

**ABERDEENSHIRE COUNCIL  
ASSET TRANSFER (AT) POLICY**

**APPROVED 14 NOVEMBER 2024**

**1. Description of Asset Transfer (AT)**

- 1.1 AT involves the transfer of responsibility for an asset from the Council to a Community Transfer Body or Community Organisation.
- 1.2 This transfer can be affected 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.
- 1.3 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.
- 1.4 For the Council to dispose of a property at a consideration less than the market value it must appraise and compare the costs, cost benefits and dis-benefits of the proposal. The Council must satisfy itself that disposal for less than market value is reasonable, and the disposal is likely to contribute to any of the following purposes, as outlined in the Community Empowerment (Scotland) Act 2015 Part 5, 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.**
- 1.5 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.

**2. Asset Transfer – Policy Statement**

- 2.1 Aberdeenshire Council is committed to 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 and the development of Place.
- 2.2 Importantly, these solutions not only meet the needs of local people, but they can also contribute to the delivery of both the Council’s Local Outcome Improvement Plan (LOIP) and Scottish Government National Outcomes, and emerging Place Plans and Community Action Plans.
- 2.3 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.
- 2.4 The Council recognises that community ownership of assets can:

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

2.5 The aim of this revised policy is to ensure Aberdeenshire Council has in place a transparent process for the receipt and assessment of Asset Transfer requests. Although Scottish Government Guidance provides that public authorities are to **assess requests transparently against a specified list of criteria**, a request will be approved unless there are reasonable grounds for refusal. 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.

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

- a. the number of asset transfer requests received.
- b. the number of such requests which the Aberdeenshire Council has both agreed to and refused.
- c. 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.
- d. 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.
- e. 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.

2.7 The ambition of this policy is to align with the principles of the Community Empowerment (Scotland) Act 2015.

### 3. Local Policy Context

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

- a. Local Outcome Improvement Plan.
- b. Council Plan.
- c. Asset Management Strategy.
- d. Asset Disposal Strategy.
- e. Place Plans.

- f. Local Community Plans.
- g. Community Action Plans.

- 3.2 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<sup>1</sup>, the Council will continue this process and the asset may be disposed of prior to the conclusion of the AT process. The Surplus Property Policy confirms that, except in the above circumstances once an 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.
- 3.3 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.
- 3.4 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.
- 3.5 Whilst fully supporting the principle of asset transfer this policy also recognises that currently operational 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.
- 3.6 In addition, some assets may have conditions, or burdens on them making them unsuitable for transfer.
- 3.7 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.
- 3.8 Any transfers involving Housing Revenue Account property assets may also be subject to the approval of Scottish Ministers in terms of the Housing (Scotland) Act 1987.

#### **4. Scope of the Policy**

- 4.1 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” *for example but not limited to* town halls, village halls, community centres, bowling greens, pavilions, public conveniences, country parks, caravan parks.
- 4.2 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

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<sup>1</sup> The date on which a Formal ATR is to be regarded as having been made is not the date when a decision is reached that all information has been received but (retrospectively) the actual date on which the last of the items or information required to be contained in or accompany the ATR (in accordance with Section 79(4)(a) to (g) of the Act and Regulation 3(2)) is received by the Council.

income for the Council and supporting the economic development of the area and may not be considered suitable for transfer.

