

Community Asset Transfer

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This information sheet is designed to give an overview of the main things that the managers of community organisations will need to consider with respect to taking on a Community Asset Transfer (CAT) project.

What is a Community Asset Transfer (CAT)?

Community Asset Transfer (CAT) is the process by which public bodies transfer management control of their land, buildings and / or services to a community organisation. The terms of the transfer are negotiated and might be on a; freehold, leasehold, licence or management agreement basis.

A CAT is sometimes (not always) offered at less than market value i.e. at a discounted asking price or with a 'favourable' level of rent, but this is generally only where there is a local, community, social, economic and / or environmental benefit to be gained.

The context to CAT in Wales

Community Asset Transfer has been identified by Welsh Government as being something that public bodies in Wales should support; to help bring forward new and more efficient ways to deliver public services, but also because it is recognised that community ownership and management of local land, buildings and services can help create long-term resilience, and support communities to thrive. Welsh Government have also identified the significant role that CAT can play in meeting the seven well-being goals of The Well-being of Future Generations (Wales) Act 2015.

Under the provisions of the Local Government Act 1972: General Disposal Consent (Wales) 2003, a Local Authority may dispose of an asset at below full market value, usually when a disposal will benefit the community through the 'promotion or improvement' of the economic, social or environmental well-being of the area and / or when the value of the asset disposed is less than £2 million.

The current context for CAT projects is therefore good, and there is a greater appetite and willingness to see such projects succeed than there may have been a decade ago. However, it should be stated at the outset, that the process is challenging, time-consuming and not without its issues and risks.

Who can take on a CAT project?

CATs are generally available to town and community councils, charities, voluntary and community organisations and social businesses. However, the transferring body will usually define who they deem eligible and will set out minimum requirements in terms of; legal status, governance arrangements, skills and capacity, mandatory documents e.g. constitution, annual reports and accounts etc. New organisations are not generally precluded from taking on a CAT project, but the level of scrutiny by the transferring body is likely to increase and additional conditions / safeguards may be put in place to reduce the risk to both parties.

Why take on a CAT project?

The motivation that you / your organisation has in first considering taking on a community service or asset will be important. In an ideal world there will be a strong fit between the potential that can be realised in the community project you have identified, and the core purpose of your group or organisation.

There are pitfalls to avoid. If you are a new group, it will be important to ensure that the initiative isn't, for example; somebody's pet project. If you are an existing organisation then you might want to avoid a situation where you start trying to mould the purpose of your organisation around your proposed project. This will be a case of 'mission drift' – where the tail starts to wag the dog!

The question you might ask yourself before you start is therefore what your true motivations are. If taking on the asset will help you further your charitable purposes, then you are off & running. Poorly motivated projects will invariably get found out, but you can save a lot of time & effort by spotting any signs of this from the outset for yourselves.

Freehold, Leasehold, Licence or Management Agreement?

Each CAT opportunity is different and needs to be viewed on its merits as well as against your organisation's legal status, its capabilities and aspirations. There are, however, four main types of transfer each with their attendant advantages and disadvantages. They are broadly as follows:

- Freehold – where your organisation purchases the asset and it comes into your organisation's ownership. Not many CAT projects are undertaken on this basis, as the transferring body generally likes to retain the title to the property and / or land. However, if there is an opportunity to attain freehold title and you are able to secure a transfer at less than market value (for example, on the basis that you are better placed to secure capital to undertake refurbishment / redevelopment) then this generally represents the best option because of the increased flexibility to do with the property as you please.
- Leasehold – this is a form of land or property tenure where your organisation buys the right to occupy land or a building for a given length of time. The terms of the lease need to be negotiated and the length of the lease will in particular be of interest (see later).
- Licence – this form of agreement can be good way to 'test trade' a CAT project – one that affords both parties the opportunity to 'get to know one another' before entering into a more substantial agreement such as a long lease. Generally, a licence is issued for a short term (typically three to 18 months) and also has less onerous obligations concerning repairs, maintenance and decoration.

