
  - 3.2.3 A number of replacement facilities have been included within the capital plan covering such properties as schools, care homes, etc. When developing the business case, and subsequent Gateway Reports for these projects, it should be confirmed that the existing facility will be surplus to requirements of the service.
  - 3.2.4 If no alternative use can be identified the property should be declared surplus at the same time as approval is given for the new build project to go ahead. The asset can still be in use by the holding service at this time. There is no need for it to be vacant before declaring surplus; this action enables the disposal process to commence at an early opportunity, limits the timescale that assets remain vacant and mitigates any impact vacant assets have within communities.
  - 3.2.5 Making it clear that the asset will be surplus to requirements of the service once the replacement facility is ready will allow time to consider whether it is surplus to the requirements of the Council. Decisions must not be left until the asset is vacant as this could result in increased costs and/or reduced revenue or capital receipts.
  - 3.2.6 If the property is no longer required for current service delivery consideration should be given to its location and its potential for future service delivery, economic development or regeneration. Officers from Economic Development can help with this assessment, the outcome of which will determine whether the asset is retained meantime with alternative short term occupancy or offered for disposal.

### 3.3 Other ways in which a property asset may be identified as surplus

3.3.1 Apart from declaring assets surplus, disposals can arise in a number of ways. These include:-

- (i) A Property is identified as having potential for development or redevelopment and its service can be relocated.
- (ii) Following an approach from an outside party, e.g. developers, adjoining landowners etc.
- (iii) Through development partnerships such as asset backed vehicles or local housing associations.
- (iv) Following requests from community groups or public bodies for the transfer of an asset.
- (v) where a statutory duty to transfer arises, e.g. Compulsory Purchase, Statutory Wayleave, etc.

## 4 **Declaring a property surplus to the requirements of The Council**

4.1 Once it is concluded that an asset may be surplus to the requirements of the Council the property will be added to the Asset Disposal Schedule. Consideration will then be given to whether there may be any unintended consequences of such a declaration, failing which the property is declared surplus.

4.2 If Committee approval is required to stop providing a service from an asset it is the responsibility of the holding service to gain that approval prior to the property being declared as surplus.

4.3 Should the property not be suitable for declaring surplus, the Estates Section will advise of the appropriate course of action that will be required.

## 5 **Consideration of whether to dispose of property**

5.1 The long term revenue income of the Council requires to be preserved or increased. Any opportunity to increase revenue will be fully investigated by officers during the surplus property process. In the circumstances, there will be a general presumption against disposal of assets capable of producing income unless officers are of the view that a substantial capital receipt could be generated, or an opportunity exists to facilitate this via partnership with adjoining owners or developers, which offsets the loss of revenue income.

5.2 Some categories of property are not considered suitable for sale on the open market.

### (i) **Industrial and commercial properties**

There is a general presumption against disposal of properties within this part of the portfolio, except in cases where the likely capital receipt is significantly higher than the capital value to the Council of the likely income stream or where the justification on Economic Development grounds significantly outweighs the value to the Council of maintaining the income stream and the property is to be sold at market value.

(ii) **Playing fields, open space and amenity land**

Assets in these categories are considered to be valuable community resources, to be enjoyed by the wider community. There will be a general presumption against the disposal of such assets. The general presumption will not apply in relation to playing fields where there is an over-provision in the area or alternative provision is being made and the benefit to the Council justifies disposal. Before disposing of playing fields Planning and **SportScotland** are consulted where appropriate for views on the level of provision and the suitability of replacement facilities.

5.3 Some assets may be subject to disposal despite not having been previously declared surplus.

(i) **Disposal of assets for community regeneration**

Disposal to developers for community regeneration schemes by way of asset-backed vehicles or to Registered Social Landlords (RSL) for the development of affordable housing and extra care schemes. In these cases the Council must direct whether or not disposals will take place at the best price that can reasonably be obtained or whether prices are to be discounted to achieve the outcomes of the proposed schemes. It is also beneficial in some circumstances to transfer land for a development by way of a building licence agreement, by transferring the legal interest in the land, and taking the capital receipt on completion of the development. Alternatively it is possible to transfer the legal interest at the outset but reserve a right of pre-emption at historic cost if the development does not proceed by a certain date. One of the benefits of such disposals is that through appropriately worded conditions or covenants, greater control can be exercised through the land transaction than through the Council's planning controls.

