



# STONEHAVEN TOWN PARTNERSHIP

## ADVICE AND GUIDANCE TO VOLUNTARY AND COMMUNITY GROUPS IN ABERDEENSHIRE

### ON

## COMMUNITY ASSET TRANSFER

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### Preamble

The Stonehaven Town Partnership (STP) was the community group involved in the transfer from Aberdeenshire Council (AC) of the Queen Elizabeth II Caravan Site to the Caravan Club of Great Britain (CCGB) via lease to the STP.

Although this particular transfer began before Aberdeenshire Council's CAT policy was finally approved and implemented, the STP believes that its experience enables it to comment on the policy and in particular the process of transferring a Council asset to a community or voluntary organisation (CVO).

In retrospect and based on the experience of this particular transfer, the STP believes that, as a framework, the Council's CAT policy should be flexible enough to enable it to be applied to most transfers but would benefit from review.

The Guide, "Community Asset Transfer – A Guide for Voluntary and Community Groups", which accompanies and supports the Policy is considered by the STP to be a document which CVOs will find useful.



STP recognises that not all of what is covered by the Policy and the Guide applied to its transfer of the Queen Elizabeth II Caravan Site. For example, this transfer involved three parties (AC, STP, CCGB) and neither document allows for this. Also, the section in the Guide relating to the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) among others did not apply in this case.

The transfer of the Queen Elizabeth II Caravan Site to the CCGB via STP was ultimately a success but STP quickly became aware that there was much to be learned from the experience for all involved which could be shared with others.

STP therefore decided to establish a sub-group consisting of three directors of STP who had not been involved in the actual Caravan Site task, and two lay representatives to review the process. A remit was agreed for the sub-group and a timeline established for it.

The CAT Review Sub-group set about its business by devising a questionnaire and sending it to those directly involved in the transfer, eight people in all, three directors of STP, two AC officials including one from the Council's legal department, and the solicitors representing STP and the CCGB.

Six completed questionnaires were returned and STP fully acknowledges that the recommendations which follow are based on the comments of a small number of individuals but feels that the recommendations are valid as they emanate from those with the most experience. The CAT Review Sub-group's recommendations are also supported by information garnered from accessing the correspondence file of the firm of solicitors employed by STP.

STP hopes that the information, guidance and recommendations which follow and are organised under three headings: Process; Timeline and Project Management; will be of assistance to any CVO considering applying to Aberdeenshire Council to transfer an asset to them thereby helping make the transfer as effective, efficient and as well managed as possible.

## **Process**

It must be emphasised that this asset transfer was a three party transaction involving AC, STP and CCGB. The sub-lease, via the STP, involved the creation of a Head lease from Aberdeenshire Council and a sub-lease to the CCGB, both of which necessitated discussion and negotiation among the three parties.

This tripartite situation may be unique to this transfer but it added to an already complex process – something the CAT Review Sub-group felt nobody fully appreciated at the start of the process.

Dealing with land leases can be a complex legal process especially if dealing with pre land registration title issues. Beware of thinking of this as a simple process.



The legal time scale basically broke down into the three periods shown below:

1. The introductory period	August 2011 – February 2012	The three parties coming together to assess the work involved in the transfer.
2. The main working period	March 2012 – October 2012	Negotiating and drafting the head and sub-leases, ancillary documents and concluding missives.
3. The finalisation period	November 2012 – July 2013	Purification of missives and registration of leases.

Aberdeenshire Council's CAT Policy sets out principles which the CAT Review Sub-group feels are clear but, in the opinion of the CAT Review Sub-group, the Policy will require review in the light of experience. It does however assist as a framework.

As previously mentioned, this transfer of the Queen Elizabeth II Site was unusual and slightly more complex as the Council made a policy decision regarding caravan sites and the CAT policy was adopted after that, and then applied.

### ***Recommendations***

- The policy sets out clear principles and should be seen as a useful framework but it and the accompanying Guide would benefit from being reviewed and revised in the light of experience on an on-going basis;
- The accompanying Guide should be used by CVOs to assist them through the process;
- Dealing with land leases is a complex business even if there are only two parties (AC and a CVO) involved, and allowances especially in terms of time and expertise must be made for this from the very start of the process;
- Most importantly, any CVO embarking upon the asset transfer process should be aware that it is very unlikely to be simple and straightforward.

### **Timeline**

The four stage approach for the application of asset transfer provided in the Guide for Voluntary and Community Groups is useful and gives an indication of timescales.

Stages 1 and 2 of the Guide are fairly straightforward and have the advantage of being flexible with support built in. However, it clearly states that stage 3, "Implementation" needs to take as long as necessary adequately to complete



negotiations and put funding in place. Based on its experience, the STP's CAT Review Sub-group strongly advises others to heed this advice.

The Guide states that: "It is recognised that each transfer will have a unique set of considerations so timescales will vary". The CAT Review Sub-group feels that this point is worth reiterating as it is important that each CAT is distinguished as unique and, as far as is practicable, its particular circumstances and challenges are identified, understood and allowed for at the outset.

Timescales should however reflect "the real world". All parties should acknowledge the potential legal complexity of certain aspects of a transfer and make appropriate allowances when setting budgets and timescales, and deciding on the extent of professional/specialist support required.

