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**Item Number X**



**XX/2020  
TAYSIDE NHS BOARD  
30January 2020**

## **COMMUNITY ASSET TRANSFER REQUEST FOR WEDDERBURN HOUSE**

### **1. Actions Recommended**

The Tayside NHS Board is asked to consider the following recommendations in response to the proposal from Yusuf Youth Initiative (YYI) for the acquisition, by Community Asset Transfer, of the NHS Tayside property, Wedderburn House for the consideration of £50,000.

It is recommended that Tayside NHS Board:

- a) Reject the Community Asset request from YYI for their acquisition of the property at Wedderburn House, Dundee under Community Asset Transfer.
- b) Note that YYI have a right of appeal and that Scottish Government may appoint an Independent Assessor on behalf of Scottish Ministers who may make a final binding determination.
- c) Agree to an urgent review of the staff relocation/property rationalisation plan in order to assess the options for moving to closure on the disposal of Maryfield and Wedderburn House properties.
- d) Request the urgent development of a Community Asset Transfer policy framework and procedure identifying key principles and accountabilities.

### **2. Strategic Context**

NHS Tayside is committed to a number of strategic priorities, including building a health and social care system that is integrated, focuses on prevention, anticipation and supported self management, is accessible and treats everyone fairly and equally. We are committed to The Public Sector Equality Duty and the Fairer Scotland Duty as set out in The Equality Act, 2010 across all of the protected characteristics and aim to improve everyone's health and wellbeing by promoting and supporting healthier lives and reducing health inequalities, while making the most effective use of all available resources.

We are also committed to working with public sector partners and in partnership with our local communities across Tayside, including communities of interest, and developing services and solutions in collaboration and through co-production where appropriate. A key partner in supporting communities around health and well-being are the third sector and the communities themselves, particularly where we are addressing the needs of communities of interest, vulnerable groups and people with protected characteristics.

The Community Empowerment Act<sup>1</sup> in Scotland seeks to help to empower community bodies through the ownership or control of land and buildings, and by strengthening their voices in decisions about public services. The legislation contains five parts and Part 5 gives community bodies a right to request to buy, lease, manage or use land and buildings belonging to local authorities, Scottish public bodies or Scottish Ministers. This part of the act

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<sup>1</sup> Community Empowerment (Scotland) Act 2015 - 24 July 2015

came into force on 23rd January, 2017 and requires relevant authorities, including the NHS to publish a register of the land they own or lease, to help communities identify suitable property.

The community body must set out what it plans to do with the asset and what benefits it will bring. The authority must consider, amongst other things, whether the proposals will improve economic development, regeneration, health, or social or environmental wellbeing, or reduce inequalities. The benefits of the community body's proposals must be compared to the benefits of any other proposals, including continuing the current use or sale on the open market. The request must be agreed to, unless there are reasonable grounds for refusal.

The Act does not say whether the community body should pay full market value for the property or should be allowed a discount. The published guidance<sup>2</sup> includes advice on the assessment of non-financial benefits. (See Appendix 1 for full guidance).

Therefore, in consideration of a request to transfer an asset in terms of the community asset transfer provisions, Tayside NHS Board must weigh up very carefully these obligations, its strategic priorities, the perceived benefits of the proposals and the consideration offered against alternative courses of action including continued use or disposal on the open market.

### **3. Key matters relevant to recommendation**

#### ***The Community Asset Transfer Proposal***

Wedderburn House is a four-storey office block building, in the Central / West-End area of Dundee, is part of NHS Tayside estate and occupied by a range of clinical and non-clinical services including community mental health based support teams and suites of consulting rooms for patient consultation.

Over recent years, NHS Tayside has been gradually seeking to rationalise its property footprint and has been consolidating its use of office buildings. The property comprising Wedderburn House is part of that programme and was declared surplus to requirements by NHS Tayside Board on 23 April 2015 and has been marketed for sale since 01 February 2018 with offers invited over £200,000 to stimulate market interest. There has been some interest in the property; however, in October 2018 NHS Tayside received a request from a charitable body, Yusuf Youth Initiative (hereafter referred to as YYI) under the Community Empowerment Act for a Community Asset Transfer of the property for a consideration of £50,000.

Applications received in respect of Community Asset Transfer must be from an eligible community body and must include all of the required information. Only when this is confirmed as complete can the public body issue a formal letter of acknowledgement and validation. The date of this letter is the Validation Date.

Under the legislation Public Bodies should determine a decision on the Community Asset Transfer request within six months of the Validation Date, unless otherwise mutually agreed. The Request was acknowledged by NHS Tayside on 19 October 2018, following receipt of the required information from YYI. This letter of Acknowledgement noted that, as the land had already been advertised for sale prior to the receipt of the Community Asset Request that the Scottish Ministers per NHS Tayside is not prohibited by section 84(2) of the Act from selling, leasing or otherwise disposing of the land described above to someone other than Yusuf Youth Initiative.

This means that NHS Tayside may continue to consider interest or offers received from prospective purchasers while considering the Community Asset Transfer request from YYI. No firm interest or offers received for the property to date and NHS Tayside has committed to making a decision on this request before concluding any alternative disposal plans are considered.

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<sup>2</sup> Community Empowerment (Scotland) Act 2015: asset transfer guidance for relevant authorities – Scottish Government – January 2017

In March 2019 NHS Tayside established a steering group to oversee the progress with the request.

In line with the expectation that the public body should work with the community group through the process, NHS Tayside has actively engaged with YYI to ensure that a fair and reasonable consideration is given and that the process is open and transparent for all parties.

### **The Yusuf Youth Initiative**

The Yusuf Youth Initiative is a registered charity established in 2005, currently based at its registered offices in Bellfield Street, Dundee. Its main purposes are to benefit the Muslim community of Dundee with the following objectives:

- The advancement of education through a structured youth development programme
- The advancement of health through a series of projects involving young people and by working in partnership with health agencies
- The advancement of Citizenship or community development through community events and intergenerational activity
- The promotion of religious or racial harmony through integration or inter-faith work
- The provision of recreational facilities or organisation of recreational activities with the object of improvement of conditions of life for the intended participants
- The advancement of public participation in sport with a particular focus on minority young people

The organisation was registered as a Scottish Charity Incorporated Organisation in May 2015 as a result of conversion from a charitable company. This model provides a limited liability and a separate legal identity to organisations that want to become charities but do not want or need the complex structure of company law.

The YYI Business Plan 2019/2024 sets out their vision for “strengthening communities”, their core values and their unique selling point of providing a platform for minority ethnic youth development in Dundee, with a particular focus on the Muslim community in the city. YYI claims to be the only organisation that delivers emergency food parcels across the city. YYI offers five support cafes across the regeneration areas, providing support and warm meals to over 300 clients weekly. The organisation has primarily focussed on youth development work to develop a Scottish Muslim identity that contributes to Scottish society.

The organisation is governed by a young and diverse management committee with over twenty members that meets on a regularly monthly basis. In 2013, YYI achieved the European Foundation for Quality management (EFQM) quality award. It employs a full-time Chief Executive Officer and a number of part-time and sessional staff members as well as fourteen volunteers. The organisation has been accredited as a Volunteer Friendly organisation through Volunteer Scotland and volunteers are encouraged to apply for Saltire Awards for young people.

YYI has grown and flourished over the fifteen years since its inception. In present day it provides a number of services and supports, including:

- *YYI Youth Clubs* – supporting seventy young people on a weekly basis.
- *Future Leaders Academy* – a supplementary school supporting a further seventy young people through a specialised , dynamic learning programme after school and covering many topics, including Arabic and Islamic studies (to GSCE level), life skills and sports development.
- *“Taught by Muhammad”* – an outreach programme that supports vulnerable adults across the five regeneration areas in Dundee and incorporating,
  - *Fifteen cooking skills programmes supporting 105 clients through a five week programme of cooking skills to cook healthy.*
  - *Five Advice Cafes – across the city supporting over 300 vulnerable clients on a weekly basis*
  - *Presentations and school drop-in workshops to six high schools and eight primary schools in the city, reaching over 2,000 young people.*

- *Short term Support for the Homeless, including curry kitchens and a food parcel delivery service*
- *Minority Elders Men's Shed*
- “*ChangeMakers*” – a programme with a strong focus on building confidence in young people, supporting them into employment, training and volunteering.
- “*Engage*” – a health and well-being project that supports minority ethnic adults in Dundee (and newly arrived refugees) to tackle mental health from a community learning perspective.

### ***YYI Rationale for Acquisition of Wedderburn House***

The organisation sees the acquisition of Wedderburn House through community asset transfer as crucial to their future development. It considers the property to be strategically placed in the west end ward in Dundee, close to the city centre and Lochee, Maryfield and Coldside wards and in close proximity to two universities, city mosques and the Al Maktoum College. The property extends to nearly 19,000 square feet, meets modern standards and is in reasonably good condition, providing the space the organisation needs and with room for expansion.

Public and private transport links to the property are good and YYI consider that they can meet all accessibility standards as there are no barriers to entry for people with disabilities or for very young children or child “buggies” (although the building over four floors is dependent upon lift facilities).

The organisation believes that it will enable a number of key activities to be provided from a centre rather than scattered across many locations in Dundee. YYI propose:

- Establishing a ***large industrial standard kitchen*** to cook for the curry kitchens and to hold the budget cooking classes, avoiding the need to hire facilities.
- Provision of a ***cafe*** on the premises for users of the services within the building.
- Establishing a ***nursery***, registered by the Care Inspectorate that can accommodate up to sixty five children on a full-time basis.

YYI have indicated that they consider that their existing premises are not large enough to meet their needs and are not fit for purpose for the future and the forward strategy for increasing services in line with their vision, mission and values demands larger premises with scope for expansion.

The organisation state that they are the largest minority ethnic youth work organisation in Dundee and operate at scale to effect positive change on the lives of young people in the city. They have facilitated young Muslim and minority ethnic people to become representatives on the Dundee Youth Work Partnership and on the Dundee Youth Council. They have over fifty volunteers, representing fourteen nationalities.

They state that they ensure that all of their projects provide a safe faith and culturally sensitive space for young people to thrive and develop, while seeking opportunities for interfaith work and building bridges across the diverse communities of the city.

### ***How YYI Propose to Use the Property***

The organisation aims to increase their services and start new services as soon as they secure the property, if successful in their Community Asset Transfer request. They have indicated that they have funding commitments to secure the £50,000 offered in consideration of the Community Asset Transfer request and further significant funding for refurbishment.

They aim to use the building space for:-

- Ten Classrooms to expand their Supplementary School to 150 young people daily.
- A recreational space for weekly Youth Clubs and adult programmes for up to 400 people weekly
- Meeting rooms for community events
- Regular Curry Kitchen and full-time Food bank
- Space for community and interfaith groups to provide additional services
- Nursery provision for 3 to 5 year old for up to 40 children

- Community space with seating for up to 200 people for community events and hire
- Business Incubator space for young people
- Office accommodation for up to 25 staff
- Catering and training kitchen with income generation potential

Included in the above proposals are a number of new “Social Enterprises” that will offer benefits but will also generate income for the organisation.

- **YYI Cafe**
  - Would operate as an extension to the Curry Kitchen and Budget Cooking Classes, offering catering skills training for young people and volunteering opportunities. This venture would generate income of between £15-25,000 per annum over the plan period
- **Future Leaders Academy (FLA) Nursery**
  - Would provide a full-time nursery for up to 40 children, based on the Steiner Education method. This would attract Scottish Government Grant funding and, potentially income from charges. It is understood that the proposals have been developed in agreement with the Care Inspectorate.
- **Youth Clubs**
  - The provision will be extended to 150 young people weekly, with the scope within the building to offer a wider range of activities, all from one centre.
- **Adult Classes**
  - These would be expanded from 10 classes per week to 25 classes per week, with approximately 15 adults per class.
- **Training Kitchen**
  - The Training Kitchen offers an accredited “NHS Cook-it” workshop programme as well as in-house training for members and the local community.
- **Room Hire**
  - The building provides scope and capacity to extend the range and scope of meeting rooms and event/workshop space for hire to local organisations and charities.

The organisation has had been afforded the opportunity to make a visual inspection of the property and to review the NHS Tayside Building Report, but if successful, they would intend to undertake a full property survey. They have identified an amount of circa £200,000 to undertake repairs and refurbishment and have indicated that they have investors willing to support these costs. The organisation has stated that it has financial backing available to cover a higher level of cost if necessary.

The YYI has undertaken consultation and engagement on their proposals and some action research with local communities and groups. The organisation currently works closely with a number of external partners and stakeholders and has working relationships with around 57 different organisations and bodies.

They have also received 16 letters of support from a number of leading individuals and organisations, including Joe Fitzpatrick, MSP, Dundee West and Minister for Public Health.

Additionally, during the required 20 day public notification process undertaken by NHS Tayside during March 2019, as required by the legislation and guidance, no representations were made by members of the public.

### ***YYI Perceived Benefits***

The organisation has identified three categories community benefits, as follows:-

- **Muslim Community**
  - There were around 4,000 Muslims in the City of Dundee at the 2011 census date, half of whom were under 30 years of age. The numbers will have risen in recent years due to growing families, settled students and refugees from Bangladesh, Syria and various African nations as well as enrolled students at the various universities.

- The main meeting places are the five mosques and YYI has close working relationships with the mosques, the Amina-Muslim Women's Resource Centre, Dundee University Islamic Society and the Al-Maktoum College.
- In this way there is direct contact with around 10% of the Muslim Community in the city, with greater reach through the larger events, including the city wide, "Eid in the Park" event
- With the new premises, the group plan to expand to reach 50% of the Muslim Community.
- **West End Ward**
  - The population of 11,000 residents, combined with a large university community of around 20,000, provides access to a sizeable part of the local community and adds to the existing presence of YYI in the west end of the city.
  - The organisation also has a lease of the former Victoria Park bowling green as a community garden.
- **Dundee Community**
  - The population of 148,000 people living in Dundee is spread across the eight wards or neighbourhoods, with six of the wards having high levels of deprivation. The group accesses around 3,000 young people through the schools work, around 3,000 through the delivery food bank and a further 3,000 through the support cafes, a total of 9,000 or 6% of the population.

YYI have identified economic and regeneration benefits for the West End and wider Dundee area from employment, volunteering, the business incubator, impact of events and social enterprise. They also anticipate health benefits from the preventative measures from the healthy adult programmes, health cooking, healthy eating, fitness from sporting activity, and community connectedness from men's shed and regular drop-in sessions on health and wellbeing, including health checks.

They also foresee social well-being benefits from the community spaces to be provided enabling people to socialise make friends and engage in communities, including discussions on mental health, relationships, social media, volunteering, carers' advice and support.

YYI intend that the Victoria Park Community Garden will provide environmental benefits in bringing back into use a green space to grow around 500kg of produce to support the cooked food, cafes, budget cooking programmes and food bank deliveries. This will engage the communities in gardening and growing local produce and offer opportunities to around 200 people to learn basic horticultural skills. Other environmental initiatives include a cycling hub and a potential renewable energy approach to reduce the site carbon footprint.

On health inequalities, the minority ethnic community has a higher prevalence around heart disease and diabetes, due to cultural aspects of diet and exercise. The aim of the YYI programmes are to tackle these challenges through preventative measures, engaging young people and promoting positive and healthy lifestyle choices. In addition, there are opportunities for reducing the barriers to employment and volunteering for minority ethnic and local communities.

### **YYI Business Case**

The YYI business plan includes a financial and fundraising strategy, incorporating a five year financial income and expenditure forecast/projection. This illustrates an increasing accumulated surplus year on year, rising to circa £28,000 by the end of Year 5. This represents a small accumulated surplus year on year. This analysis includes the costs of the YYI offer price for the property and the initial estimated costs of the refurbishment. It is understood that the YYI intention is to meet the offered price of £50,000 from a separate restrict fund. To meet the refurbishment costs, once fully estimated, will be obtained through fund raising, corporate donation and national appeal funding.

The revenue income estimates include an amount of £150,000 per annum in respect of grants awarded and/or pending and Government subsidy for nursery provision rising from circa £75,000 in 2020-21 to circa £100,000 in 2023-24. The remaining income is estimated from nursery fees, supplementary school fees, youth club fees, room hire, charges for incubator and adult classes, cafe and catering and fundraising and donations.

Apart from the main corporate support, office and facilities management costs for the organisation; expenditure includes the staff and project costs for each of their main programmes as well as property, utilities, HMRC and pensions costs.

It is not possible to fully assess the validity of the assumptions within the financial plan; however, there is a need to take a view of these from the perspective of deliverability and sustainability.

### ***Evaluating the Proposals***

It is important to note that while NHS Tayside is the first health board in Scotland to have received and considered such a request under the legislation, Forestry and Land Scotland (previously previously Forestry and Land Scotland and Forest Enterprise Scotland) has transferred surplus forestry land to community groups under the legislation. There have also been occasions where assets have been sold to community groups at less than market value in consideration of community benefit.

There was, therefore, no significant previous experience of Community Asset Transfer within NHS Scotland to draw on but relevant advice was obtained from both the Scottish Government and the Forestry and Land Scotland.

The initial approach to evaluate the proposals alongside the offered price proved to be challenging and ultimately inconclusive.

The greatest challenge in this case was undoubtedly to consider the benefits against the substantial discount arising from the low offer in consideration of the Community Asset Transfer request from YYI for the property. There was no obvious objective way of appropriately selecting qualifying benefits from the YYI Business Case to be evaluated in monetary terms in accordance with the criteria agreed by the Panel to set against the requested discount.

It was therefore determined to develop a Community Asset Transfer policy framework and process to incorporate the following:

- Establish a stakeholder evaluation panel to assess, score and evaluate the proposals under the following aspects
  - Benefits
  - Viability
  - Community Support and Wider Public Benefit
  - Social Value
- Establish an advisory group to undertake the Best Value Assessment to determine whether or not a discount should be offered against the joint market value and to provide the rationale for any recommended discount.

**Stakeholder Evaluation Panel:** The stakeholder evaluation panel, comprising representatives from NHS Tayside, Dundee City Council, Dundee Voluntary Access and a Public Partner, met on three occasions and undertook an initial scoring and assessment. This identified a number of aspects that required further clarification, documentation and evidence from YYI. The panel then met to further consider this and to undertake a second and more detailed assessment and scoring exercise. (See Appendix 2: Evaluation Panel Outcome). The result of the assessment by the panel was a relatively low scoring of 9.3 out of a possible 20 points. Once the utilisation factor had been applied this resulted in a multiplier of two out of three with an overall score of 18.6 out of 60 points. This reflected the concerns of the panel regarding the deliverability and sustainability of the Community Group proposals. The panel also considered the wider social benefits and on balance recommended approval subject to mitigating actions and conditions to address their concerns.

**Best Value Assessment:** The advisory group was established comprising representation from Finance, Property, Public Health and Strategic Change. The approach taken was to seek to identify specific aspects that could be directly attributable to healthcare from within the broader

range of YYI proposals. It is certainly the case that much of the work of YYI will contribute in some way to improved outcomes for people, particularly those in minority ethnic communities, but it was important for the group to identify the specific, additional healthcare benefits deriving increased or new activity associated with the acquisition of Wedderburn House, Dundee.

The national guidance advises that where a community body makes an offer under Community Asset Transfer at less than the assessed market value, the public body should give consideration to best value and the potential for discount from market value, although the basis upon which the financial values should be assessed is not specified in the legislation. Therefore, a methodology was developed locally which was validated with Scottish Government.

The panel agreed that the determination of potential discount applicable to the CAT request should be attributable to the following factors:

1. Additional activity over and above pre existing YYI activity
2. Specifically related to healthcare benefits within the five year period of the Business Plan
3. Specifically related to the use of the property by YYI.

Based on the application of these factors, only certain aspects of future planned activity within the Business Plan were deemed appropriate for consideration of potential discount against the property joint market valuation.

The outcome of the process is attached as Appendix 3: Best Value Assessment and attributes the following areas of healthcare benefit:

- Deliver budget cooking programmes (NHS Cook-it)
- Increase support café provision across the City

The approach taken has been to extract the estimated cost of delivering these elements as stated from within the YYI Business Plan, signed off by YYI Board Secretary, (who is a suitably qualified person) and their Trustee Board.

These have been quantified in financial terms amounting to a value of £52,068 and this forms the NHS Tayside Best Value Assessment of the services proposed by YYI.

The Comprehensive Investment Appraisal (CIA) Model guidance has been applied to the figures provided in the YYI Business Plan in order to:

- Apply Discounting at the rate and on the basis set out in the CIA for Non-Quality of Life Adjusted Years i.e. 3.5%.

### ***Vacant Possession***

An update paper on staff relocations and property rationalisation was prepared in May 2018.

- The majority of staff from Maryfield and Wedderburn House was to be relocated to the former Bowel Screening Centre, Kings Cross and the Mackenzie building within the Ninewells campus.
- The Mackenzie building is currently occupied by the University of Dundee (UoD) staffs that in turn are required to be relocated into the Ninewells building.
- A sequence of moves involving nearly 300 staff has been planned.
- The commitment of the UoD is to carry out alterations only outwith Academic teaching time.
- This is a significant time risk due to the time required for building alterations to the spaces due to receive staff.

This is a very challenging and complex logistical plan that requires NHS Tayside and the University of Dundee to work collaboratively to enable staff to be relocated freeing up Maryfield

and Wedderburn House to be available for disposal. Given the passage of time, the plan needs to be reviewed and updated in line with yet to be agreed key policy principles around property rationalisation, including whole life cost benefit assessment.

### ***Financial Considerations***

The financial aspects of consideration of the Community Asset Transfer Request from YYI are noted below:

- The Net Book Value (NBV) for Wedderburn House held on the Asset Register is £250,000.
- Approval of the Community Asset Transfer Request at a figure of below this Net Book Value would result in a loss to NHS Tayside and would require to be written off to revenue.
- The District Valuer has advised that the market value for the Wedderburn House would be £340,000, so a further potential loss of £90,000 may arise (£340,000 receipt less £250,000 NBV).

### ***Conclusions from evaluation and assessment process:***

In considering the Community Asset Transfer request there were concerns expressed regarding the governance of the community body the planning for the scale of change involved; the risks of asset ownership and management; the costs and funding acquisition and development and the operational viability of the YYI Business Plan.

Although the Stakeholder Evaluation Panel recommended conditional approval subject to mitigation of risks, the Executive Leadership Team (ELT) took the view that, due to the low offer price, the relatively low score, the risks around deliverability and sustainability of the proposals and the challenges of achieving vacant possession, the request should be rejected.

### ***Decision Making Process***

The requirement is for the public body to reach a decision within six months from the date of formal acceptance of the request for Community Asset Transfer. This six months period commenced from 19 October 2018, when the request was formally acknowledged and would have expired on 19 April 2019 but for joint agreement with YYI to extend the date for a decision. The extension of the decision making period requires to be formally agreed with the community body making the request.

The decision has been extended further so that it has been agreed that a final decision be made by the end of January 2020. This would enable the matter to be ultimately determined at this Special Tayside NHS Board meeting prior to the end of January 2020.

### ***Options for Decision***

The options for NHS Tayside are as follows:

1. **Accept the Executive Leadership Team recommendation to reject the Community Asset Transfer request.**
2. **Accept the original offer** made in respect of the Community Asset Transfer request from YYI for the consideration of £50,000.
3. **Approve** the Community Asset Transfer request at a discount of £52,068 against the market value subject to agreement on mitigation of risk and conditions for sale.
4. **Determine that No Decision can be made** based on the evidence provided and the difficulties in objectively assessing the benefits.

***As above, it is recommended that Option 1 be approved.***

### **4. Policy and Accountability**

This Community Asset Transfer request is the first of its kind to be received and considered by NHS Tayside and has had to be progressed in the absence of a policy framework. In order to facilitate the approach taken, as described above, a draft policy framework to inform the process has been developed. It will be necessary to consider and adopt an NHS Tayside

policy and procedure for Community Asset Transfer to ensure appropriate and consistent assessment and evaluation of current and future requests.

It will also be important to assign the accountabilities and responsibilities for relevant aspects of the policy and procedure.

- 5. YYI have a right of appeal and Scottish Government may appoint an Independent Assessor on behalf of Scottish Ministers who may make a final binding determination. Responsible Executive Director and contact for further information**

If you require any further information in advance of the Board meeting please contact:

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**6. Date – Monday 13 January 2020**

Consideration by other groups and committees

The proposal was considered by the Asset Management Group (AMG) on 21 November 2019 and subsequently at Executive Leadership Team (ELT) on 02 December 2019 and 13 January 2020.

**7. Additional supporting information**

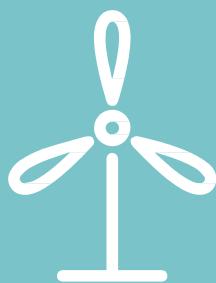
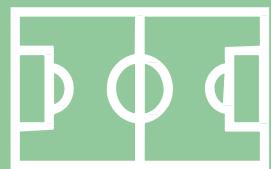
Appendix 1: Community Asset Transfer Guidance for Relevant Authorities

Appendix 2: Evaluation Panel Outcome

Appendix 3: Best Value Assessment

# Asset Transfer under the Community Empowerment (Scotland) Act 2015

## Guidance for Relevant Authorities



January 2017

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## 1. Introduction

1.1. The Scottish Government is determined to see a Scotland where community-led action is celebrated and community ownership is desirable and viable.

