

Community Asset Transfer Policy 2012 – 2017 (updated 14 July 2017)

This plan sets out a framework through which the Borough Council will make decisions relating to the transfer of its assets. The plan forms part of, and should be read alongside, the Borough Council's **Asset Management Strategy**.

This plan also sets out how the Council will deal with Part 5, sections 87-108 of the **Localism Act 2011**, which relate to Assets of Community Value and the Community Right to bid.

1. What we mean by Community Asset Transfer

The term "Community Asset Transfer" relates primarily to long leasehold (from 25-99 years) or freehold arrangements to voluntary or community organisations and covers land and buildings.

This policy also applies to the transfer of Borough Council owned land and buildings to other public bodies such as Town and Parish Councils.

2. Why we have a Community Asset Transfer Policy.

2.1) National Policy Context

Community Asset Transfer is not new. One of the most important policy documents was the 2007 publication "Making Assets Work: The Quirk Review of community management and ownership of public assets". Having considered the risks and opportunities, the Quirk Review concluded strongly in favour of local ownership and management of public assets, a position which was supported by the previous government through a number of place-shaping and empowerment policy initiatives, including the establishment of the Asset Transfer Unit (delivered by Locality).

The coalition government's policies in relation to Localism and the Big Society have moved the agenda on. The current government's approach to devolving power to communities and neighbourhoods (enshrined within the Localism Act, 2011), alongside a commitment to diversification of provision and a challenging spending settlement means that now, more than ever, Council's and other public bodies increasingly need to consider asset transfer as an enabler to achieve their corporate aims.

2.2) Legal Framework: What powers do local authorities have to transfer assets?

Local authorities are able to transfer their land and buildings to community based organisations at 'less than best consideration', i.e. below market value. Local Government can dispose of its assets at less than best consideration under the General Disposal Consent (England) 2003, where the asset to be disposed of has an 'undervalue' of less than £2million.

The legislation also requires that the transfer should help to secure the promotion or improvement of the economic, social or environmental well-being of an area.

2.3) What are we trying to achieve?

Public assets are rarely used by everyone, with their value being locked in to a particular use or a particular group of people. We recognise that changing ownership or management opportunities offers opportunities to extend the use of a building or piece of land, increasing its value in relation to the numbers of people that benefit and the range of opportunities it offers.

In particular through this plan we aim to:

- Provide **clarity and transparency** about our processes and develop a clear framework through which we can make decisions.

- Support **our wider regeneration aims** by recognising that asset transfer can act as a catalyst for social, environmental and economic regeneration.
- Deliver **efficiency savings** for Council tax payers, by using asset transfer as one of the options for dealing with under utilised or surplus property assets.
- Secure **more investment** for the area. We recognise that with Asset Transfer there can be more opportunities to lever in additional resources which would be unavailable to the Council acting independently.
- Support our **corporate plan and community strategy objectives** to promote community cohesion and participation. Asset transfer can stimulate the involvement of local people in shaping their community and increasing local volunteering.
- Furthermore, we recognise that activities that are stimulated or protected by asset transfer are likely to contribute towards the achievement of our wider council objectives and priorities.
- Support a **stronger, more sustainable voluntary and community sector** within the Borough.

2.4) Our Principles

- We are committed to a thriving voluntary and community sector within the Borough and recognise the value of community led solutions to local issues.
- We will seek to proactively implement this plan and to promote asset transfer to the voluntary and community sector.
- We will take a strategic approach to community asset transfer and identify assets to be transferred through regular reviews of the Council's assets.
- We will consider community ownership as an option throughout the life of an asset not just when it is considered surplus to requirements.
- We will work in partnership with voluntary and community sector organisations to support long term sustainability and minimise the risk of failure.

- We will have a transparent process for responding to requests for asset transfers and a clear process and timescale for dealing with transfers.

3. Asset Transfer Criteria

3.1) Types of assets that can be considered

- Most assets (buildings or land) that are in the ownership of the Council would be **considered**. Exclusions will include:
 - Where the asset forms part of a wider redevelopment scheme.
 - Assets where the location or specific features of the asset are required as part of the efficient and effective delivery of services.
 - Assets where there is already a lease agreement in place and where notice has not been received from the current leaseholder that they wish to terminate their lease.
 - Where the applicant already has a lease agreement in place in relation to a specific asset, such assets will generally be excluded from consideration of Community Asset Transfer, unless there are exceptional circumstances and significant and additional community benefit can be evidenced.
- When considering the suitability of an asset for potential transfer the Council will consider financial and other implications for the Council.
- For any transfer, the Council will require a proposal outlining the business case, including financial viability and benefits to the community (see section 5 below).

