

NHS Tayside – Review and Evaluation of Asset Community Transfer (REACT)

1. Our Approach

Community organisations have a right to request to take over publicly-owned land or buildings that they feel they can make better use of these assets for local people. These rights apply to all land and buildings managed by NHS Tayside.

Our Community Asset Transfer approach seeks to empower and enable communities to understand how community groups can acquire land and buildings that we own and manage, for the benefit of their communities.

Our response to community asset transfer requests, known as REACT is designed to fairly and robustly review and evaluate Community Asset Transfer Requests to include consideration of:

- The nature of the community group and the request
- The identification of the benefits from the proposals for the proposed community use of the asset in the form of a community business plan
- Active engagement with, and participation by, the community group to ensure that they understand what is required of them, how their request is being reviewed and evaluated, to ensure that that the process is fully informed and fully aware of the proposals and the anticipated benefits
- An assessment, scoring and evaluation of the benefits by a well informed panel drawn from key stakeholders.
- A review and evaluation of offer price consideration, market value, best value and social value determinants
- A transparent decision making tool, based on best practice, that is sufficiently objective to ensure a fair and reasonable outcome
- A clear decision making process and governance with effective communication of the determination of the outcome and rationale to the community group making the request.

2. Community Asset Transfer Requests

Before beginning the Asset Transfer Request process, Community Groups are encouraged to familiarise themselves with the Scottish Government guidance and regulations¹, on which our REACT approach is based. Community Groups may also

wish to access the Scottish Government summary guide introduction² to what asset transfers are and how they may assist the community group in formulating and making a Community Asset Transfer Request to NHS Tayside.

This outline of our approach seeks to establish how we will inform community groups to develop and submit an Asset Transfer Request for land or buildings operated by NHS Tayside. It also sets out how we will evaluate and make a decision on the request. A summary guidance document³ has also been created, for easy reference.

3. Making a Community Asset Transfer Request

Our application process seeks to ensure that Community Groups are informed about how can make an Asset Transfer Request. The summary guidance document offers further assistance to Community Group in making a request.

Applications, along with any representations received from the public and other stakeholders, will be assessed against set criteria, by a stakeholder evaluation panel.

4. REACT

Overview

This NHS Tayside REACT Guidance sets out the process for developing, submitting, assessing and concluding Asset Transfer Requests for NHS Tayside managed land and buildings made under Part 5 of the Community Empowerment (Scotland) Act 2015. It has been developed with reference to the Scottish Government guidance on Asset Transfer.

The guidance has four sections taking for the four key stages in an Asset Transfer Request as set out below. An overview is provided at the start of each section.

Communities must include the price they are prepared to pay in their Asset Transfer Request. In some cases, this will be the market valuation but may be a lower price, if the community can provide evidence, usually set out in a business case, of the benefits that their proposal will deliver.

SECTION 1: PRIOR TO AN ASSET TRANSFER REQUEST

At the point that a community group starts to develop a proposal for asset transfer, there are key aspects to consider at an early stage. This includes whether the community body is eligible, whether or not the identified asset is suitable for their needs, what types of asset transfer are applicable, and the costs involved.

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SECTION 2: MAKING AN ASSET TRANSFER REQUEST

When a community group is ready to make a Request they will need more detail on the process from submission of their Request to being notified of the decision. The information that is required to be provided in the Request, advice on determining the price they are prepared to pay, and the steps in the process.

SECTION 3: ASSESSMENT AND DECISION

Once the community group has submitted their Request, NHS Tayside has set out how it will make the decision on the Request, the assessment criteria to be applied and how we will assess whether the proposals offer Best Value. We also set out the process for notifying the community group of the decision and next steps, including how to appeal if the Request is refused.

SECTION 4: CONCLUDING AN ASSET TRANSFER REQUEST

If the Request is approved, we set out the process for submitting an offer and concluding the sale, lease or agreement for the asset.

The REACT Guidance sets out the process for developing, submitting, assessing and concluding Asset Transfer Requests for NHS Tayside managed land buildings made under Part 5 of the Community Empowerment (Scotland) Act 2015. It has been developed with reference to the Scottish Government guidance on Asset Transfer.