1.2. Ownership or control of land and buildings is a powerful tool for communities to drive change and achieve their own goals. In the first place it provides a base for activities and services that might not otherwise be accessible to members of a particular community, and can provide jobs, training and bring income to the local area. More widely, it can provide stability and sustainability for the community organisation, allowing them to develop new initiatives and support other developing groups, and it can create a stronger sense of community identity, cohesion and involvement.

1.3. Many communities in Scotland have already taken on ownership of assets, from public sector or private sellers. A baseline study carried out by the Community Ownership Support Service (COSS) in 2012 identified 2740 community assets owned by community bodies, and there has been increased interest in recent years. Many local authorities, and some public bodies, have operated successful asset transfer schemes, mainly in relation to property they have identified for disposal. There is a thriving network of community landowners, both rural and urban, as well as a range of lease, management and partnership arrangements, and plenty of examples to show the benefits communities can deliver, given the right opportunity.

1.4. The Community Empowerment (Scotland) Act 2015 moves forward from this voluntary approach by the public sector, and introduces a right for community bodies to make requests to all local authorities, Scottish Ministers and a wide-ranging list of public bodies, for any land or buildings they feel they could make better use of. Community bodies can request ownership, lease or other rights, as they wish. The Act requires those public authorities to assess requests transparently against a specified list of criteria, and to agree the request unless there are reasonable grounds for refusal. This shifts the balance of power clearly towards the community body, and ensures that asset transfer is available throughout Scotland.

1.5. Despite the introduction of a statutory scheme, much of the existing best practice will still apply. COSS, funded by the Scottish Government, has developed advice for both community bodies and public sector authorities, based on experience of supporting organisations through the existing, voluntary schemes. A range of other organisations can also provide support to community bodies in developing their proposals, depending on their location and the type of project they have in mind. Links to some helpful websites are provided in Annex C.

## 2. Status of this guidance

2.1. Part 5 of the Community Empowerment (Scotland) Act 2015 sets out the key rights and duties and provides a framework for the asset transfer process. It is supported by the following regulations which fill in more detail of the procedures to be followed:

- The Asset Transfer Request (Procedure) (Scotland) Regulations 2016
- The Asset Transfer Request (Appeals) (Scotland) Regulations 2016
- The Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016
- The Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016
- The Community Empowerment (Registers of Land) (Scotland) Regulations 2016
- The Community Empowerment (Miscellaneous Amendments) (Scotland) Regulations 2016 (these make corrections and clarifications to the wording of the other Regulations).

2.2. The text of the Act is available at <http://www.legislation.gov.uk/asp/2015/6/part/5>. The text of the Regulations is also available at [www.legislation.gov.uk](http://www.legislation.gov.uk), indicative amended versions are provided on the Scottish Government website.

2.3. Part 5 of the Act and the Regulations came into force on **23 January 2017**.

2.4. **This document constitutes guidance under section 96 of the Act**, which relevant authorities are required to have regard to in carrying out their functions in relation to asset transfer. It has been developed in discussion with a steering group and short life working group of stakeholders, listed in Annexes A and B, and takes account of comments made in response to the consultation on draft regulations conducted from 17 March to 20 June 2016. Discussions with stakeholders at many meetings and events during development of the Bill and since the Act was passed have also informed the guidance, and we are grateful to everyone for their help.

2.5. Separate guidance is provided for community transfer bodies, and you may sometimes find it helpful to refer to that as well. Both versions cover the whole process, but focus on the points where each party has to take action – for example, there is more guidance for community transfer bodies on completing the request form, and more for relevant authorities on the acknowledgement and notices they have to issue following receipt of a request.

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2.6. More information about the development of the Act and its implementation can be found on the Scottish Government website at  
<http://www.gov.scot/Topics/People/engage/CommEmpowerBill>

2.7. Any comments, questions or suggestions about this guidance may be sent to  
[assettransferguidance@gov.scot](mailto:assettransferguidance@gov.scot)

### 3. Getting started

3.1. This guidance focuses on the procedures which relevant authorities are required to carry out under the asset transfer legislation. However, for asset transfer to be successful, there also needs to be a wider context of partnership with and support for community bodies and community-led activity. This aligns with the approach which is encouraged throughout public services in Scotland, and should build on existing relationships.

3.2. COSS provides extensive advice for relevant authorities on the benefits of asset transfer and how to prepare and work with community bodies: <http://www.dtascommunityownership.org.uk/public-bodies>. The following provides some brief pointers.

3.3. Community transfer bodies are encouraged to discuss their ideas with the relevant authority at an early stage. This may be when they have identified an asset they are interested in, or to discuss their ideas and needs and see whether any suitable assets are available. Relevant authorities should be open to such approaches and ready to direct community transfer bodies to sources of support if needed.

3.4. It is important that community transfer bodies can easily identify who to contact about asset transfer, and that all relevant staff know how to direct any enquiries, or requests. The legislation does not require a single point of contact to be identified, but it should be clear who is responsible, whether it is a central team or a named official for each region, for example.

3.5. In discussions with community transfer bodies, officials should be clear about the asset transfer request process and should, for example, avoid making commitments or assumptions about the outcome of any potential request. Information about the criteria and procedures used by the authority should be made available to help community bodies develop their requests.

#### Assets and services

3.6. Sometimes a community transfer body may wish to take over a building or land and the services which are delivered by the relevant authority from those premises. This could be addressed by an asset transfer request, or a participation request in relation to improving the outcome of the services. We do not recommend using both types of request for the same project.

- If the community body wants to take over running a service which is tied to the particular premises, and does not want to use the premises for any other purpose, this should be addressed through a participation request. Usually this would apply to services which will be delivered under a contract or

## Asset Transfer Guidance for Relevant Authorities

agreement with the relevant authority. A lease or other arrangement in relation to the premises can be negotiated as part of the agreement to provide the service.

- If the community body wants to take control of the asset in order to deliver services on its own terms or use the property for other purposes, this should normally be addressed through an asset transfer request.
- An asset transfer request can be accompanied by negotiations for the public authority to contract with the community body to continue to provide a service, as a source of income.

## 4. Summary of asset transfer under the Community Empowerment Act

4.1. Part 5 of the Community Empowerment (Scotland) Act 2015 allows a community transfer body to make an asset transfer request to a relevant authority. Chapter 5 of this guidance explains the requirements for being a community transfer body. A list of relevant authorities is in chapter 6.

4.2. A request can be made in relation to any land which is owned or leased by the relevant authority. (In law, —land<sup>11</sup> includes buildings and any other structure on the land, such as a bridge, wall or pier.) Chapter 7 explains the information that relevant authorities have to publish or provide on request about their property.

4.3. The community transfer body can ask to buy or lease the land, or to have other rights, for example to occupy or use the land for a particular purpose.

4.4. Chapter 8 sets out the information that a community transfer body must include in its request. This includes the reason for making the request, the benefits of the proposals, and the price they are prepared to pay. Chapters 11 and 12 give guidance on valuation of the property and deciding on a price.

4.5. There is a process for the relevant authority to acknowledge the request, notify others who may be interested, and allow them to make representations. This is explained in chapter 9.

4.6. Where an asset transfer request has been considered and refused (including any review or appeal), the relevant authority does not have to accept another similar request for the same property if it is made within two years of the first. The relevant authority can accept a repeat request if it wishes, for example if it is from a genuinely different group or the proposal has been improved. More guidance on this point is provided from paragraph 9.5.

4.7. Once an asset transfer request has been made, the relevant authority is not allowed to transfer the property to anyone else until that request process has been completed, including any appeals. This does not apply if the property was advertised for sale, or negotiations had started to transfer it to someone else, before the asset transfer request was made. This is explained in more detail from paragraph 9.22.

4.8. In deciding whether to agree to or refuse the request, the relevant authority must consider the following things:

- the reasons for the request,
- any other information provided in support of the request

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- whether agreeing to the request would be likely to promote or improve
  - economic development
  - regeneration
  - public health
  - social wellbeing
  - environmental wellbeing, or
- whether agreeing to the request would be likely to reduce socio-economic inequalities
- any other benefits that might arise if the request were agreed to
- how the request relates to the relevant authority's duties under Equalities legislation
- any obligations that may prevent, restrict or otherwise affect the authority's ability to agree to the request

4.9. The relevant authority must compare the benefits of the proposal in the request to the benefits of any alternative proposals, whether those come from the authority itself or anyone else, and consider how the potential benefits relate to the functions and purposes of the authority, and any other matters they consider relevant. More detail is provided in chapter 10.

4.10. Chapters 11 to 14 provide some advice on how to obtain a valuation of the property, how to assess non-financial benefits, and on using conditions to protect any discount given, if required.

4.11. When the relevant authority has made its decision, it must issue a —decision notice setting out its reasons for agreeing or refusing. Details of what must be included in a decision notice are given in chapter 15.

4.12. If the relevant authority agrees to the request, there is a process to negotiate the final contract, which is explained in chapter 16. This can allow time for the community body to confirm funding before the final transfer takes place.

4.13. There are various options for review or appeal if:

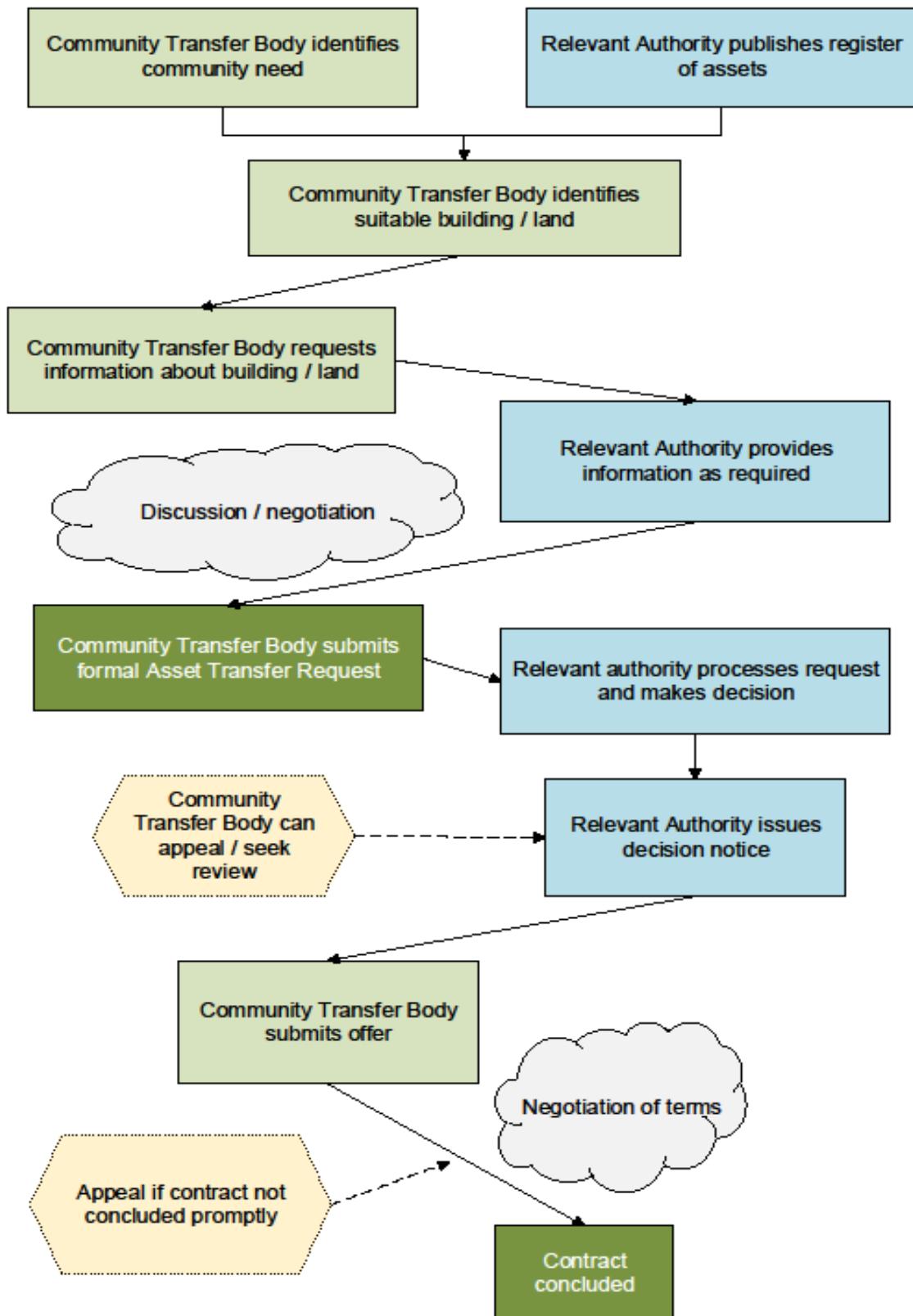
- the request is refused,
- no decision is given within the time allowed, or
- the community transfer body does not agree with conditions imposed by the relevant authority.

Details of the review and appeal processes are set out in chapters 17 to 20.

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4.14. At the end of each financial year, each relevant authority must publish a report on the number of requests it has received and the number which have been agreed, refused, appealed etc. It must also report on action it has taken to promote the use of asset transfer requests and to support community transfer bodies to make requests. Guidance is provided in chapter 21.

## Summary of Asset Transfer process



## 5. Community Transfer Bodies

5.1. To make an asset transfer request, an organisation needs to be a community transfer body. This is defined in section 77 of the Act. It can be either a **community controlled body** (defined in section 19) or a body **designated by the Scottish Ministers**.

5.2. A community controlled body does not have to be incorporated, but it must have a written constitution, incorporating the provisions set out in paragraph 5.11.

5.3. A community controlled body which wants to make an asset transfer request for ownership must also be incorporated as a company, a SCIO (Scottish Charitable Incorporated Organisation) or a BenCom (Community Benefit Company), with a minimum of 20 members and provision for transfer of its assets on winding up. This is set out in section 80.

5.4. The Act does not require a community transfer body to be incorporated in order to make an asset transfer request for lease or other rights. Since the property remains in the ownership of the relevant authority, it is for the authority to decide what type of legal structure is appropriate, depending on the rights requested. This should be proportionate, taking into account the type of activity, duration of the lease or other agreement and the scale of the responsibilities involved.

5.5. SCVO has helpful advice on its website <http://www.scvo.org.uk/setting-up-a-charity/> for groups setting up a formal organisation, including advice on charitable status.

5.6. Model governing documents will be provided on the Scottish Government website for an unincorporated association, company, SCIO or BenCom which meet the requirements for a community controlled body.

5.7. Bodies eligible for community rights to buy are also eligible for asset transfer – see paragraph 5.21.

5.8. An asset transfer request must be accompanied by a copy of the community transfer body's constitution or other governing documents. You should check that it meets the requirements of the Act set out below. Even if they appear to have used the model documents, you should check that they have not deleted any of the provisions necessary to qualify as a community transfer body.

5.9. In deciding whether a community organisation meets the requirements for a community transfer body, either as a community controlled body or in relation to any designation order, you should be aware that this may have an impact on other relevant authorities. If an organisation is accepted by one relevant authority, it will be reasonable for them to expect that they will also be accepted by others. Other community organisations that use the same terms in their governing documents, for

example as fellow members of a wider association, may also expect the same treatment. You should therefore be very clear with the community organisation if there is any uncertainty over their eligibility.

### **Requirements for a community controlled body**

5.11. To qualify as a community controlled body, the body's constitution, Articles of Association or registered rules must include the following:

(a) A definition of the community to which the body relates.

The group may represent the community in a particular area or people who have a common interest or characteristic. (See below for more on —communities of interest<sup>11</sup>). The definition should be clear enough to show whether a person is a member of the community or not.

(b) provision that membership of the body is open to any member of that community

Membership of the body must be open to anyone who is a member of the defined community. There must not be any additional requirements.

It has been queried whether membership is open to all if membership fees are charged. The Scottish Government's view is that fees may be charged, but they should be set at a level that is affordable for members of the community.

Membership fees are more common for communities of interest based around a common activity, for example for a sports club to cover insurance, hall hire and registration with the sport's governing body.

(c) provision that the majority of the members of the body is to consist of members of that community

People (and organisations) who are not members of the defined community may be allowed to join the body, but the governing documents must require that those who are members of the community must always be in the majority. The model documents handle this requirement by providing for those who are not members of the community to be Associates rather than Members.

If the asset transfer request is for ownership, the governing documents must require the body to have at least 20 members.

(d) provision that the members of the body who consist of members of that community have control of the body

Having —control of the body<sup>12</sup> means that the members of the community are in charge of the decisions made by the body. This may be arranged by providing that only Members can vote at General Meetings, a majority of the Board must be made

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up of Members and the Chair (and Vice-Chair, if any) must be Members, where they have a casting vote in board meetings. If the model documents are not used, you may have to search for measures that implement this requirement.

- (e) a statement of the body's aims and purposes, including the promotion of a benefit for that community

The aims and purposes may include activity that goes wider than the defined community, such as raising money for charity, promoting their interest to other people or sharing experience with communities in other areas. But at least one of the purposes of the body must clearly be for the benefit of the community they represent.

- (f) provision that any surplus funds or assets of the body are to be applied for the benefit of that community.

Any money or property the body has, after covering its running costs, must be used to benefit the community as a whole. Bodies incorporated as co-operatives, which distribute their profits or dividends to members of the body, are not eligible to make requests for ownership.

If the request is for ownership, and the community transfer body is a company, the Articles of Association must include arrangements for what happens to the body's assets if it is wound up. This must require that the property is transferred:

- (i) to another community transfer body,
- (ii) to a charity,
- (iii) to such community body (within the meaning of section 34 of the Land Reform (Scotland) Act 2003) as may be approved by the Scottish Ministers,
- (iv) to such crofting community body (within the meaning of section 71 of that Act) as may be so approved, or
- (v) if no such community body or crofting community body is so approved, to the Scottish Ministers or to such charity as the Scottish Ministers may direct.

If the organisation is a SCIO or BenCom, there will be similar provisions to ensure that remaining property is transferred to another body with similar structure and aims.

## **Communities of interest**

5.12. Unlike community right to buy, the legislation on asset transfer does not define what a —community— can be. It simply requires a community transfer body to define the community it relates to, and ensure the body is open to and controlled by members of that community, and uses its assets to benefit that community. Whether an organisation is eligible to make an asset transfer request depends on their constitution meeting the requirements, not on what community it represents.

5.13. A community can be any group of people who feel they have something in common. In many cases, it is that they live in the same area. However, it can also be that they share an interest or characteristic. Communities of interest could include faith groups, ethnic or cultural groups, people affected by a particular illness or disability, sports clubs, conservation groups, clan and heritage associations, etc. They may be very specialised or local, ranging up to national or international groups with thousands of members.

5.14. Large charities or Non-Governmental Organisations may qualify as community controlled bodies, but you will need to check their governing documents to ensure they relate to a defined community, that the members of that community are always in the majority and in control of decision-making processes, and that at least one of the purposes of the body is to provide a benefit to the community they represent.

5.15. An asset transfer request should be judged on the benefits it will deliver, not on the community it represents. However, relevant authorities may also take into account the impact on other groups, such as any loss of facilities, and any wider benefits or potential for conflict. Bodies representing communities of interest should be encouraged to engage with and seek support from the local community.

## **Designation**

5.16. The Scottish Ministers can designate a body to be a community transfer body. They will do this by making an order. Ministers can either designate an individual body, or could designate a class of bodies, if they decided in future that all organisations of a particular type should be able to make asset transfer requests. A designated community transfer body is only entitled to make a request for ownership if the designation order states that it is allowed to do so.

5.17. The criteria for community controlled bodies are there to make sure the organisation truly represents the members of its community and is open and inclusive. It must also be clear that the organisation uses its assets and resources for the benefit of that community as a whole and not, for example, for the private benefit of those individuals who are members of the organisation. Ministers will normally only designate a body (or a class of bodies) if it works in a way similar to a

community-controlled body, and there is a good reason why it is not able to meet the requirements in the Act. Examples could include a charitable trust which cannot change who is on its Board, or an organisation representing a small community which could not reasonably get 20 members.

5.18. Due to the responsibilities involved in dealing with any property, it is unlikely that unconstituted organisations will be accepted for designation. Organisations seeking to be designated to buy property should be incorporated.

5.19. Ministers may consider designating a class of bodies as community transfer bodies if the rules for being that type of body are similar to the requirements for a community controlled body. Examples could include members of an umbrella organisation, or bodies which are regulated under particular legislation. This could be used to avoid the need for other legislation, or the rules of the umbrella organisation, to be amended to match the asset transfer requirements.

5.20. The guidance for community transfer bodies includes instructions on applying for designation.

### Bodies eligible for Community Rights to Buy

5.21. The Scottish Ministers have made an order designating organisations that meet the requirements for the community right to buy or the crofting community right to buy under the Land Reform (Scotland) Act 2003 as community transfer bodies which can make asset transfer requests, including for transfer of ownership. Their constitution, articles of association or registered rules will need to meet the requirements set out in:

- subsection (1), (1A) or (1B) of section 34 of the 2003 Act (community right to buy), or
- section 71(a) to (h) of the 2003 Act (crofting community right to buy),

5.22. Further guidance and model governing documents are available at <http://www.gov.scot/Topics/farmingrural/Rural/rural-land/right-to-buy>. The text of the legislation is available through [www.legislation.gov.uk](http://www.legislation.gov.uk).

5.23. Bodies seeking to use this designation to make an asset transfer request do **not** require a confirmation letter from the Scottish Ministers. (This letter is needed to confirm that the main purpose of the community body is consistent with sustainable development, before registering an interest in land for the purposes of community right to buy.) It is for each relevant authority to decide whether a community organisation which does not have a confirmation letter is eligible to make an asset transfer request, either as a community controlled body or as a designated body.

**The Scottish Government will not give views on the eligibility of community bodies in relation to asset transfer requests.**

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5.24. We expect that bodies eligible for the right to buy abandoned, neglected or detrimental land, or the right to buy land for sustainable development, will be designated when those parts of the legislation come into force.

## 6. Relevant Authorities – who can an asset transfer request be made to?

6.1. Asset transfer requests can be made to any —relevant authority<sup>1</sup>. Relevant authorities are listed in schedule 3 to the Act, or can be designated by order (see below). They are:

- Local authorities
- Scottish Ministers (including agencies such as Forest Enterprise Scotland and Transport Scotland)
- Crofting Commission
- Further Education colleges which are —incorporated colleges<sup>2</sup>
- Health Boards, both regional and Special Health Boards
- Highlands and Islands Enterprise
- Historic Environment Scotland
- National Park Authorities (Cairngorms and Loch Lomond and Trossachs)
- Regional Transport Partnerships
- Scottish Canals
- Scottish Courts and Tribunals Service
- Scottish Enterprise
- Scottish Environment Protection Agency
- Scottish Fire and Rescue Service
- Scottish Natural Heritage
- Scottish Police Authority (who own all land and buildings used by Police Scotland)
- Scottish Water

6.2. Links to information for each relevant authority will be provided on the Scottish Government website.

6.3. Section 78 of the Act says that the Scottish Ministers can add new relevant authorities or can remove relevant authorities or amend the list, for example if an organisation changes its name. Organisations which are not already on the list in Schedule 3 can only be designated as a relevant authority if they are:

- a part of the Scottish Administration
- a Scottish public authority with mixed functions or no reserved functions, or

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- a publicly-owned company – this means any corporate body which is wholly owned by one or more relevant authorities already on the list.

This covers most public bodies and officers who deal with matters which are devolved to the Scottish Parliament.

6.4. Historic Environment Scotland has been designated as a relevant authority.

6.5. UK Government departments and agencies cannot be listed as relevant authorities, nor can private or voluntary sector organisations. For example, people have asked whether the Ministry of Defence, Network Rail or the National Trust for Scotland could be included. The Act does not allow any of these to be listed as relevant authorities.

## 7. Helping community bodies to identify suitable assets

7.1. In the past, asset transfer has usually only been available for land or buildings which a public authority has decided to dispose of, and has decided is suitable for community use. The Act puts more power in the hands of communities by allowing them to request whatever publicly held property they believe will be most suitable to deliver their objectives. The decision process provides for a comparison between the benefits of the community body's proposal and the benefits of any alternative, including the current use.

7.2. The guidance for community bodies encourages them to start by thinking about what they want their project to achieve – for example, to help young people gain new skills through training, create greater community cohesion by providing a place for people to meet or hold events, or improve health and wellbeing by providing access to the natural environment.. Then they can consider whether they need an asset to deliver their aims, and look for somewhere that will be suitable. This is highlighted in advice from the Community Ownership Support Service ([www.dtascommunityownership.org.uk](http://www.dtascommunityownership.org.uk)). Community projects which focus on —saving<sup>11</sup> a building threatened with closure or demolition often run into difficulties later if they have not fully thought through what they will do with it and the costs involved.

7.3. Publicly owned land and buildings, and how they are used and maintained, can have a significant impact on the community in which they are located, whether they are used to provide services, have historic connections to the community, or affect patterns of traffic and custom for local businesses. Public authorities are generally conscious of the need to engage with communities over any change to services, but you should also consider seeking views on the disposal or future use of premises which become vacant as a result. Relevant authorities may wish to invite community bodies to register their potential interest in particular types of asset, such as offices, halls or business units. They can then be contacted if suitable spaces become available, or included in discussions where relevant new facilities or co-location of services are being considered.