Whilst agreeing to a licence as a starting off point, it might not be such a good idea to end up in a situation where the licence is continually 'rolled over' – better to secure a lease at the end of the first licence term if possible.

- Management Agreement – this form of agreement will allow your organisation to provide certain services or activities at public body's premises, in return for some kind of support from the that body – which may be financial, support in kind or human resources. There are fewer costs, but also no right to occupy the building. Some organisations involved in CAT projects end up securing the asset as described above, and have a management agreement to deliver a service as well.

Is your organisation CAT ready?

Your readiness as an organisation to take on a CAT project will undoubtedly be driven, at least in part, by the application process itself (which is described below).

However, there are some things that you should do and other things that you would be wise to do before embarking on the journey. How you tackle these tasks will depend on the skills and experience you have available. At the end of this information sheet is a list of organisations that can help you along the way. The key tasks are as follows:

Check your legal status

It will be important for you to check whether or not your organisation's governing documents allow you to take on land or property tenure as part of a CAT Project.

If your organisation is currently structured as an unincorporated association, there is nothing preventing you taking on a lease or licence, but you will need to ensure that you nominate no less than four individuals (generally drawn from the management committee) to enter into the agreement on behalf of your association – these are called 'Holding Trustees'. This can cause complications in the future if/when the holding trustees leave the organisation.

NB: entering into a lease or licence as an unincorporated organisation does bring additional personal risk. This is because the individual signing the lease/licence will be personally liable. For this reason an incorporated structure is normally the preferred legal structure.

The Trustee Act 2000 gives all charities the legal power to acquire property. The property can be held as an investment or for the purpose of carrying out the charity's objects (or both). However, in exercising this power trustees must:

- Always act in the best interests of the charity
- Secure the best terms reasonably attainable
- Take professional advice on matters which require it
- Protect the present and future value and integrity of the charity's assets

Other incorporated forms of legal structure, such as a Company Limited by Guarantee or Charitable Incorporated Organisation, will generally allow you to take on land or property, but you should always check

your incorporation documents and get professional advice in this matter.

Establish clear aims and objectives for your project

As part of this process and with the asset you are seeking to acquire in mind, you might like to take the following practical steps:

- Visit the building. Take a critical look at the potential to build on the existing situation and / or develop new community uses, especially those that might address an unmet need or fill a gap in local service provision.
- Go and see other similar projects elsewhere. Talk to the managers of services and facilities that offer the same kinds of activities that you have in mind for your community project.
- Identify any local 'competition'. Find out about the activities and facilities they have to offer. Look for opportunities to work together and share resources.
- Engage with your 'key stakeholders'. These may include; local residents, the existing users of the service, land or building, potential new users, neighbours and other potential project delivery partners. Where appropriate, talk to them to find out what they want & need. Involve them directly in helping you to develop your project proposals.

Once you've done this you will be in a better position to establish the aims and objectives for your proposed CAT project, which should be no more or less than a simple list of the things that you would like your project to achieve.

Build your capacity

This is about having the right mix of abilities, skills, knowledge and experience, together with the time and financial resources necessary to commit to a community project. At the outset the task may seem insurmountable. However, if you were to ask an organisation that had already successfully gone through the process, they would undoubtedly tell you that much of it was new to them too at the start, and it was more a case of building their capacity along the way.

One key consideration before you set out is to not underestimate the time commitment required. The process of securing the transfer of a service or asset from a public body is a lengthy one, even when it all goes to plan! And once complete there will be additional responsibilities for the asset's management.

Test the feasibility of what you are proposing

Taking over a community service or building is a substantial commitment and your organisation should therefore be sure that your well-intended ideas can stand up to scrutiny.

For straightforward projects (where perhaps there is not much more than a change in the way the service or building is managed) this process of feasibility testing might be undertaken by you, perhaps with the support of your key stakeholders.