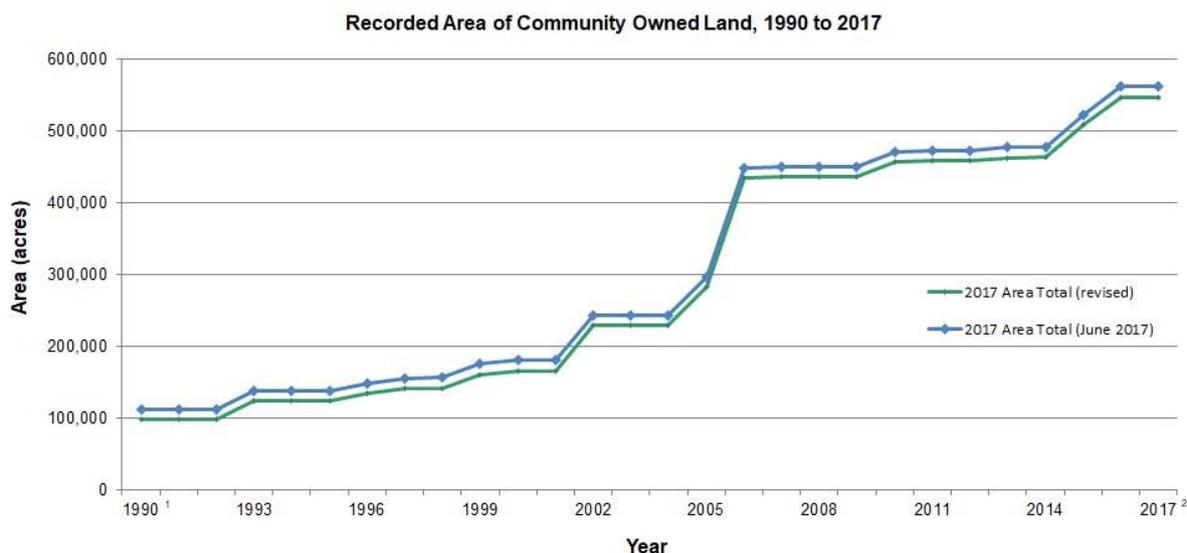
The guidance has four sections, working through the four key stages in an Asset Transfer Request as set out below. An overview is provided at the start of each section.

INTRODUCTION

Introduction to Asset Transfer

Community ownership or control of land can make a major contribution towards strengthening communities. It can help provide stability and sustainability for community organisations, allowing them to develop new initiatives and support other developing groups. This may be as a base for activities and services, providing training and employment opportunities, and opening up opportunities for investment.

The Community Empowerment (Scotland) Act 2015 provides a statutory right for community bodies to make requests to take control of land or buildings they consider they could make better use of. The Act and subsidiary Asset Transfer Regulations set out how NHS Tayside, along with other public authorities in Scotland, will assess requests against a specified list of criteria and agree the request unless there are reasonable grounds for refusal. As at December 2017 there were 547,691 acres in community ownership, which is 2.8% of the total land area of Scotland. There were 508 land parcels/assets in community ownership owned by 388 community groups.



Notes:
 1. Where the year of purchase/transfer of the land parcel/asset is earlier than 1990 or unknown it has been defaulted to 1990, the start of the series.
 2. The 2017 (June 2017) series includes figures up to June 2017. The 2017 (revised) series includes figures for the whole of 2017.

Introduction to REACT

This Review and Evaluation of Asset Community Transfer guidance (REACT) for NHS Tayside managed assets sets out how we will deliver the requirements of the Act and build on the successes and lessons learned from wider work to support community empowerment.

REACT sets out how eligible community bodies can request to purchase or lease land, either land identified by the community body as a suitable asset to deliver their projects, or through NHS Tayside’s approach to disposal of surplus assets. In addition, communities now have a statutory right to request to manage, use or occupy land to carry out projects and activities.

The guidance sets out NHS Tayside’s application and assessment processes, and how we will make the decision on Community Asset Transfer Requests for NHS Tayside’s managed estate. REACT does not affect the statutory rights of any community body eligible under the Act. Guidance is available on the Scottish Government’s website on the statutory asset transfer process and best practice for relevant authorities.

REACT provides the framework for communities to exercise their rights under the Act, but a community is under no obligation to follow the statutory process. Communities already have legal rights to purchase or lease land when it is put on the open market.

SECTION 1: PRIOR TO AN ASSET TRANSFER REQUEST

This Section sets out the options for your community body to consider in developing proposals for an Asset Transfer Request, the information that you will need to

provide, including the eligibility of your organisation, and what advice and support is available to help you develop your proposals.

Developing an Asset Transfer Request

The first stage in developing a Request is for the community group to clarify the aims and objectives of their proposed project or activity, identify the best solution to deliver that project or activity and engage with their community to ensure support for the proposals. If the organisation represents a community of interest, they should also engage with the local community at an early stage.

The community group will also need to start thinking about a number of other requirements, including:

- whether they are appropriately constituted to deliver the project and manage the land and are an eligible body under the legislation.
- whether they wish to purchase, lease or simply have an agreement with NHS Tayside to use the land or buildings.
- how they will fund the costs of the asset transfer and their proposals.

The benefits that the proposals will deliver are a key part of the assessment process, and community groups should consider the outcomes they want to achieve and how they will deliver them. It may be necessary for the group to carry out a feasibility study and develop a business plan to set out how their proposals will benefit the community, benefit the potential wider public, and their capacity to deliver them.

It will take time to assess whether the property that is the potential subject of an asset transfer request is suitable, work up a proposal and identify potential funding.

Communities thinking of taking over assets can get advice and information from a number of places. This guidance sets out the key questions that groups should consider in deciding whether to proceed with a Request or other options to support their community aims and objectives.