3.2) Who will we transfer to?

We will consider asset transfer to any Voluntary, Community or non profit distributing organisation and Town or Parish Councils. Any organisation seeking an asset transfer will be asked to demonstrate they meet the criteria below

- Be able to demonstrate strong governance arrangements by operating through open and accountable, co-operative processes, with strong performance and financial management systems.

- Demonstrate it has the skills and capacity within the organisation, or available to the organisation, to effectively deliver the services specified and manage the asset.
- Have a clear purpose and understanding of the activities it wishes to deliver and demonstrate how the asset transfer will enable and support these activities.
- Demonstrate clear, realistic financial plans for the management and development of the asset and the delivery of any services and activities proposed.
- Demonstrate community support for the proposals.
- Be clear about how the organisation will comply with any relevant legislation and any statutory requirements arising from the transfer of the asset.

In addition Voluntary, Community and not for profit organisations will need to:

- Be a legal entity, or be part of a legally constituted consortia agreement.
- Be appropriately constituted (examples might include. a registered charity, community interest company or charitable incorporated organisation, not for profit company or Industrial and Provident Societies for the Benefit of the Community.)
- Have stated community benefit objectives.
- Be non profit distributing – any surpluses must be reinvested to further its social aims/community benefits.

We welcome applications from groups wishing to work together, subject to appropriate governance arrangements being in place.

Where there is more than one party interested in the transfer of a specific asset we will seek to encourage collaboration. If this is not possible we will consider all competing bids and select a preferred partner.

3.3) What should the asset be used for?

- The use of the asset must support the aims and priorities of the Council and aim to create the widest public value.
- Applications will be judged on community benefits, community involvement, organisational sustainability, business plan and financial viability, regeneration outcomes, services/activities that will be delivered, potential for continued investment and benefits for council tax payers. (see section 5 below).

3.4) Who can initiate a transfer?

- Any voluntary, community or non profit distributing organisation can submit a proposal for a community asset transfer of a specific asset.
- Town and Parish Councils.
- The Council can also initiate a transfer as part of its asset management review process.

4. What type of tenure will we consider?

4.1) Types of lease

Asset transfers will generally be by means of a long term lease. This is likely to be between 25-99 years, although longer leases may be considered. The terms of the lease will be agreed at the time of each individual transfer.

Freehold transfer will only be considered in exceptional circumstances, where a strong case can be made that freehold is necessary for success and provides reassurance that community benefit will be maintained in the long term.

4.2) Conditions of the lease

The Council will provide legal agreements which enable organisations to manage and develop the asset in the long term while ensuring that the asset is retained as a community asset.

Lease agreements will include matters such as restrictions on use and break clauses. For example, in the case of a long term lease, we will write into the

lease circumstances under which the asset would revert back to the Council, such as

- In the case of bankruptcy
- In the case of corruption
- In case of non payment of rent (if appropriate)
- In the case of non performance of other terms such as allowing the asset to fall into serious disrepair
- If the transfer agreement is breached
- If the organisation wishes to develop and move into bigger premises.

The organisation taking ownership will be responsible for:

- Upkeep, repair and maintenance of the asset
- All running costs including insurance
- Compliance with statutory inspections, health and safety requirements and the Council's Safeguarding Policy.

Levels of discount of market value will be set on a case by case basis based on the nature of the asset, a robust assessment of the business plan and the extent of community benefits to be derived.

The Council may, provide some grant revenue subsidy that will taper off over time to ensure a smooth transition from council to community ownership. In exceptional cases the Council may consider investment in an asset prior to transfer to ensure the building is fit for purpose, however, preference will be given to organisations that can lever in external investment.

Transfer recipients will be expected to produce a statement of community benefit annually.