- 4.3 The Council will determine whether or not an asset is suitable for transfer on a case-by-case basis, against the following broad criteria:
  - a. Benefits to the respective parties.
  - b. Potential loss of any existing income.
  - c. Retention of assets for direct service delivery.
  - d. Asset has been declared surplus by the Council or is already subject to a transfer request.
  - e. Potential impact on the delivery of the Capital Plan.
  - f. Savings to Community Planning Partners through service delivery.
- 4.4 Full transfer of ownership will only be agreed with community transfer bodies which the Council considers having 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, as outlined in the Community Empowerment (Scotland) Act 2015 Part 5.
- 4.5 The Local AT Operational Group shall consist of a minimum of the Area Manager, Finance, Legal, Property, Economic Development officers and a representative of the budget holding service responsible for the asset. Other appropriate specialist officers will provide support as and when required. In order to adhere to the required timescales, the Area Manger will arrange for this group to meet monthly, meetings may then be cancelled if not required.
- 4.6 The Asset Transfer Steering Group exists to support the processes of the Local AT Operational Group. The group will be chaired by the Business Services Director; or substitute and consist of a minimum of an Area Manager, Finance, Legal, Property, Economic Development Officers and appropriate specialist officers as required. The Steering Group will recommend training and review sample application processes to build best practices and consistency of approaches to asset transfer requests.

## **5. Community Transfer Body or Community Organisation**

- 5.1 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.
- 5.2 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:

A definition of the community to which the body relates.

- a. That the majority of the members of the body are members of that community.
- b. That the members of the body who are from that community have majority control of the body.
- c. Provision that membership of the body is open to any member of that community.
- d. A statement of the body's aims and purposes, including the promotion of a benefit for that community.
- e. Provision that any surplus funds or assets of the body are to be applied for the benefit of that community.

- f. 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.

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

- a. that the activities of the organisation are in keeping with its founding principles, objectives and values.
- b. 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.
- c. compliance with all relevant legal and regulatory requirements, for example the Equality Act 2010 and seeks independent advice where required.
- d. 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.
- e. that it is non-political and is not engaged in supporting candidates for political office.

5.4 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.

5.5 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.

5.6 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.

## **6. Applying for an Asset – Stages of Process**

6.1 The process for groups is as follows:

- Expression of Interest (optional, informal stage but allows two-way flow of information between Aberdeenshire Council and the group).
- Asset Transfer Request (formal stage).
- Conveyancing.

## **7. Expression of Interest (EOI) - Informal**

7.1 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. These informal discussions will help resolve any issues that might arise during a formal Asset Transfer Request. The result of initial discussions, instigated from the response to any Expressions of Interest will not prevent the Community Transfer Bodies /Community Organisation from proceeding to submit an Asset Transfer Request under the 2015 Act. The intention of this early informal stage is to gather information and provide support to voluntary and community organisations.

7.2 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 (ATR) was made<sup>2</sup>, the Council will continue this process and the asset may be disposed of prior to the conclusion of the AT process.

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

- a. the land to which the EOI relates, providing a clear plan of the site/asset.
- b. 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 EOI).
- c. 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.
- d. a demonstration of community support from the community within which the asset sits.
- e. the benefits which the Community Transfer Body or Community Organisation considers will arise if the Council were to agree to the request.
- f. 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.
- g. 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 EOI the duration of any such lease, and any other terms and conditions that the organisation considers should be included in any such lease.
- h. any other terms or conditions applicable to the request.

7.4 The Community Transfer Body or Community Organisation must also provide:

- a. 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.
- b. 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.

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

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<sup>2</sup> The date on which a Formal ATR is to be regarded as having been **made** is not the date when a decision is reached that all information has been received but (retrospectively) the actual date on which the last of the items or information required to be contained in or accompany the ATR (*in accordance with Section 79(4)(a) to (g) of the Act and Regulation 3(2)*) is received by the Council.

7.6 The Council will then provide the applicant with advice regarding the suitability of the EOI. 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 Asset Transfer application.

The Council will take into consideration the following matters:

- a. the reasons for the Expression of Interest,
- b. any other information provided in support of the Expression of Interest whether such other information is contained in the request or otherwise provided),
- c. whether agreeing, but not essential for approval, to the request transfer of the asset would be likely to promote, address or improve:
  - A Sustainable Economy,
  - Connected Communities,
  - Living Well Locally,
  - Climate Change.
- d. whether transfer of the asset would be likely to reduce inequalities of outcome which result from socio-economic disadvantage,
- e. any other benefits that might arise if the EOI 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 EOI 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 EOI and
- i. such other matters (whether or not included in or arising out of the request) as the Council considers relevant.