Identifying an Asset

A community body can make a Request for any NHS Tayside managed land and buildings at any time and can contact the property to find out more about specific areas of land or buildings. Once they have identified a suitable asset and started preparing their asset transfer request, we will be able to provide details of any burdens, responsibilities and rights attached to the land and buildings as well as the condition and backlog maintenance.

Only community bodies eligible as community transfer bodies under the Act can submit a Request to buy or lease under a community asset transfer.

Once a valid Request is received, if we have not already advertised the land or buildings for sale or it is not already the subject of negotiations with any other

person, we cannot dispose of the land to any other person until the process is completed and the Request is dealt with. Where land or buildings that are the subject of a community asset transfer request have already been marketed or offered for sale, then NHS Tayside will exercise discretion in deciding how it will continue to consider any subsequent offers to purchase while the decision on the asset transfer request is being determined.

Once we intend to put the land or buildings for sale we will carry out a formal notification as follows:

- place details of the land or buildings for sale on our website;
- advertise the land or buildings in the local newspaper;
- inform the local Community Council, where possible;
- post notices on or near the site;

In the event that different community bodies submit Requests for the same land then the applications will be considered on their merits, although it is likely to be preferable that the bodies find a way to act jointly.

Eligibility

The eligibility requirements for Community Asset Transfer are set out in the Community Empowerment (Scotland) Act 2015. The main criterion is that the organisation meets the definition of a community controlled body. A community controlled body does not have to be incorporated, but it must have a written constitution. The constitution must include a statement of the body's aims and purposes, including the promotion of a benefit for that community.

The Scottish Government has published model constitutions for unincorporated and incorporated community bodies to help communities set up a body which is eligible for asset transfer. Existing organisations should check their constitution as it may contain clauses which do not comply with the Act, which would need to be amended.

If a community group does not meet the eligibility requirements, we will advise them of the reasons and set out the options that are available.

A community transfer body must be a community controlled body, which means

- a body (whether corporate or unincorporated), having a written constitution which includes:
 - a definition of the community to which the body relates,
 - provision that the majority of the members of the body is to consist of members of that community,
 - provision that the members of the body who consist of members of that community have control of the body,

- provision that membership of the body is open to any member of that community,
 - a statement of the body's aims and purposes, including the promotion of a benefit for that community, and
 - provision that any surplus funds or assets of the body are to be applied for the benefit of that community.
- or a body that is designated as a community transfer body by an order made by the Scottish Ministers for the purposes of Asset Transfer under Part 5 of the Community Empowerment (Scotland) Act 2015
- or a body that falls within a class of bodies designated as community transfer bodies by such an order.

To purchase land or buildings, a community transfer body must also be one of the following

- a company whose articles of association provide that:
 - it has no fewer than 20 members, and
 - on the winding up of the company, land acquired under asset transfer passes to another community transfer body, a charity, a community body or a crofting community body (as defined in the Land Reform Act 2003), the Scottish Ministers or to such charity as the Scottish Ministers may direct.
- a Scottish charitable incorporated organisation (SCIO) the constitution of which includes provision that the organisation must have not fewer than 20 members,
- a community benefit society the registered rules of which include provision that the society must have not fewer than 20 members,
- if designated by Scottish Ministers as a community transfer body (or is one of a class of bodies designated by Scottish Ministers)
- that the designation also says it may purchase land or buildings under the Act.

If a community group is unsure if it is eligible, they should contact us at an early stage to discuss options. Additional eligibility requirements apply for some types of asset transfer:

Ownership of assets can deliver many benefits to a community. As an owner of an asset a community body would take on responsibility for any legal obligations in relation to ownership of the land or buildings and their project including managing health and safety, planning regulations and securing other consents. Ownership will give the community body the benefits of full control and responsibility for the land or buildings and their long-term future.

A lease may be the best option where a community body does not want to take on ownership at this stage but requires exclusive possession of land or buildings, for

example where planning permission and some form of infrastructure is an ambition, and/or where longer term tenure is needed to meet funder's criteria.

Under a lease the community will have responsibility for managing the land or buildings, according to the terms of the lease. The lease would need to be for a long enough period to allow time for the community group to develop and implement their plans.

A community body making a Community Asset Transfer Request should consider how it will fund both the asset transfer and their proposed activity or project. To purchase land or buildings, they will need to know the approximate market value of the assets, to help determine the price they are prepared to pay. Once they are ready to make a Request, we can jointly instruct a formal market valuation. To lease land or buildings, the community body will need to include the rental costs in their business plan, and for some agreements, standard fees or other costs may apply.

The cost of the asset transfer will also depend on the type of activity being proposed. The public benefits that the proposals are likely to deliver can be taken into account in determining the price the community body may be prepared to pay. Each community proposal will be different and a community body should make early contact with NHS Tayside at any point to discuss the details of their proposals.

SECTION 2: MAKING AN ASSET TRANSFER REQUEST

This Section sets out the information that a community body will need to put together to make an Asset Transfer Request, how the application will be processed and the timescales for assessment and decision. More information on how to set out the benefits of the proposals and how those will be assessed is included in Section 3: Assessment and Decision.