Bigger, more complicated projects though, may require a more detailed investigation – a 'Feasibility Study'- undertaken by an independent consultant or consultancy team. This will often be the case where your

project proposal involves any significant reconfiguration or redevelopment of land or buildings.

It is also well worth undertaking a Community Consultation prior to taking or considering the asset. This will help confirm the need and identify what else is there locally/what gaps are there in other provisions? And help demonstrate the need that would met by taking on this asset?

This should look at the best way to provide the service/activities you want to deliver. Just because there is the possibility of the CAT, does not mean it is necessarily the best option. It is important that you are open minded to the best solution and not just looking to make the CAT work for you without fully considering other options.

Develop an outline business case

Even at the 'Expression of Interest' (EOI) stage of the process (described below), you will be expected to be able to put forward an outline of the business case your organisation has for taking on the asset.

The work that your organisation does to build its 'business case' will be a continuation of the work that you have done to prove that your CAT project proposal is feasible in the first place. For the most part your business case is about two things – the 'financial viability' and the 'sustainability' of your project proposals.

Put another way – can you make your project pay and can you keep your project going? It is the process of 'business planning' that helps to bring these two things together.

The CAT process



The CAT process is set out by the transferring body (usually one of 22 unitary authorities in Wales) in its CAT policy. The Wales Audit Office reported in 2018 that the vast majority of local authorities in Wales now have a CAT policy in place. You should therefore refer to the policy that covers your geographical area of interest in the first instance.

To guide public bodies in Wales, Welsh Government have established Ystadau Cymru – (formerly known as the National Assets Working Group) which is set up to 'encourage excellence in active management of the Welsh public sector estate.'

Ystadau Cymru has produced a series of excellent CAT guidance documents a link to which is provided at the end of this information sheet.

Welsh government guidance to transferring bodies

A brief overview of Ystadau Cymru's guidance to transferring bodies is provided below. The CAT process should:

- Be community-led and transparent
- Be centred on mutual benefit with a joined-up vision and shared goal
- Be managed by an inter-departmental team, which is focussed on CAT, led by a Senior Manager (such as the Chief Estates Officer) and including where appropriate the involvement of wider stakeholders representing the community
- Be set within the wider policy framework of the public body in question e.g. strong fit with its Corporate Plan
- Be promoted through appropriate channels e.g. Local Authority websites, advertisements in local press / social media channels, the 'Space Cymru' website etc
- Take a common sense approach and be proportional to the project in question – not a 'one-size-fits-all' solution
- Enable the applicant to access relevant and up to date information about the asset in question e.g. Condition surveys, historical maintenance and running costs (and relevant legal contractual information regarding service providers to the property), the energy rating and consumption data for the asset, repairing responsibilities, planning conditions, restricted covenants, access requirements, TUPE arrangements (where appropriate) etc

Experience on the ground tells us that this is not always the case, but it's also probably fair to say that the situation is improving, and that more of the above-mentioned guidance is being taken on board.

Making a CAT application

One of the things that does seem to have become more consistent across authorities in Wales is a more coherent and well-defined application process, the key elements of which are as follows:

Pre-application – public bodies should welcome you pro-actively getting in touch to discuss potential CAT opportunities and may in some instances reach out to specific organisations that they think might be best placed to deliver a particular service to the community. The transferring body should, nevertheless, advertise the asset or service, providing a 'window of opportunity' for you to express an interest.

Expression of Interest (EOI) – public bodies will invite you to express an interest in a particular asset, by asking you to complete a form which includes things like:

- An outline of your 'business case' and why you need the asset
- A summary of the benefits you see for your community
- The governance, structure and history of your organisation
- The terms of transfer you are looking for

As part of the EOI assessment process the public body will naturally wish to consult with key stakeholders and may ask for further information or clarification. If they are satisfied then you may then be invited to submit a full application.