### Register of land

7.4. To help community bodies identify assets that may be available through asset transfer, section 94 of the Act requires each relevant authority to establish, maintain and make available a register of land which it owns or leases, —to the best of its knowledge and belief<sup>11</sup>.

7.5. Effective asset management systems are an essential part of financial management. However, it is recognised that the ownership and boundaries of land are sometimes unclear, especially where records are old and land has changed

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hands by statutory powers or reorganisation of public bodies. The legislation

therefore does not require relevant authorities to make checks or confirm title before publishing information in the register of land. The Scottish Government has committed to improving the accuracy of information about land ownership, and is seeking to have all public sector land included on the Land Register by 2019. The process of undertaking voluntary registration will, over time, also improve the accuracy of information held by public bodies and published in their register of land. However, the two processes are not formally linked.

7.6. Relevant authorities will already hold the information which is required to be included in the register of land, in their asset registers held for accounting purposes and in property management systems. In some cases the information may already be published as part of a publication scheme under the Freedom of Information (Scotland) Act 2002<sup>1</sup> (—FOISAll). These resources should be used as far as possible to minimise the work required to comply with the requirement in section 94 of the Community Empowerment Act. However, some additional work may be required to bring the information together and make it accessible to communities.

7.7. It is for each relevant authority to determine whether a particular property is required to be included in the register, depending on the individual terms of ownership or lease in each case.

7.8. The Act requires that the register must be maintained. If the register is not linked to your authority's internal systems to be updated automatically with any changes, it should be reviewed at least every three months, and the date of the last update should be shown on the register. It will be in the authority's interest to keep the register current, to avoid enquiries about properties you no longer own.

### **Land which need not be included in the register**

7.9. The Act allows the Scottish Ministers to make regulations specifying types of land that relevant authorities need not include in their registers. Following consultation and discussion with various relevant authorities, a number of types of land have been specified in the Community Empowerment (Registers of Land) (Scotland) Regulations 2016.

7.10. Please note that the register of land to be produced under section 94 does not determine what may be requested by a community transfer body. An asset transfer request may be made for any land owned or leased by a relevant authority, including land which is not included in the register.

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<sup>1</sup> See guidance at  
<http://www.itspublicknowledge.info/ScottishPublicAuthorities/PublicationSchemes/PublicationSchemesHome.aspx>

7.11. The following types of land need not be included in relevant authorities' registers:

- (a) **Roads.** Including all roads would make registers much larger for no purpose, as community bodies are unlikely to want to take over roads. If they do, it is usually clear who to approach. The definition covers pavements, footpaths and cycle paths. It does not cover footpaths on land—owned or managed by a local authority and used by them for the provision of facilities for recreational, sporting, cultural or social activities, but these need not be listed separately from the land they cross.
- (b) **Underground railways**, together with stations, entrances and other land essential to the operation of the railway. This applies only to Strathclyde Partnership for Transport (SPT), in relation to the Glasgow Subway (Network Rail, as a UK body, is not a relevant authority). It would not be practically possible for a community transfer body to take over individual parts of the Subway, since it operates as a whole. If they wanted to use areas within stations, for example, it is clear who to approach.
- (c) **Canals.** Scottish Canals owns and operates the five main canals in Scotland. As with the Subway, it would not be possible for a community transfer body to take over a section of a canal, as the whole network operates together. The definition includes towpaths, bridges, reservoirs etc, which are essential to the operation of the canal, but Scottish Canals will need to list the other land and buildings it owns.
- (d) **Bus stations.** Bus stations may be operated by local authorities or Regional Transport Partnerships. They need not be included in registers of land, along with roads, railways and canals.
- (e) **Houses, hostels and lodging-houses.** As with roads, including all houses would make registers much larger and more difficult to maintain and search. There are also concerns about the privacy of tenants and security for accommodation for vulnerable people. Community bodies do not often want to take over houses that are occupied, and special arrangements would apply if they wanted to transfer social housing to a new landlord.

The exclusion for houses, hostels and lodging-houses does not apply if they are surplus to the requirements of the relevant authority, which will usually mean they are empty and available for sale. In areas where there is a shortage of affordable housing, particularly in small rural communities, community bodies may be interested in taking over such properties, and relevant authorities should consider engaging with them before putting the house on the market.

The exclusion also does not cover hostels and lodging-houses operated on a commercial basis, for example as tourist accommodation.

- (f) **Land used for the supply of drinking water and disposal of waste water, and certain reservoirs.** The location of these facilities is not published in the interests of national security.
- (g) **Police radio masts and sites used for covert policing.** The location of these facilities is not published in the interests of national security and the prevention and detection of crime.
- (h) **Souvenir plots.** These are areas of land that are of —inconsiderable size and no practical utilityl and have never been registered, as described in section 22 of the Land Registration (Scotland) Act 2012. However, you should be aware that community groups, particularly those interested in community growing, may value even small patches of land and you may receive enquiries about them.
- (i) **Mineral rights** owned or leased separately from the land to which they relate. The ownership and exercise of such rights is likely to be complex and would require significant investigation by the community body.

7.12. Land of the types specified in the regulations can be included in your authority's register if you believe this would be helpful for communities, or more straightforward to provide. You should consider the issues of volume, security and privacy outlined above before taking such a decision.

### **Information about each property**

7.13. As a minimum, the register must identify the property and its location. This should normally include a grid reference, the street address (including postcode) if there is one, any name the land or building is known by and its UPRN if there is one (Unique Property Reference Number – these are provided by local authorities through the One Scotland Gazetteer <http://onescotlandgazetteer.org.uk/>). Users should be able to search the register for particular properties, and also to search for land in particular areas. National public bodies should identify at least the local authority area for each property; local authorities and other authorities with a lot of property might want to identify smaller districts or neighbourhoods.

7.14. A basic description of the current use should also be given if possible, such as —officesl, —clinicl, —depotl, —parkl. Where a relevant authority owns an area of land with several buildings on it, it is not necessary to identify the buildings separately. For example, a hospital, college campus or business park could be listed as one property. For large areas such as forests, country parks or nature reserves it may be helpful to identify substantial buildings, but there is no need to list every storage shed or shelter.

## Asset Transfer Guidance for Relevant Authorities

7.15. You should consider what additional information could be included in the register to help community bodies understand the status of each property and whether it may be suitable for their needs, without having to make further enquiries. This will, of course, depend on the information your authority holds and how easily different datasets can be linked. Details that may be helpful include:

- The department responsible for it or account it is held on (for local authorities);
- Whether it is owned or leased by the authority (there is no need to provide any details of a private owner, but it would be helpful to note if the owner is another relevant authority)
- Whether it is vacant, occupied by the authority, tenanted, surplus, etc
- Size –it is important to be clear what this represents, for example the total area of the plot, the footprint or the floor area of the building
- Any heritage or environmental designations affecting the land
- Any known restrictions on disposal or future use of the property, such as common good a trust deed, etc. It may be appropriate to include a caveat that other restrictions may come to light on investigation.

7.16. Notes attached to the register should also help community bodies to understand the information provided. Any abbreviations, codes or technical terms should be explained, and contact details provided for enquiries, including for different departments if appropriate. This is also an opportunity to explain the purposes for which the authority holds land and buildings and any general restrictions on your ability to dispose of property, or of particular categories of property.

### **Publishing the register**

7.17. There is no set format in which the register must be made available, although it must be online. It will depend on how the information is currently held, the number of properties to be listed and how frequently changes are made. Ideally you would provide a map-based, searchable system which is automatically updated from the authority's own property management system; some authorities already have such systems available to the public. Text-based systems with the ability to search or filter entries by location or description could also be used. As a minimum, authorities with only a small number of properties on their register (less than 100) could provide a table or simple spreadsheet with the ability to search for text.

7.18. There are a number of projects already in progress to improve public access to information about land, including ScotLIS (managed by Registers of Scotland) and the Spatial Hub <http://www.spatialhub.scot/> (managed by the Improvement Service), in addition to the requirements of the INSPIRE Directive for publishing spatial datasets. If you are developing a new system to maintain or present your register, it

should be compatible with other ongoing projects, and compliant with INSPIRE, so that in time they could potentially be linked together. Speak to your geographic information or spatial data specialists to ensure you take advantage of any existing work.

7.19. There are no plans at present to provide a single, central register for all relevant authorities. However, relevant authorities may wish to combine with others in the same area or of similar types. Links to all relevant authorities' pages will be provided via the Scottish Government website,  
<http://www.gov.scot/Topics/People/engage/AssetTransfer>.

7.20. In addition to making the register available online, arrangements must be made for members of the public to inspect it, free of charge, at reasonable times and at such places as the authority may determine. This does not mean that a full paper version of the register has to be produced, although this may be practical for some authorities. Alternatives could be, for example, to enable people to use the register on a computer at a public enquiry office, or to send out printed extracts in response to telephone enquiries.

7.21. For local authorities and others which have public offices across their area, it should be straightforward to make arrangements for people to inspect the register. Others may only be able to provide this service at a few locations. Members of community bodies may be able to access online registers at libraries or community hubs, which are generally used to helping users find information. You should ensure your register is easy to find and has clear instructions for use.

7.22. You must also be ready to provide information from your registers in alternative languages and formats if requested, to meet equality requirements.

### **Enquiries about land**

7.23. As mentioned above, an asset transfer request can be made for any land owned or leased by the relevant authority, even if it is not on the register. You may receive enquiries about land which someone believes is owned or leased by your authority, which is not on your register. You should aim to respond helpfully to such queries, for example providing pointers if you believe the land is owned by another relevant authority. Even where there are security issues about the publication of lists or maps of sites, it will often be possible to respond to a particular request about an individual property.

7.24. If it appears that significant cost would be involved in answering the enquiry, or it involves information that you think should be withheld, you should consider it in line with the requirements of FOISA and the Environmental Information Regulations (EIRs). Remember that there is no requirement to state that the request is made under this legislation, and the EIRs do not even require a request to be in writing.

This consideration may indicate that it is appropriate to direct the community body to Registers of Scotland<sup>2</sup> to investigate ownership, or to charge a fee if substantial work is required to provide the information.

7.25. It is important that all staff are aware of the asset transfer legislation (as well as FOISA / EIRs requirements) and where to direct any enquiries. Community bodies may ask any staff they see on site, rather than contacting a central office or accessing your website. It is essential that they are put in touch directly with officers dealing with asset transfer who can provide accurate information, for example about the status of the building and any future plans. It can be difficult to build positive relationships later if people have received misleading information, or have not had an answer to their enquiries. Officers should also keep in mind that, while it is helpful to provide advice, community transfer bodies ultimately have a right to make a request for any property, on their own terms, and to receive a formal decision in line with the legislation.

### Further information about land

7.26. Once they have identified one or more properties that may be suitable for their project, a community body will need further information about them. They will need to decide whether the land or building is suitable for their planned activities, what the running costs will be, and how much to offer for it. If they intend to request ownership or a lease with repairing responsibilities, they will need information about the structural condition of any building, other rights on the land, and so on.

7.27. We recommend that community bodies should make contact with the relevant authority as early as possible and there should be an open discussion about the community's objectives and property that may be suitable. The relevant authority should be open about the information it has, including practical knowledge about managing the property, and how other information might be obtained. Most importantly, you should ensure that the community transfer body is aware of any information that is likely to be a significant factor in the authority's decision on the request.

7.28. Although the Scottish Ministers may make regulations about information which a community body may request from a relevant authority about land for which they intend to make an asset transfer request, no such regulations have been made so far. We consider that FOISA and the EIRs provide sufficient rights for community bodies to request any information they may require. The exemptions and exclusions provided by this legislation are equally appropriate in relation to asset transfer, for example the ability to withhold information on grounds of protecting personal data, commercial confidentiality or national security. These exemptions are also backed by a right to a review and appeal to the Information Commissioner if information is

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<sup>2</sup> <https://www.ros.gov.uk/>

## Asset Transfer Guidance for Relevant Authorities

withheld without good reason. Further guidance on these rights is available on the Scottish Information Commissioner's website,  
<http://www.itspublicknowledge.info/home/ScottishInformationCommissioner.aspx>. All staff who may be dealing with enquiries should be familiar with the requirements.

7.29. Relevant authorities may not have current, detailed information about all their properties, for example in relation to condition and energy costs. Where they do it will have been produced for the authority in relation to their use of the building, and may not be appropriate for the community transfer body to rely on. Professional surveys produced for the authority may also be confidential to them. You should seek to make as much information available to the community body as possible, but these kinds of caveats should be made clear.

7.30. Ultimately it is the responsibility of the community transfer body to ensure it has all the necessary and relevant information to develop its proposals. There is no requirement for the relevant authority to obtain information or commission reports to provide to the community body, which it does not already have. However, as a way of supporting them, the relevant authority may agree to share the cost of producing or commissioning new information, and provide assistance by providing information to surveyors, facilitating access to the site, and so on. Funding for project development work such as surveys may be available where the community body proposes to buy the property. It is less likely to be available for proposals for lease.

7.31. Where an authority is seeking to dispose of a property, or considers that a community proposal deserves support, it may be appropriate to draw together a —sales pack—, which would contain information such as:

- title reports
- rateable value
- size – including site or building plans if appropriate
- any planning restrictions, heritage designations, environmental designations, or other restrictions on future use
- information on any tenancies, occupancy agreements etc (as far as possible under confidentiality)
- Coal authority report
- utility / service information

### For buildings

- condition and suitability reports
- asbestos reports and management plan
- energy costs (for current use) and / or Energy Performance Certificate

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### For land

- contamination
- for agricultural or forestry land, any relevant planting records, management plan or similar.

## 8. Requirements for an Asset Transfer Request

8.1. Ideally, you will be aware of any community body's intention to make an asset transfer request before it is formally submitted. Community transfer bodies are strongly advised to contact the relevant authority and discuss their proposals at an early stage. You should make sure it is easy for community bodies to get information about the scheme and that all relevant officers are aware of it and can direct enquiries to the appropriate team. At this stage you can also, if appropriate, direct the community body to other sources of support – see Annex C.

8.2. In the past, most voluntary asset transfer schemes have taken a two-stage approach. Community bodies were asked to submit outline proposals or expressions of interest, and if this was given approval in principle they would be supported to develop a full case to go forward for a final decision. While the statutory scheme requires a full request to be made to initiate the process, it may still be helpful to invite outline proposals as a —pre-applicationl stage. Community bodies would then know whether they had support from the relevant authority before undertaking the substantial work to produce a full asset transfer request, or applying for funding. However, they will still have the right to submit an asset transfer request without going through any —pre-applicationl stage, or if their outline proposals have not been supported.

8.3. Whatever other arrangements may be in place, community transfer bodies have a right to submit an asset transfer request without any previous discussion and you must be ready to process it in accordance with the requirements of the Act.

### Content of a request

8.4. The legislation requires certain information to be specified in an asset transfer request. This is set out in section 79(4) of the Act and regulation 3 of the Asset Transfer Requests (Procedure) (Scotland) Regulations 2016 (—the Procedure Regulations). In terms of regulation 5 of the Procedure Regulations, an asset transfer request is not treated as having been made until all the required information is received by the relevant authority. This chapter lists what is required and gives guidance on what you should expect to see under different headings. The next chapter explains how to process the request, and what to do when a request is incomplete.

8.5. For points (k) to (o) below, covering information on areas such as the benefits of the request and how it is to be funded, only outline information is required to accept an asset transfer request as complete and valid. The relevant authority can seek further detail during the process, and the community transfer body may provide additional information, in particular in response to any representations made about the request. The relevant authority may decide to refuse the request if it does not feel it has sufficient information on the proposals. The level of detail required

## Asset Transfer Guidance for Relevant Authorities

should be proportionate to the scale and nature of the request, but the community transfer body should always be given the opportunity to provide any missing information which is considered to be key to the decision.

8.6. A standard form for an asset transfer request is provided on the Scottish Government website. This is intended to help community transfer bodies to make sure they provide all the information needed for a valid request, but is not statutory. You could also provide a tailored form for your own relevant authority, which may ask for additional information specific to your organisation, but you cannot require a community transfer body to use any particular form. The only requirement is that they provide all the information specified in the Act and Regulations.

**An asset transfer request must be made in writing and must:**

- A state that it is an asset transfer request made under Part 5 of the Community Empowerment (Scotland) Act 2015
- B contain the name and contact address of the community transfer body
- C be accompanied by a copy of the constitution of the community transfer body
- D if the request is made by a body which is not a community controlled body, explain the basis on which the body is a community transfer body
- E specify the land to which the request relates
- F specify whether the request falls within paragraph (a), (b)(i) or (b)(ii) of section 79(2), ie whether it is a request for ownership, lease or other rights in the land
- G if the request is for ownership, specify the price that the community transfer body would be prepared to pay for the transfer of ownership of the land
- H if the request is for lease, specify
  - the amount of rent that the community transfer body would be prepared to pay,
  - the duration of the lease, and
  - any other terms and conditions that the community transfer body considers should be included in any lease
- I if the request is for other rights, specify the nature and extent of the rights sought
- J specify any other terms or conditions applicable to the request
- K specify the reasons for making the request
- L describe how the community transfer body proposes that the land is to be used
- M specify the benefits which the community transfer body considers will arise if the authority were to agree to the request
- N outline how it is proposed that—
  - the transfer of ownership of the land, the lease of the land or the conferral of other rights in respect of the land on the community transfer body (as the case may be); and
  - the proposed use of the land,  
are to be funded
- O describe the level and nature of support for the request from the community to which the community transfer body relates.

## **Guidance on the requirements for making an asset transfer request**

### **A State that it is an asset transfer request made under Part 5 of the Community Empowerment (Scotland) Act 2015**

8.8. This is included to make clear that the community transfer body intends to make an asset transfer request, even if it does not include all the required information.

### **B Name and contact address of the community transfer body**

### **C Copy of constitution**

### **D How the body is a community transfer body**

8.9. The name and contact address of the community transfer body are required. The form also gives space for an email address and telephone number.

8.10. The form states that by providing an email address the community transfer body agrees that the relevant authority can send any correspondence relating to the request to that address. Under regulation 12 of the Procedure Regulations they are also deemed to give consent if they send any material by email (if the form is sent from a different email address than is given on the form, you will need to clarify which they intend to be used). The community transfer body can ask the relevant authority to stop sending correspondence by email, or change the email address to which correspondence should be sent, by giving 5 working days' notice.

8.11. The organisation's constitution, articles of association or registered rules must be attached, so that you can check the organisation is eligible to make an asset transfer request, and to make a request for ownership if appropriate (see chapter 5). The company number, charity number or registered number are also requested on the standard form, to provide for background checks.

8.12. If the organisation does not qualify as a community controlled body but has been designated as a community transfer body, or is one of a class of bodies which have been designated as community transfer bodies, they must explain this. Designation orders will be published online for reference.

### **E The land to which the request relates**

8.13. The request must provide sufficient information to be clear what land is being requested.

8.14. If the land is on your register of land, you can expect the community transfer body to copy those details. If not, they should provide similar details, ie the name by which the land or building is known, the street address (including postcode) if there is one, or a grid reference. If the request is only for part of a plot or a building it must be clear exactly what is requested. For example, a request for one building on a

## Asset Transfer Guidance for Relevant Authorities

larger site should identify the boundaries of the land required around it; any request for lease or use of part of a building should include details of any use of amenities required, for example storage, kitchens or parking.

8.15. Maps or drawings may not be necessary if the location and boundaries of the land requested are clear from the description. For rural land, or if only part of a piece of land or a building is being requested, a map is likely to be required to accurately identify the area being requested. If possible you should assist the community transfer body to provide suitable maps or drawings, for example by providing copies of any existing maps, directing them to sources of mapping information, or helping them to understand the level of detail required.

### **F, G, H, I, J Type of request, payment and conditions**

8.16. The request must state clearly whether it is for:

- ownership (under section 79(2)(a))
- lease (under section 79(2)(b)(i)), or
- other rights (section 79(2)(b)(ii))

8.17. A request for ownership must state the price that the community transfer body is prepared to pay for the land.

8.18. A request for ownership must state the amount of rent the community transfer body is prepared to pay, the duration of the lease, and any other terms and conditions they consider should be included in the lease.

8.19. A request for other rights must state the nature and extent of the rights sought.

8.20. All requests should also include any other terms and conditions applicable to the request (section 79(2)(h)). For ownership, this is likely to include key terms which the community transfer body wishes to be included in the contract, in addition to the information included elsewhere in the request on the extent of the land, price and proposed use. This section need not be completed if the community transfer body does not wish to include any additional terms and conditions, and it is not required for a request to be accepted as complete.

### **K Reasons for making the request**

### **L Proposed use of the land**

8.21. The community transfer body should explain the reasons behind the project and why this land or building is necessary or particularly suitable for it. They should also set out how the land or building will be used and what activities, in general terms, will take place there. For example, the reason for making the request may be

to prevent a prominent building from falling into disrepair, or increase tourism to the area; the intention might be to use it as a visitor centre or community venue; more information would then be needed on the planned activities. In other cases the reason and use may be the same, for example where the intention is to develop a hydroelectric scheme or a community garden. This section should also set out any planned physical changes or development on the land.

## **M Benefits of the proposals**

8.22. This is one of the most important sections of the request, since the benefits of the community body's proposals are key to the decision on whether to agree to or refuse the request, as set out in chapter 10.

8.23. You should consider all requests in detail to understand the proposed benefits, but community transfer bodies are encouraged to set them out along the lines of the issues relevant authorities are required to consider, and with reference to intended outcomes. They are also encouraged to show how they might address any potential negative consequences, take account of any restrictions on the use of the land, and demonstrate the capacity of the organisation to deliver the project.

8.24. If possible, you should advise the community body at an early stage of any negative consequences likely to arise, and discuss whether these can be addressed or mitigated. If the land is subject to heritage or conservation designations, the community transfer body should show they have engaged with the appropriate regulators, and that their proposals support the Local Development Plan, if relevant.

## **N Funding**

8.25. The community transfer body must outline how they propose to fund the price or rent they are prepared to pay for the land, and their proposed use of the land. This should include any development costs, ongoing maintenance and the costs of activities.

8.26. In some cases this will be very straightforward, for example if the organisation's rent and incidental expenses are covered by the fees paid by members, or by volunteering, donations and fundraising. For large projects, more detail will be required, showing that the community transfer body understands all the costs associated with their proposals and how these will be covered. This may be through grants, loans, fees for activities, income from commercial operations, and so on. Community bodies should not be expected to have funding in place when the request is made, but they should have a clear idea of where they expect to get it.

## **O Community support**

8.27. The request must set out the level and nature of support for it within the community to which the community transfer body relates, ie the community defined

in the community transfer body's constitution. How the level and nature of support should be described will depend on the particular case, but could include evidence from a range of activities undertaken to engage with the wider community, such as public meetings, community surveys, community action planning or a charette, or community budgeting. The community transfer body may reference the National Standards for Community Engagement<sup>3</sup> to show that their engagement has been effective and inclusive. A full community ballot may be used, but is not required. The community transfer body will not have access to the assistance from the Scottish Government that is available for community right to buy applications, where a ballot is compulsory.

8.28. Community transfer bodies are encouraged to include information on the total number of people in their community and how many of them are members of the organisation to provide context for the level of support. Communities of interest may only be able to estimate this, using evidence such as the census, other surveys or information from national representative bodies.

8.29. The legislation only refers to support from the community which the body represents, but details of other support may also be provided. This could be, for example, from another local community or community of interest which the project will benefit, or from organisations such as a sport governing body or national umbrella body.

### Signatures

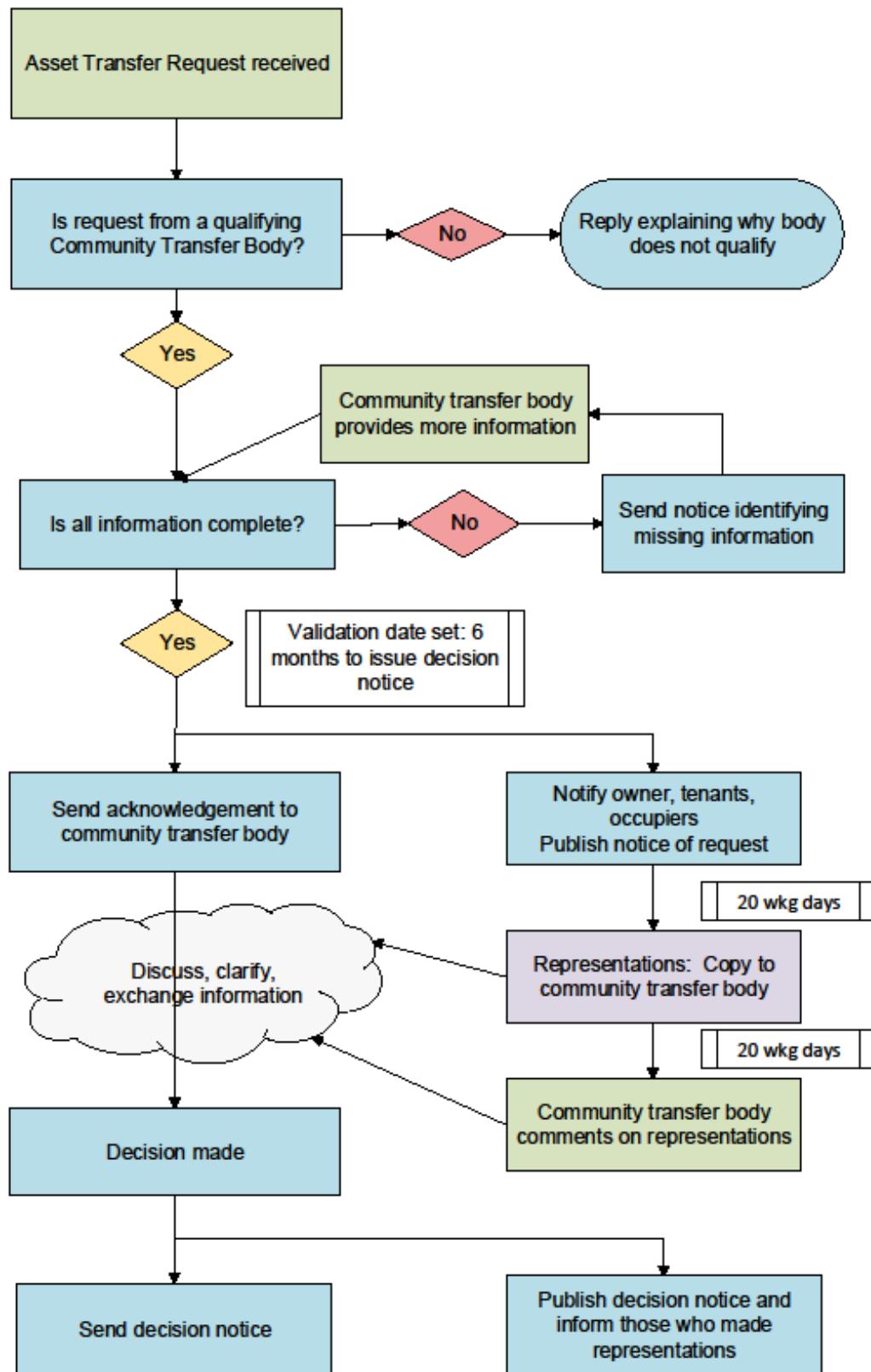
8.30. The standard application form requires two signatures from officers of the community transfer body, with their full names and addresses. This is not a requirement of the asset transfer legislation, but will be required by relevant authorities to undertake fraud prevention checks.

