



Community Asset Transfer Guidance Pack

Revised October 2022

Contents

Introduction	Page 3
What is Community Asset Transfer?	Page 3
Reasons for Community Asset Transfer	Page 3
Suitability	Page 4
Assets considered suitable for transfer	Page 4
Assets considered unsuitable for transfer	Page 4
Applicants	Page 5
How to apply for an asset	Page 6
Stage 1: Full Asset Transfer Request	Page 6
Acknowledgement	Page 7
Decision Making Process	Page 8
Stage 2: Cabinet Decision	Page 8
Implementation & Handover – Offer to Proceed	Page 8
Review and Appeal Process Review	Page 9
Decision of Review	Page 10
Appeal to Scottish Ministers	Page 10
Glossary of Terms	Page 11
Sources of Support – including Key Documents	Page 13

Foreword

Community ownership or control of assets can empower individuals and communities, helping them respond to local challenges by taking greater control of the land and buildings where they live. People can feel a sense of ownership and pride when they control their own assets and often the experience of doing so is inclusive, inspirational and rewarding.

Whilst it is not necessary to submit your Community Asset Transfer request using North Ayrshire Council's pro-forma, it is highly recommended you do so, to ensure that you provide all the required information, meet the government conditions of governance and make the process as quick and simple as possible.

North Ayrshire Council work closely with colleagues of the Development Trust Association Scotland - Community Ownership Support Service, who are an independent organisation providing help and support, to anyone exploring a Community Asset Transfer. Details of how to contact them are contained within an appendix at the end of the guidance pack.

Introduction

North Ayrshire Council's Community Asset Transfer Policy recognises that transferring the ownership of an asset to communities can play a valuable role in supporting and sustaining local communities in North Ayrshire.

This guide is for all community, voluntary and social enterprise groups / community controlled bodies interested in acquiring assets owned by North Ayrshire Council (herein referred to as 'the Council') to develop and deliver services and/or generate benefits for their local communities.

This guide explains the scope of the Council's policy on community asset transfer, provides guidance to interested groups on how to apply, and explains how the Council will process applications.

This information and the application form is also available on the Council's website at <https://www.north-ayrshire.gov.uk/your-community/community-asset-transfer.aspx>

What is Community Asset Transfer?

Community asset transfer involves the transfer of responsibility for an asset from the Council to any suitable community, voluntary or social enterprise group / community controlled body. This transfer can be facilitated in different ways, e.g. by the transfer of management responsibility through short or long term lease arrangements or through the transfer of outright ownership.

Reasons for Community Asset Transfer

Community asset transfer is rooted in the principals of the Community Empowerment (Scotland) Act 2015 and provides an opportunity for people to be involved in developing and providing opportunities or services for their local communities. It may also allow groups to develop commercial proposals which will support community benefit. Asset transfer also may mean that public assets get used more frequently and more effectively. Community-led ownership may also allow additional opportunities for groups to secure extra funding or resources.

For further information on the Community Empowerment (Scotland) Act 2015 part 5 see <http://www.legislation.gov.uk/asp/2015/6/part/5>

Please also refer to the 'Asset Transfer under the Community Empowerment (Scotland) Act 2015 - Guidance for Community Transfer Bodies' document available on the Scottish Government's website, at <http://www.gov.scot/Resource/0051/00513211.pdf>

Where the Council transfers assets to community-based groups it will continue to promote and improve the contribution to North Ayrshire and will evaluate each proposal in terms of its ability to contribute to the following:

- Community empowerment
- Local community benefits
- Building the capacity of, and encouraging a sustainable voluntary and community sector
- Economic development and economic well-being
- Social enterprise
- Social well-being
- Public health
- Environmental improvements, regeneration and environmental well-being Improvements to public services
- Value for money

Suitability

For further information please refer to the 'Asset Transfer under the Community Empowerment (Scotland) Act 2015 - Guidance for Community Transfer Bodies' document, chapter 7.'

Assets Considered Suitable For Transfer

Any land or building (with some exceptions) the public feel they could make better use of. Assets may include such as public halls and community centres, public conveniences, parks, sports facilities, play areas – any physical asset that the community feel that they can operate in a way that supports the local community or a community of interest. Each application for transfer will be considered on a case-by-case basis against the criteria outlined within the Community Empowerment (Scotland) Act.