Full application – at this stage you may have effectively been put on a ‘short- list’ of bidders or may in fact be the public body’s ‘preferred bidder’, either way, you will be required to provide significant additional evidence that you are best placed to take on the asset or service. This will involve filling out a more extensive application form and providing a range of additional documentation. The kinds of things you might be expected to submit may include:

- Full business case with financials.
- A risk assessment in relation to your financial and organisational capacity, governance and ability to manage the asset.
- Your track record of delivering similar community services projects and enterprises.
- How far your proposed use will ensure community engagement.
- How you will ensure business sustainability e.g. through income generation.
- Your financial management arrangements.
- Compliance with State Aid, Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and EU Procurement as appropriate.
- The rules you will need to adhere to if applicable, e.g. any legal restrictions, restrictive covenants and claw back provisions.
- Your monitoring and evaluation arrangements.
- You might also be invited to attend for an interview / meeting to discuss your application.

Experience on the ground tells us that this is not always the case, but it’s also probably fair to say that the situation is improving, and that more of the above-mentioned guidance is being taken on board.

Negotiating the terms of the transfer

If you are successful in this process then you will probably be given an ‘in principle’ decision that the transfer can take place. However, this is the phase where you and the transferring body will need to negotiate the terms of the transfer and undertake final ‘due diligence’ checks. The following are of note where a lease is being negotiated:

Rent – look for a substantial discount or ‘peppercorn’ (nominal £1) rental sum per year especially where your organisation is helping maintain the continuation of a service to your community, which may have otherwise ceased and / or is retaining land or buildings that might otherwise have been lost to community use. The key here is to provide evidence of substantial additional community benefit which comes at no extra cost to the public purse.

Length – you should only sign up to the length of lease that suits your organisation’s particular circumstances, but longer is most often better and a term of 28 years is generally held as being the minimum that you should try to secure if you are looking to refurbish and or redevelop the property (most funding bodies look for at least 25 years at the time of a grant application).

Sub-letting and hiring – your lease should allow for sub-letting and hiring out the property without excessive restrictions from the landlord.

Some leases explicitly prohibit sub-letting, although many organisations still do so in practice. It's advisable to check with your local authority before proceeding.

Repairs and maintenance – in most cases, the landlord is responsible for the exterior of the property, while the tenant takes on responsibility for the interior. However, if the rent is significantly reduced or set at a nominal level, you may be required to take on a full repairing lease. If this applies, it is crucial to identify any major defects before signing the lease and ensure the landlord addresses them before the transfer takes place.

Full repairing leases are not uncommon and sometimes the only option available for taking on a facility long-term. In some areas of Wales this is often the standard arrangement rather than the exception.

Termination – you may or may not wish to include a break clause in your lease, but you should ensure that termination is possible in extreme circumstances. Most local authorities understand that community organisations may face challenges in maintaining service delivery. However, it is beneficial to establish a strong partnership with the transferring body, as good communication is key.

NB: agreeing to a break clause may hinder your chances of securing grant funding. It also worth noting that although you are issued a lease, the Local Authority are still the corporate landlord, so the facility can just be handed back to the Local Authority.

Due diligence

There are two important aspects to this:

- **Consulting a surveyor** – your organisation should hire a qualified surveyor to assess the property's condition, suitability for your intended use, and the appropriateness of the asking price or rent.

Additionally, consider requesting that your local authority conducts a condition survey. In some cases, local authorities provide this service, which can be invaluable when evaluating the property.

- **Using a solicitor's services** – your organisation should employ an appropriately qualified solicitor – especially where a long lease is being considered. A solicitor should be able to advise you on; the wording of the lease, its terms and conditions, conduct relevant searches (local authority and Land Registry) on your behalf, dealing with the Inland Revenue on stamp duty land tax, and registering the lease with the Land Registry. Choose a solicitor that is familiar with charity law.

