

Community Asset Transfer in the City and County of Swansea - Officer and Member Guidance

What is a Community Asset Transfer (CAT)?

A CAT occurs when a Public Sector body, usually a Local Authority, passes on the management and/or ownership of facility to a community group.

Local Authorities have the general power to dispose of land in any way it wishes, (sections 123 (1)/127 (1) Local Government Act 1972) although there is a general legal requirement that the Authority must achieve best price for the site, also known as 'best consideration'.

However, the Government has recognised that there may be circumstances where it is appropriate for a Local Authority to dispose of land at below best consideration and has therefore given Local Government the **power under the General Disposal Consent (Wales) 2003 to dispose of land at an undervalue of up to £2m without Welsh Government consent provided that the disposal is likely to contribute to the promotion of social, economic or environmental well-being in its area.**

A disposal for less than best consideration using these "well-being powers" is what fundamentally constitutes a 'Community Asset Transfer'.

If the asset was built or purchased using grant funding then the Terms & Conditions of the grant offer will need to be considered, at an early stage, as part of the discussion on whether a CAT is an option.

In some circumstances it means that an asset can be disposed for very little or even no consideration. **It is important to recognise that Local authorities are not obliged to undertake CAT's** but many do as they recognise that transferring assets to another owner is likely to increase the investment and sustainability of that asset.

State Aid considerations could apply in the case of disposals for non-profit making purposes and will need to be considered in some cases, particularly if the asset was built using EU funding. Consideration will have to be given as to whether the Council's resources are being used to provide assistance that gives organisations an advantage over others and distorts competition. Where there is a genuine market failure, State Aid might be necessary and justified so the State Aid Rules will need to be considered before undertaking a CAT.

This agenda has been around for some time, at least on a case by case basis, but the key difference in more recent times is the strategic policy approach that successive governments have sought to promote.

It is obvious that with the efficiencies and cost savings that Local Authorities are being forced to make as public spending is cut different ways to deliver local services will be sought in the future and the consideration of CAT's as a way to provide these savings is likely to become more prevalent.

When might a Community Asset Transfer be considered?

There are essentially two types of potential transfers which require different treatment, namely:

- Transfer of assets which are no longer being actively used for service delivery purposes and have been declared as surplus.
- Transfer of assets which are currently being used for service delivery purposes and where it is proposed these services will continue to be delivered.

Both examples require a different approach.

In the former case the choice is between disposing of the building on the open market in order to generate a capital receipt or entering into a CAT with an appropriate community body who have identified the property as suitable for community use. **In most circumstances within the City and County of Swansea if a surplus property is able to be disposed of for a substantial capital receipt or at a rent then it will not be available for CAT.**

In the latter case the Council will have taken the initiative by seeking a suitable community organisation with sufficient experience, funding, local support, and business acumen to take over the running of an existing service which it no longer intends to continue to provide in house. This may involve TUPE considerations if retained Council staff are involved and the production of a Service Level Contract between the Council and the community body to govern the new operational arrangement.

Generally, **a long-term lease of a maximum 125 year term** will be the most appropriate method of transfer. **It is important to note that freehold transfers should not be considered.**

It is important to realise that the main goal of a CAT is to create a mutual benefit for both the Local Authority and the Community and the most appropriate method of disposal and terms will be selected to enable this.

The Local Authority recognises the opportunities offered by CAT's, however, it also recognises that there are risks to be considered as part of the process, not least the possible loss or reduction in capital receipts which could be realised should properties not be sold on the open market.

It is also essential to ensure that proposals are properly scrutinised to ensure commercial viability and that the organisation proposing to run the project is properly constituted and has sufficient competent people willing and available to ensure its effective and sustained operation.

Process

Properties may be identified as potential candidates for Community Asset Transfer in a variety of ways. They are likely to be identified either by community groups themselves, by Service departments, or following a decision to declare a property surplus to requirements.