Assets Considered Unsuitable For Transfer

There are some assets that must remain under the Council ownership in order to support the delivery of essential services or to support economic activity in an area. There are also some assets that may be considered unsuitable for transfer because of title conditions e.g. castles, monuments and assets gifted to the Council for educational purposes. The Council must also balance the needs of the community and its commitment to community asset transfer against its need to generate capital receipts in order to invest in essential capital projects.

Assets which have the potential to generate significant capital receipts for the Council may not be considered suitable for transfer. A community transfer body has the right of appeal against a decision of the Council not to release land or property for asset transfer. A link to the Council's website which contains information on North Ayrshire Council register of land and property is available to assist community transfer bodies.

<https://www.north-ayrshire.gov.uk/Documents/EconomyCommunities/asset-register.pdf>

Applicants

Applications will be welcomed from community, voluntary and social enterprise groups / community controlled body – see chapter 5 of the Scottish Government Guidance for Community Transfer Bodies.

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

A community controlled body does not have to be incorporated, but it does have to have a written constitution.

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 of the Community Empowerment Act.

Appropriate groups may be area-based, based around particular social groups or have some other shared interest. Applicants should meet the following essential criteria:

- Be an appropriately constituted voluntary and community sector organisation or social enterprise;
- Be able to demonstrate good governance;
- Be able to demonstrate sustainability/viability;
- Ensure the proposed use can demonstrate community benefit. This includes organisations which serve a particular interest group or geographical area;
- Have the skills and capacity to effectively deliver services and manage the asset to be transferred; and
- Be aware of any need to build capacity within their organisation and demonstrate how they intend to do this.

Community controlled/transfer bodies will be expected to demonstrate how they will contribute to the North Ayrshire Local Outcomes Improvement Plan 2022-30 which is an agreement between the Scottish Government and the Council, and sets out how Community Planning Partners will work in the future towards improving national outcomes for the local people in a way that reflects local circumstances and priorities: [Local Outcomes Improvement Plan – North Ayrshire Community Planning Partnership](#)

North Ayrshire Local Outcomes Improvement Plan priorities are:

Wellbeing

- We will address health inequalities. We will promote children and young people’s wellbeing. We will enable community wellbeing.

Work

- We will increase employment. We will develop volunteering. We will better support our young people.

World

- We will work together to reduce carbon emissions and mitigate the impacts of climate change. We will increase active travel. We will increase carbon literacy within our organisations and communities.

How to apply for an asset

The Council is committed to processing any request for asset transfer in an open and transparent way in partnership with the organisation concerned.

Please feel free to contact us by email at communityassetteam@north-ayrshire.gov.uk. Community bodies would then know whether the asset is available and if they had support from the Council before undertaking the substantial work to produce a full asset transfer request or applying for funding.

At any stage in the process, an organisation can cancel a transfer if their circumstances change and they no longer wish to pursue the asset.

At any stage in the process, the Council can cancel the transfer where suitable justification exists.

A list of what information is required and guidance on what you should consider is explained in chapter 8 of the Scottish Government guidance document.

Alternatively, the questions that the Council require answers to are contained in the Community Asset Transfer – Initial Enquiry Form available on the Council website <https://www.north-ayrshire.gov.uk/your-community/facilities/community-asset-transfer.aspx>

If helpful, the Council will share all available information on the asset, including details of its condition, running and maintenance costs, and title deed restrictions, to help community bodies to decide whether to submit a full asset transfer request. If a Transfer Body requires a significant level of information and support, a reasonable charge may be applied by the Council for the provision of that information.

The process of making a full request for asset transfer is set out in the following two stages.

Stage 1: Full Asset Transfer Request

Interested parties can submit their full request by completing the North Ayrshire Council Request Form the Sections 1 to 5 which is available on the Council website or alternatively as described in the Scottish Government guide.

Forms should be sent to communityassetteam@north-ayrshire.gov.uk and will be reviewed by the Community Asset Transfer team; a group of representatives from services across the Council who will consider the suitability of assets and applicants.

Assistance with preparation for submitting a full request may be available (especially if all the required information is not initially provided).

Applicants will be allocated a Single Point of Contact (SPOC) who will act as key contact throughout the process.