7.7 The Local AT Operational Group will then provide advice 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.

7.8 The Local AT 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).

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

7.10 The Local AT Operational Group will advise the Community Transfer Body or Community Organisation of its view, and the reasons for this.

7.11 Marketing of the asset can commence or continue at this stage as Expression of Interest is informal and is not legally recognised as part of the formal AT process.

## 8. Asset Transfer Request – Detailed Assessment

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

- a. 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.
- b. 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.
- c. highlight any Common Good implications. Assets held on Common Good land may require Common Good Orders to be obtained before a 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.
- d. require the Community Transfer Body or Community Organisation to provide evidence of formal consultation with the community and the relevant Community Council for that area, such consultation being a requirement under the Community Empowerment (Scotland) Act 2015. This evidence will form part of the formal assessment.
- e. where appropriate, provide information it has available in relation to running costs, maintenance costs etc.
- f. 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.

8.2 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 make 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 AT process has been exhausted. However, should no valid request be received, the Council reserves the right to dispose of the asset.

8.3 At this stage the Community Transfer Body or Community Organisation will be required to submit a valid application form. In addition to the requisite information as laid out in Section 79 of the Act, Aberdeenshire Council requests applicants to outline their detailed business case for the transfer. In doing so Aberdeenshire Council requests the applicant to provide the following documentation to support their business case:

- a) confirmation that the organisation has effective governance and management arrangements.
- b) Evidence that where specific services are being delivered, staff will have the requisite qualifications for the managing and operation of the service. If services are to be



delivered to U18's and/or vulnerable groups appropriate evidence that protection policies are in place.

- c) details of any service the organisation wishes to take over from the Council.
- d) Information on how the organisation intends to use the asset.
- e) demonstration of a clear community/social demand and benefit for the transfer and the community benefits to be derived from the transfer.
- f) evidence that there is community backing for the transfer and that consultation has taken place within the community.
- g) evidence of engagement with Elected Members for that Ward in relation to the transfer.
- h) demonstration that the group has the capacity to manage the asset and has members who have the necessary skills and experience.
- i) demonstration that the organisation has the ability to conclude the transfer within 9 months of the date of the decision notice.
- j) confirmation that the organisation has considered its responsibilities in terms of Subsidy Control rules and any implications the transfer may have. Domestic and international subsidy control obligations 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.
- k) 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.

8.4 The Local AT 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.

8.5 This recommendation will be formally reported on the next appropriate Area Committee date. The Committee is able to consider this item in terms of Section B.9.2.6 of the List of Committee Powers in Part 2A of the Scheme of Governance.

8.6 In line with Aberdeenshire Council's Scheme of Delegation, Section B.9.2 - Part 2A 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 Business Services Committee for determination Set out in Section C.5.1.1 of Part 2A.

8.7 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. The decision will be issued within 6 months of the validation date unless a longer period is agreed by the Council and Community Transfer body. An extension should always be agreed before the prescribed (or previously extended) period expires.

8.8 Marketing of the asset will **not be commenced** during this period. Assets already being marketed when the application is validated will continue to be marketed. ATRs may be considered alongside any commercial offers.

## **9. Asset Transfer – Appeal Process**

9.1 In line with the requirements of the Community Empowerment (Scotland) Act 2015, Community Transfer Bodies or Community Organisations can pursue a review or appeal of a decision to decline an asset transfer request.

9.2 If an application:

- (i) is refused, or
  - (ii) the terms and conditions in the decision notice are significantly different from those in the request, or
- (iii) if no decision notices is issued within the required period;  
then the Community Transfer Body or Community Organisation can write to the Chief Executive of Aberdeenshire Council within 28 days asking that the decision be internally reviewed.

9.3 The Community Empowerment Review Body will review the decision and convene an appeal 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.