The following steps would then need to be taken;

- Any proposal for a CAT must be supported by a Head of Service and the relevant Cabinet Member; if the proposal does not have internal support then it cannot proceed. If supported then under the Council's Land Disposal Rules, Strategic Estates must be consulted. The latter will assess the status of the property, its tenure, open market value and potential for realisation of a capital receipt and liaise with the supporting department. Estates and Finance must be consulted prior to reporting to consider the financial implications of the CAT and to ensure it does not breach State Aid rules. Legal, financial and any possible Equality and Engagement Implications will also need to be considered and discussed at this stage.
- If the supporting department wishes to proceed further at this stage then the Local Authority will then make clear the basic proposed terms of business and the group must accept the proposal in writing for the proposal to proceed any further. The proposed terms may include generic draft legal documentation if appropriate but this will not always be possible. If the transfer is still considered to be practical and have a strong prospect of long term success then it can proceed further.
- The supporting department must then be willing to present a report to Cabinet detailing how the proposal benefits both the Local Authority and the community by promoting social, economic or environmental well-being in the relevant area.
- There may be a considerable amount of work to be done at this stage as it is essential that a thorough investigation is done into the benefits to the Local Authority and the organisation looking to take on the transfer. It is not enough for the proposal to be a good idea but there must also be a sound business plan, governance and finance to ensure that the proposal is sustainable. It is important to realise that CAT is not for everybody or a solution or remedy for all difficulties.
- Once the proposal is approved by Cabinet, Cabinet Member or Delegated Authority (depending on the appropriate delegation thresholds) then Strategic Estates will work with the legal department to complete the lease. The salient legal responsibilities will have already been made clear so legal experts will be instructed at as late a stage as possible in order to keep costs down.

Strategic Estates and Legal will have regard to the need to make the transfer a viable project and not a liability to the group taking over the asset but must also protect the Council's interests and make sure that the mutual benefit of

the proposal remains. **As such the basic terms of the transfer will generally be non-negotiable and will be on the basis that the organisation will be taking full responsibility for any land or asset.**

- On-going monitoring of the community body taking on the asset must be written into the lease and will be the responsibility of the supporting department. Following the successful transfer of an asset the supporting department has to fulfil this obligation on a regular and on-going basis, they should highlight issues and mitigate the risk of the building returning to Council ownership. If this is unavoidable, the supporting department must where possible work with the organisation to develop and implement an exit strategy so the operation has fully ceased when the building returns to Council ownership.

The Welsh Government National Assets Working Group (NAWG) has developed a best practise guide to Community Asset Transfers which assists local government and other organisations in managing the process and minimising associated risks. <http://gov.wales/topics/people-and-communities/communities/community-asset-transfer/best-practice-guide/?lang=en>

In addition there are a number of existing template documents and guidance documents available to officers who are supporting a community asset transfer which can be obtained via the Council's Community & Voluntary Sector Partnership Office.

Community Asset Transformation Fund

The Council has a grant available to third sector organisations to help facilitate the Community Asset Transfer Process. Further details are available through the following link: <http://www.swansea.gov.uk/communityactiontransformationfund>

Summary

The most important points to remember when initially considering a CAT are that;

- **The transfer must create a mutual benefit to both the Council and the Community.**
- **More often than not there should be an element of financial benefit to the Council.**
- **The proposal must be supported by a Head of Service and Cabinet Member whose department will present a Report to Cabinet if necessary.**
- **Strategic Estates must be consulted in order to comply with the Council's Land Disposal Rules.**
- **The Council is not obliged to undertake CAT's. It is not a charitable function and a commercial benefit will be sought even if in kind.**

- **The basic terms of any transfer will generally be non-negotiable and will be on the basis that the organisation that the asset is being transferred to will be taking full responsibility for any land or asset.**
- **The supporting department has an on-going obligation to monitor the organisation that the asset has been transferred to. It is not a closed book once the asset has been transferred.**

For further property related guidance please contact Lewis Hinds
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And for further guidance related to supporting a CAT please contact Polly Gordon
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