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<sup>3</sup> <http://www.scdc.org.uk/what/national-standards/>

## Asset Transfer Guidance for Relevant Authorities

### Procedure following receipt of an asset transfer request



## **9. Procedure following receipt of an asset transfer request**

9.1. When you receive a request, the first thing to do is to check it contains all the required information, and that the organisation making the request qualifies as a community transfer body (and is eligible to make a request for ownership, if appropriate).

9.2. If the organisation making the request is not eligible to do so, technically it is not an asset transfer request and no further action is required under the legislation. As a matter of good practice, you should reply explaining in general terms why the organisation is not eligible, and directing them to the guidance on eligibility. If appropriate, you should highlight any specific failings in the body's constitution.

9.3. If the request does not contain all the required information you must send the community transfer body a notice saying what is missing. As set out in regulation 4(2) of the Procedure Regulations, this applies if the request is in writing and contains a minimum of the community transfer body's name and contact address, and a statement that it is an asset transfer request under part 5 of the Act. No further action needs to be taken until all the required information is received. It would be helpful to make clear in the notice that the request will not be progressed until it is complete. Depending on the content of the partial request, you may also want to direct the community transfer bodies to sources of support, or invite them to discuss their proposals with you.

9.4. Only outline information under each heading is required to accept a request as complete. You can seek further information at a later stage if you feel this is needed to support the decision-making process.

### **Power to decline repeat requests**

9.5. Section 93 of the Act allows a relevant authority to choose not to consider a request which is the same or very similar to a previous request which was refused. This applies if the new request relates to the same land or building, and seeks the same type of transfer, as a request made in the previous two years, which was refused. It does not matter if the new request is made by the same body or a different one. For example, if one community transfer body requests to lease a particular building, and is refused, and another body requests to lease the same building for very similar purposes within two years, the relevant authority may decline to consider that second request. On the other hand, if the second request was for transfer of ownership instead of a lease, the relevant authority would have to consider it. Declining to consider a request under these circumstances does not count as a refusal of the request and therefore is not eligible for appeal or review.

9.6. This provision is intended to help relevant authorities deal with repeated requests which are unlikely to have a different outcome. They can still choose to

consider a repeated request if they wish. If the community transfer body has worked to improve its proposal, or other circumstances have changed, or the new request is from an entirely different organisation, it may well be appropriate to consider it.

9.7. Where a repeated request is declined, you should write to the community transfer body to advise them of the situation and the reason for declining the request.

### Acknowledgement

9.8. Once you are satisfied that all the required information has been provided, you must send an acknowledgement to the community transfer body, as required by regulation 4(3) and (4). The acknowledgement must include the following information:

- the validation date – regulation 5 states that this is the date on which the last of the required information was received (the date the request was received if it was complete). This is the date from which other time limits will be calculated.
- an explanation of the timescale for you to issue the decision notice. As set out in regulation 10 and section 82(8), you must issue a decision notice within 6 months after the validation date, unless a longer period is agreed between the relevant authority and the community transfer body.
- information about the right to appeal to the Scottish Ministers or request a review, as appropriate. This is required at the outset because of the option to appeal if no decision is made within the time limit. The acknowledgement should set out who the appeal or request for review can be made to, according to the relevant authority to which the request is made, and the circumstances in which it can be made. It would also be helpful to provide details of the address to which an appeal or request for review should be sent.
- whether another asset transfer request has already been made to the relevant authority in respect of the same land (or part of the same land).
- whether the relevant authority considers that it is now prohibited from disposing of the land to any other person (see below).

9.9. You may also want to consider including in the acknowledgement information about the process by which your authority will make its decision on the asset transfer request, and any further support that will be provided to the community transfer body.

9.10. A model acknowledgment letter is provided on the Scottish Government website.

## **Publication of documents**

9.11. You must make copies of the asset transfer request and any documents or information accompanying it available to be viewed online, until the request process is completed. Any representations made about the request must also be put online.

9.12. In order to comply with data protection requirements, any personal information should be redacted from these documents before they are published.

9.13. It may be helpful for other community transfer bodies (and other relevant authorities) to maintain an archive of completed requests online. In particular, this will help community transfer bodies to know if previous requests have been made, and refused, for the same property.

## **Notification and representations**

9.14. Regulations 6 and 7 of the Procedure Regulations set out arrangements for other people to be made aware that an asset transfer request has been made, and of how they can make representations about it. This must be done as soon as practicable after the validation date (the date the completed request was received).

9.15. You must directly notify any tenant or occupier of the land the request relates to. This would include any group which has an agreement for regular use of the land or building. You must also notify the owner, if the relevant authority leases the land.

9.16. Notice of the asset transfer request must also be published online, and put up at the site. Regulation 7(2)(b) requires it to —be displayed at a public place in the vicinity of the land to which the asset transfer request relates!. You can delegate this to the community transfer body, or another agency, if you wish, to save staff having to travel to the site, but it is the responsibility of the relevant authority to ensure the notice is displayed.

9.17. If the request relates to a building or area of land in a settlement, the notice should normally be placed on the building or land, or on an object close to it. If it is a building open to the public, you may also want to put a copy somewhere prominent inside. However, it is more important that the notice is put up where interested people will see it than that it is on or adjacent to the land in question. It could be displayed in a village shop, on a community noticeboard or an information point in a car park – wherever local events and notices are normally advertised.

9.18. You can expect the community transfer body to publicise information about its proposals, and it will probably announce the fact that it has submitted a request, through social media, newsletters etc. However, it is the responsibility of the relevant authority to formally give notice that a request has been received and to invite representations.

## Asset Transfer Guidance for Relevant Authorities

9.19. Notices sent to tenants, occupiers and owners and those published online and near the land all require to contain the same information. They must:

- state that an asset transfer request has been made
- identify the community transfer body making the request and the land to which the request relates
- give a brief description of the nature of the rights requested and how the community transfer body propose to use the land
- say how the asset transfer request and associated documents can be inspected
- say how representations about the request may be made, and by what date. This must be at least 20 working days after the notice is given or published

The notice should also advise that all representations will be copied to the community transfer body for their comments, and published

9.20. A template and example notices are provided on the Scottish Government website.

9.21. If any representations are received in response to these notices, the relevant authority must send copies to the community transfer body and inform them how and by what date they can make comments about them. The date must be at least 20 working days from the date on which the copy is sent. Any personal information should be redacted from representations before they are copied to the community transfer body or published online.

### **Prohibition on disposal of land**

9.22. Once an asset transfer request has been made, the relevant authority is not allowed to sell, lease or otherwise dispose of the land it relates to, to anyone other than the community transfer body that made the request, until the whole process is completed. This is set out in section 84 of the Act. Subsection (11) provides that in these circumstances, any contract requiring the relevant authority to dispose of the property to any other person has no effect.

9.23. You should make sure that anyone dealing with property management will be aware of the fact that an asset transfer request has been made for a particular property, in case another approach is made for the same property while the process is underway. This might be done, for example, by putting a note on the property management system.

## Asset Transfer Guidance for Relevant Authorities

9.24. Subsections (4) to (10) of section 84 set out all the possible ways in which the asset transfer request process can come to an end. In summary, the process is completed when:

- a contract for the transfer is concluded;
- the request is refused and the community transfer body has followed all routes of appeal without success, or
- the community transfer body fails to take the next action in the process within the time required. For example, if it does not make an offer, or does not request a review or appeal if the request is refused.

9.25. There is no statutory provision for a community transfer body to withdraw its request.

9.26. Under subsection (12), the prohibition on disposal does not apply if, before the asset transfer request is made, the land has already been advertised for sale or lease, or the relevant authority has entered into negotiations or begun proceedings to transfer or lease the land to another person. In these cases, an asset transfer request can still be made, but it will not prevent negotiations or proceedings continuing with, or bids being made by, any other person.

9.27. There is no specific definition of —entering into negotiationsll, but you should be able to show evidence of discussions that go further than a preliminary enquiry.

9.28. The Scottish Ministers can also make a direction to say that the prohibition does not apply. A request for a direction under section 84(13) must identify the land to which the asset transfer request relates, the relevant authority and the community transfer body, and must explain why you consider the prohibition on disposal should not apply.

### **Multiple requests for the same property**

9.29. Each asset transfer request that is received must be processed in line with the procedures and timescales set out above, even if further requests are received for the same land before the first has been concluded. There is no provision, for example, to allow the relevant authority to delay a decision on one request until it has considered another, unless the community transfer body making the first request has agreed to an extension of the timescale. However, if you are using a pre-application process, you may be able to agree with the community transfer bodies involved that all requests will be submitted at roughly the same time, allowing them to be processed in parallel. Ideally, all community transfer bodies interested in a particular property would work together to submit a single request, but this is not always practical.

## Asset Transfer Guidance for Relevant Authorities

9.30. Each asset transfer request that is received prohibits the relevant authority from disposing of the land to anyone other than the community transfer body making that request, until it has been completed (as described in paragraphs 8.11.). Where there are multiple requests for the same land, this could result in overlapping prohibitions. It is not considered that receiving and processing an asset transfer request would disapply the prohibition in terms of section 84(12), in respect of subsequent requests. Equally, the prohibition imposed by the first request would not prevent subsequent requests being processed, but the ultimate disposal of the land could not take place until all requests have been concluded, including any appeals.

9.31. If the relevant authority decides to agree to one of the requests, it may be appropriate to include in the decision notice that the agreement is conditional on the prohibition imposed by the other request(s) being lifted. An application can be made to the Scottish Ministers for a direction to disapply the prohibition if necessary.

9.32. As explained in paragraph 9.26, the prohibition on disposal does not apply if the land has already been advertised or negotiations for transfer have begun before any asset transfer request is received. In this situation it would be helpful to keep the community transfer body informed of the progress of that process, so they can understand how this may affect their request. The asset transfer request must be processed according to the legislation, but the decision would take into account the other offer(s) or negotiations and whether these would restrict the authority's ability to agree to the request.

## 10. Decision-making process

10.1. To provide a robust decision-making process it is essential to bring together officers with key responsibilities within the authority, including property, legal, finance, and those with a focus on community development or community engagement. It may also be helpful to include, or obtain advice from, relevant colleagues in relation to the benefits that an asset transfer may provide, such as economic development or environmental improvements.

10.2. Relevant authorities with a remit focused on particular issues may find it helpful to seek advice from others, for example through the community planning partnership. This may be general advice or in relation to specific benefits included in a community body's proposals. Some of the proposed benefits are likely to relate to a specialist area on which advice may be required. For example a relevant authority may seek advice on assessing outcomes for mental health or on environmental issues. Community planning partners may also be able to provide insight in relation to the local context. Some relevant authorities are planning to recruit a panel of external people with appropriate experience to advise on asset transfer requests, although the final decision must rest with the authority itself.

10.3. Each relevant authority will need to establish its own procedures for obtaining approval of decisions at an appropriate level, within the time limit required. Information on the process should be made available to the public, including who makes the decision and expected timings for each stage.

10.4. Dialogue between the relevant authority and the community transfer body should continue throughout the process. Relevant authorities can request clarification or more detail on any issues they feel are necessary for their decision. This will help to avoid situations where a request is refused on the basis of a lack of information which the community transfer body could have provided if they had been asked. Authorities should also take care that the type of information and level of detail expected is appropriate and proportionate to the individual request.

10.5. If the relevant authority considers at an early stage that they are likely to refuse the request in its current form, but could agree to an alternative proposal, you could discuss this with the community transfer body and suggest that they submit a new request. However, this must be entirely at the community transfer body's choice. They have a right to persist with the request they want to make and receive a formal decision, which is open to review or appeal.

## Matters to be considered

10.6. Section 82 of the Act states that, —where an asset transfer request is made by a community transfer body to a relevant authority ... the authority must decide whether to agree to or refuse the request<sup>11</sup>. Under subsection (5), —the authority must agree to the request unless there are reasonable grounds for refusing it<sup>11</sup>.

10.7. It is not possible to give detailed guidance on what may be reasonable grounds for refusal, as this must be determined in the circumstances of each individual case. However, they are likely to include cases where the benefits of the asset transfer request are judged to be less than the benefits of an alternative proposal, where agreeing to the request would restrict the relevant authority's ability to carry out its functions, or where another obligation on the relevant authority prevents or restricts its ability to agree to the request.

## Benefits

10.8. In reaching its decision the authority must consider the reasons for the request and the information provided in the request and in support of the request, and compare the benefits of the community transfer body's proposals with the benefits that might arise from any alternative proposal. Alternative proposals may be another asset transfer request, or another proposal made by the authority, or by any other person. If the relevant authority does not consider the property to be surplus, continuing the existing use would be treated as an alternative proposal; if the property has been identified for disposal, disposal on the open market could be an alternative.

10.9. In assessing the benefits of the request the relevant authority must consider whether agreeing to it would be likely to:

- promote or improve
  - economic development
  - regeneration
  - public health
  - social wellbeing
  - environmental wellbeing, or
- reduce inequalities of outcome which result from socio-economic disadvantage

10.10. The authority must also make the decision in a manner which encourages equal opportunities and the observance of the equal opportunities requirements. While some of this may come under the heading of promoting or improving —social wellbeing<sup>11</sup>, it provides a focus for considering activities which may benefit particularly disadvantaged groups, or promote inclusion and understanding between different groups.

## Asset Transfer Guidance for Relevant Authorities

10.11. When comparing the benefits of other proposals to the benefits of the asset transfer request, the non-financial benefits of the other proposals should be considered, where possible, as they are for the asset transfer request. The price offered for the transfer should also be considered alongside the non-financial benefits. In its simplest form, you should consider what outcomes could be achieved with any profit or savings that might be made, or what impact any financial loss might have, compared with the benefits offered by the community project or alternative proposals.

10.12. Further guidance on the assessment of benefits and price is provided in chapter 13.

### **Ability to deliver**

10.13. Considering whether a proposal is likely to achieve the benefits set out is not only a matter of whether the planned activities would lead to the suggested outcomes. It also requires an assessment of whether the community transfer body is able to successfully deliver the project, and make it sustainable. This should cover both funding and the capacity and governance of the organisation. Some issues to be considered might be:

- has the community transfer body identified all the relevant costs of the project or activities?
- have they identified appropriate and realistic sources of funding – for example, will they be eligible for any suggested grants, are any fees for activities affordable for their target market, do they have a viable business plan for any proposed commercial activities?
- where relevant, have they identified how the project will be funded in the longer term?
- do members have appropriate skills, experience and qualifications to deliver the project, or does the body have a plan for engaging people who do?
- does the community transfer body have suitable governance arrangements for the scale of the project?
- where relevant, do they have succession plans in place for recruiting new Board members / Trustees in future?

10.14. Consideration of these issues should always be proportionate and appropriate to the scale and type of project involved. A proposal to buy and redevelop a building to provide new facilities for a range of users will be a complex and long-term project which requires clear planning for several years and a range of professional skills. A proposal to provide sport activities for young people in school

grounds in the evening may not need long-term planning, but the community body will still have to consider whether people with appropriate skills are available and potential additional costs such as affiliation to governing bodies or Disclosure checks.

### **Relevant authority's functions**

10.15. The relevant authority must consider how any benefits relate to other matters the authority considers relevant, including, in particular, the functions and purposes of the authority. In many cases, the proposed benefits of an asset transfer request will contribute to achieving the relevant authority's outcomes, or to national outcomes more generally. However, there may be cases in which agreeing to the request would have an unacceptable impact on the relevant authority's ability to deliver its functions. This could be a direct impact, for example because the community activities would physically interfere with the relevant authority carrying out its operations, or require them to put alternative arrangements in place that substantially increase the costs. There may also be cases where the community transfer body's proposals conflict with a policy of the relevant authority. And affordability may be a factor, if the cost of the transfer would affect the authority's budget to the extent that it reduced its ability to deliver its functions, even after taking account of the value of the proposed benefits.

10.16. Where there is a direct impact on the relevant authority's operations, in some cases it may be possible to work with the community transfer body to make adjustments to accommodate both parties' activities. If the community body understands the difficulties they may be able to suggest innovative solutions. Alternatively, the relevant authority may be able to suggest other land in the area that the community body might use.

### **Obligations and restrictions**

10.17. Another matter to be considered is any obligations that may prevent, restrict or otherwise affect the authority's ability to agree to the request, whether these arise from legislation or otherwise. For example, legislation may require a relevant authority to obtain special permission to dispose of certain property, or title conditions or planning restrictions may say that it cannot be used for certain purposes. The Act does not over-ride or alter any such obligations. They should be explained to the community transfer body at the earliest possible stage, as they may influence their decision on what property may be suitable for their needs.

10.18. If an obligation imposes an absolute ban on the transfer of the rights sought by the community transfer body, or on the use they propose for the land, that would be reasonable grounds for refusal. However, in many cases there are mechanisms available for amending or removing the restrictions. The relevant authority should consider the benefits of the asset transfer request first. If it would be inclined to

agree to the request, and, if appropriate, considers it would meet the requirements for removing the restrictions, the authority can then investigate the possibility of doing so. For example:

- If a lease prohibits subletting, the relevant authority could potentially ask the landlord if they would consider amending it in favour of the community transfer body. (This only applies if the landlord is not a relevant authority, or a company wholly owned by a relevant authority; otherwise the restriction in the lease is disapplied under the terms of section 92 – see paragraph 10.24.)
- If permission is required from the Scottish Ministers (or any other person) to transfer the rights requested, if the relevant authority considers the request should be agreed, they should prepare a case to seek permission for the transfer.
- In some cases an application to the courts may be required, for example if an asset transfer request relates to inalienable common good land. A proposal with strong support from the community is likely to strengthen the authority's case for disposing of the property.

10.19. In each of these cases, it may take some time to deal with the potential restriction on disposal. It may be necessary either for the relevant authority and the community transfer body to agree to extend the time allowed for issuing a decision notice, or for the agreement to the request to be conditional on the restriction being removed.

### **“Other matters” and community support**

10.20. The final paragraph of section 82(3) requires the relevant authority to consider —such other matters (whether or not included in or arising out of the request) as the authority considers relevant. One aspect that we would recommend relevant authorities consider under this heading is community support for the proposals and any potential impact on other community groups.

10.21. The relative importance of wider community support will depend on the proposed project. It is particularly important if the request is for ownership or development of a key site, or will change the delivery of services, and which therefore affects people in their everyday lives. It may be less important for a lease of office space or an unobtrusive renewable energy scheme, for example, although any asset transfer could raise questions of value for money and equal treatment of different groups.

10.22. There are often differences of opinion within communities, and you should not expect unanimous support for a proposal. However, one of the intended benefits of community ownership and community-led activity is to increase community cohesion and resilience. A scheme that attracts substantial opposition and causes

## Asset Transfer Guidance for Relevant Authorities

division in the community may not have a net benefit. It could also result in fewer people becoming involved or using the services.

10.23. If the request is from a body representing a community of interest, they should be encouraged to show how they have engaged with the geographic community in the area where the asset is located. A community of interest may be a subset of the local community, such as an equality group or sports club, or it may be drawn from a regional, national or even international base. In either case, the views of local residents who are not part of that community of interest should be considered. Equally, a proposal from a geographic community may reference support from communities of interest who may benefit.

### **Lease restrictions**

10.24. If the request is for land which is leased to the relevant authority by another relevant authority, in certain circumstances restrictions in the lease do not apply, as set out in section 92 of the Act. The circumstances are that:

- the land is leased by one relevant authority, or a company wholly owned by a relevant authority, to another relevant authority
- the request is for lease or a right of occupancy of the land, and
- no other person is entitled to occupy the land.

10.25. In this case, any restrictions in the lease which restrict the ability of the relevant authority to sub-let or share occupancy of the land, or restrict how the land may be used, do not prevent the relevant authority agreeing to lease the land to the community transfer body or allow them to occupy the land. This does not affect any restrictions on the power of the relevant authority to assign or transfer rights and liabilities under the lease, and the relevant authority continues to be subject to any obligations under the lease. For example, if the lease said sub-letting was not allowed, the relevant authority could agree to an asset transfer request for a sub-let, but would still be responsible to the landlord for any maintenance requirements included in the lease between them.

## 11. Price, Valuation and Non-financial benefits

11.1. The Act does not say how much should be paid to purchase an asset or in rent, whether it should be at market value or at a discount. The community transfer body has to state in the asset transfer request how much they are prepared to pay, alongside the benefits the project will deliver, and the relevant authority has to decide whether to accept that price. This can be a difficult area for both sides. The Scottish Government brought together a Short-Life Working Group to look at the issues of Valuation and Assessment of Non-Financial Benefits, and they have developed the guidance in this chapter. Details of the group's membership and a link to its papers are provided at Annex B.

11.2. All relevant authorities have a duty to secure Best Value in their operations, including when disposing of or letting property. However, it has long been recognised that best value does not always mean the highest possible price, and all authorities have the ability to dispose of property at less than market value where there are wider public benefits to be gained. This is set out in the Disposal of Land by Local Authorities (Scotland) Regulations 2010, and in the Scottish Public Finance Manual for other relevant authorities. It is a question of balancing the financial and non-financial impacts, both positive and negative, of the different options.

11.3. The likely price of the asset is something the community transfer body will need to consider at an early stage in developing its proposals, along with the initial and ongoing costs of the project. It will be helpful for relevant authorities to give an indication of their expectations in terms of price at an early stage in discussions, if possible. Community transfer bodies should not assume that asset transfers will be at a nominal sum.

11.4. For purchase or lease, both parties are likely to need a formal valuation for accounting and funding purposes. Chapter 12 explains how this could be done on a joint basis.

11.5. Most asset transfer requests are for property which is unused or to be closed. If a request is made for a building or site which is in use, there may be costs to the relevant authority for relocating staff and services, which may offset the value of the non-financial benefits of the proposal. On the other hand, there may be savings from the community transfer body taking over maintenance or other responsibilities. Similarly, a request for use of a property outside normal hours, for example, may incur additional costs such as safety and security arrangements. It may be possible to make arrangements with the community transfer body to reduce these costs and make the transfer more feasible.

11.6. If the community transfer body decides to offer a price that is less than the market value, the relevant authority will need to assess whether the non-financial benefits offered by the proposals justify that reduced price. Chapter 13 provides

## Asset Transfer Guidance for Relevant Authorities

guidance for relevant authorities in doing this. Chapter 14 deals with circumstances where the relevant authority may wish to include arrangements to protect any discount in case the proposed benefits are not delivered.

### State Aid Considerations

11.7. All asset transfers must comply with State Aid rules<sup>4</sup>. A disposal at less than market value may constitute state aid, if it provides an economic advantage to a trading entity. There are four key tests<sup>5</sup> that need to be met in order to establish whether a measure constitutes state aid, this includes whether any intervention is likely to **affect trade between Member States**.

11.8. The relevant authority will have to consider whether any reduction from market value is allowed under the state aid rules. However, if any assistance is found to have breached the rules, it is the organisation that received the assistance that has to pay it back, so it is important for both parties to be clear about the position in relation to State Aid.

11.9. If assistance is considered to be state aid, there is a —de minimisll rule that allows small amounts of assistance to be given over a rolling 3-year period. The threshold is for all state aid from any source; where a discount involves state aid the community transfer body will be required to demonstrate that this will not exceed the limit. Assistance should always be considered to see if it is state aid, before considering whether it is —de minimisll.

11.10. Asset transfer projects often receive assistance from more than one public authority, for example by a discount and a grant. In such cases it would be helpful if the authorities could come to an agreed position on whether the project meets the state aid tests.