9.4 Such a Review Body will be made up ensuring that the local Councillors at area level involved in the initial decision-making process are not involved in any review process. Thus, ensuring a fair, independent, and transparent review.

9.5 If the review by the Council does not resolve the issue or if the request is made to any other relevant authority, the Community Transfer Body or Community Organisation can appeal, under Section 86 of the Act, to the Scottish Ministers. Such a request should be submitted within 28 days of the original or revised (following review) decision notice.

9.6 On appeal, the Scottish Ministers can consider any aspect of the previous decision, whether it is mentioned in the appeal or not.

9.7 They can:

- (i) allow the appeal or
- (ii) they can dismiss it.

Procedures for the appeals process is set out in Asset Transfer Request (Appeals) (Scotland) Regulations 2016. If the appeal is allowed the Scottish Ministers must give a direction to the Council, requiring it to issue a new decision notice, thus replacing the original decision notice. Thereafter the process continues as set out in this Policy at Stage Two.

9.8 If the request is refused following an appeal, the asset transfer process comes to an end. In all cases the final decision lies with the Scottish Ministers with no further route of appeal.

## **10 Stage Two - Conveyancing Stage**

10.1 For successful applications the Council will set out the terms of any proposed transfer. The Local AT 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. The Council also reserve the right to charge a fee for legal services required in line with Charging Policy.

10.2 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.

10.3 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 AT Operational Group in conjunction with the Head of Legal and People.

10.4 In the event of disposal by way of a Lease (not sale) then the lease issued by the Head of Legal and People 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.

Also included in the terms of the lease will be reference to lease renewal at the end of the agreed lease period.

10.5 If transferring ownership, the conditions of sale issued by the Head of Legal and People 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.

A clause will be added to both transfer of ownership and lease documents where the Community Transfer Body subsequently change the use of the asset from the use agreed in the original transfer.

For clarity, in the event that the original or subsequent Community Transfer Body changes the use of the asset from the use agreed in the original transfer and intends to utilise the asset for purposes different from those initially agreed upon, the Council may exercise one of the following options:

- Reclaim possession of the property, or
- Request additional financial compensation (in the case of a sale) or an increased rental rate (in the case of a lease)

10.6 Use of conditions to protect any discount of price to a Community Transfer Body / Clawback clause

Aberdeenshire Council are required to achieve Best Value in their property transactions. In the case of asset transfer to community bodies, disposal at less than market value, or with other support or concessions, may be justified by reference to the expected benefits to be delivered by the project. In such a situation, Aberdeenshire Council can seek to protect themselves against the risk that the benefits may not be delivered by including clauses in the contract requiring some form of restitution if the project fails.

It is for Aberdeenshire Council to determine whether it is appropriate to include such conditions in the contract (and for community transfer bodies to decide whether to accept the transfer on those terms). Where such conditions are used, they must be appropriate and proportionate.

Where it is agreed such conditions will be imposed to protect such a discount then these will be included in the decision notice.

There are a range of legal mechanisms that can be used by the Council in seeking to protect their interests, including standard securities, and minutes of agreement, which may contain a range of provisions and be linked to standard securities. The Council may have the powers to create certain types of real burden on title, under the Title Conditions (Scotland) Act 2003. A different range of options will be needed to reflect the individual circumstances of each case and how appropriate and effective the mechanism chosen is at obtaining the desired effect. It is for the Council to determine the appropriate mechanism.

For clarity, the concept of "clawback," which refers to a provision whereby the Council may be entitled to a portion of the profits should the property be resold at a higher value.

It is imperative to note:

- The Council retains discretion regarding the inclusion of these conditions in the contractual agreement.
- Community organisations have the prerogative to either accept or decline these terms.
- Should these conditions be implemented, they must adhere to principles of fairness and reasonableness.

10.7 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.

10.8 In the case of existing leases which do not contain provision for extension at the end of the period of lease, current legislation makes no provision for such extension. In such circumstances it would be necessary for the lessees to submit a fresh asset transfer application