(ii) **Private Finance Initiatives (PFI) or PPP's**

This is another form of disposal in which the control of the land and building asset together with risks relating to availability and maintenance, etc., are transferred to the contractor for the length of the contract. The Council retains service use of the asset and a reversionary property interest. Disposals of property under major PFI/PPP or other similar public sector works contracts are subject to European Procurement rules.

(iii) **Transfer to the community**

The Council has a separate Community Asset Transfer Policy that details the basis on which it will consider transfers to community groups and the terms that apply to such transfers.

## **6 Notification of Ward Members**

6.1 The Estates Section must notify Ward Members and the Area Manager that the asset is surplus to the needs of the Council and is being considered for disposal. Ward Members will be given 14 days to respond.

6.2 If Ward Members disagree with a proposed disposal they must present a case for the asset's retention. If officers do not agree that the property should be retained, the matter will be reported to the relevant Area Committee seeking permission to dispose.

## **7 Corporate Landlord Model**

- 7.1 Currently services retain a role in the management of the property assets used by the service. This includes the need for staffing resources and for budget provision in relation to property matters. The Council has largely moved to a Corporate Landlord Model, which places the responsibility for property matters in the hands of the Property & Facilities Management Service. The intention is that the Council will soon move to a full Corporate Landlord Model. This will leave services to concentrate on service provision and place the responsibility for all property matters in the hands of P&FM. This Corporate Landlord role will include the responsibility for carrying out asset reviews to match the needs of each service to the properties it occupies. A report will be brought to a future cycle of the Policy & Resources Committee (later in 2016) setting out the proposals for the introduction of the full Corporate Landlord Model.

## **8 Property holding costs**

- 8.1 At present, once a property is deemed to be surplus to the requirements of a service its associated revenue costs for business rates/council tax, utilities, etc., become the responsibility of the Estates Section of Property and Facilities Management (within Infrastructure Services) or for assets that are occupied at that time, revenue costs should become the responsibility of the Estates Section once the property becomes vacant. On the property being deemed surplus (or becoming vacant, if later) the budget for these elements must be transferred from the relevant service to Estates. The budget for repairs and maintenance will already be held within Property and Facilities Management. Once a full Corporate Landlord Model is introduced all property related budgets will be held by P&FM and there will be no need for this transfer of budgets once a property is declared surplus.

## **9 Data collection**

- 9.1 A corporate schedule of the use and allocation of all property is maintained in accordance with CIPFA guidance on local authority asset registers, as contained in the Code of Practice on Local Authority Accounting in the United Kingdom. All Council owned property (other than Common Good property) is held within the asset register. Surplus property is separately identified in the register. The register is updated annually. In addition, P&FM maintains an Asset Disposal Schedule. This lists all property that is currently identified as surplus, together with any properties that have been identified as being potentially surplus. For example, when a facility is being considered for replacement, the existing facility will be listed as potentially surplus.

## APPENDIX 2

### PROPERTY DISPOSAL PROCEDURE

#### 1 Introduction

- 1.1 The purpose of this document is to set out a disposal process following a property being declared surplus and suitable for disposal (see Asset Management Procedure).
- 1.2 Some categories of property may be disposed of by means other than exposure to the open market. Consideration of whether the property to be disposed of falls into one of these is required before marketing the property.