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<sup>4</sup> <http://www.gov.scot/Topics/Government/State-Aid>

<sup>5</sup> <http://www.gov.scot/Topics/Government/State-Aid/About/state-aid-tests>

## 12. Obtaining a joint valuation of the asset

12.1. The Act does not say how much should be paid to rent or purchase an asset, and there is no requirement to obtain a valuation for the purposes of the Act. However, both the relevant authority and the community transfer body are likely to need to understand the —market value— of the asset, for accounting, borrowing or funding purposes, and to ensure transparency about the amount of any reduction from market value. A market value is also required for Best Value and State Aid assessments.

12.2. To reduce overall costs and provide a common starting point, we would encourage the relevant authority and community transfer body to obtain a joint valuation, and to agree that this will give the figure on which discussions will be based. If at any stage the relevant authority and the community transfer body are unable to agree on the approach, they may need to obtain separate valuations instead.

### What is “market value”?

12.3. Market value is an important measure which is used widely for financial accounting purposes as well as in property transactions. The concept is set out in International Valuation Standards and incorporated into the professional standards set out by the professional bodies governing valuers, such as the Royal Institution of Chartered Surveyors (RICS) Valuation – Professional Standards (known as —the Red Book—). Valuers who are suitably qualified to practice in Scotland are required to comply with these professional standards.

12.4. Market Value is currently defined in the Red Book as “the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm’s length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.”

12.5. Market Rent is currently defined in the Red Book as —The estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm’s-length transaction after proper marketing where the parties had each acted knowledgeably, prudently and without compulsion—.

12.6. These definitions may be revised from time to time. The most up-to-date version should always be used.

### **When should the valuation be undertaken?**

12.7. There are two points within the process where discussions on the value of the property are needed:

- Stage 1- initial enquiry. When the community transfer body requests information about the property, if an approximate indication of the value is known to the relevant authority this should be made available to the community body. This should be caveated to the extent that it is an indicative value only, and it may be given as a range of values. This would be very helpful to community bodies, particularly where they are considering options across more than one property.
- Stage 2 – confirmed proposals. Once the community transfer body has confirmed their interest and the property has been clearly defined, then the formal assessment of market value should be instructed. This is likely to be prior to the date of the Asset Transfer Request, during pre-application discussions. If the valuation takes place after the request is received, the community transfer body may wish to revise their offered price on that basis, or a revised price may be included in the decision notice.

12.8. The formal valuation can be undertaken when the relevant information about the property has been assembled. This includes defining the exact boundaries, layout plans, information about the property, legal rights and burdens, etc. In the event that material information is unavailable when the valuation is undertaken then it may require to be re-valued at a future date. Where that is the case, where possible, this should be made clear to both parties and the valuer at that stage.

12.9. The valuation report will qualify how long the valuation is valid. This may be only at the date of the report, or may be for some time (typically six months) unless market circumstances change or further information comes to light which would cause a revised opinion of value. Despite this, when agreeing to instruct a valuation jointly, the relevant authority and the community transfer body should agree the time period within which they are able, or are prepared, to proceed to conclude the transaction at a price based upon the valuation to be obtained, taking into account the time required to process an asset transfer request. Any such agreement will nonetheless be subject to any material change within the agreed time period which may affect the valuation and require a revaluation. The community transfer body should also consider the requirements of funders or other organisations involved, in relation to the date of the valuation.

### **Who should value the property?**

12.10. Stage 1 valuations are likely to be provided by an in-house Estate Management team, or retained advisers. The valuation should be provided by the relevant authority with no costs charged to the community transfer body, provided

the requests are reasonable in nature. This value should be provided from existing information, where appropriate information is available, and should not require a valuation to be instructed. It may be provided on the basis of a range of values.

12.11. Stage 2 valuations should be provided by either

- a) the Valuation Office Agency (VOA) (the —District Valuerll), or
- b) a suitably qualified and experienced independent valuer, registered with an appropriate professional body (such as RICS).

12.12. For Stage 2 valuation, if the relevant authority and the community transfer body agree to obtain a joint valuation, they must first agree who will be asked to determine the market value. Either party may provide additional information to the valuer if they consider it relevant to the assessment of market value, and this information must be disclosed to the other party. However, it is for the valuer, acting as an independent expert, to determine what information is pertinent in their assessment of value and they may choose to disregard any such submissions, if they deem it appropriate.

### **How should the valuation be instructed?**

12.13. If a joint valuation is to be obtained, the parties should issue a joint letter of instruction to the valuer. This must state clearly the basis of valuation and the extent of the property. The wording of the letter is to be agreed between the parties. A suggested template letter is provided below, based on the information required under Terms of Engagement in the Red Book). The draft letter is a guide only and its use is not mandatory.

12.14. The parties may instruct the valuer to make special assumptions in relation to the valuation. If the valuation is for lease, they should set out the main terms of lease required, or provide sufficient information to enable the valuer to form an opinion on the nature of the rental market relating to that type of property in that area.

12.15. The parties should share the cost of a joint valuation equally.

12.16. If the community body is applying for funding for the cost of valuation, they will usually need to get at least one quote to include in the application, and will not be able to confirm the instruction until the funding application has been decided. The valuer's response to the instruction will include a note of their fees, and can be used as a quote. If necessary the letter of instruction can be sent to several valuers to get more than one quote. It is accepted that no contract exists until all the details have been agreed and the client has confirmed the valuation should go ahead.

### **The basis of value**

12.17. The basis of value in most cases will be the market value as defined in the Red Book. This valuation should include any development potential and any rights or burdens that run with the land/property as well as any reduction in the value of any remaining land as a result of the fact that only part of the land is being acquired by the community body.

12.18. Whilst it is expected that the vast majority of valuations will be on the basis of market value, in some situations it may not be appropriate to use the market value of an asset but instead to use a different basis of value. The situations where alternative bases of valuation would be used are likely to be very specific, possibly where a specialist building for which no market would otherwise exist, is to be transferred subject to a restriction on use which prevents it from being used for another purpose. The parties must agree the most appropriate basis in order to instruct the valuer.

12.19. Whatever basis of valuation is used to assess the value it must be one of the recognised bases set out in the Red Book.

### **Value for lease**

12.20. For a lease, the market rent is based on the usual terms of lease for the relevant type of property in the same area. However, a community transfer body and a relevant authority may have agreed in advance to different terms. It is for the two parties to agree whether to instruct a market valuation, to understand the full discount being sought, or to obtain a valuation on the basis of the terms they have agreed, which may be more helpful in determining the actual rent to be paid. The letter of instruction should make clear the terms on which the valuation is to be based. The valuer may comment on the terms, how they may differ from standard market terms of lease, and how that may impact on the valuation.

**Suggested Template for joint letter of instruction to assess value of asset  
subject to Asset Transfer**

Dear Sir,

**[Name of Relevant Authority]**

**[Name of Community Transfer Body]**

The above parties wish to jointly appoint you to provide a valuation of the property **[description of property]**, shown in heavy black outline on the attached plan ref xx. The valuation is required to assess the value of the property for its possible sale to **[Name of Community Transfer Body]**.

The valuation should be carried out in accordance with the RICS Valuation Professional Standards (The Red Book). The basis of value will be **[market value]/[market rent valuation]/[other agreed basis of valuation]** as defined in The Red Book.

This valuation should include any development potential, any rights or burdens that run with the land/property (as provided by **[Name of relevant authority]**) and such other agreed facts as are set out. Please set out clearly details of your assumptions.

**[ (for lease) The lease terms to be assumed should be those that reflect current practice in the market in which the property is situated. Please set out clearly the principal lease terms assumed when providing your opinion of market rent. ]**

When writing to confirm this instruction, please advise the fee for undertaking this work.

In order to arrange access to the property please contact **[contact name]**, Tel **[phone number]**. We confirm that the parties are to be equally responsible for the valuation fees and request that you forward an invoice in respect of half those fees to our office, and the other half to **[contact details of other party]**.

Annex 1 – Joint statement of Agreed Facts (this should include items such as area / lease terms / condition report / planning situation / burdens / restrictions on title / handling of fixtures and fittings.)

Annex 2 – Further information provided by the RA (not forming part of the agreed facts)

Annex 3 – Further information provided by the community body (not forming part of the agreed facts)

## 13. Assessing asset transfer requests

13.1. When the price offered in an asset transfer request is less than the market value of the property, the relevant authority will need to consider whether the proposed benefits to be delivered by the community transfer body justify the proposed discount (which will be accounted for as a —gift<sup>6</sup>). This will be based solely on the analysis of the information included in the request. The benefits of the request should be proportionate to the value of the asset and the level of discount, with an appropriate level of information to support the application. Any decision to transfer an asset must represent good use of public resources.

### Criteria for Assessing Requests

13.2. A way to demonstrate resources are being put to good use is to demonstrate Best Value<sup>6</sup>. Best Value is the requirement to make arrangements to secure continuous improvement in performance whilst maintaining an appropriate balance between effectiveness and economy. It also requires due regard to equal opportunities requirements, and to contribute to the achievement of sustainable development.

13.3. There are seven Best Value themes (see the table at page 58) and public bodies across Scotland have a duty to secure Best Value for public money and can sell, or lease, at less than market value where there are wider public benefits to be gained from a transaction. In making a case for the transfer of an asset, the Best Value themes will be evident, to a greater or lesser extent, in the community transfer body and the related benefits that will accrue in pursuing positive outcomes for a more prosperous and fairer Scotland. The matters which the relevant authority must consider include the following types of benefit:

- Economic development
- Regeneration
- Public health
- Social wellbeing
- Environmental wellbeing
- Reducing inequalities of outcome from socio-economic disadvantage
- Any other benefits that might arise through the alternative use of the asset.

13.4. Asset transfer at less than market value is justified when these additional benefits empower communities and align with local and national priorities to enable the delivery of Best Value across the public sector as a whole. Such benefits are

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<sup>6</sup> <http://www.gov.scot/Topics/Government/Finance/spfm/BestValue>

likely to align with one or more of the Scottish Government's National Outcomes<sup>7</sup>, which all Scottish public authorities are required to have regard to in carrying out their functions (under Part 1 of the Act). They may also contribute to the relevant authority's policy objectives or local priorities determined through Community Planning, but the value of benefits should be judged on a broad basis, not only in relation to the particular authority to which the request is made.

13.5. Case studies demonstrating the kind of benefits that can be delivered by community-led projects are available via the Scottish Government website.

### **Considering the Request**

13.6. The information provided in the asset transfer request should demonstrate that the project has clear objectives, including the projected outcomes and impacts sought by the community transfer body alongside any associated dependencies, constraints and risks identified. The benefits of the request should be proportionate to the value of the asset and the level of discount.

13.7. Each one of the seven Best Value themes should be explored with the evidence provided used to evaluate the strength of the case being made, including the sustainability of the proposal in the longer-term (see the table at page 58). The request must also include the benefits that will be delivered as part of the proposal (see paragraph 13.3) which can come in a variety of forms:

<b>Benefit</b>	<b>Example</b>	<b>Assessment</b>
Financial	Reduction in public sector costs or enhancement of provision due to the proposal.	e.g. the costs associated with volunteers' time or where intervention can reduce pressure on municipal services through the people that can be reached, such as alleviating alcohol/drug/ smoking dependency.
Outcomes - quantitative	Contribution towards local or national priorities e.g. improved standards of healthcare; contribution towards alleviating homelessness; supporting local employment etc.	e.g. the increase in local engagement in physical activity for a particular group or groups; the reduction in numbers of homeless through intervention/advocacy; the hours of vocational training provided to help develop skills that are in demand.
Outcomes - qualitative	Improved community cohesion; enhanced local services etc.	e.g. the improvement in local wellbeing from reducing anti-social behaviour; the increase in participation from a marginalised group or groups, such as providing online access or financial independence.

<sup>7</sup> <http://www.gov.scot/About/Performance/scotPerforms/outcome>

## **Assessment of outcomes**

13.8. It is recognised that measuring the value derived from community activity is not straightforward, especially for qualitative outcomes which may only be apparent in the long term, or cannot be directly attributed to one particular intervention. A number of methodologies have been developed for measuring social impact, including Social Return on Investment, Social Audit and others. However, they tend to be perceived as inherently complicated and too onerous to be justified in relation to most community projects. They also all include a degree of subjective judgement at some level, and communities and public authorities may not agree on the value placed on different elements.

13.9. Most authorities who have operated voluntary asset transfer schemes have used a simple assessment of the benefits provided, for example on a 1-5 scale. This can be placed alongside similar assessment of the Best Value themes and any other relevant factors. This is an approach that most officials will be familiar with, for example from awarding grants, procurement, recruitment, or determining the best offer in commercial property disposals. It is helpful to have a framework to ensure that all issues have been fairly considered and clearly recorded, and to allow comparison between different options and between assessors.

13.10. In reviewing each request the following matters, though not exhaustive, should be considered:

- a) Value to relevant authority in existing use
  - feasibility and cost of relocation of services elsewhere
  - potential revenue savings arising from transfer
- b) Value for alternative use/redevelopment
- c) Value for proposed and other community purposes
- d) Level of community benefits
  - extent of community served
  - Nature of benefits to be delivered
  - links to relevant authority's corporate priorities and outcomes
  - community need/demand for the services
- e) Likelihood that benefits will be delivered over a 5-year period
  - strength of organisation
  - sustainability of business plan/project
  - sources and level of funding support
- f) Impact of project failure

## Asset Transfer Guidance for Relevant Authorities

- to surrounding local environment
- to reputation of the parties
- to the service users/relevant authority's objectives

13.11. The request will then be assessed in terms of the evidence provided:

Evidence	Overview
Very strong	Governance and financial arrangements are strong and sustainable. Best Value characteristics are evidenced and contained throughout the overall approach. Related projected benefits are very robust and demonstrate value for money: suitability, effectiveness, prudence, quality, value and the avoidance of error and other waste.
Strong	Governance and financial arrangements are sound and sustainable. Best Value characteristics are in evidence in the proposal. Related projected benefits are demonstrated well and represent value for money.
Moderate	Governance and financial arrangements are in place and acceptable. Best Value characteristics have been considered as part of the proposal. Related projected benefits are acceptable and could lead to value for money.
Weak	Governance and financial arrangements are weak. Best Value characteristics are not well demonstrated in the proposal. Related projected benefits are not based on robust information and demonstrates questionable value for money.
Poor	Governance and financial arrangements are poor. There is little evidence of Best Value characteristics in the proposal. Related projected benefits are ill defined and/or unrealistic and do not demonstrate value for money.

13.12. The strength of the proposals will then be considered against the financial implications of any decision both for short-term budget planning and long-term asset strategies. This will include the consideration of the current use of the asset and any consequent implications that could arise from the transfer of the asset. A larger discount will require a stronger case to be made with an appropriate level of benefits demonstrated effectively.

### **Asset Transfer Request Recommendation**

13.13. Following a detailed review and assessment of the information provided in an asset transfer request, a recommendation can then be made on the strength of the case to the relevant accountable officer. It may be appropriate for a relevant authority to consider weighting the various matters in its consideration of an asset transfer request in order for it to reach a clear judgement.

13.14. Depending on the nature of a request, expert opinion may need to be sought to assess effectively the financial implications, the Best Value considerations and/or the proposed benefits.

13.15. The community transfer body needs to provide a proportionate request that demonstrates clear benefits with the appropriate level of information to support the application – commensurate to the value of the asset and the level of discount.

13.16. Any asset transfer request should be assessed alongside any other proposals for the related asset to enable a Best Value judgement to be made. This will be a judgment that takes into account the financial implications alongside the wider benefits that will accrue in pursuing local or national priorities to deliver improved outcomes for Scotland.

13.17. In considering requests, the relevant authority should always keep in mind that the criterion is whether there are reasonable grounds for refusal.

## Asset Transfer Guidance for Relevant Authorities

<b>Best Value Theme</b>	<b>Summary</b>	<b>Information Required</b>
Vision and Leadership	An organisation will have in place a clear vision and plan for what it will do to contribute to the delivery of improved outcomes for Scotland. This may be linked to one or more local or national priorities e.g. the Scottish Government's National Outcomes.	A clear plan for achieving the intended outcomes, ideally showing links to local or national priorities. Members of the community transfer body would also show that they have the relevant skills and experience to deliver the intended objectives.
Effective Partnerships	An organisation will show how it, and its partnerships, provides a collaborative approach to the challenges that communities face.	The detail of any partnerships in place to help ensure successful delivery of the intended benefits. Community support is vital and can be shown through a variety of metrics such as surveys, consultations or ballots.
Governance and Accountability	An organisation will be able to demonstrate structures, policies and leadership behaviours that support the application of good standards of governance and accountability.	An outline to illustrate that the appropriate structures and policies are in place to help ensure success in the longer-term.

## Asset Transfer Guidance for Relevant Authorities

Use of Resources	<p>An organisation will show how its effective management of all resources (including staff, assets, and information) is contributing to the delivery of specific outcomes, highlighted in the national outcomes.</p>	<p>Explain how the body's current and future resources will be used as part of a medium to long term plan (5-10 years). This could include the numbers of employees or volunteers and the maintenance of any asset. This could also include the funding requirements of the group and the sources of funding already in place.</p>
Performance Management	<p>An organisation will ensure that robust arrangements are in place to monitor the achievement of its desired outcomes as well as any reporting arrangements.</p>	<p>Outline the way in which a community transfer body will be able to monitor the achievement of its objectives, whether that be recording volunteers time or the amount of benefit achieved as part of the overarching vision. To demonstrate openness and transparency it will be important to report performance to the community.</p>
Sustainability	<p>An organisation will demonstrate an effective use of resources in the short-term and an informed prioritisation of the use of resources in the longer-term in order to contribute to sustainable development. The goal of Sustainable Development is to enable all people throughout the world to satisfy their basic needs and enjoy a better quality of life without compromising the quality of life of future generations.</p>	<p>There are five broad principles of sustainability:</p> <ul style="list-style-type: none"> <li>• promoting good governance;</li> <li>• living within environmental limits;</li> <li>• achieving a sustainable economy;</li> <li>• ensuring a stronger healthier society; and</li> <li>• using sound science responsibly.</li> </ul> <p>A community transfer body could demonstrate how its future funding or self-financing arrangements are to be achieved. Any proposal could also include any positive impact on the natural environment.</p>
Equality	<p>An organisation will demonstrate that consideration of equality issues is embedded in its vision and strategic direction and throughout all of its work.</p>	<p>The community transfer body should establish that the different groups within the community have had their different needs taken into account. Any request should include where a proposal may be reducing inequalities of outcome from socio-economic disadvantage.</p>

## 14. Use of conditions to protect discount

14.1. As explained in previous sections, public sector organisations 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 that situation, relevant authorities sometimes 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.

14.2. It is for relevant authorities 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). The aim of this guidance is to ensure that, if conditions are used, it is done in an appropriate and proportionate way. This form of protection may be supplemented by maintaining relationships with the community transfer body and supporting it to develop its capacity and deliver the project effectively.

14.3. Any conditions which the relevant authority proposes to impose to protect discount should be included in the decision notice, in sufficient detail that the community transfer body is able to decide whether they are acceptable or not. As a result, the community transfer body could seek to challenge them through the review and appeal process.

14.4. Where ownership of the asset is transferred, the main ways of protecting the discount are:

- where a reduced price was agreed in recognition of the benefits to be delivered, the community body may be required to repay the difference in price if the benefits are not delivered.
- where the price was based on a lower valuation for a particular use, conditions may be imposed to return any increase in value to the authority, if the use of the property is changed or the expected benefits are not delivered.
- if the property itself is important to the community, for example due to its heritage or location, arrangements may be made to enable the authority to recover the property if it is no longer used by the community body for the agreed purpose (or the community body is wound up).

14.5. The usual triggers for the implementation of these protections are if the project fails, the community transfer body is wound up, or it seeks to dispose of the property, either by sale or lease, for a purpose other than was expected at the time of transfer. The terms set out in the contract must be clear, setting out the trigger points for the condition to be activated and the basis for calculating any repayment.

14.6. Relevant authorities should note that the constitution of a community transfer body must include provision that its surplus funds or assets must be applied for the benefit of the community. A community transfer body eligible for ownership must have provision that on winding up any surplus property, after the satisfaction of liabilities, passes to another charity or community body (the details depend on the legal form of the community transfer body). This means that any property acquired by asset transfer cannot be used or sold for the private profit of the members of the group. A community transfer body's constitution could, however, allow property to be sold to raise money for the group's activities, if the property is no longer needed or appropriate for delivering those activities. In some cases this is a planned part of the original proposals, that part of the land will be sold to provide funding for other developments, and any conditions would need to recognise this.

### **Mechanisms used**

14.7. A range of legal mechanisms are used by authorities 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. Some relevant authorities also have 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.

14.8. Any relevant authority seeking to create a real burden should consider carefully whether it will be appropriate and effective in achieving the desired result. Guidance is available from Registers of Scotland

<https://rosdev.atlassian.net/wiki/display/2ARM/Types+of+Personal+Real+Burdens+-+Real+Burdens+Part+1>

14.9. In most asset transfer cases, there will be other organisations providing funding to the project in addition to any concession given by the relevant authority. Like relevant authorities, funders have a responsibility to ensure that their grants are used effectively and in accordance with the purpose for which they are granted, and they seek to secure this through a range of legal agreements. Where there are multiple contributors each requiring security for their investment then there is likely to be the need for a ranking agreement so that each party understands its position should the project fail, recognising that such a position may not enable each party to recover in full what it has funded.

14.10. OSCR has confirmed that protective mechanisms as described above do not conflict with the requirements for charities. The charity's trustees would need to be satisfied that the arrangements were in the best interests of the charity before agreeing to them. However, on winding up, such arrangements would be dealt with as liabilities or contractual obligations to be settled before any remaining assets are distributed for charitable purposes.

14.11. If the relevant authority has a long-term interest in retaining the property, or does not have the power to sell it, a lease may be appropriate. Long leases (which can be up to 175 years in Scots law) are common for commercial property and may be appropriate for community bodies in such cases. Shorter leases may also be appropriate for a community body that wants to develop its capacity before taking on the responsibilities of ownership. However, relevant authorities should keep in mind the Scottish Government's ambition to increase community ownership, and the fact that key funding programmes may not provide grants for leasing.

### **Proportionality**

14.12. Any mechanisms used to protect the relevant authority's interest must be appropriate and proportionate. Excessive requirements for repayment or conditions on development or change of use could make a project unviable, or restrict the ability of the community transfer body to increase its capacity and develop new projects over time. Proportionality should take into account:

- the value of the concession granted
- the scale of the authority's contribution within the overall project, and
- the time within which benefits are expected to be delivered.

14.13. In some cases the contribution provided by funding bodies may be substantially greater than the value of the concession granted by the relevant authority, or even greater than the value of the property, especially when there is significant redevelopment or new-build planned. Any mechanisms used should therefore recognise the scale of the relevant authority's interest within the overall project.

14.14. The duration of the protection mechanism should reflect the amount of discount compared to the expected benefits. It may be appropriate for the amount to be returned to reduce over the period within which the benefits are expected to be delivered. Any mechanism which restricts the use of the property should take account of the community body's need to develop in the longer term; for example, it should not last longer than the expected remaining life of a building which is transferred.

14.15. Authorities must also consider the level of risk that the benefits will not be delivered, and how effective the chosen mechanism is likely to be in enabling the authority to recover its investment. If the risk of non-delivery is considered to be particularly high, it may be necessary to revisit the decision to agree the asset transfer request. (Any conditions on the transfer should be included in the Decision Notice, and therefore considered before the decision to agree the request is final.) The community body may need to provide more assurance of its ability to deliver, or more support may need to be provided. In the case of a project failure where it is not

possible to recover the full amount funded, a robust, documented process will help to show that the initial decision was taken appropriately.

### **Collaboration and monitoring**

14.16. It will often be helpful for the relevant authority to work directly with funders to agree a balance of legal mechanisms to secure the interests of all those involved. There can be misunderstandings about the requirements of different organisations which are best clarified by making direct contact. While these discussions are likely to take place between lawyers, community bodies should be reassured that the aim is to produce a better result for them, with fewer overlapping conditions.

14.17. Where any mechanism is put in place, by a relevant authority or a funding organisation, to ensure that benefits are delivered or property is used for a particular purpose, monitoring of those requirements is also essential. If difficulties arise with a project, support may also be necessary to help the community body get back on track. Where there are several organisations with similar interests, it may be possible to establish an agreement whereby one partner undertakes monitoring on behalf of all, providing other partners with sufficient confidence to reduce the need to impose multiple protective mechanisms. This would also benefit the community body, in reducing duplication of monitoring.

## 15. Decision notice

15.1. Having made its decision, the relevant authority must issue a decision notice to the community transfer body, under section 82(7) of the Act, setting out its decision and the reasons for it. This must be done within six months from the validation date, as prescribed in regulation 10 of the Procedure Regulations, or a longer period if agreed between the relevant authority and the community transfer body. If no decision notice is issued within this time, the community transfer body has the right to request a review or appeal to the Scottish Ministers, as appropriate.

15.2. The decision should not be unnecessarily delayed. It may be possible to make a decision in less than six months if the request is straightforward or there has been substantial discussion with the community transfer body before the request is submitted – as little as three months has been suggested. On the other hand, a longer period may be required for complex requests or where another process is required to remove a restriction on the relevant authority. You should advise the community transfer body of any potential delays at the earliest opportunity, and seek their agreement to an extension to the time period. It may be helpful to assess the complexity of a request and give the community transfer body an indicative decision date at the beginning of the process, for all cases. An extension should always be agreed before the prescribed (or previously extended) period expires.