Preparing an Asset Transfer Request

Once a community body is ready to submit a Request, and have all the required information and supporting documents, they should complete an application ensuring that they have all the information needed to make a valid Request.

The Scottish Government's Asset Transfer Guidance for Community Transfer Bodies, and the summary guidance, sets out the information required for an asset transfer request. The key information that must be provided is:

- Information about the community transfer body

The community body should submit the information that is required, and also additional information to give us more background on the community the body represents.

- Information about the asset

The community body should describe the asset and its location to accurately identify the land or buildings they are interested in..

- Type of request, payment and conditions

The community body must state the type of asset transfer they are requesting, the reasons for the request, and describe the proposed use of the land or buildings. Specific information required will depend on the type of request:

Ownership:

- Price the community body are prepared to pay
- Any other terms and conditions

Lease:

- the amount of rent the community body are prepared to pay
- the duration of the lease
- any other terms and conditions they want to be included in the lease

- The community body should set out the benefits of their proposals, which we will use to make the decision on the Request, and should also provide evidence of their capacity and capability to deliver the proposals.
- It is important that the community body set out how they intend to fund the asset transfer and the proposed activities.
- The community body should be able to provide evidence of community support for your proposals. You
- The Request must be made in writing, stating that it is an asset transfer request made under Part 5 of the Community Empowerment (Scotland) Act 2015, and providing the information set out in Section 79(4) of the Act and the

Asset Transfer Request (Procedure) (Scotland) Regulations 2016, including the relevant supporting evidence.

- The community body should ensure that they provide us with all the necessary information to validate their Request and assess the application.
- The kind of evidence to be provided will depend on the nature of the proposals and their scale. For example, a major project may require a feasibility study, a business plan, a robust management and governance structure and evidence that the community body will be able to finance the project.
- If the Request does not include all the information required, we will not be able to set a validation date and start processing the Request until we have all the required information.
- Competing requests involving competing, eligible, Requests from community bodies to acquire the same land or buildings will go through the assessment process, with opportunities for comments to be made during the public consultation period
- If the same or very similar Request has been refused within the previous two years, we may decide not to consider the new Request unless a material difference has been made.

Community bodies will need to provide evidence of the benefits of their project and their capacity and capability to deliver those benefits. The evidence required to assess benefits will be proportional to the scale of the asset transfer.

Where the value of the benefits likely to be delivered is a relatively small proportion of the value of the asset, community bodies may want to review the area of land or buildings required to effectively deliver their project and make best use of their resources. Making sure the scale of the Request is appropriate to their project will maximise the benefits compared to the costs of the asset transfer.

Community bodies should discuss the options with NHS Tayside and funders at an early stage to determine the price they are prepared to pay for the asset. For larger proposals the community body may need to seek professional advice.

Once a completed application is received and it is confirmed that the organisation is eligible and that the Request is complete we will set the validation date for the Request which will be the date that NHS Tayside received the completed application. We must notify the community body of our decision on the Request within 6 months of the validation date.

When we issue the acknowledgement of a valid application and set the validation date, we will also publish the application on NHS Tayside's Community Asset

Transfer web pages (commercially sensitive and personal information will not be published) and display a notice at a public place in the vicinity of the land or buildings to which the asset transfer request relates. This could be at point of access to the property, or a nearby notice board or information point. The notice will state that an asset transfer request has been made, identify the community body making the request and the assets to which the request relates. The notice will give a brief description of the nature of the rights requested and how the community body propose to use the property. The notice will include details on how anyone can respond to the request and by what date, which will be 20 working days from publication of the notice. The application will then be made available to a Stakeholder Evaluation Panel who will assess the application, and to relevant officers of NHS Tayside for initial consideration (including officers responsible for property, legal, finance, community engagement and, where relevant, economic regeneration).

The application, supporting information and any additional information provided through the public consultation process will then go through an assessment process and with the aim of reaching a decision on the request within six months from the from the validation date of the application.

SECTION 3: ASSESSMENT AND DECISION

Once the Asset Transfer Request is received and validated, the application will be assessed, and the decision notified within 6 months from the validation date. This guidance sets out how we will assess the proposals set out in the Request, determine whether it delivers best value, notify the applicants of the decision and, if the Request is not approved, the applicants rights to appeal. Where a community body wants to request ownership of land or buildings, it is important for them to understand the market value of the assets in order to assist them in making an informed decision on whether to proceed with an acquisition request. The market value will help them determine the price they may be prepared to pay for the asset, inform their business plan and identify suitable funding.

At the initial stages, early discussions on the potential value or likely range of values for the asset can provide an indication of the price that may be required to secure the asset, subject to change if new information becomes available or circumstances change during the period the group are developing your proposal, which may take some time. Once the community body are ready to submit a Request, we will offer to jointly instruct a formal valuation which will be carried out by the District Valuer or other suitably qualified and experienced independent valuer on a shared cost basis with the community body.