5. Assessment and Decision Making

5.1) Decision making

- Where an asset is not directly marketed by the Borough Council as available for transfer, upon receipt of an expression of interest, an initial assessment will be made by the Community Asset Transfer (CAT) Panel about the suitability of the Asset for transfer, within 4 weeks of receipt. The CAT Panel will be made up of relevant officers and elected representatives.
- If the asset is considered suitable for possible transfer then the expression of interest will be considered. If the Expression of interest is considered viable then the applicant will be invited to submit a full business case. Timescales for the submission of the business case will be negotiated with the applicant and will depend on the asset and circumstances. The CAT Panel will review ongoing applications at least annually.
- Following the initial assessment of the CAT Panel, the website (www.scarborough.gov/CAT) will be updated within 2 weeks, with details of the asset and the expression of interest received. The website will advise that further expressions of interest will be accepted and a deadline provided for submission of these. The deadline will generally be a minimum of 8 weeks, however, this will be determined by the CAT Panel depending on the asset/individual circumstances.
- Assets will not generally be advertised in the press.
- The CAT Panel will undertake a thorough assessment of each business case received. This will include
 - Assessing the merits of the case
 - Considering any financial or other implications for the Council.
 - An initial consideration of lease terms, market discount.
- The applicant will be notified of the outcome of the assessment in writing and whether the CAT Panel are recommending acceptance of the transfer. If the applicant disagrees with the recommendation they have

10 working days (stand down period) during which they can make any additional representations/challenges prior to a formal decision being made.

- Recommendations from the CAT Panel, including any representations received during the stand down period will then be referred to the Councils Cabinet in most cases. Where the value is between £25, 000 and £49, 999 decisions will be referred to the Individual Cabinet Member and below £25,000 to the Head of Finance and Asset Management.
- In most cases there will be an initial “**in principle**” decision and then a “detailed development stage, during which further work can be undertaken which might include submission of planning applications, confirmation of funding, feasibility studies etc. Following completion of these there will then be a **final decision** made on transfer, again this will usually be made by the Council’s Cabinet, unless the value is below £50000.
- For very straightforward transfers, it may be possible to proceed straight to final decision, this will depend on the circumstances and complexity of the transfer.
- Details of the transfer arrangements will be arrived at through individual negotiation. The decision to transfer an asset will not be considered as setting a precedent.

5.2) Submission of a Full Proposal and Business Case

We welcome informal discussions at any time about potential asset transfers.

Organisations wishing to have an application for asset transfer considered by the Council will need to submit an Expression of Interest and then a business plan. A template for this is available. There are also sources of help available to groups wishing to develop their business plan, so groups are encouraged to

contact us at an early stage to discuss their ideas and any support they may need.

In brief we will be looking for a clear proposal and strong evidence to show that the organisation can manage the asset effectively for the benefit of the local community. We would expect that proposals

- Demonstrate how the asset will support community and voluntary activities within the area and that the proposals have community support. This might include information obtained from surveys, events, community/parish plans or other consultation activities which show the proposal is needed and wanted by the community.
- Are clear about the planned outcomes and benefits that will arise from the transfer.
- Are clear about opportunities for enhancing the asset and/or for increasing the use of the asset by the community.
- Have strong, open governance structures.
- Have realistic financial plans to ensure the asset can be managed in a sustainable way in the short and longer term.
- Evidence that the organisation already has (or has a clear plan for developing) the skills and capacity to manage the asset effectively.