15.3. The information to be provided in a decision notice is set out in sections 82(7) and 83(2) of the Act, and regulation 11 of the Procedure Regulations. It must do the following:

- A. state the date on which the asset transfer request was made
- B. identify the community transfer body which made the request
- C. identify the land to which the request relates
- D. set out the authority's decision to agree to or refuse the request
- E. set out the authority's reasons for its decision
- F. contain notification of the right of appeal or review, how an appeal or application for review may be made, and the date by which it must be made.

and if the request is agreed:

- G. specify the terms and conditions on which the authority is prepared to transfer ownership, lease the land or confer the rights requested
- H. state that, to proceed with the process, the community transfer body must submit an offer,

I. specify the period within which the offer must be submitted (this must be at least 6 months from the date of the decision notice)

15.4. A template for a decision notice is provided on the Scottish Government's website.

**A, B, C – date of the asset transfer request, community transfer body and land to which the request relates**

15.5. This information is simply to identify the request to which the decision notice relates.

**D, E – the authority's decision and reasons**

15.6. The requirement for the relevant authority to give reasons for its decision is a key part of the legislation. An asset transfer request must be agreed unless there are reasonable grounds for refusal: it is the decision notice that will set out those grounds, and if the community transfer body does not believe they are reasonable they may appeal or seek review of the decision. In particular, if a request is refused because an alternative proposal is preferred, the decision notice would need to describe the alternative proposal and how it was considered to provide greater benefits. This should be as transparent as possible and reasons should be given for any key information that is withheld, for example on grounds of commercial confidentiality. The decision notice should be equally clear if the request is refused because of deficiencies in the community transfer body's case.

15.7. If the request is agreed, the reasons may simply be that there were no reasonable grounds for refusal. However, if there were alternative proposals for the property, or objections to the transfer, the reasons might set out why the community transfer body's proposals were favoured.

**F. Notification of the right of appeal or review**

15.8. As with the acknowledgement letter, the decision notice should advise the community transfer body of the type of appeal or review that is available to them, depending on the relevant authority to which the request is made. At this stage it can be more detailed, taking account of the decision which has been made. You should explain the circumstances in which the appeal or application for review can be made, ie, if the request has been refused, or if it has been agreed, in case the terms and conditions are significantly different from those in the request.

15.9. You should say who the appeal or application for review should be made to, with the address it should be sent to, and refer the community transfer body to the guidance on how to make the application. You should also give the date by which the application must be made – this is 20 working days beginning with the date of the decision notice.

**F. Terms and conditions for transfer**

15.10. The terms and conditions (including price or rent) on which the relevant authority would be prepared to agree to the transfer may be the same as or different from, any terms and conditions set out in the request, or may add to those in the request. However, if they are significantly different the community transfer body may apply for a review or appeal against them.

15.11. The terms and conditions set out in the decision notice form the basis of the offer to be made by the community transfer body, and subsequent negotiations to conclude the contract for transfer. They should therefore be detailed enough for the community transfer body to decide whether or not they are willing to agree, and to write a meaningful offer. The terms and conditions set out in the request should cover any issues that are key to the community transfer body's proposal; those set out in the decision notice should add anything the relevant authority considers essential. They should also clearly include anything that may affect the community transfer body's ability to deliver their proposals or secure funding, such as any restrictions on use or conditions requiring repayment if benefits are not delivered.

15.12. The decision notice may be conditional on a range of factors, such as the community transfer body securing funding, planning permission or confirmation of charitable status.

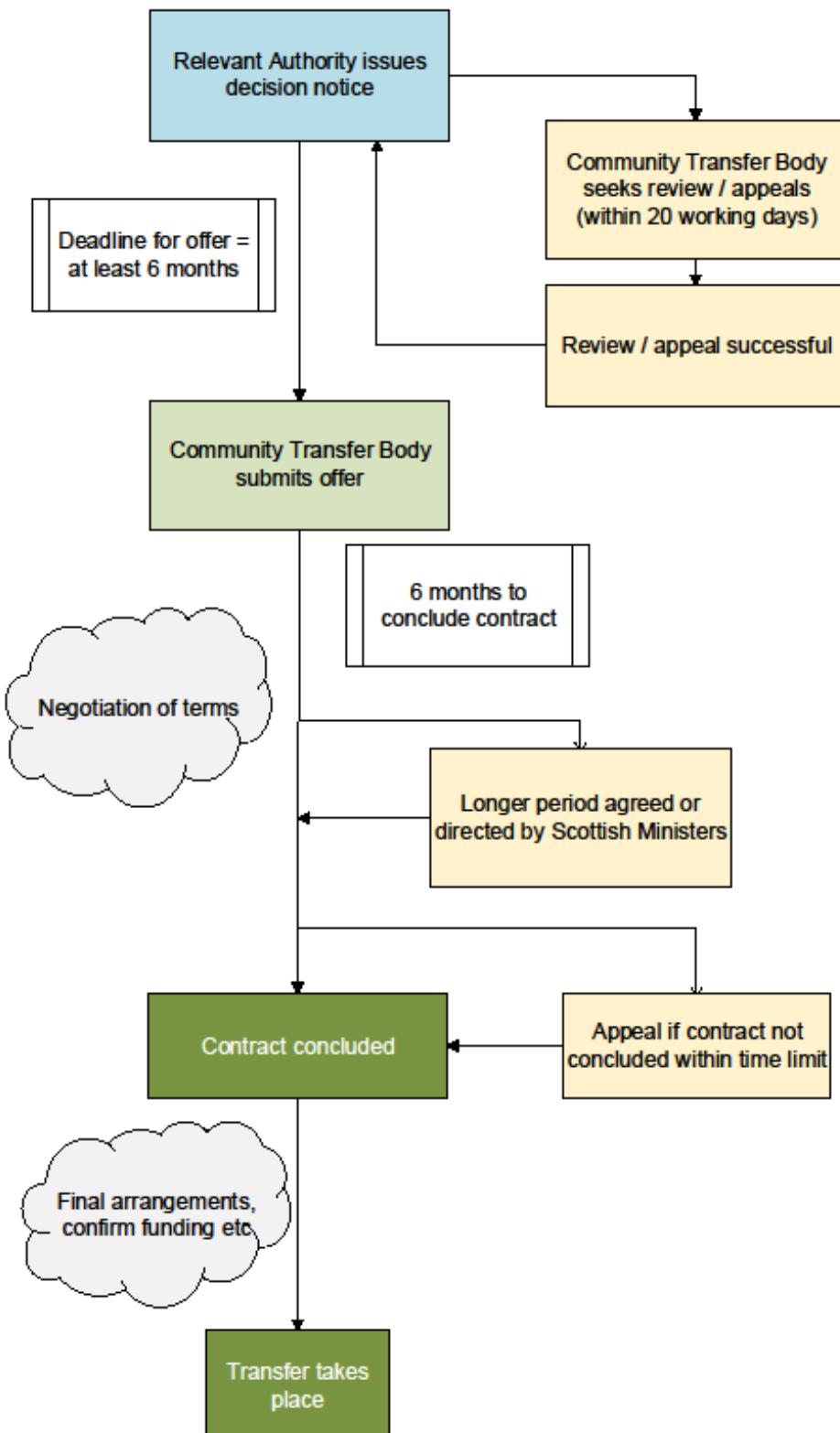
**G, H. Requirement to submit an offer, and date**

15.13. As the next stage in the process, if the community transfer body wishes to proceed, it must submit an offer to the relevant authority. This offer must reflect the terms and conditions in the decision notice, and may include any other reasonable terms and conditions that are necessary or helpful to secure the transfer of the rights requested in a reasonable time. The decision notice must set out this requirement, and give the date by which the offer must be submitted. It is for the relevant authority to determine that date, but it must be at least 6 months from the date of the decision notice.

**Notification and Publishing**

15.14. The decision notice must be sent to the community transfer body at the contact address, and published online. The relevant authority must inform anyone who made representations (and provided an address) of its decision and where the decision notice can be seen.

## After Agreement



## 16. After Agreement

### Community Transfer Body's Offer

16.1. Section 83 of the Act sets out the next steps after a relevant authority has issued a decision notice agreeing to an asset transfer request. The same process applies whether the request was agreed to initially or following a review or appeal.

16.2. In response to the decision notice, the community transfer body must submit an offer to take ownership of the land, lease it or take up the rights covered by the request. They must do this by the date stated in the decision notice, which has to be at least 6 months from the date of the decision notice. The offer must reflect the terms and conditions set out in the decision notice; if those terms and conditions are significantly different from those included in the request, and are not acceptable to the community transfer body, they can appeal or request a review (see chapter 17). The offer can also include other reasonable terms and conditions that may be needed to make sure the transfer goes ahead within a reasonable time.

16.3. It may be helpful to continue to discuss the proposals with the community transfer body during this period. They are also likely to progress applications for funding and other preparations during this period.

16.4. If no offer is made by the date set in the decision notice, (and the community transfer body did not appeal or request a review in relation to the terms and conditions within 20 working days of the decision notice), the process is at an end. The agreement to transfer the property to the community transfer body has no further effect, and the authority is free to keep it or dispose of it as it wishes.

16.5. The community transfer body can, of course, submit their offer at any point after the decision notice is issued. It may take much less than six months in straightforward cases.

### Conclusion of contract

16.6. Once you have received the community transfer body's offer, there can be further negotiations with them to conclude the contract. If the request is for ownership or a long-term lease this will be like any other property transaction, with exchanges between lawyers to agree the final wording, although for other rights the process may be much simpler.

16.7. The contract must normally be concluded within 6 months of the date of the community transfer body's offer. This does not mean the transfer has to take place within that time, but the date for the transfer, the price or rent and any other terms and conditions must be agreed. The contract may be conditional on other factors that are needed to allow the community proposals to go ahead, such as confirmation of funding or planning permission.

### No contract concluded

16.8. If no contract is concluded within 6 months of the offer, and no other action is taken, the process is at an end. The community transfer body has no further claim on the property, and the relevant authority can keep it or dispose of it as they wish. Sometimes this is by mutual consent –circumstances may change, funding or other requirements may not be secured, and it may no longer be practicable to take the project forward. However, if the community transfer body believes there is still progress to be made, they can take action to keep the request alive.

16.9. There are three options available to the community transfer body to keep the asset transfer request going beyond 6 months after the offer date:

- agree an extension with the relevant authority,
- apply to the Scottish Ministers for a direction to extend the period, or
- appeal to the Scottish Ministers, under section 83(6), to determine the terms and conditions of the contract, which the relevant authority can be required to accept.

16.10. An application to the Scottish Ministers for an extension must be made between 6 weeks and 4 weeks before the end of the 6 month period. The community transfer body must first try to agree an extension with the relevant authority, so this may be raised around 4 months into the negotiations. An extension can be agreed at any point, and need not be used if the contract is concluded sooner than expected. There is no limit on how long the extension may be, but there must be an end date.

16.11. If the end of the period is reached, either the original 6 months or an extended period, and no contract has been concluded, the community transfer body can appeal to the Scottish Ministers. This must be done within 10 working days of the end of the period. Procedures for such appeals are set out in chapter 20.

### Application to Scottish Ministers for an extension

16.12. The community transfer body can apply to the Scottish Ministers for a direction to extend the time allowed to conclude a contract in relation to an asset transfer request. The community transfer body must make its application between 30 working days (6 weeks) and 20 working days (4 weeks) before the end of the period of 6 months from the date of the community transfer body's offer. The guidance for community transfer bodies sets out the requirements for an application for a direction.

## Asset Transfer Guidance for Relevant Authorities

16.13. At the same time as making the application to the Scottish Ministers, the community transfer body must send a copy of the application to the relevant authority. You will have 10 working days to send any comments to the Scottish Ministers and the community transfer body.

16.14. Having considered the application and any comments made by the relevant authority, the Scottish Ministers will decide whether or not to make the direction as requested. The direction will be copied to both the relevant authority and the community transfer body, and will state the period within which the contract must be concluded.

## 17. Reviews and Appeals - Introduction

17.1. A community transfer body can seek a review or appeal if:

- their request is refused,
- the request is agreed, but the terms and conditions in the decision notice are significantly different from those in the request, or
- no decision notice is issued within the required period.

17.2. The process depends on which relevant authority the request was made to.

- If the request was made to a local authority, the community transfer body can apply for an internal review by the authority, as set out in section 86 of the Act. This may also apply in future to requests made to other relevant authorities that are designated by the Scottish Ministers, for example if they are bodies closely related to local authorities. If the outcome of the review does not resolve the issue, or if no decision is made within the required period, the community transfer body can then appeal to the Scottish Ministers under section 88.
- If the request is made to the Scottish Ministers, the community transfer body can apply for a review by the Scottish Ministers under section 87.
- If the request is made to any other relevant authority, the community transfer body can appeal to the Scottish Ministers under section 85 of the Act.

17.3. Section 91 of the Act provides that a community transfer body cannot seek a review or appeal in relation to the terms and conditions in the decision notice if it has already made an offer, unless it first withdraws that offer. If the community transfer body makes an offer after submitting an appeal or application for review, the appeal or review is treated as having been withdrawn.

17.4. A community transfer body can also appeal to the Scottish Ministers if a request is agreed, but no contract is concluded within the required time limit – see chapter 20.

17.5. In all cases the final decision lies with the Scottish Ministers. There is no further route of appeal beyond them (except by judicial review).

## 18. Local authority review

18.1. If an asset transfer request is made to a local authority, the community transfer body can apply for an internal review by the authority, as set out in section 86 of the Act. Procedures for such reviews are set out in the Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 (excluding Part 4 of the Regulations, which applies to reviews by the Scottish Ministers).

18.2. Section 89 of the Act allows Ministers to designate additional relevant authorities to which this route of review will apply. This could be the case, for example, if ALEOs are designated as relevant authorities in future.

18.3. Section 86(10) amends the Local Government (Scotland) Act 1973 so that a review of an asset transfer decision must be carried out by Councillors, it cannot be delegated to officers. This may have an impact on how initial decisions are taken, to ensure there is scope for a review to be carried out by Councillors not involved in the original decision.

### Application for review and acknowledgement

18.4. The community transfer body's application for review must be made in writing to the local authority within 20 working days beginning with the date of the decision notice, or if no decision has been made, within 20 working days beginning with the date of the deadline for the decision (6 months from the validation date, as given in the acknowledgement of the request).

18.5. The application must include the name and contact address of the community transfer body, and specify the land to which the asset transfer request relates. It must also include a statement setting out their reasons for requiring a review, and the procedure which they consider should be used to obtain further information, for example whether there should be a hearing or perhaps a site visit, in addition to written representations. The final decision on procedure is for the local authority.

18.6. The application for review must include a statement setting out the reasons for the application. This must cover all matters which the community transfer body intends to raise in the review. They may only bring forward further matters or evidence in response to representations on the application, or if the local authority request it. The application must also be accompanied by a list of documents and other evidence supporting the case, and copies of any of those documents or evidence the local authority does not already have. Regulation 5 requires all these review documents to be published on the local authority's website. Any personal information should be redacted before publication.

18.7. Under regulation 4, you must send an acknowledgement of the application for review to the community transfer body within 10 working days of receiving it. The acknowledgement must state the date on which the application was made, and tell the community transfer body how the review documents can be inspected.

### **Notification of interested parties**

18.8. Also within 10 working days of receiving the application, you must give notice of the review to anyone who made representations on the original asset transfer request. These people are described as —interested parties<sup>11</sup>. Notice must be sent by post to any interested party who is a tenant or occupier of the land or building to which the request relates, or an owner if the relevant authority leases it. Other interested parties may be notified by post, or by newspaper advertisement. Every interested party should have given a name and address with their original representation, but newspaper advertisement may be more appropriate if there are large numbers to be notified.

18.9. Regulation 16 provides that, if the requirements for notification and publication of the original asset transfer request were not fully met at the time, the local authority must complete this before determining the review.

18.10. The notice to interested parties must state the name of the community transfer body and the land to which the asset transfer request relates. It must say that copies of any representations previously made about the asset transfer request will be considered by the local authority when determining the review, and that further representations may be made, giving information about how and by what date they must be made, and that a copy will be sent to the community transfer body for comment. It must also state how documents relating to the review can be inspected. A template notice is provided on the Scottish Government website. The notices must be published online with the other review documents.

18.11. Interested parties may make representations to the local authority within 10 working days of the date of the notice. After this they may not bring forward any further matters or evidence unless the local authority requests it.

18.12. You must send a copy of any representations received to the community transfer body, and inform them how and by what date they may make comments to the local authority. This must be at least 10 working days from the date of sending the copy to them.

18.13. If appropriate, regulation 15 allows you to require anyone who has submitted any documents or other material in connection with the review to provide additional copies to the local authority or to any other person, and you must make such materials available for inspection until the review is determined.

## **Further representations**

18.14. Once they have the initial evidence, any representations from interested parties and comments on those representations, the local authority may consider they have enough information to determine the appeal. If not, they may decide what further procedure to use to get more information. This could be by written submissions, a hearing session, or other procedures such as a visit to the land to which the asset transfer request relates or to another relevant site (for example the community transfer body's existing premises or another similar community project). The community transfer body can say in their initial evidence what procedures they think should be used, but the final decision is with the local authority. Anyone may be asked to provide further information by written submissions, or by attending a hearing session, including people not previously involved in the case.

18.15. Any request for further information should be proportionate to the transfer request to which the review relates.

18.16. If further written submissions are required, you must send a notice to the community transfer body and any other person you want information from. The notice must set out the matters on which further representations are required, and the date by which they are to be sent to the local authority. It must also give the name and address of each person the notice is sent to. Any information provided to the local authority in response to the notice must be copied to everyone else the notice was sent to. Those other people then have 10 working days to send any comments to the relevant authority, again copied to everyone else.

## **Hearing session rules**

18.17. The rules for arranging and conducting a hearing session are set out in the Schedule to the Regulations.

18.18. If the local authority decides they should hold a hearing session to get more information on particular matters, you must send a notice to the community transfer body, any interested parties, and any other person they want to provide further information. The notice must set out the matters to be considered at the hearing session. The people invited must confirm within 10 working days if they plan to attend the hearing session. Anyone who does not do so will not be entitled to be involved in the procedures that follow. You must inform the people who have confirmed they will attend the hearing session of the date, time and place when it will be held, giving them as much notice as you consider reasonable in the circumstances. This also applies if the date, time or place of the hearing session is changed.

18.19. If they wish, the local authority may ask people who plan to attend the hearing session to submit a written statement of the case they plan to make, with

supporting documents. These statements will be copied to everyone attending the hearing.

18.20. The hearing session is intended to be a discussion, led by the local authority, on the particular matters set out in the notice. The people attending will not normally be allowed to question each other on their statements, and the local authority will be able to stop anything being raised if they consider it is not relevant or is repeating previous points. Apart from the points set out in the Hearing Session Rules, the local authority can determine the procedure of the hearing.

### **Additional evidence**

18.21. If the local authority proposes to take into consideration any new evidence that was not obtained through the process for written representations or hearing sessions, they must not reach a decision on the review without giving the community transfer body and other —relevant parties<sup>11</sup> an opportunity to comment on that evidence. —Relevant parties<sup>11</sup> are anyone who was entitled to appear at a hearing session, if the evidence relates to matters considered at the hearing session, or anyone who was sent a notice requesting further information in writing, if the evidence relates to matters covered by that notice.

### **Decision**

18.22. Section 86(8) of the Act states that section 82, subsections (3) to (5) apply to a review as they apply to an original asset transfer request. This means that, in carrying out a review, the local authority must consider the request in the same way as the original process, taking into account the same factors and benefits of the request and alternative proposals.

18.23. Having carried out the review, the local authority may confirm the original decision, modify it or any part of it (including the terms and conditions set out in the decision notice) or substitute a different decision. They must issue a new decision notice, which replaces the previous decision notice. The decision notice must be given within 6 months of the date the application for review was made, or a longer period if agreed with the community transfer body. If the request is agreed following the review, the process continues as set out in chapter 16. If it is refused (or no decision is made within the time limit, or the terms and conditions are not acceptable) the community transfer body can appeal to the Scottish Ministers – see chapter 19.

18.24. In addition to sending the decision notice to the community transfer body, you must publish it online and inform every person who made written representations in relation to the review of the decision and where the notice can be inspected.

## 19. Appeal to the Scottish Ministers

19.1. If the asset transfer request was made to any relevant authority other than the Scottish Ministers or a local authority, the community transfer body can appeal to the Scottish Ministers, as set out in section 85 of the Act. Procedures for such appeals are set out in the Asset Transfer Request (Appeals) (Scotland) Regulations 2016.

19.2. Community transfer bodies can also appeal to the Scottish Ministers following a review by a local authority, as provided by section 88 of the Act. The procedure is the same in both cases. Part 4 of the regulations sets out the technical differences in how they refer back to section 88 instead of section 85.

### **Notice of appeal and relevant authority response**

19.3. The community transfer body must send a notice of appeal in writing to the Scottish Ministers within 20 working days beginning with the date of the decision notice, or if no decision has been made, within 20 working days beginning with the date of the deadline for the decision (6 months from the validation date, as given in the acknowledgement of the request, or a later date if agreed between you). For appeals following a local authority review, this relates to the date of the decision on the review, or the deadline for that decision.

19.4. The notice of appeal must include the name and contact address of the community transfer body, and specify the land to which the asset transfer request relates. It must also include a statement setting out why they are appealing, the matters which they consider should be taken into account in determining the appeal, and the procedure which they consider should be used, for example whether there should be a hearing or perhaps a site visit, in addition to written representations..

19.5. The Scottish Ministers may consider any aspect of the decision in their appeal, including issues not raised by the community transfer body, but they will mainly focus on the matters covered in the notice of appeal.

19.6. The notice of appeal must cover all matters which the community transfer body intends to raise in the appeal, and be accompanied by all documents or other evidence they intend to refer to. Further matters or evidence may only be brought forward in response to representations on the appeal, or if the Scottish Ministers request it.

19.7. The notice of appeal must be accompanied by a copy of the original asset transfer request, and all documents provided by the community transfer body to the relevant authority in connection with the request (and review, if appropriate). If a decision notice has been issued, this must also be attached. The Scottish Ministers will publish all these documents on their website.

19.8. At the same time as sending the notice of appeal to the Scottish Ministers, the community transfer body must send a copy to the relevant authority. This must be accompanied by a list of all the documents and evidence sent to the Scottish Ministers, and copies of anything the relevant authority does not already have.

19.9. The relevant authority must send a response to the Scottish Ministers within 15 working days of receiving the copy of the notice of appeal. This must set out the matters you consider should be taken into account in the appeal and the procedure you consider should be used. The final decision on what procedure to use will be up to the Scottish Ministers. You must also send to the Scottish Ministers copies of any documents that were before the relevant authority and were taken into account in reaching its decision on the request (or review), which were not included with the community transfer body's notice of appeal.

19.10. Your response must cover all matters which you intend to raise in the appeal, and be accompanied by all documents or other evidence you intend to refer to. Further matters or evidence may only be brought forward in response to representations on the appeal, or if the Scottish Ministers request it.

19.11. If there are any issues raised in the relevant authority's response that were not covered in the original decision notice, the community transfer body may send comments to the Scottish Ministers within 15 working days of receiving that response, together with any related documents or evidence. All this material will be published on the Scottish Ministers' website.

### **Notification of interested parties**

19.12. The relevant authority is responsible for giving notice of the appeal to any interested parties<sup>11</sup> who made representations on the original asset transfer request (or review). This must be done within 10 working days of receiving the notice of appeal. The relevant authority must also send copies of the original representations to the Scottish Ministers, to be considered when determining the appeal.

19.13. Notice must be sent by post to any interested party who is a tenant or occupier of the land or building to which the request relates, or an owner if the relevant authority leases it. Other interested parties may be notified by post, or by newspaper advertisement. Every interested party should have given a name and address with their original representation, but newspaper advertisement may be more appropriate if there are large numbers to be notified.

19.14. The notice to interested parties must state the name of the community transfer body and the land to which the asset transfer request relates. It must say that copies of any representations previously made about the asset transfer request (or review) will be sent to the Scottish Ministers and the community transfer body and will be considered by the Scottish Ministers when determining the appeal, and

that further representations may be made, giving information about how and by what date they must be made. It must also state how documents relating to the review can be inspected.

19.15. If the requirements for notification and publication of the original asset transfer request were not fully met at the time, the Scottish Ministers must complete this before determining the appeal.

19.16. Interested parties may make representations to the Scottish Ministers within 10 working days of the date of the notice. After this they may not bring forward any further matters or evidence unless the Scottish Ministers request it.

19.17. The Scottish Ministers will send a copy of any representations received in relation to the appeal to the community transfer body and the relevant authority, and inform you how and by what date you may make comments on those representations to the Scottish Ministers. This must be at least 10 working days from the date of sending the copy.

19.18. The Scottish Ministers may require anyone who has submitted any documents or other material in connection with the appeal to provide additional copies to the Scottish Ministers or to any other person. They may require the relevant authority to make copies of such material available for inspection at an office, for example if it is not practical to view them online.