This valuation is best completed before the Request is submitted. We will provide information to the community body to allow the valuation to be instructed. A valuation is usually valid for no more than 6 months. As it is likely to take longer than 6 months to process and finalise an asset transfer request and sale, re-valuation may be required before completion of the sale. This is to ensure we have a valid and up to date market valuation at the point at which we transfer a public asset. A re-valuation would also be required, by agreement between the

parties, where there has been a change in circumstances which will affect the value of the asset.

For sales and leases, the Request must include the sum which the community is prepared to pay either to acquire the land or for its annual rent. This will be taken into account in the assessment of the Request

Requests at the market valuation will be assessed to determine whether they meet the assessment criteria and the Stakeholder Evaluation Panel will evaluate and assess the proposal from the community body to ensure that it is a suitable use of the asset, without any or with minimal negative impacts which can be mitigated.

If there is a differential between the price the community body is prepared to pay and the market valuation, the Stakeholder Evaluation Panel's assessment score will be taken into account by NHS Tayside in making the decision on the Request

Where the community body decides to propose a lower price than the market valuation, they will need to provide sufficient evidence to allow us to assess whether the proposal provides public benefits that give a rationale for a lower price, assessed against the criteria set out in this guidance. So when considering the price that they intend to offer, the community body will need to take into account a number of factors:

The REACT evaluation process will assess the Request and determine the price NHS Tayside is able to accept, taking into account two key factors:

- Benefits and Social Value Assessment*
- Best Value Assessment*

In practice, the Benefits and Social Value and Best Value assessments are likely to benefit smaller community projects focussed on delivering benefits to their members. Significant discounts on larger land and property sales will need to be supported by strong evidence of significant benefits and the community body's capacity to deliver them.

Benefits, Social Value and Best Value Assessment

The REACT approach will follow a 2 stage assessment process:

- Stage 1: Assessment of the project's Benefits and Social Value by a Stakeholder Evaluation Panel.
- Stage 2: Determination of the Best Value, to be considered by NHS Tayside in evaluating any potential discount against the agreed or joint market value in determining the decision on whether or not to agree to the Asset Transfer Request and therefore the financial consideration to be met by the Community Group in respect of the acquisition of the subject asset.

The assessment template incorporates the best value themes into the four key aspects of community proposals: Benefits, Viability, Community Support and Social Value.

Negative impacts will be considered and although they will not contribute to the best value score for the benefits, they will allow the Stakeholder Evaluation Panel to advise NHS Tayside where there are good reasons to refuse an Asset Transfer Request. The Panel may also identify potential mitigation measures, which NHS Tayside may be able to take into account in its decision on the Request (see Table 1 below).

NHS Tayside will take into account the Evaluation Panel's scoring of the benefits in determining the asset transfer price that it can accept.

It is important to note that benefits are considered against the absolute value of any request below the market valuation, and not as a proportional reduction. For example, if the benefits justified a discount of £10,000, this discount would be the same whether this was proportionally 90% of a small sale or 5% of a large scale proposal.

Assessment of the Request

Identify positive and negative impacts

- Positive impacts: Score level of positive impact from very low to very strong (1-5). Where NHS Tayside has requested evidence from the community body but has not been provided by the community, the proposals will score 0.
- Negative impacts: Identify impacts as
 - "critical" which may result in decision to refuse or
 - "potential to mitigate" which may result in conditions being placed on the decision, or are relatively minor

Calculate weighted score based on level of positive impacts (negative impacts are not scored but taken into account in the decision)

Benefits:	Weighted score out of 10 (50%)
Viability:	Weighted score out of 6 (30%)
Community Support and Wider Public Benefit:	Weighted score out of 2 (10%)
Social Value	Weighted score out of 2 (10%)
TOTAL	Weighted score out of 20

Negative impacts will not contribute to the best value score for the benefits, but will allow the Evaluation Panel to advise Forest Enterprise Scotland where there good

reasons to refuse an Asset Transfer Request. The Panel may also identify potential mitigation measures, which Forest Enterprise Scotland may be able to take into account in its decision on the Request (see Table 1 below).

NHS Tayside will take into account the Stakeholder Evaluation Panel's scoring of the benefits in determining the asset transfer price that it can accept.

It is important to note that benefits will be considered against the absolute value of any request below the market valuation, and not as a proportional reduction. For example, if the benefits justified a discount of £10,000, this discount would be the same whether this was proportionally 90% of a small sale or 5% of a large sale.

In Assessing the Request, the Community Empowerment (Scotland) Act 2015 requires that we consider whether agreeing to the Request would be likely to promote or improve

- economic development
- regeneration
- public health**
- social wellbeing**
- environmental wellbeing, or
- reduced inequalities of outcome which result from socio-economic disadvantage**

We will make the decision in a manner which encourages equal opportunities and the observance of the equal opportunities requirements. The decision will also consider how the proposals affect health and care in our populations, and any obligations that affect our ability to agree to the request, whether these arise from legislation or otherwise.