Clearly, both of these services will come with potentially significant costs attached, but gaining an independent professional perspective is invaluable and it's a duty for trustees to have undertaken due diligence in deciding upon such significant investments.

Issues and risks

There is no doubt that taking on a CAT project is a time-consuming undertaking and even the smallest of projects will require a good deal of commitment, patience and perseverance. There are real and significant

issues and risks that will be encountered along the way too. Some of the more common of these include:

- **Skills and capacity** – taking on a new asset is a significant undertaking and brings with it additional legal and financial obligations. These will take time to manage, and ensure compliance. It is therefore really important to ensure that there are the skills and capacity within the organisation to not just adopt the asset, but appropriately it into the future.
- **Sustainability**
- **Time taken / burn out** – it cannot be over-stated just how long and how time consuming the process of successfully securing an asset can be – even for the projects which at face value appear simple and straightforward. The author has rarely experienced a transfer that has gone through in under a year and the length of time is more often up to two years from the initial enquiry. Building and maintaining the enthusiasm of a team of volunteers that can see this process through without it becoming very stressful is difficult. Getting as much of the right kind of help and advice along the way will be important (see below).
- **Managing volunteers** – what makes CAT Projects work is the engagement of volunteers – most especially those people that help manage the facility and / or deliver the service on a day-to-day basis. Aside from the cost benefit there are many wider individual and community benefits to volunteer engagement. However, recruiting and developing volunteers can be hugely challenging. To do this successfully your organisation should develop a robust policy and procedures that follow best practice.
- **Condition of the assets being transferred** – many buildings that are the subject of CAT Projects are old and in need of updating. Your organisation needs to ensure it knows exactly what it is taking on. Aside from the major defects that should be dealt with before a transfer takes place it is useful to get inside knowledge on the things that could do with being refurbished or upgraded. Talking to the existing / previous building manager may help in this respect.
- **Dealing with local ‘conflict’** – CAT Projects are sometimes offered on a competitive tender basis and because of this may generate competition amongst different local community organisations. Looking for ways to work together can help as dealing with the ‘fall out’ from a successful / unsuccessful tender process can be challenging.
- **Changing political climate** – this is not necessarily something that your organisation can do anything about, but because of the length of time a CAT can take, there is a risk that attitudes to the transfer of the property in question can change amongst those that have the ultimate say in approving the transfer. Keeping council members up to speed with your plans might just help ensure that your project doesn’t fall down for a lack of good communication on your part.

Financial Management – Costs may change during the process, and achieving funding for any changes may not possible or take longer than expected. Ensure such eventualities have been considered and that you have a “Plan B” in place as well as sufficient financial reserves to ease cashflow during any difficulties.

Community opposition – If you are changing the use of a building or expanding what maybe a controversial service, consider how you will deal with opposition from the local community. How will you show wider community benefit and that any potential community safety issues are addressed.

Further Information and Support

[Ystadau Cymru](#) (formerly the National Assets Working Group) – Welsh Government

(Search for ‘Community Asset Transfer (CAT): guidance for applicants’)

[One Voice Wales](#)

The voice of community and town councils in Wales – look for ‘Assets and Services Toolkit’

[Coalfields Regeneration Trust](#)

Dedicated to supporting former mining towns and villages throughout the UK.

[DTA Wales](#)

The Development Trusts Association Wales (DTA Wales) is an independent practitioner based membership organisation promoting the work of and supporting the growing network of development trusts in Wales.

Community Assets and Ownership

[My Community](#)

My Community is created by 12 leading community support organisations. They’ve put all their support and advice in one place. Understanding Community Asset Transfer

[Cwmpas](#)

Cwmpas supports the development and growth of social entrepreneurship, Social Enterprises and Co-operatives in Wales.

Acknowledgement: Some of the guidance above has been extracted and abridged for use from ‘Stepping Up – A toolkit for developing and managing services and assets’ produced by City of Cardiff Council.