### **Further representations**

19.19. Once they have the initial evidence, any representations from interested parties and comments on those representations, the Scottish Ministers may consider they have enough information to determine the appeal. If not, they will decide what further procedure to use to get more information. This could be by written submissions, a hearing session, or other procedures such as a visit to the land to which the asset transfer request relates or to another relevant site (for example the community transfer body's existing premises or another similar community project). Anyone may be asked to provide further information by written submissions, or by attending a hearing session, including people not previously involved in the case.

19.20. If further written submissions are required, the Scottish Ministers will send a notice to the community transfer body, the relevant authority, and any other person they want information from. The notice must set out the matters on which further representations are required, and the date by which they are to be sent to the Scottish Ministers. It must also give the name and address of each person the notice is sent to. Any information provided to the Scottish Ministers in response to the notice must be copied to everyone else the notice was sent to. Those other people then have 10 working days to send any comments to the Scottish Ministers, again copied to everyone else.

## Hearing session rules

19.21. The rules for arranging and conducting a hearing session are set out in the Schedule to the Regulations.

19.22. If the Scottish Ministers decide they should hold a hearing session to get more information on particular matters, they must send a notice to the community transfer body, the relevant authority, any interested parties, and any other person they want to provide further information. The notice must set out the matters to be considered at the hearing session. Apart from the community transfer body and the relevant authority, who are automatically entitled to appear, the people invited must confirm within 10 working days if they plan to attend the hearing session. The Scottish Ministers must inform you of the date, time and place when the session will be held, giving as much notice as they consider reasonable in the circumstances. This also applies if the date, time or place of the hearing session is changed.

19.23. If they wish, the Scottish Ministers may ask people who plan to attend the hearing session to submit a written statement of the case they plan to make, in relation to the matters specified to be considered at the hearing. They must send a notice requesting this, specifying the date by which those statements must be submitted. The hearing statement must be accompanied by a list of documents you intend to rely on, and a copy of any of those documents which has not already been submitted and published in connection with the appeal. Other people may speak at the hearing session in relation to your case; your hearing statement must list any such persons, setting out the matters which they are to address and their qualifications for doing so.

19.24. The notice requesting a hearing statement may also require you to copy it to other people who are entitled to appear at the hearing. All hearing statements from other people must be copied to the community transfer body and the relevant authority. The Scottish Ministers must also publish them online. The Scottish Ministers may request further information about matters contained in a hearing statement; that further information must also be copied to anyone else the hearing statement was sent to.

19.25. The hearing session is intended to be a discussion, led by the Scottish Ministers, on the particular matters set out in the notice of the session. The people attending will not normally be allowed to question each other on their statements, and the Scottish Ministers will be able to stop anything being raised if they consider it is not relevant or is repeating previous points. Anyone who is entitled to appear at the hearing session may be represented by someone else, if they wish. One representative may speak for a group of people who have similar interests in the case.

### **Additional evidence**

19.26. If the Scottish Ministers propose to take into consideration any new evidence that was not obtained through the process for written representations or hearing sessions, they must not reach a decision on the appeal without giving the community transfer body, the relevant authority and other —relevant parties<sup>11</sup> an opportunity to comment on that evidence. —Relevant parties<sup>11</sup> are anyone who was entitled to appear at a hearing session, if the evidence relates to matters considered at the hearing session, or anyone who was sent a notice requesting further information in writing, if the evidence relates to matters covered by that notice.

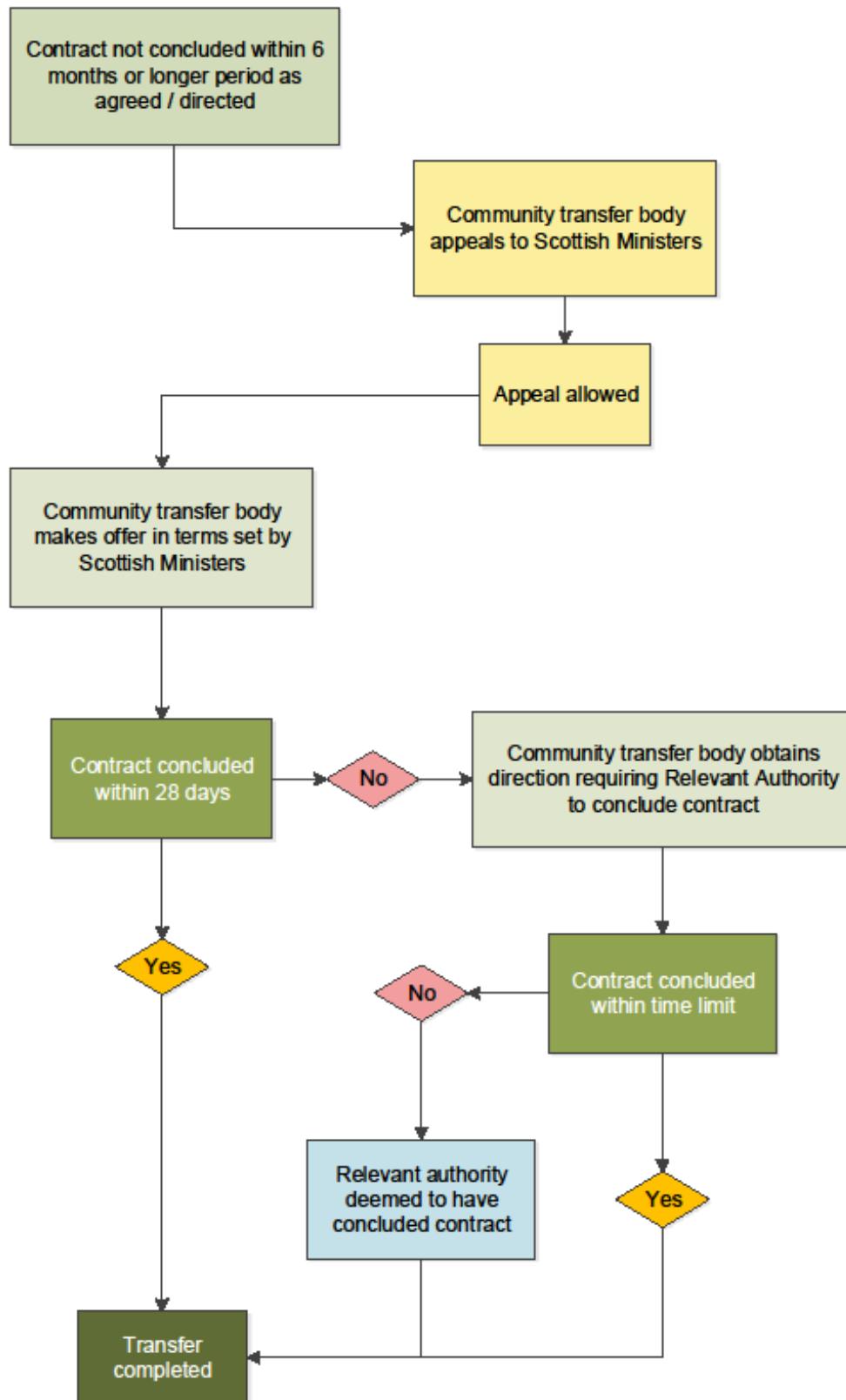
### **Decision**

19.27. Having carried out the appeal, the Scottish Ministers may allow or dismiss the appeal, and may reverse or vary any part of the original decision, even if that part was not mentioned in the appeal, including changing the terms and conditions set out in the decision notice.

19.28. If the outcome of the appeal is that the asset is to be transferred, or any terms and conditions in the decision notice are to be changed, the Scottish Ministers must issue a direction to the relevant authority requiring them to issue a new decision notice on those terms. This decision notice replaces any previous decision notice in relation to the asset transfer request.

19.29. The Scottish Ministers must notify the community transfer body and the relevant authority of its decision, and send the community transfer body a copy of any direction issued to the relevant authority. They must also publish their decision and any direction online and inform every person who made written representations in relation to the appeal of the decision and where the notice can be inspected.

### Appeal where no contract concluded



## 20. Appeal where no contract is concluded

20.1. Once an asset transfer request has been agreed, if no contract has been concluded within the period allowed, the community transfer body can appeal to the Scottish Ministers under section 83(6) of the Act. Procedures for such appeals are set out in the Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016.

20.2. Chapter 16 explains the timescale allowed for concluding a contract. These Regulations also cover the procedure for applying for a direction to extend the period.

20.3. Unlike appeals and reviews over the decision whether or not to agree to the asset transfer request, appeals where no contract has been concluded do not allow for any publication of documents or representations from people other than the community transfer body and the relevant authority. This is because the negotiation of a contract is likely to be complex and involve discussion of sensitive or commercially confidential issues.

20.4. The Scottish Ministers must appoint a panel of 3 people to consider the appeal and report back to Ministers on their findings and recommendations. The panel will be appointed from a pool of people with appropriate experience in relation to community asset transfer and property contracts; no more than one of them may be a civil servant.

### Notice of appeal and relevant authority response

20.5. The community transfer body must send a notice of appeal in writing to the Scottish Ministers within 10 working days beginning with the date of end of the period for concluding a contract.

20.6. The notice of appeal must include the name and contact address of the community transfer body, and specify the land to which the asset transfer request relates. It must also include a statement setting out the detail of the appeal and the matters which the community transfer body considers should be taken into account in determining the appeal. This is likely to outline how negotiations have progressed so far and why it has not been possible to conclude a contract. A statement must also be provided of the terms and conditions on which the community transfer body considers the land should be transferred, and how this differs from the terms and conditions set out in the decision notice.

20.7. The notice of appeal must be accompanied by copies of the original decision notice, the community transfer body's offer to the relevant authority, and all correspondence between the community transfer body and the relevant authority in relation to the negotiation of the contract.

20.8. The notice of appeal must cover all matters which the community transfer body intends to raise in the appeal, and be accompanied by all documents or other evidence they intend to refer to. Further matters or evidence may only be brought forward in response to the relevant authority's response, or if the review panel request it.

20.9. The community transfer body may also state by what procedure they consider the appeal should be conducted. The final decision on what procedure to use will be up to the review panel.

20.10. At the same time as sending the notice of appeal to the Scottish Ministers, the community transfer body must send a copy to the relevant authority. This must be accompanied by a list of all the documents and evidence sent to the Scottish Ministers, and copies of anything the relevant authority does not already have.

20.11. The relevant authority must send its response to the Scottish Ministers within 15 working days of receiving the copy of the notice of appeal. This must set out the matters you consider should be taken into account in the appeal, the procedure you consider should be used, and the terms and conditions on which you consider the land should be transferred. The relevant authority will not be allowed to bring forward any further issues or evidence after submitting its response, unless the review panel request it.

20.12. The community transfer body will have 15 working days to send the Scottish Ministers any comments on the relevant authority's response, including its proposed terms and conditions for the contract.

20.13. The Scottish Ministers may require the community transfer body or anyone else who has submitted any documents or other material in connection with the appeal to provide additional copies to the Scottish Ministers or to any other person.

### **Further representations**

20.14. The review panel may consider they have enough information in the notice of appeal, the relevant authority's response and the community transfer body's comments to determine the appeal. If not, they will decide what further procedure to use to get more information. This could be by written submissions, a hearing session, or other procedures such as a visit to the land to which the asset transfer request relates or to another relevant site (for example the community transfer body's existing premises or another similar community project). The review panel may ask other people to provide further information on the case. This allows them to include experts on particular issues or people who may be affected by the transfer.

20.15. If further written submissions are required, the panel will send a notice to the community transfer body, the relevant authority, and any other person they want information from. The notice must set out the matters on which further

representations are required, and the date by which they are to be sent to the panel. It must also give the name and address of each person the notice is sent to. Any information provided to the panel in response to the notice must be copied to everyone else the notice was sent to. Those other people then have 10 working days to send any comments to the panel, again copied to everyone else.

### **Hearing session rules**

20.16. The rules for arranging and conducting a hearing session are set out in the Schedule to the Regulations.

20.17. If the panel decide they should hold a hearing session to get more information on particular matters, they must send a notice to the community transfer body, the relevant authority, any interested parties, and any other person they want to provide further information. The notice must set out the matters to be considered at the hearing session. Apart from the community transfer body and the relevant authority, who are automatically entitled to appear, the people invited must confirm within 10 working days if they plan to attend the hearing session. The panel must inform you of the date, time and place when the session will be held, giving as much notice as they consider reasonable in the circumstances. This also applies if the date, time or place of the hearing session is changed.

20.18. If they wish, the panel may ask people who plan to attend the hearing session to submit a written statement of the case they plan to make, in relation to the matters specified to be considered at the hearing. They must send a notice requesting this, specifying the date by which those statements must be submitted. As with the notice of appeal, the hearing statement must be accompanied by a list of documents you intend to rely on, and a copy of any of those documents which has not already been submitted and published in connection with the appeal. Other people may speak at the hearing session in relation to your case; your hearing statement must list any such persons, setting out the matters which they are to address and their qualifications for doing so.

20.19. The notice requesting a hearing statement may also require you to copy it to other people who are entitled to appear at the hearing. All hearing statements from other people must be copied to the community transfer body and the relevant authority. The panel may request further information about matters contained in a hearing statement; that further information must also be copied to anyone else the hearing statement was sent to.

20.20. The hearing session is intended to be a discussion, led by the panel, on the particular matters set out in the notice of the session. The people attending will not normally be allowed to question each other on their statements, and the panel will be able to stop anything being raised if they consider it is not relevant or is repeating previous points. Anyone who is entitled to appear at the hearing session may be

represented by someone else, if they wish. One representative may speak for a group of people who have similar interests in the case.

### **Additional evidence**

20.21. If the Scottish Ministers propose to take into consideration any new evidence that was not obtained through the process for written representations or hearing sessions, they must not reach a decision on the appeal without giving the community transfer body and the relevant authority an opportunity to comment on that evidence.

### **Decision**

20.22. Having carried out the appeal, the Scottish Ministers may allow the appeal or dismiss it. If they allow it, they must issue a notice to the community transfer body and the relevant authority setting out details of the terms and conditions of an offer which the community transfer body may make to the relevant authority in relation to the asset transfer request, and the date by which any such offer is to be made. In effect, the Scottish Ministers will write the contract which they expect the parties to agree.

20.23. If the appeal is dismissed, the asset transfer request process comes to an end and the relevant authority is free to keep or sell the property as it wishes.

20.24. If the appeal is allowed, the community transfer body is not required to make an offer based on the Scottish Minister's notice. They may decide not to proceed, or a contract may be agreed with the relevant authority on different terms. However, if the community transfer body does not make an offer in the terms of the notice within the specified period, the asset transfer request process comes to an end.

### **Offer, Conclusion of Contract and Directions**

20.25. If the community transfer body wants to proceed, it must, within the period specified in the appeal decision notice, submit an offer to the relevant authority containing —all and only— the terms and conditions set out in the appeal decision notice.

20.26. The relevant authority must conclude a contract with the community transfer body, on the basis of that offer, within 20 working days of the offer being submitted. If they do not, the community transfer body can apply to the Scottish Ministers for a direction under section 90(5) of the Act, requiring the relevant authority to conclude the contract.

20.27. An application for a direction under section 90(5) must be sent to the Scottish Ministers within 20 working days beginning with the date of the deadline for the contract to be concluded (which is 28 days after the offer is made). The application must include the name and contact address of the community transfer

## Asset Transfer Guidance for Relevant Authorities

body and the relevant authority, and the land to which the asset transfer request relates. It must include a statement of the steps taken by the community transfer body and the relevant authority to conclude a contract, the reasons why the community transfer body considers a direction should be given, and the period within which the relevant authority should be required to conclude the contract. Copies of the appeal decision notice and the community transfer body's subsequent offer must also be attached.

20.28. At the same time as making the application to the Scottish Ministers the community transfer body must send a copy to the relevant authority. You may send comments to the Scottish Ministers, within 10 working days of receiving that copy.

20.29. If the Scottish Ministers approve the application, they will give a direction to the relevant authority (copied to the community transfer body) requiring you to conclude a contract within a specified time. If this is not done, the relevant authority will automatically be deemed to have accepted the offer and concluded the contract with the community transfer body, and the transfer will go ahead (unless, in the meantime, the parties have concluded a contract on other terms or the community transfer body has withdrawn its offer).

20.30. If the contract is not concluded within the original 28 days and the community transfer body does not apply for a direction under section 90(5), or the application is refused, the asset transfer process comes to an end.

## 21. Reporting

21.1. Section 95 of the Act requires every relevant authority to publish an annual report setting out the numbers of asset transfer request received and their outcomes. The report must state:

- how many asset transfer requests were received
- how many requests were agreed to or refused
- for requests agreed to, whether they resulted in transfer of ownership, lease or conferral of other rights
- for appeals relating to requests made to the relevant authority, how many have been allowed, dismissed, or have resulted in any part of the authority's decision being reversed or changed
- where decisions made by the authority have been reviewed, how many have been confirmed, modified or substituted by a different decision.

21.2. The report must also describe anything the relevant authority has done to promote the use of asset transfer requests and support community transfer bodies to make requests.

21.3. Annual reports cover each year from 1 April to 31 March and must be published by 30 June. Note that the report will show the number of requests received in that year and the numbers agreed to or refused in that year – the figures will not be the same as many requests may be received in one year and decided the next year.

21.4. The first annual reports are not required until 30 June 2018. The Commencement Order provides that these should cover all requests received from the scheme coming into force up to 31 March 2018.

21.5. In addition to the information required by the Act, the Scottish Ministers may request further details to provide information on progress towards the target of 1 million acres in community ownership, and other policy issues. Scottish Government officials will contact relevant authorities directly about this, and will provide a standard form to record the information required.

## Annex A: Asset Transfer Implementation Steering Group

### Members:

Joanne Forbes	ACES, South Lanarkshire Council
Alison Fraser	SOLAR, Glasgow City Council
Linda Gillespie	Community Ownership Support Service
Angus Hardie	Scottish Community Alliance
Shona Harper	Scottish Government Property Division
Jon Hollingdale	Community Woodlands Association
Peter Peacock	Community Land Scotland
Brian Taylor	Scottish Government Finance Division
Ian Turner	Scottish Government Community Empowerment Team
Jean Waddie	Scottish Government Community Empowerment Team
Malcolm Wield	Forestry Commission Scotland
Rebecca Carr	Forestry Commission Scotland

Notes of the Steering Group's meetings can be found on the Scottish Government website at <http://www.gov.scot/Topics/People/engage/AssetTransfer>

## Annex B: Short-Life Working Group on Valuation and Assessment of Non-Financial Benefits

### Members:

Nick Allan	
Jim Boyle	Director of Finance, Stirling Council (replaced David Robertson)
Tim Bridle	Audit Scotland (Observer)
Gareth Evans	NHS Grampian
Joanne Forbes	ACES, South Lanarkshire Council
Alison Fraser	SOLAR, Glasgow City Council
Paul Furbank	West Lothian Council
Linda Gillespie	Community Ownership Support Service
Angus Hardie	Scottish Community Alliance
Shona Harper	Scottish Government Property Division
Jon Hollingdale	Community Woodlands Association
Sandra Holmes	Highlands and Islands Enterprise
Robin Johnston	Historic Environment Scotland
Donald McLellan	Forest Enterprise Scotland
Pauline Megson	Historic Environment Scotland
Peter Peacock	Community Land Scotland
Susan Robinson	CIPFA
Eric Samuel	Big Lottery Fund / Scottish Funders' Forum
David Robertson	Director of Finance, Scottish Borders Council (initially)
Brian Taylor	Scottish Government Finance Division
Ian Turner	Scottish Government Community Empowerment Team
Jean Waddie	Scottish Government Community Empowerment Team
Malcolm Wield	Forestry Commission Scotland
Rebecca Carr	Forestry Commission Scotland

Notes of the Working Group's meetings can be found on the Scottish Government website at

<http://www.gov.scot/Topics/People/engage/CommEmpowerBill/AssetTransfer>

## Annex C: Useful Websites

Scottish Government <http://www.gov.scot/Topics/People/engage/AssetTransfer>

Community Ownership Support Service <http://www.dtascommunityownership.org.uk/>

Highlands and Islands Enterprise (for bodies in the Highlands and Islands area)  
<http://www.hie.co.uk/community-support/community-assets/>

Community Woodlands Association [www.communitywoods.org](http://www.communitywoods.org)

Community Energy Scotland <http://www.communityenergyscotland.org.uk/>

Community Land Advisory Service Scotland <http://sc.communitylandadvice.org.uk/>

Forestry Commission Scotland <http://scotland.forestry.gov.uk/managing/get-involved/communities>

National Standards for Community Engagement  
<http://www.scdc.org.uk/what/national-standards/>

Communities Channel Scotland <http://www.communityscot.org.uk/>

Community Land Scotland <http://www.communitylandscotland.org.uk/>

Community Funds <http://www.gov.scot/Topics/Built-Environment/regeneration/communityfunds>



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**Appendix 2: Evaluation Panel Outcome**



**Wedderburn House  
Community Asset Transfer  
Assessment Panel Meeting**

Committee Room 1, Level 10, Ninewells Hospital

1.30 PM 13<sup>th</sup> November, 2019



**Wedderburn House  
Community Asset Transfer  
Assessment Panel Meeting**

**Meeting:** Committee Room 1, Level 10, Ninewells Hospital  
1.30 PM 13<sup>th</sup> November, 2019

**Agenda:**

- 1. Welcome**
- 2. Declaration of Interests**
- 3. Overview of Process**
- 4. Update from YYI**
- 5. Assessment of application**
- 6. Summary of status of application**
- 7. Next Steps**
- 8. Further meetings**

## Wedderburn House - Community Asset Transfer Assessment



### Update

Area	Evidence/Documentation	Details Required/Update	Status
<b>1. Governance</b>	<ul style="list-style-type: none"> <li>Names of Trustees</li> </ul>	Maximum number or percentage of co-opted board members to be set.	Open
<b>2. Viability</b>	<ul style="list-style-type: none"> <li>Staffing ratios correct and in line with Care Inspectorate.</li> </ul>	Being prepared	Open
	<ul style="list-style-type: none"> <li>Evidence of link to health care provision agreed with Dundee H&amp;SCP.</li> </ul>	Being prepared	Open
	<ul style="list-style-type: none"> <li>Single summary of all consultation and engagement by YI.</li> </ul>	Being prepared	Open
	<ul style="list-style-type: none"> <li>Access to building to establish work requirements and costs going forward (to include asbestos review).</li> </ul>	Being prepared NHST to provide access.	Closed
	<ul style="list-style-type: none"> <li>Cost breakdown of proposed conversion.</li> </ul>	Being prepared	Open
<b>3. Funding</b>	<ul style="list-style-type: none"> <li>Disclosure of all grant providers, including International Charity.</li> </ul>	Being prepared	Open
	<ul style="list-style-type: none"> <li>Due diligence by NHST of YI.</li> </ul>	NHST to follow up.	Open
<b>4. Delivery</b>	<ul style="list-style-type: none"> <li>Business Case to have strategic case for Nursery and discussed with Lesley Gibb (DCC).</li> </ul>	Contact has been made to Lesley Gibb – Awaiting a response	Open

Wedderburn House - Community Asset Transfer Assessment  
Process



[www.mentimeter.com](http://www.mentimeter.com)

**Code (50-94-03)**

**Five sections:**

1. Benefits: (score out of 10)
2. Viability: (score out of 6)
3. Community Support and Wider Public Benefit: (score out of 2)
4. Social Value: (score out of 2)
5. Utilisation: (H =3; M=2; L=1)

**Score = (Benefits + Viability + Community + Social) x Utilisation**

## Wedderburn House - Community Asset Transfer Assessment



Benefits Indicators	COMPARISON TO BASELINE
<u>Contribution to NHS Tayside's KPIs</u>	
<ul style="list-style-type: none"> <li>• Better health: We will improve everyone's health and wellbeing by promoting and supporting healthier lives and reducing health inequalities</li> <li>• Better care: We will improve the quality and access to care and improve patient and service user experience</li> <li>• Better workplace: We have a valued and diverse workforce who are well informed and appropriately trained, can access development opportunities and have a strong voice throughout the organisation</li> <li>• Better value: We will make the most effective use of all available resources</li> </ul>	<span style="font-size: 2em;">◐◑</span> <span style="font-size: 1.5em;">◐</span> <span style="font-size: 1.5em;">◐◑</span> <span style="font-size: 1.5em;">◐</span>
<u>Contribution to National Indicators</u>	
<ul style="list-style-type: none"> <li>• We live in a Scotland that is the most attractive place for doing business in Europe.</li> <li>• We realise our full economic potential with more and better employment opportunities for our people.</li> <li>• We are better educated, more skilled and more successful, renowned for our research and innovation.</li> <li>• Our young people are successful learners, confident individuals, effective contributors and responsible citizens.</li> <li>• Our children have the best start in life and are ready to succeed.</li> <li>• We live longer, healthier lives.</li> <li>• We have tackled the significant inequalities in Scottish society.</li> <li>• We have improved the life chances for children, young people and families at risk.</li> <li>• We live our lives safe from crime, disorder and danger.</li> <li>• We live in well-designed, sustainable places where we are able to access the amenities and services we need.</li> <li>• We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.</li> <li>• We value and enjoy our built and natural environment and protect it and enhance it for future generations.</li> <li>• We take pride in a strong, fair and inclusive national identity.</li> <li>• We reduce the local and global environmental impact of our consumption and production.</li> <li>• Our people are able to maintain their independence as they get older and are able to access appropriate support when they need it.</li> <li>• Our public services are high quality, continually improving, efficient and responsive to local people's needs.</li> </ul>	<span style="font-size: 1.5em;">◐◑</span> <span style="font-size: 1.5em;">◐◑</span>
<u>Potential future outcomes</u>	
<ul style="list-style-type: none"> <li>• Increase the number of nursery places</li> <li>• Increase in number of after school education places</li> <li>• Increase in Adult education places</li> <li>• Increase in meals delivered</li> <li>• Increase in food parcels delivered</li> </ul>	<span style="font-size: 1.5em;">◐</span> <span style="font-size: 1.5em;">◐</span> <span style="font-size: 1.5em;">◐</span> <span style="font-size: 1.5em;">◐</span> <span style="font-size: 1.5em;">◐</span>