#### 2 Matters to be considered prior to disposal

##### 2.1 Listed buildings/buildings in Conservation Areas

- 2.1.1 Prior to disposal on the open market, the Council will give The North East Scotland Preservation Trust (NESPT) the opportunity to purchase any surplus listed building that appears on the Listed Buildings at Risk Register, or that requires significant investment. NESPT will be required to submit details of its proposals for the building to achieve a viable future use within 28 days if possible. The rationale behind this is that NESPT can secure funding that is not available to local authorities and should take a lead role in preserving buildings that contribute to local heritage. NESPT should be informed that the building is surplus to Council requirements as soon as all services have informed Estates that they do not require the property.
- 2.1.2 Where NESPT does not wish to acquire a listed building the Council will seek to ensure that any person/body wishing to acquire the building is in a position to restore the property and is able to fulfil its future responsibilities as the owner of a listed building.
- 2.1.3 Similar assurances will be sought when the Council is disposing of a building located in a Conservation Area and that building requires significant investment. Again, if the Council is seeking to lease a listed building (or building in a Conservation Area) on a repair and maintenance lease it should only do so if the tenant can assure the Council that the tenant is able to maintain the building to the required standard. In either case the aim is to avoid the building falling into disrepair and then the lessee/owner approaching the Council for financial assistance to carry out the work.
- 2.1.4 On occasions the Council may wish to use Compulsory Purchase powers to acquire a listed building that is no longer being effectively maintained by the owner. Before seeking to acquire such buildings under CPO the Council will advertise its intention to do so and will invite interested parties to submit their proposals for the building, together with financial evidence of their ability to implement these. The Council will then enter into an agreement with the preferred party to transfer the building following successful CPO. This process minimises the risk to the Council. As part of the process the Council will make NESPT aware of its intentions and give it an opportunity to submit proposals.

## 2.2 Use by other public bodies

- (i) As a member of the North East Scotland Joint Public Sector Property Group, the Council has adopted the North East of Scotland Integrated Property Strategy. One aspect of this is that participating public sector partners have entered into a "Surplus Property Protocol" which affords them first refusal to acquire a surplus property prior to it being placed on the open market. Partners are given 21 days to express an interest in a surplus property. The protocol dictates that transfers of property will be at market value.
- (ii) Properties not to be circulated include development sites on industrial estates, sales of small areas of amenity land, property which has previously been the subject of a decision by either a Committee or the Management Team and for which a course of action has already been approved, sales of houses under right to buy legislation, sales to statutory undertakers for infrastructure purposes, properties being sold under pre-emption clauses, property which is the subject of a Compulsory Purchase Order.

## 2.3 External consents

- 2.3.1 External consents are required to effect the sale of certain types of properties e.g. common good, schools, playing fields, land held in trust, etc. It can take some considerable time to obtain these consents. The asset disposal process requires that the Estates Section should establish whether there are any constraints on the site, title conditions, legal burdens, planning, statutory authorities, etc., at the earliest point possible.
- 2.3.2 Irrespective of the intended sale price, all proposed Common Good disposals must be approved by the appropriate Area Committee. This will require changes to the Scheme of Delegation and the List of Delegated Powers to Officers.
- 2.3.3 Ownership in a trustee capacity must be carefully considered as a disposal may require the consent of the Charity Commission and/or the Court of Session. Disposal of property held by Education under the Education Act will need to be considered carefully as there may be a requirement to offer the property back to the original owner if no longer required for educational purposes.

## 2.4 Fund within which property is held

- 2.4.1 The Estates Section will clarify whether the property was acquired under an act which determines it be an asset held on the Housing Revenue Account, General Fund or as Common Good.

## 2.5 Financial constraints

- 2.5.1 Further checks are implemented to establish whether there are any financial constraints, such as the property having been the subject of assistance funding in the past, that necessitate the repayment of grant monies.

## 2.6 Properties acquired under compulsory purchase

- 2.6.1 Scottish Government recommends that where a property was purchased by or under the threat of compulsory purchase, the "Crichel Downs" rules should apply. Essentially this requires an offer to sell the property back to the previous owner. The provisions of Crichel Down and the Council's requirements to adhere to best value will be examined in each case.

## 2.7 Planning permission

Where appropriate, town planning investigations are implemented to establish the authorised use and the potential for valuable alternative uses of the property. For some larger sites a reallocation of use through the Local Development Plan may be required before a more beneficial use for the asset can be successfully promoted, e.g. change of use from community to say industrial. For some buildings or smaller sites the Council may apply for planning permission for an alternative use to enhance the value of the asset before sale.

## 3 **Disposal of the property**

### 3.1 Valuation

3.1.1 A valuation and appraisal of the property for disposal must be undertaken at the earliest opportunity and continually reviewed throughout the disposal process. In many cases valuations can be carried out in-house. However with regard to high value cases or where it is decided to negotiate a disposal to a single party rather than offer the property on the open market, it may be appropriate to obtain a valuation from a third party.

### 3.2 Asset Disposal Schedule

3.2.1 The Estates Section maintains an Asset Disposal Schedule providing an up-to-date list of Council owned assets that have been declared surplus or have been identified as possibly being subject to future disposal.