The Request will be evaluated by a Stakeholder Evaluation Panel to advise whether the Request meets these requirements and to assess the benefits set out in the Request against the agreed criteria. The recommendations made by the Stakeholder Evaluation Panel will be advisory, The final recommendation to Tayside NHS Board for final decision on the determination of the Request will be made by the Chief Executive, NHS Tayside, based on their Panel's recommendations and whether the Request demonstrates Best Value , in compliance with the Scottish Public Finance Manual.

The Stakeholder Evaluation Panel is made up of representatives and officials, where possible, from NHS Tayside, Health and Social Care Partnership, Local Authority, Third Sector and public partners(s), chosen for their expertise across the economic, environmental and social sectors.

The Panel will look at 5 key areas to assess the proposals:

A. Benefits

B. Viability

C. Community Support

D. Value

E. Utilisation

The Panel will base their assessment on the information set out in the Request, any additional information provided through the public consultation process and any additional information that we have requested or that the community body has provided prior to the assessment.

The Panel may seek further information from the community body and may contact them to arrange a visit to their group and the land or buildings concerned. We will also provide the Panel with information on the public benefits being delivered through the current management plans for the land or buildings

The sections below describe the criteria against which each of the Key Areas will be assessed and gives examples of the information and evidence the community body should provide. We are currently developing the detailed criteria which the Stakeholder Evaluation Panel will use to assess Requests, which will be published alongside the finalised guidance.

It is anticipated that the community body are likely to have brought together most of this information in working with their community to scope and develop the proposals, and some of the information will be useful for other purposes, for example, a business plan is likely to be a requirement for funding applications, as well as asset transfer.

Benefits

Each Request should set out proposals demonstrating a clear vision for how the community will use the land or buildings and the outcomes it intends to achieve. The criteria we will use to assess the benefits set out in the proposals will take account of the financial and non-financial benefits. Financial benefits that can be demonstrated include enhancing the number of jobs supported by management of the asset or reduced costs to the community from provision of services locally. Non-financial benefits may be quantifiable such as the contribution the proposals will make to Scotland's 16 National Outcomes which set out what the Scottish Government wants to achieve, through indicators such as creating new jobs, reduced demand for health services or increasing population.

Qualitative benefits may include increased community cohesion, enhancing skills within the community or improved local wellbeing. We will also consider any steps the community body have taken in developing the proposals to encourage equal opportunities and help their community to address inequalities resulting from

socioeconomic disadvantage. Some key points that that should be considered in identifying the benefits of the proposals are whether they:

- show that the proposals will provide net additional public benefit;
- demonstrate benefits to the whole local community rather than only some individuals in the community;
- show that benefits for the immediate community are not outweighed by disbenefits to the wider community, environment or economy.

Viability

The assessment will consider how the community body intends to deliver the project and its viability. The Request should demonstrate that the community has the resources and skills appropriate to the scale and requirements of the project, including leadership and capacity to provide long term sustainable management. The community body making the Request must have an appropriate governance structure and policies in place, which will depend on the nature of the proposals and the scale. For example, if the project will generate significant cashflows, robust financial governance and accounting procedures are essential. For simple projects, a statement setting out roles and responsibilities and appropriate oversight from the community body may be sufficient to demonstrate that the project will be managed successfully.

The Request should also provide evidence that the community body have sufficient resources and capacity to deliver the project. This capacity can be demonstrated through business plans, budgets, management plans, development plans, evidence from the management of existing property, and evidence of the activity of any existing community body or other community structures. In general, all applications to buy or lease land should have a business plan. Even for small projects a simple business plan is likely to prove useful in clearly setting out your proposals and how the community body will fund the initial and ongoing project costs. As they will need a business plan for other purposes, e.g. funding applications, we recommend using a format which would be suitable for dual purposes. The assessment will also consider the sustainability of the proposals. For leases with a fixed term, the business plan should set out how the project will managed for the term of the agreement and what the intention is when the agreement ends. For significant applications to purchase land or buildings, plans should cover the process of acquisition and financial management for at least the three years following purchase. Budgets and funding sources should be defined. Where important outcomes will not be achieved within the first three years, the anticipated funding sources for those activities in subsequent years should be shown.

One of the policy aims of empowering communities to acquire assets is to further sustainable development of communities. Sustainable development requires an integrated long-term approach to economic, social and environmental issues. The proposed management of the land or buildings should be consistent with the Scottish Government's policy on sustainable development. The Request should also set out

clearly how the benefits and outcomes of the proposals will be monitored and reported on.

Community Support and Wider Public Benefit

The proposals should be supported by the community that the community body making the Request represents. This can be demonstrated in a number of ways - guidance and tools on best practice for community engagement are available such as the National Standards for Community Engagement. Where the community is based on shared interests or characteristics rather than a connection to the land or buildings, it is particularly important to demonstrate engagement with the local community. The assessment will look at any partnerships that are in place and whether they will contribute to the delivery of the project.