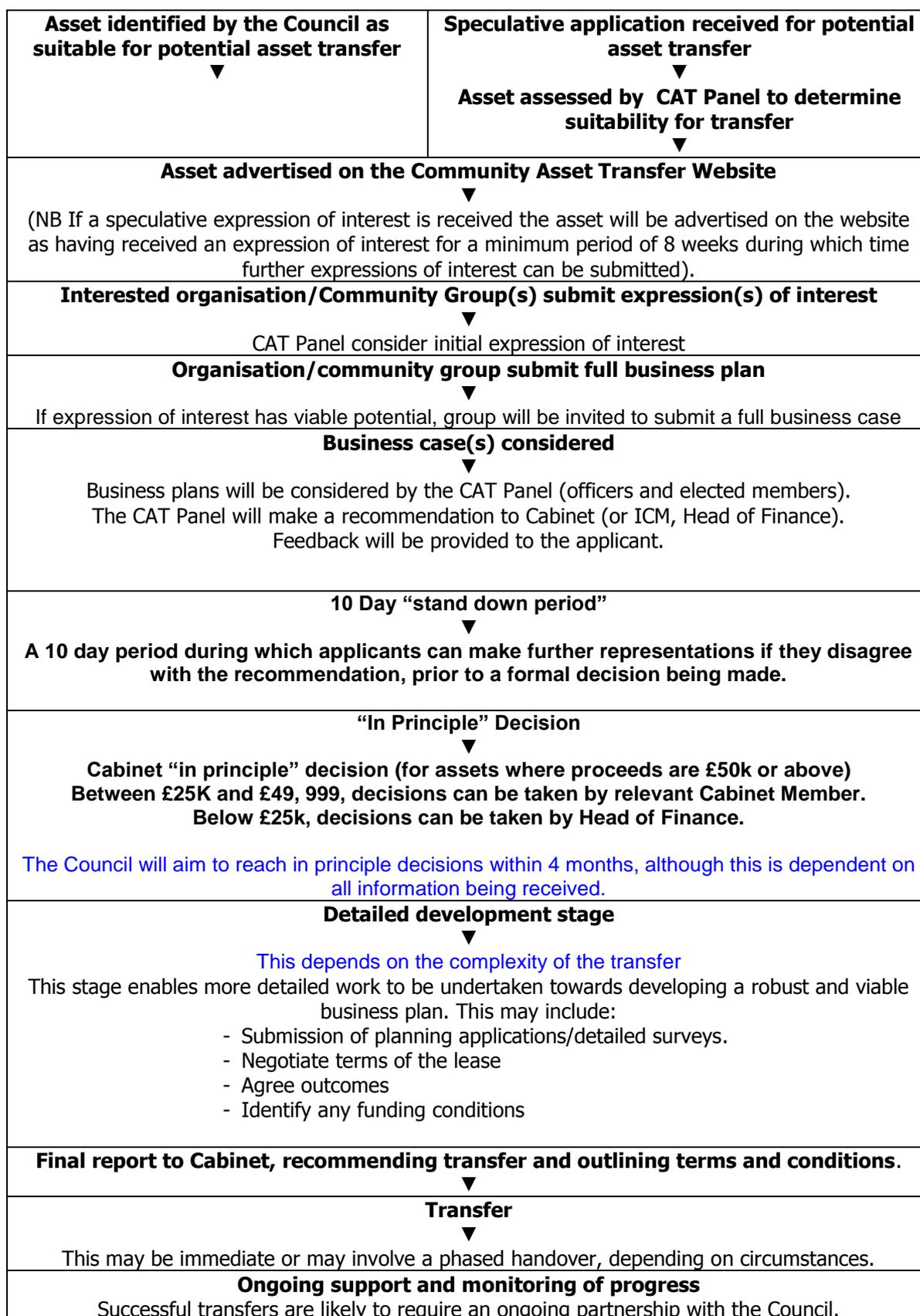
5.3) Information about Assets

We may hold information about an asset that applicants might find useful. If applicants have completed an expression of interest they can request information, relevant to their application, this might include:

- The condition of the asset
- Maintenance costs
- Plans of the land/building
- Income streams

We will provide applicants with any relevant information we have within 4 weeks.

6. Key Stages and Timescales



7. The Localism Act 2011: Assets of Community Value

In neighbourhoods across the country there are buildings and amenities that are integral to the communities that use them. This could be a village shop, a pub, a community centre or a library for example. The closure or sale of such buildings and amenities can create lasting damage in communities.

The Localism Act introduces a Community Right to Bid (Assets of Community Value) which aims to ensure that buildings and amenities can be kept in public use and remain an integral part of community life. Under the Localism legislation, voluntary and community organisations and parish councils can nominate an asset to be included in a 'list of assets of community value'.

The Borough Council will maintain the list and if the owner of a listed asset then wants to sell the asset a moratorium period will be triggered during which the asset cannot be sold. This is intended to allow community groups time to develop a proposal and raise the required capital to bid for the property when it comes onto the open market at the end of that period.

What is the procedure for including land on the 'assets of community value' list?

- The local authority (Scarborough Borough Council) will determine the format of the list, any modifications made to any of the entries on the list and any removal of an entry from the list.
- A community nomination must come from a parish council, a community council or a locally connected voluntary or community body. The nomination has to be made for land or buildings in the nominee's local area or neighbouring authority.
- If the Borough Council deems that the asset does have community value, and it is in their local area, then it will add that asset to the 'assets of community value' list.