Your Asset Transfer request should:

- provide responses in the application relative to the asset under consideration; demonstrate a clear community/social demand for the transfer;
- demonstrate that the group has the capacity to manage the asset and has members who have the necessary and appropriate skills, experience and qualifications to deliver the project, or has plans for engaging people who do;
- show the group has good governance and robust financial systems;
- show how the group's aims for a project will contribute to the achievement of the Council's priorities;
- prove that the proposed project will not duplicate activities, services or facilities already provided in the local community.

Acknowledgement

Once the Council is satisfied that all the required information has been provided, it will send you an acknowledgement in writing. This will include the following information:

- the validation date for your request – this is the date on which the last of the required information was received by the Council (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, i.e. the time period for the Council to notify you of its decision – this is 6 months from the validation date;
- information about the appeals process and the right to request a review by the Council or appeal to the Scottish Ministers, as appropriate.

At this stage, the Council will publish the notice of request and notify other parties (i.e. owner / tenants / occupiers, local Community Council etc) therefore you are agreeing to the name of your

organisation being published on the Community Asset Transfer page on the Council website. Personal information will be redacted prior to publication.

In some instances, there may be more than one request received with interest in the same asset. Each asset transfer request that is received will be processed in line with the procedures and timescales set out. In this situation we may support all community transfer bodies interested in a particular property to work together to submit a single request, however this is not always practical. Should this occur, the criteria found in the NAC Officers Assessment found at <https://www.north-ayrshire.gov.uk/your-community/community-asset-transfer.aspx> will be used to inform the decision in relation to the more suitable request.

During this process representations may be received about this request from other parties (within 20 working days of publication), these will be copied to the organisation making the transfer request.

Community transfer bodies will have 20 working days to make comments on any representations received.

Further information may be sought by the Council throughout this process if required to support the decision-making process. The process of evaluation will also apply where there are numerous interested parties and a final recommendation will be made to North Ayrshire Council Cabinet on whether to proceed with the asset transfer.

Subject to any pre-standing requirements or preclusions, such as Common Good, please be advised this may impact on the decision-making progress and timescales.

Stage 2: Cabinet Decision

Once the assessment and evaluation process is concluded a report will be presented to the Cabinet of North Ayrshire Council. The report outlines the findings of the assessment and makes recommendations relating to the way forward for the transfer of the asset and asks Cabinet to agree to the recommendations. This then allows Officers to do the follow up work to either transfer the asset or to inform the applicant that the request has been declined and why. A Cabinet report would also be used to recommend the preferred application, in the event that there is more than one application for the same asset.

The Cabinet report will also contain a recommendation as to the cost to the applicant of acquiring the asset. In accordance with the Local Authorities (Scotland) Regulations 2010 it may be possible where wider public benefits are to be gained to transfer an asset at less than market value. In such cases the Council's reasonable legal and negotiating fees and expenses may be recoverable from the community body.

Based on the decision at Cabinet, a Decision Notice on the outcome of the application will be conveyed in writing to the applicant and will include the reasons for the decision and the financial implications. It will also contain the notification of the right of appeal or review and it will be publicised on the Council website. Applicants have a set timescale in which to respond to the Decision Notice should they wish to appeal. A Draft Offer will be issued with the Decision Notice.

Implementation & Handover

Once they receive the Decision Notice and Draft Offer, if the applicant wishes to proceed, they must engage with a Lawyer to act on their behalf to conclude the proceedings. A Lawyer will use the Draft Offer as a starting point for the negotiations into the Terms and Conditions. They will then liaise with the Legal Team of North Ayrshire Council to conclude the process on behalf of the applicant.

In some instances, a contract will be drawn up between the applicant and the Council setting out the support being provided by the Council to enable the group to meet its responsibilities. Such support may include financial, business or governance advice, or advice on the management of the asset to ensure its sustainability. For successful applications, the SPOC will continue to support the transfer of the asset and any resultant work.

The final Terms and Conditions will set out what the organisation can do with the asset and what restrictions may apply if the group wishes to sell on the asset.

Both the applicant and the Council will each be responsible for their own legal and negotiating fees and expenses unless there are exceptional circumstances or there is a complex Legal situation.

At this point the asset transfer will be complete and the applicant will begin using the asset to deliver the benefits described in the business proposal.