The proposals should also demonstrate that the community body have considered local impacts and the assessment will take account of whether the Request would have negative impacts on local communities or communities of interest. The assessment will also consider the wider public interest in the proposals. The public interest includes the interest of any sector of the public which would be affected by the application. This is intended to protect the interests of distinct communities and groups other than the community represented by the community body. The Request should demonstrate the support of key stakeholders and user groups for its proposals. This could be by way of letters of endorsement.

Where planning permission or change of use is being considered, evidence of discussions with the relevant planning authorities is important as the planning system guides the development and use of land in the long-term public interest. For example, it will be for the community body to show that their proposals for development are consistent with the Local Development Plan.

Social Value

The community body proposals should be able to demonstrate the quantitative and qualitative benefits as set out in the above section on Benefits. However, particularly where a community body is offering a financial consideration below the projected market value, it is important to also evidence social value in the proposals that can only be realised through acquisition and deployment of the asset that is the subject of the Request. *Social value* is the quantification of the relative importance that people place on the changes they experience in their lives. Some, but not all of this value is captured in market prices. It is important to consider and measure this social value from the perspective of those affected by an organisation's work.

‘Social value’ is about aiming beyond a long-standing volunteering program and a well-established apprenticeship scheme. It’s about seeing further ahead than a local business target into societal and community development. Social value is about using the spend in any organisation to drive social and economic opportunities to those most in need, to the most vulnerable in society

However, there are many practical obstacles to producing an assessment of the social value or impact of a project - it is a new area and can present a lot of technical challenges. One of these, is the issue of additionality. Additionality is all about the marginal difference a project makes, and what value it adds. For example, if you want to work out whether a carbon saving project is worthwhile, you need to gauge what would have happened in its absence. Similarly, in a social value context, to assess community projects or the difference that a particular socially-minded investment is making, it is relevant to ask the question: what difference is the project making compared to an alternative project? Or what would have happened if the project didn't take place?

The evaluation of marginal impact relies on the intention to make a positive differential impact in the first place. Clearly community bodies have impacts that go way beyond the special purpose community projects they may set up. There are technical issues about the handling of impacts that have no market price, such as health and safety and it is acknowledged that it is very challenging to evidence social value in absolute or monetary terms. It is important to establish the aspects of wider social value that can be readily demonstrated.

Utilisation

The Panel will also consider whether the project maximise the benefits in relation to the scale of the asset transfer and makes best use of the asset. This criteria will not usually be taken into account in deciding whether or not to approve the request in principle, but will affect the best value assessment where the community is seeking a discount. Strong proposals will demonstrate that the project benefits will maximise the use of the asset and deliver significant financial and non-financial benefits in relation to the size of the asset transfer. Very low impact proposals will only make use of a small part of the asset, or will deliver limited benefits in relation to the overall scale of the asset transfer.

Assessment of Best Value

NHS Tayside will consider the price offered by the community, alongside the benefits set out in the Request. Any decision to transfer an asset must represent good use of public resources. This includes taking into account the level of financial and non-financial benefits of the proposals, based on the Stakeholder Evaluation Panel's

assessment, compared to the public benefits that would be delivered from retaining the land and buildings in public ownership, including any revenue or costs or from reinvestment of and the capital received from sale of the land or buildings.

Where the price offered is the market valuation, it is likely to be accepted provided that no critical negative impacts have been identified by the Stakeholder Evaluation Panel, or any negative impacts can be mitigated. Where the price offered is below the market valuation, determining whether any discount requested has been justified will be based on the Stakeholder Evaluation Panel's recommendation, subject to consideration of Best Value and the Scottish Public Finance Manual. In particular, where the value of the discount requested is significant, we will need to consider the extent to which this will reduce the public benefits of NHS Tayside health programmes. In certain circumstances, where the price is below market value, it may be appropriate for us to include conditions in the contract to protect against the risk that the benefits set out in the Request are not delivered, to allow us to claim restitution.

Where such conditions would be appropriate and proportionate, we will set these out clearly in the decision notice. The Scottish Government's Asset Transfer Guidance for Community Transfer Bodies Chapter 14 sets out some of the options for protection of a discount in more detail.

Making the Decision

The decision whether to agree to the Asset Transfer will be made by the NHS Tayside Board on recommendation by the NHS Tayside Chief Executive, taking into account the assessment of the Request by an Stakeholder Evaluation Panel, and the input of NHS Tayside officers.

The Chief Executive can recommend approval of the Request subject to specific terms and conditions, or recommend refusal of the Request. It may also be the case that there is insufficient evidence on which to recommend either approval or refusal of the Request, in which case a recommendation of no decision may be made.

Once the decision has been made, we will issue a decision notice to the community body. This will be within six months of the Validation Date for the Request unless we have jointly agreed a longer time period. The decision notice will be published on our website and, where an address has been provided, we will advise all those who made written representations in respect of the asset transfer request of the decision and where the decision notice is available online.

The decision notice will

- state the date on which the asset transfer request was made
- identify the community transfer body which made the request
- identify the land to which the request relates

- set out NHS Tayside’s decision to agree to or refuse the request
- set out NHS Tayside’s reasons for the decision
- 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.