## Wedderburn House - Community Asset Transfer Assessment



Viability Indicators	COMPARISON TO BASELINE
<u>YYI Business Plan</u> <ul style="list-style-type: none"> <li>• Governance: assurance organisation has appropriate governance structures and complies with all governance standards</li> <li>• Constitution</li> <li>• Finances</li> <li>• Track record</li> <li>• Contingency</li> <li>• Operational Viability</li> <li>• Service Viability: Support of statutory governing bodies.</li> <li>• Acquisition funding</li> <li>• Development funding</li> <li>• Operational funding (grants)</li> <li>• Market needs</li> </ul>	<span style="color: #0070C0;">◐</span>

Impact	Low	Medium	Strong
Increase	◐	◑◑	◑◑◑
No change		◐	
Reduction	◐	◑◑	◑◑◑

## Wedderburn House - Community Asset Transfer Assessment



Community Support and Wider Public Benefit Indicators	COMPARISON TO BASELINE
<ul style="list-style-type: none"> <li>• Letters from Community</li> <li>• Public engagement</li> <li>• Consumer research</li> </ul>	<span style="color: green;">● ●</span> <span style="color: orange;">●</span> <span style="color: red;">●</span>

Social Value Indicators	COMPARISON TO BASELINE
<ul style="list-style-type: none"> <li>• Tackling wider inequalities</li> <li>• Community integration</li> <li>• Community education, e.g. cooking classes.</li> <li>• Social Inclusion; e.g. community cafe</li> <li>• Employment opportunities</li> </ul>	<span style="color: green;">● ●</span> <span style="color: orange;">●</span> <span style="color: green;">● ●</span> <span style="color: green;">● ●</span> <span style="color: red;">●</span>

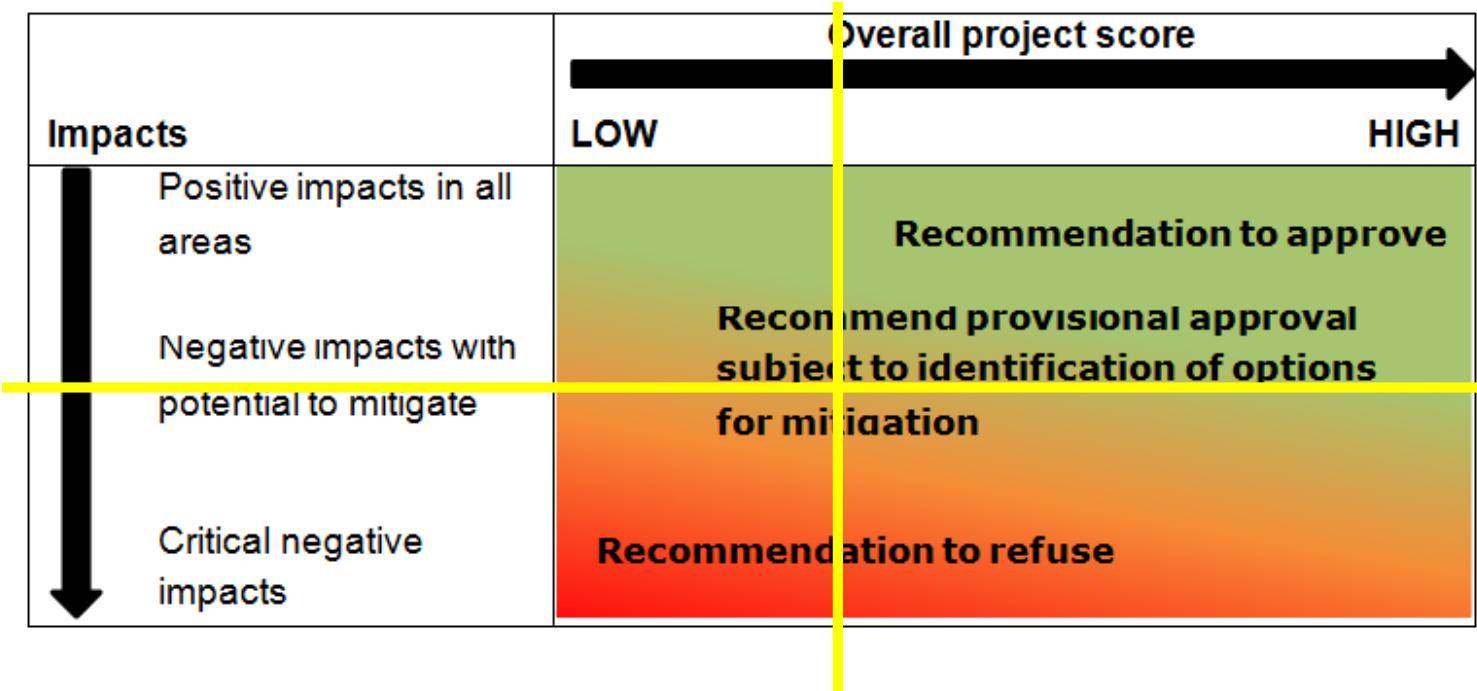
Impact	Low	Medium	Strong
Increase	●	● ●	● ● ●
No change		●	
Reduction	○	○ ○	○ ○ ○

## Wedderburn House - Community Asset Transfer Assessment



Attribute	Measure	Score
<b>Benefits:</b>	Weighted score out of 10 (50%)	5
<b>Viability:</b>	Weighted score out of 6 (30%)	2
<b>Community Support and Wider Public Benefit:</b>	Weighted score out of 2 (10%)	1
<b>Social Value</b>	Weighted score out of 2 (10%)	1.3
<b>Sub Total</b>	Weighted score out of 20	9.3
<b>Utilisation</b>	Low (score 1), Medium (score 2) and High (score 3)	1.8
<b>Total</b>	Weighted score out of 60	<b>16.7</b>

## Wedderburn House - Community Asset Transfer Assessment



The above lines reflect the scoring of the qualitative attributes:

**Vertical Line:** Overall scoring from the Mentimeter on-line voting

**Horizontal Line:** From the impacts assessed from the four attributes.

## Wedderburn House - Community Asset Transfer Assessment



### **Next Steps:**

- Confirmation of recommendation and any mitigation (if required).
- Best Value Assessment (NHS Tayside Team).
- Confirmation of outcome to YI.

## Appendix 3: Best Value Assessment

### **BEST VALUE ASSESSMENT: Wedderburn House, Dundee.**

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## SECTION 1: BACKGROUND AND SUMMARY

### Site Information

<b>Ref:</b>	WBH001	<b>Type: Purchase price</b>	
<b>Site, Location:</b>	Wedderburn House, Dundee.	<b>DVS Valuation</b>	£340,000
<b>Health Board</b>	NHS Tayside	<b>Price offered</b>	£50,000
<b>Area</b>	1,744 square metres in a plot of 0.31hectares	<b>“Gift” requested:</b>	£290,000 (85%)
		<b>NHS Tayside Best Value Assessment</b>	£52,068 (15.3%)

### Comparative Scenario

Wedderburn House was identified for disposal on 23 April 2015 and has been marketed as a commercial property since January 2018.

The Comparative Scenario is open market sale; the level of interest indicates that this is likely to be sold at DV Valuation within a period of 12-18 months.

### Benefits Assessment Overview

The types of benefits identified in the Community Empowerment (Scotland) Act 2015, which NHS Tayside must consider in making its decision, are: economic development; regeneration; public health; social wellbeing; environmental wellbeing; reducing inequalities of outcome from socio-economic disadvantage any other benefits that might arise through the alternative use of the asset.

The benefits assessment sets out the calculations and evidence used in the request to justify the discount. It then sets out NHS Tayside analysis of the outcomes and benefits, taking into consideration the key factors.

**Outcomes may deliver financial, quantitative or qualitative benefits:**

Benefit	Example	Assessment	Key Factors																
<b>Part A: Financial</b> 1. Jobs & Income 2. Social 3. Environmental 4. Public Sector Cost Savings	Reduction in public sector costs or enhancement of provision due to the proposal.  NHS Tayside Dundee Health and Social Care Partnership Dundee City Council	Where possible, financial costs e.g. new income generation for the community, GVA of new jobs, costs associated with volunteers' time in providing services are quantified.  Any public costs, e.g. loss of income, increase staff time, are also quantified.	This assessment summarises the benefits identified in the asset transfer requests and Evaluation Panel's report, taking into account: <ul style="list-style-type: none"><li>• extent of community served</li><li>• community need / demand for services</li><li>• likelihood that benefits will be delivered over a <b>5-year period</b></li><li>• impact of project failure</li></ul>																
<b>Part B: Outcomes - quantitative</b>	Contribution towards local or national priorities e.g. improved standards of healthcare; contribution towards alleviating homelessness; supporting local employment etc.	A simple evaluation is used to assess the impact of the request on NHS Tayside's key performance indicators and other Scottish Government National Indicators.  <table> <thead> <tr> <th>Impact</th> <th>Low</th> <th>Medium</th> <th>Strong</th> </tr> </thead> <tbody> <tr> <td>Increase</td> <td>◐</td> <td>◑◑</td> <td>◑◑◑</td> </tr> <tr> <td>No change</td> <td></td> <td>◑</td> <td></td> </tr> <tr> <td>Reduction</td> <td>◐</td> <td>◑◑</td> <td>◑◑◑</td> </tr> </tbody> </table>	Impact	Low	Medium	Strong	Increase	◐	◑◑	◑◑◑	No change		◑		Reduction	◐	◑◑	◑◑◑	To account towards a discount, benefits should be <b>additional</b> . Therefore the outcomes are compared to the baseline scenario, and the existing benefits.
Impact	Low	Medium	Strong																
Increase	◐	◑◑	◑◑◑																
No change		◑																	
Reduction	◐	◑◑	◑◑◑																
<b>Part C: Outcomes - qualitative</b>	Improved community cohesion; enhanced local services etc.	A description of any additional qualitative outcomes.																	

## SECTION 2: BEST VALUE ASSESSMENT SUMMARY

### Community Proposal

Yusuf Youth Initiative's (YYI) was set up in 2005 as a community based organization, it employ 31s staff – (9 FTE) and operates in all community wards in Dundee. Currently they support 250 minority adults and young people weekly and 500 people across the City through our outreach programme comprising five projects:

- Future Leaders Academy,
- YYI Youth Clubs,
- ChangeMakers,
- Engage &
- Taught by Muhammad.

YYI wish to acquire the entire building for modification to provide a central hub linked to the West end of Dundee as a base to maintain and enhance their services to deliver:

- Ten classrooms to expand their Supplementary School (to 150 young people daily from across Dundee)
- A recreational space for their weekly Youth Clubs and adult programmes (supporting up to 400 people weekly)
- Meeting rooms for community events
- Running a regular Curry Kitchen and a full time Foodbank
- Community and interfaith groups to be able to provide additional services
- Opening nursery provision for 3 to 5year old children (for up to 40 children)
- Large community space with seating for up to 200 people to be used for community events and available for hire to the local community
- Business incubator space for young people
- Office space for staff accommodating up to 25 staff members.
- Catering and training kitchen for income generation

The following table identifies the costs from the YYI Business Plan for the benefits that are planned to be delivered. Below is NHST assessment of benefit to NHST

## Asset Transfer Guidance for Relevant Authorities

*Table 1: YYI Benefits Calculation (see YYI Business Plan Appendix 3 p55) full cost of delivering these activities*

<b>Benefit by Activity</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	<b>Total</b>
<b>Benefit: Taught by Muhammad</b> Increase support café provision across the City from supporting 350 people weekly to 600 people. Deliver budget cooking programmes for 40 adults per week Workshops Food parcels for 3,500 people pa.	£31,360	£31,360	£38,880	£39,380	£39,880	£180,860
<b>Benefit: YYI Youth Clubs</b> Increased youth work provision from 150 young people to 300 young people weekly	£12,800	£15,200	£17,800	£18,800	£18,800	£83,400
<b>Benefit: ChangeMakers</b> Developing older young people; preparing and enhancing skills for life	£23,000	£23,000	£24,500	£25,500	£26,000	£122,000
<b>Benefit: Engage</b> Engage is a health and wellbeing project that aims to support minority ethnic adults in Dundee	£21,360	£21,360	£22,360	£23,360	£23,360	£111,800
<b>Benefit: Future Leaders Academy</b> An additional full time nursery in the City supporting 40-65 children daily and after school club	£23,588	£59,025	£65,263	£74,400	£81,375	£303,651
<b>Benefit: Administration and Overheads</b> Increase employment by 100% - 18 Full time equivalent staff	£156,180	£187,203	£193,529	£205,440	£208,795	£951,147
Purchase and Conversion	£250,000	-	-	-	-	£250,000
<b>Total</b>	<b>£518,288</b>	<b>£337,148</b>	<b>£362,332</b>	<b>£386,880</b>	<b>£398,210</b>	<b>£2,002,858</b>

## Asset Transfer Guidance for Relevant Authorities

### NHS Tayside Analysis

The NHS Tayside Community Asset Transfer Evaluation Panel noted significant concerns over the viability of

- Governance: Constitution and composition of members and trustees quoracy
- Viability: Lack of contingency and small margin and the realistic assessment of conversion and operating costs.
- Funding: Lack of evidence for funding for asset purchase and conversion
- Operational dependency on grant funding

#### **Outcome:**

The outcome of the best value assessment is that £52,068 is the value identified with the services offered by YYI.

Details of the identified and quantified benefits are as follows:

The following table identifies the benefit from the NHS Tayside assessment of the submission over a five year period.

#### **Mitigation:**

- Business Plan
  - Clarification of market research to demonstrate the need for the additional services
  - Evidence of planning prior to start up for development; service delivery; recruitment and staffing.
  - Feasibility of funding for acquisition, development and operation based on realistic cost estimates
- Constitution
  - Confirmation of number of trustees and quoracy
  - A limit on the number of members that can be co-opted
  - Confirmed by a quorate Trustee AGM/EGM.
- The above mitigation to be submitted by YYI after a three month period.
- Protection of NHS Tayside in the details of sale to ensure discount is protected within the five year period.
- Delegated authority from Board to Chief Executive and Finance Director to review revised submission.

## Asset Transfer Guidance for Relevant Authorities

*Table 2: NHS Tayside Benefits Calculation*

<b>Benefit by Activity</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	<b>Total</b>
<b>Benefit: Taught by Muhammad</b> Increase support café provision across the City from supporting 350 people weekly to 600 people. Deliver budget cooking programmes (NHS Cookit) for additional 40 adults per week Food parcels for 3,500 people pa. (no additional parcels identified).	£9,544 £1,000 £0	£9,544 £1,000 £0	£11,152 £1,000 £0	£11,252 £1,000 £0	£11,352 £1,000 £0	£52,844 £5,000 £0
<b>Benefit: YYI Youth Clubs</b> Increased youth work provision from 150 young people to 300 young people weekly	£0	£0	£0	£0	£0	£0
<b>Benefit: ChangeMakers</b> Developing older young people; preparing and enhancing skills for life	£0	£0	£0	£0	£0	£0
<b>Benefit: Engage</b> Engage is a health and wellbeing project that aims to support minority ethnic adults in Dundee; increasing adult provision from 100 to 400	£0	£0	£0	£0	£0	£0
<b>Benefit: Future Leaders Academy</b> An additional full time nursery in the City supporting an 40-65 children daily and after school club	£0	£0	£0	£0	£0	£0
<b>Benefit: Administration and Overheads</b> Increase employment by 100% - 18 Full time equivalent staff	£0	£0	£0	£0	£0	£0
Purchase and Conversion	£0	£0	£0	£0	£0	£0
<b>Total</b>	<b>£10,544</b>	<b>£10,544</b>	<b>£12,152</b>	<b>£12,252</b>	<b>£12,352</b>	<b>£57,844</b>
<b>Net Present Value</b>						<b>£52,068</b>

**Notes:**

Note: Discount factor = 3.5% Non-Quality Adjusted Life Year Discount Factor used per 4.1 in CIA User Guide:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/855324/CIA\\_User\\_Guide.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/855324/CIA_User_Guide.pdf)

## Asset Transfer Guidance for Relevant Authorities

**Other benefits:** There are no further benefits that have been identified to have a direct impact on NHS Tayside costs.

**Conclusion:** Therefore, a discount could be considered based on the community figures provided for the activities associated with taught by Muhammad with a high likelihood of delivering public benefit outcomes.

### **Taught by Muhammad:**

Cafe provision	£52,844
NHS Cook It	£5,000
Food parcels`	nil
Total (before net present value discounting)	<b>£57,844</b>

This would give a total best value of                   **£52,068**

## SECTION 3: BEST VALUE ASSESSMENT

### PART A. Financial Benefits

#### 1. Economic Development

COMMUNITY ASSESSMENT OF BENEFITS			
Activity	Business Plan Cost (Total over 5 years)	Risk (Evidence and Timescales)	Comparative scenario
<b>Taught by Muhammad:</b> Cafe provision		<p>Evidence:</p> <ul style="list-style-type: none"> <li>• Increase from 350 to 600 places weekly</li> <li>• Increase will start on completion of conversion.</li> </ul>	Property is already identified for disposal and has been placed on the commercial premises market.
<b>Taught by Muhammad:</b> NHS Cook it		<p>Evidence:</p> <ul style="list-style-type: none"> <li>• Increase from 80 to 120 places on courses per week</li> <li>• Increase will start on completion of conversion.</li> </ul>	Property is already identified for disposal and has been placed on the commercial premises market
<b>Taught by Muhammad:</b> Food Parcels		<p>Evidence:</p> <ul style="list-style-type: none"> <li>• 80 Households provided monthly</li> <li>• Monthly Curry Kitchen supporting 50 homeless clients monthly (in partnership with Salvation Army).</li> <li>• Delivery will continue as currently.</li> <li>• No increase in volume indicated.</li> </ul>	Property is already identified for disposal and has been placed on the commercial premises market
<b>Total</b>	<b>£165,860</b>		

## Asset Transfer Guidance for Relevant Authorities

### NHS Tayside Analysis

#### Taught by Muhammad:

Assumptions:

- a) 0% of Food Bank costs: Food Bank has no change identified.
- b) 40% of Cafe costs: Cafe is increasing from 350 to 600. Increase is 40% of total.
- c) 20% of Project costs: Half of Project costs allocated to Cafe and the increase of activity is 40%.
- d) 20% of Project Manager: Half of PM time allocated to Cafe and the increase of activity is 40%.
- e) 30% of Presentation Coordinator Cook-it cost: Increase from 80 to 120 per week.

#### Taught by Muhammad:

Costs

Cafe provision	£52,844
NHS Cook It	£5,000
Food parcels'	nil
Total (before net present value discounting)	£57,844
This would give a total best value of	£52,068

## Asset Transfer Guidance for Relevant Authorities

### 3. Environmental

COMMUNITY ASSESSMENT OF BENEFITS			
Activity	Discount requested	Risk (Evidence and Timescales)	Comparative scenario
<u>Uncosted benefits</u> <ul style="list-style-type: none"> <li>Carbon emissions reductions in public and staff journeys</li> <li>Carbon emissions reductions in delivery of services.</li> </ul>	N/A	<ul style="list-style-type: none"> <li>Aim to grow 500kg of food produced at our community garden which will be contributed towards the cooked food at Wedderburn House.</li> <li>Bicycle parking rack on site encouraging people to cycle the Centre and offering incentives to those who do (such as reduction in class fees).</li> </ul>	Property is already identified for disposal and has been placed on the commercial premises market

### 4. Public sector costs / savings

COMMUNITY ASSESSMENT OF BENEFITS			
Activity	Discount requested	Risk (Evidence and Timescales)	Comparative scenario
<ul style="list-style-type: none"> <li>N/A as site identified for disposal.</li> </ul>			

## Asset Transfer Guidance for Relevant Authorities

### PART B. Quantitative Outcomes

The following tables indicate the assessment of the four attributes: Benefits; Viability; Community Support and Wider Public Benefit and Social Value

The scoring used is shown in the following table:

Impact	Low	Medium	Strong
Increase	0	00	000
No change		0	
Reduction	0	00	000

The summary of the assessment is as follows:

Attribute	Increase	No change	Reduction
Benefits	19	6	nil
Viability	5	2	4
Community Support and Wider Public Benefit	3	nil	nil
Social Value	5	nil	nil

## Asset Transfer Guidance for Relevant Authorities

Benefits Indicators	COMPARISON TO BASELINE
<u>Contribution to NHS Tayside's KPIs</u>	
<ul style="list-style-type: none"> <li>• <i>Better health: We will improve everyone's health and wellbeing by promoting and supporting healthier lives and reducing health inequalities</i></li> <li>• <i>Better care: We will improve the quality and access to care and improve patient and service user experience</i></li> <li>• <i>Better workplace: We have a valued and diverse workforce who are well informed and appropriately trained, can access development opportunities and have a strong voice throughout the organisation</i></li> <li>• <i>Better value: We will make the most effective use of all available resources</i></li> </ul>	◐◑
<u>Contribution to National Indicators</u>	
<ul style="list-style-type: none"> <li>• <i>We live in a Scotland that is the most attractive place for doing business in Europe.</i></li> <li>• <i>We realise our full economic potential with more and better employment opportunities for our people.</i></li> <li>• <i>We are better educated, more skilled and more successful, renowned for our research and innovation.</i></li> <li>• <i>Our young people are successful learners, confident individuals, effective contributors and responsible citizens.</i></li> <li>• <i>Our children have the best start in life and are ready to succeed.</i></li> <li>• <i>We live longer, healthier lives.</i></li> <li>• <i>We have tackled the significant inequalities in Scottish society.</i></li> <li>• <i>We have improved the life chances for children, young people and families at risk.</i></li> <li>• <i>We live our lives safe from crime, disorder and danger.</i></li> <li>• <i>We live in well-designed, sustainable places where we are able to access the amenities and services we need.</i></li> <li>• <i>We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.</i></li> <li>• <i>We value and enjoy our built and natural environment and protect it and enhance it for future generations.</i></li> <li>• <i>We take pride in a strong, fair and inclusive national identity.</i></li> <li>• <i>We reduce the local and global environmental impact of our consumption and production.</i></li> <li>• <i>Our people are able to maintain their independence as they get older and are able to access appropriate support when they need it.</i></li> <li>• <i>Our public services are high quality, continually improving, efficient and responsive to local people's needs.</i></li> </ul>	◐◑
<u>Potential future outcomes</u>	
<ul style="list-style-type: none"> <li>• <i>Increase the number of nursery places</i></li> <li>• <i>Increase in number of after school education places</i></li> <li>• <i>Increase in Adult education places</i></li> <li>• <i>Increase in meals delivered</i></li> <li>• <i>Increase in food parcels delivered</i></li> </ul>	◐◑

## Asset Transfer Guidance for Relevant Authorities

<b>Viability Indicators</b>	<b>COMPARISON TO BASELINE</b>
<p><u>YYI Business Plan</u></p> <ul style="list-style-type: none"> <li>• Governance: assurance organisation has appropriate governance structures and complies with all governance standards</li> <li>• Constitution</li> <li>• Finances</li> <li>• Track record</li> <li>• Contingency</li> <li>• Operational Viability</li> <li>• Service Viability: Support of statutory governing bodies.</li> <li>• Acquisition funding</li> <li>• Development funding</li> <li>• Operational funding (grants)</li> <li>• Market needs</li> </ul>	<span style="font-size: 2em;">◐</span> <span style="font-size: 2em;">◐</span> <span style="font-size: 2em;">◑</span> <span style="font-size: 2em;">◑</span>

<b>Community Support and Wider Public Benefit Indicators</b>	<b>COMPARISON TO BASELINE</b>
<ul style="list-style-type: none"> <li>• Letters from Community</li> <li>• Public engagement</li> <li>• Consumer research</li> </ul>	<span style="font-size: 2em;">◑</span> <span style="font-size: 2em;">◑</span> <span style="font-size: 2em;">◑</span>

## Asset Transfer Guidance for Relevant Authorities

Social Value Indicators	COMPARISON TO BASELINE
• <i>Tackling wider inequalities</i>	●●
• <i>Community integration</i>	●
• <i>Community education, e.g. cooking classes.</i>	●●
• <i>Social Inclusion; e.g. community cafe</i>	●●
• <i>Employment opportunities</i>	●

**PART C. Qualitative Outcomes**

YYI aim to decrease inequalities around health for minority ethnic adults who are more prone to heart disease and diabetes. This is mainly due to diet and physical exercise. By creating prevention measures through our health and environmental measures above, we aim to decrease these diseases amongst minority individuals. We also aim to encourage a positive and healthy lifestyle amongst young people so that they don't incur any difficulties as they grow older.

In the case of the Wedderburn House, the facilities will be available to the local community; there will be regular consultations with our service users and community groups about events and activities they would like to see at the Centre. There will also be discussions with local groups in the area to ensure there is no duplication of activities.