- If the nomination is unsuccessful the Borough Council must notify the nominee in writing and provide an explanation as to why the nomination was unsuccessful.
- The Borough Council must notify the landowner, the occupier and the community nominee of any inclusion or removal of an asset to the list.
- A landowner can ask the Borough Council to review the inclusion of the asset from the list and there will be a process for an appeal to an independent body.
- The Borough Council must also maintain a list of 'land nominated by an unsuccessful community nomination'.
- If land is included in the list of assets of community value it will remain on that list for five years.

What is defined as 'community value'?

A building or piece of land will be deemed to have community value only if:

- The use of the land or building currently, or in the recent past, furthers the social well-being, in particular (though not exclusively) the cultural, recreational or sporting interests of the local community.
- This use (as described above) of the building or land will continue to further the social well-being or interests of the local community.
- The use of the building or land must not be deemed 'ancillary', i.e. of secondary purpose. This means that the use of the land or building to further social well-being or interests of the community must be its principle use.
- Regulations set out by the Secretary of State provide more detail on assets that will be exempt from listing and who has the power to make this exemption.

What is the Moratorium period?

- If a building or piece of land is listed as an 'asset of community value' and the owner wants to sell the asset, they must inform the local authority. This will then trigger a moratorium period.

- There are two moratorium periods to note, both of which start from the date the owner of the asset notifies the local authority of their intention to sell the asset:
- 'Interim moratorium period' – this is a six week period during which a community group wishing to bid for the asset must notify the local authority that they wish to be considered as a potential bidder. If this does not happen the owner can proceed to a sale.
- 'Full moratorium period' - this is a six month period during which a community group can develop a proposal and raise the capital required to purchase the asset. The owner can conclude the sale after the six month period or once a bid(s) from any interested community group(s) have been received, whichever is soonest.
- There is also a 'protected period' of 18 months from the same start date to protect the owner from repeated attempts to block a sale.

There are some circumstances when the disposal of an asset that is listed as having community value can be exempt from the regulations concerning the moratorium period. These include:

- If the disposal is a gift
- If the disposal is made between members of the same family.
- If the land or building being disposed of is part of a bigger estate.
- If the disposal is of a building or piece of land on which going-concern business is operating, provided that the sale is to a new owner to continue the same business (for example if an owner of a pub wants to sell the pub to a new owner, to continue running it as a pub).

To nominate an asset of community value or to view the list please go to

- [www.scarborough.gov.uk/communityasset transfer](http://www.scarborough.gov.uk/communityassettransfer)

or

- Please contact

Rebecca Jackson, Solicitor

Rebecca.jackson@scarborough.gov.uk

8. Key Contacts and Sources of Help and Support

For a discussion about Community Asset Transfer please contact

Martin Pedley Asset and Risk Manager Martin.pedley@scarborough.gov.uk	Jo Ireland Customers, Communities and Partnerships Manager Jo.ireland@scarborough.gov.uk
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Further information and Advertising of Assets

Information about Asset Transfer can be found on the COMMUNITY ASSET TRANSFER Page of the Borough Council's website

www.scarborough.gov.uk/CAT

Where the Council is seeking to encourage asset transfer in relation to specific sites, such assets will be advertised on the above website.

Sources of Help and Support

Coast and Vale Voluntary Action (CAVCA)

www.cavca.org.uk

CAVCA provide support to the voluntary and community sector within the Borough and have specialist Social Enterprise Advisors who can offer advice and assistance to community groups.

Asset Transfer Unit

Have a comprehensive website with a wide range of tools, information, guidance and templates to support organisations and groups thinking about Asset Transfer. Also operate a helpline.

www.ATU.org.uk

Helpline: 0845 345 4564

Locality

Locality delivers the Asset Transfer Unit and is a well established provider of advice, guidance and support concerning the transfer of building and land from the public sector to community ownership and management.

www.locality.org.uk

My Community Rights

A source of information and support for organisations interested in asset transfer and/or Community Right To Bid. Includes information about grants available for undertaking feasibility/pre feasibility type activity.

www.mycommunityrights.org.uk

Sport England - Community Sport Asset Transfer Toolkit

The Community Sport Asset Transfer Toolkit is a bespoke, interactive web based tool that provides a step by step guide through each stage of the asset transfer process.

The Toolkit has been developed specifically for sports club, recognising that Asset transfer can often be a daunting task for a sports club to undertake, especially those run mainly by volunteers. Developed in partnership with Locality the toolkit aims to make the process as accessible as possible by providing step by step information, resources and case studies.

W: www.sportengland.org/support_advice/asset_transfer.aspx