If the request is agreed to, the decision notice will also

- specify the terms and conditions on which Forest Enterprise Scotland is prepared to transfer ownership, lease the land or confer the rights requested
- state that, to proceed with the process, the community transfer body must submit an offer
- specify the period within which the offer must be submitted (at least 6 months from the date of the decision notice)

The terms and conditions on which we would be prepared to agree to the Request may be the same or different from, or in addition to, any terms and conditions set out in the Request. This may include the asset transfer price or asset transfer rental value at which we can approve the Request, or other terms and conditions. If these differ significantly from the proposals set out in the Asset Transfer Request, the community body may appeal to Scottish Ministers, as set out below.

Appealing the Decision under the Asset Transfer Regulations

Eligible community transfer bodies have a statutory right to appeal the decision to Scottish Ministers if:

- their request is refused
- 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.

The Scottish Government’s Asset Transfer Guidance for Community Transfer Bodies provides more information on how community bodies can appeal a decision. The deadline for submission of an appeal is 20 working days from the date that the decision is notified, or, if the appeal is because no decision has been made, within 20 working days of the deadline for notification of the decision (ie, 6 months from the validation date of Asset Transfer Request).

SECTION 4: CONCLUDING AN ASSET TRANSFER REQUEST

This section sets out the process for concluding the sale, lease or agreement to manage, use or occupy land, after the community have been notified of the decision. It sets out the expected timescales and the options for reaching a final agreement, and rights to appeal. The decision notice will set out the terms and conditions under which the Request has been agree to, which will depend on the type of asset transfer. For sale: the terms, conditions and price for the purchase of the land or

buildings by the community. This will include any specific requirements to protect the value of any benefits to be delivered if the sale is below market value. For lease: the terms, conditions and price for the lease, including any terms and conditions requested by the community and approved by NHS Tayside

As set out above, the community has the right to appeal if the terms and conditions are significantly different to the proposals in the Request (see Chapter 17 of the Scottish Government's Asset Transfer Guidance for Community Transfer Bodies for further details). The decision notice will include the deadline for the community body to make an offer, based on the terms and conditions set out in the decision. The deadline will normally be 6 months, though longer deadlines will be considered on a case by case basis, with the expectation that contracts will be concluded within a further 6 months. More complex projects may take longer to allow time to secure any necessary permissions and third party agreements to allow the project to go ahead. We will continue to engage with the community body during this period to discuss the asset transfer and help them identify what advice and support they need to get their offer together.

Submitting the Offer

The community body will need to put in place all the measures to enable them to make an offer as soon as possible. This is likely to include appointing legal representatives, confirming that funding will be in place if the approval is for purchase or lease of land or buildings, and securing any permissions that are required for their project, such as planning or environmental permissions.

Once they have considered the terms and conditions in the decision, the community body should contact us as soon as possible, and provide us with the name and address of the solicitor who will be acting on their behalf, to begin the process of drawing up the legal agreement for their formal offer. If an offer is not received by the deadline, the asset transfer process will end.

Therefore, if they are not able to submit an offer within the deadline, the community body should contact us to discuss as soon as possible. There is no statutory right of appeal to extend the deadline but in some cases, for example, where significant progress had been made and the delay is outwith the community group's control, we can consider extending the deadline.

For sale or lease, the community group will be considered to have made an offer for sale or lease of the land when the solicitor acting for the group has provided confirmation that the terms and conditions set out in the Decision Notice are acceptable.

Concluding the Asset Transfer Request

Once the formal offer has been made, it is expected that the asset transfer will be concluded within 6 months. The date for the transfer itself may be the date contracts are concluded, or a later date if the contract is conditional on factors such as

confirmation of funding. If it appears that it will not be possible to conclude contracts within 6 months, the community body can request an extension. If they wish to request an extension, they should contact us as soon as possible. If we are not able to agree an extension, the community body can also apply to the Scottish Ministers to request an extension, provided the application is made between six weeks and four weeks before the end of the 6 months deadline.

If we have been unable to conclude contracts by the end of the 6 month period for conclusion of contract, or any agreed extension, the community body then has the right to appeal to the Scottish Ministers to determine the terms and conditions of the contract, which NHS Tayside may be required to accept. An appeal where no contract is concluded must be made within 10 working days of the deadline for conclusion of contracts. Details on the process for applying to Scottish Ministers for an extension or for making an appeal if contracts are not concluded by the 6 months period or extended deadline are set out in the Scottish Government's Asset Transfer Guidance for Community Transfer Bodies.

Changes to the terms of an approved Asset Transfer Request for purchase of land or buildings

An existing approval for acquiring land or buildings under the NHS Tayside under community asset transfer can only be amended to an approval for leasing can only be amended at the discretion of NHS Tayside Board and will be considered alongside our other public duties. If the proposal differs significantly from the original Request, the Chief Executive, NHS Tayside retains the right to ask that a new Request be submitted.

. MAKING AN ASSET TRANSFER REQUEST 17 | Community Asset Transfer Scheme Guidance | 25/05/17 Repeat Requests