### 3.3 Options for disposal

3.3.1 These could include:-

- (i) open market
- (ii) sale by Private Bargain
- (iii) informal Tender
- (iv) formal Tender
- (v) auction
- (vi) special purchaser

3.3.2 Any of the above methods could be used depending on circumstances. A flexible approach must be maintained in order to deal with the variety of property disposed of by the Council and the state of the property market at any given time.

### 3.4 Timing of disposal

3.4.1 This needs to be considered against the background of the Council's budget and capital programme requirements, current state of the market, local and regional planning framework and potential for property values to change in the future. Consideration should be given to obtaining planning consent, particularly where there is potential for redevelopment or investment in the property prior to disposal to enhance its value.

3.4.2 When a disposal of a surplus property is not appropriate due to market conditions, a temporary use should be found in order to mitigate void costs and improve security. Any external letting should be by way of a short term lease in order that vacant possession can be easily obtained.

### 3.5 Marketing Strategy

- 3.5.1 An appropriate marketing strategy should be developed for use by either the in-house or external consultants who will undertake the disposal.
- 3.5.2 Each property will be considered on its own merits and a marketing strategy will be developed to ensure that each asset maximises its capital receipt whilst taking into account economic development and regeneration considerations. In addition to appropriate press promotion, increased use of web-based facilities, e.g. Aberdeen Solicitors' Property Centre, will be considered to ensure that maximum exposure to potential purchasers/tenants is achieved.

### 3.6 Disposing of the asset

- 3.6.1 In disposing of the asset Estates follows the detailed procedure set out in the Estates Office Manual Section B (Procedure for the Disposal of Property).
  - 3.6.2 Depending on the type of asset, location, price, condition, etc., the time taken for disposal may vary considerably and Estates should review the disposal strategy adopted for each asset on a regular basis, especially where there is a lack of interest in the asset.
  - 3.6.3 If an asset has not generated sufficient interest or has been on the market for some time, officers consider whether to put the property to auction.
  - 3.6.4 If auction is determined the most appropriate form of disposal, Estates confirms whether the reserve price to be set is above £60,000. If this is the case, the appropriate Area Committee approval should be obtained to set the reserve, below which the property cannot be sold. If the reserve price is to be set at less than £60,000, officers will notify Ward Members and the Area Manager of the intention to put the property to auction and of the reserve price.
  - 3.6.5 If the asset is sold at Auction, at the set reserve price or above, officers will notify Ward Members of the sale.
  - 3.6.6 For assets that generate sufficient interest, a closing date is generally set. Any party that has noted an interest in the asset is advised of the closing date and asked to submit its best and final offer.
  - 3.6.7 Where an offer over £60,000, that is considered to be acceptable, is received after a property has been exposed to the market for a suitable period and/or a closing date has been set, the matter is referred to Area Committee. The report sets out the offer (s) received, the name(s) of the potential buyer(s), their proposed use for the asset and officer recommendations. The Committee decides the appropriate action to be taken.
  - 3.6.8 For assets being sold at below £60,000 the Scheme of Delegation states that the matter shall be determined by appropriate officers in exercise of their delegated powers. In such cases a bulletin is prepared to inform Members of the outcome of the sale.
  - 3.6.9 Officers then instruct Legal & Governance to formally conclude the disposal.
- 3.7 Capital receipts from disposals are allocated as follows:-
- (i) General Fund - to the Capital Receipts line in the Capital Plan.
  - (ii) Housing Revenue Account – to the HRA Account
  - (iii) Common Good – to the appropriate Common Good Account

#### **4 Additional consents required following agreement of sale terms**

##### **4.1 Disposal at less than best consideration**

Other than in relation to Community Asset Transfers, any proposal to dispose of property at less than market value is a matter reserved for decision by the Policy and Resources Committee, or in the case of Housing Revenue Account property, the Social Work and Housing Committee.

##### **4.2 Disposals from or to the Housing Revenue Account (HRA)**

All disposals from, or acquisitions by, the HRA require the approval of Scottish Government whether at full market value or otherwise. This includes disposals from the General Fund to the HRA and vice versa.

##### **4.3 Disposals of Common Good property**

Common Good Properties require a Common Good Order to be obtained prior to sale. All proposals to dispose of Common Good property will be referred to Area Committee, no matter the level of consideration.