When creating a timetable, community groups should be aware (and make allowances for) the requirement within AC sometimes to have committee approval for any changes to the original scheme. These meetings are scheduled monthly and if one is missed it could cause a hiatus to the process.

The experience of transferring the Queen Elizabeth II Caravan Site would suggest that it is essential to agree and set reasonable deadlines for key milestone activities throughout the process. This helps to keep the pressure on and allows valuable assessment of actual progress against the plan whilst identifying mitigation measures which may be required to keep to schedule.

Timescales also have to recognise the need for careful deliberation, public interest and professional input.

The CAT Review Sub-group cannot comment on the appeals process as set out in the Guide as it did not apply to this particular transfer.

### ***Recommendations***

- From the outset, CVOs involved in the transfer of an Aberdeenshire Council asset should recognise and allow for the fact that completing negotiations and putting funding in place are likely to take a considerable amount of time;
- As each CAT is unique, CVOs and others involved should, from the very start of the process, identify, understand and allow for the particular set of circumstances and challenges that distinguish their asset transfer. If possible and at the earliest opportunity, all stakeholders, including representatives at the appropriate level of relevant Council departments eg planning, property, legal, should get together to do this. It is important to note that if legal representation is necessary then a clear brief must be agreed between the organisation and its solicitor ie the instruction of a solicitor must be via a single channel. This also applies to Aberdeenshire Council;



- CVOs and others involved in a transfer must recognise that, when setting budgets and agreeing a timeline, the legal aspect of the process are likely to be complex, especially if more than two parties are involved, and allowances must be made for this;
- When establishing timescales, CVOs should be mindful of the need for careful deliberation, acknowledging and making sure that the public interest is taken into account, and allowing time for professional input.
- It is critical that, from the very start, CVOs decide carefully what kind of professional or specialist support they will need, the degree or level of that support and its likely cost;
- CVOs in consultation with any other party or parties involved should agree and set reasonable deadlines for key milestone at the beginning but be prepared to review and amend them throughout the process as circumstances dictate. Setting deadlines and key milestones allows CVOs to assess progress against their plan and, in good time, take any steps necessary to keep the process moving;
- CVOs in particular should bear in mind that, at various stages of the transfer, Committee approval may be required and that this, among other things, can have a significant impact on the time required to complete the transfer.

## **Project Management**

A key outcome of the STP's review of the transfer of the Queen Elizabeth II Caravan Site is that all those involved in asset transfers should not underestimate the effort and skill needed in terms of management and co-ordination required to deliver a successful outcome.

The CAT Review Sub-group strongly advises each of the negotiating parties to identify a named single point of contact for each of the negotiating parties as soon as practical. These individuals need to have the authority to make decisions and as far as possible be able to keep the process moving forward. They should be accountable for the delivery of the successful asset transfer. A person with some or all of the appropriate legal, professional or project management skills would be an asset in this role.

Whilst recognising that consultation and communication is vital, the CAT Review Sub-group considers it advisable to keep the decision making “tight” and avoid including extraneous third parties.

If it is envisioned that there will be a number of capital asset transfers in the foreseeable future, then it is crucial for Aberdeenshire Council in terms of the support



it provides CVOs to build up a cadre of appropriately qualified people to manage, facilitate and expedite such transactions.

The STP's CAT Review Sub-group considers the advice given in paragraph 4 of page 12 of the Guide to be very significant. It states: "It is important that any voluntary or community organisation fully understands the risks involved in undertaking asset transfer and should take a systematic approach to considering these at an early stage". In other words, CVOs should sit down at the outset and set clear and robust project objectives as well as a sound business case – always appreciating what is deliverable and practical.

Following on from the above, the CAT Review Sub-group would highly recommend that those involved in an asset transfer create a shared and visible action plan for the overall project.

At the earliest opportunity, Aberdeenshire Council should produce/provide an accurate and up-to-date plan of the asset to be transferred;

Building a sense of team work and strong feeling of partnership with each of the parties is also highly recommended and well worth the effort.

### ***Recommendations***

- The key recommendation in relation to project management is that CVOs should not underestimate the task, the risks involved and the effort and skills that will be required to see the transfer through to a successful conclusion.
- From the outset, CVOs must agree clear objectives and present a practical and deliverable business case.
- Each of the parties involved in an asset transfer should, as soon as is practical, identify a named single point of contact who will have the authority to make decisions and be responsible for keeping the process moving forward. The accountability for the success of the transfer should reside with that person who should ideally have the necessary skills and/or experience to help him/her succeed in this role;
- Whilst recognising the need for openness and democracy, the decision making should be as streamlined and efficient as possible given the particular circumstances;
- In terms of the support it provides for CVOs involved in asset transfers, Aberdeenshire Council should seek to develop and retain the skills and expertise of officials to manage, facilitate and expedite such transactions;



- All involved in a transfer should aim to develop and maintain a partnership approach. There will be times when it will be necessary to step back from the process and try to understand the constraints and limitations under which the others involved are operating. The process will be stressful and it is crucial that a blame culture is avoided. A successful partnership approach and effective team working are of course based on there being respect, trust, openness and honesty from all parties from the outset and throughout.

The STP's CAT Sub-group

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