#### **5 Ownership enquiries**

- 5.1 To reflect the cost incurred by the Council in responding to ownership enquiries the Council will charge a fixed amount of £500 in respect of each plot on which an enquiry is made.

#### **6 Community Asset Transfer**

- 6.1 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. 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.

## **DRAFT – Easy-to-read guide**

(Introduction)

### ***A unique opportunity for you and your community***

If you are part of a local community organisation you now have the opportunity to make an even bigger impact with the work you are doing in your neighbourhood. Whether your work involves health and well-being; supports the most vulnerable; or encourages economic development, then read on!

The Scottish Government is committed to ensuring that residents have the opportunity to lead the way in their own neighbourhood as a direct result of a new Act known as The Community Empowerment (Scotland) Act.

It simply means that community groups and organisations have the right to apply to Aberdeenshire Council for the transfer of ownership of a specific building or piece of land currently under Council ownership. Equally, where it is the best option, a lease arrangement can also be made.

This is known as Community Asset Transfer, or CAT, for short.

Nothing else could provide residents with more control over the way their own neighbourhoods improve, develop and prosper. So if your organisation is keen to develop because you know there is more you can do, then now is the time to grasp the opportunity.

For those groups where leasing is thought to be the most appropriate option (as opposed to outright ownership) preferential rents can be agreed for existing organisations. Community Organisations take many forms and have different types of legal structures ie charities, voluntary organisations, social enterprises and co-operatives. But the main issue is NOT on the precise “model” of the organisation or group– but that your group is recognised within your community as important, open and transparent. As a result, a wide range of groups and organisations are able to take advantage of this opportunity.

### ***Why is Aberdeenshire Council keen to do this?***

The Council recognises that no-one knows your immediate neighbourhood and its challenges as well as you do, so by transferring an asset, community groups can do more proactive work and have a genuine stake in the future development of the area in which they live and/or work.

At the same time, ownership of a building or land is a terrific way to underpin the foundation of your organisation and secure a long-term future. In many situations you will be able to ensure a steady income stream by the effective use of the bricks-and-mortar, although this will vary from group to group. After all, every neighbourhood is different and has varying needs and priorities.

Additionally, it is very likely that you will be able to use the asset much more effectively and ultimately stimulate further activity in your area as a result of your increased effectiveness and the awareness that will inevitably derive from your work.

### ***So how does it work?***

The process is very straightforward!

**Firstly**, you complete a short form which confirms to Aberdeenshire Council that your group/organisation has a special interest in acquiring a building (or plot of land). This is known as an Expression of Interest.

This means there can then be informal discussions with the relevant Area Manager for your area who will review all the specific circumstances of your organisation and the asset which is of interest to you. Consideration will be given to long-established organisations who can demonstrate stability and a secure track record of activity. A new organisation will receive equal consideration, providing it can demonstrate the necessary experience and expertise to manage the asset.

Aberdeenshire Council will give some advice and whilst it is only informal at this stage, it will help the group decide whether to continue with the Application or not.

The Council will provide advice on: whether a property is available and not restricted; the applicant's governance arrangements and what the applicant needs to consider as part of a formal application. This will include the development of a business plan and agreed timescales.

{Insert Link To Application Form}

If the group decide to submit a formal application for a Community Asset Transfer Aberdeenshire Council and its third sector partners will provide appropriate support and assistance as required.

**Secondly**, the group will have to prepare and submit a formal CAT Application.

{Insert Link To Application Form}

This is a more detailed application process and the group will have to demonstrate how they are going to use the asset and that there is community support for the application.

A business plan will have to be developed and financial information supplied on both capital and revenue costs. The Council recognises that assets can vary significantly in their value and the development of the business plan will be proportionate to the asset under consideration.

At the end of this process the relevant Area Committee will decide whether or not to proceed with the application.

If the Area Committee decide not to progress the applicant will be able to appeal this decision and the matter will be considered by a specially established committee of Elected Members from across Aberdeenshire.

{Insert Link To Details of the Appeals Process}

**Finally**, if the transfer is agreed work will commence to implement the transfer and handover the asset so the group can begin to use the asset to deliver benefits to its community.

To find out more about this exciting opportunity contact {Insert Area Managers details}.

For information on Aberdeenshire Councils detailed CAT Policy {insert link}

2016

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