The Council may continue to monitor the progress of the project in a manner appropriate to the proposal. Tenants may be obliged to submit annual accounts and details of community use on a regular basis and we would seek to agree a minute of agreement between both parties.

Review and Appeal Process

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
- no decision notice is issued within the required period

Review

The community transfer body can apply for an internal review by the Council, as set out in section 86 of the Community Empowerment Act.

An application for review must be made in writing addressed to the Council within 20 working days of receipt of the decision notice and sent by email to communityassetteam@north-ayrshire.gov.uk

The application for review must include the name and contact address of the community transfer

body and specify the asset to which the transfer request relates. It must also include a statement setting out the reasons for requiring a review.

The community transfer body must cover all matters which the community transfer body intends to raise in the review and may provide/submit new information only with the Council's approval.

An acknowledgement of the application for review will be sent to the community transfer body within 10 working days of receiving it.

Decision of Review

The review will be carried out in accordance with the Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016. The review process may include requesting further information, holding a hearing or deciding the case on the basis of the information provided within the asset transfer application.

Following the review the original decision may be confirmed, modified in whole or in part or a different decision substituted.

A new decision notice will be issued and will replace the previous decision notice. The new decision notice will be given within 6 months of the date the application for review was made.

Appeal to Scottish Ministers

A community transfer body can appeal to the Scottish Ministers as set out in the Scottish Government 'Guidance for Community Transfer Bodies'

For further information on Review or Appeal process please refer to chapters 17 – 19 of the Scottish Government 'Guidance for Community Transfer Bodies' document.

Glossary of Terms – Community Empowerment (Scot) Act

Glossary of Terms:

Relevant Authority in the context of this policy is North Ayrshire Council.

Community Controlled Body: A Community (controlled) Body is an organisation or group which meets the criteria. To qualify as a community controlled body, your constitution, Articles of Association or registered rules must include the following things:

- A definition of the community to which the body relates.
- Your 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"). You should make sure you define the community clearly so you can know whether a person is a member of your community or not - this is important for the membership requirements.
- Provision that membership of the body is open to any member of that community. Membership of your body must be open to anyone who is a member of the community you have defined. There must not be any additional requirements.

Asset: For the purpose of this policy an asset shall be considered to be any land or buildings which are owned or leased by North Ayrshire Council.

Community Asset Transfer involves the transfer of the responsibility for an asset from the Council to a Community Body through either a transfer of management responsibility, short or long term lease, or through the transfer of ownership. It should be noted that only Community Bodies which meet the criteria can request a transfer of ownership of land.

For a successful application a Community Body must have a written constitution which:

- Defines the community to which the Body relates
- Provides that a majority of the members of the Body must be members of that community
- Provides that the members of the Body who are members of the community control the Body
- Provides that membership of the Body is open to any member of the community
- Sets out the Body's aims and purposes, which must include promoting community benefit
- Provides that any surplus funds or assets are used for community benefit

A Community Body requesting a transfer of ownership of an asset:

- Must be a company whose articles of association provide that it should have no fewer than 20 members and that, on winding up, its assets are to transfer to another Community Body or a charity, or
- Must be a Scottish Charitable Incorporated Organisation (SCIO) whose constitution

provides that it must have no fewer than 20 members, or

- Must be a community benefit society whose registered rules provide that it must have no fewer than 20 members, or
- If it is a body designated by order of the Scottish Ministers, the order must specify that the body may request a transfer of ownership of land.

Validation Date: This is the date on which the last of the required information was received by the Council and accepted as complete. This is the date from which other time limits will be calculated.

Decision Notice: 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, or a longer period if agreed between the relevant authority and the community transfer body.

Sources of Support – including Key Documents

Scottish Government

Community Empowerment (Scotland) Act 2015 - www.legislation.gov.uk/asp/2015/6/part/5 Guidance for Community Transfer Bodies - www.gov.scot/Resource/0051/00513211.pdf

National

Development Trusts Association Scotland - www.dtascot.org.uk/
 Community Ownership Support Service - www.dtascommunityownership.org.uk/
 Community Woodlands Association - www.communitywoods.org
 Community Energy Scotland - www.communityenergyscotland.org.uk/
 Community Land Advisory Service Scotland - sc.communitylandadvice.org.uk/
 Forestry Commission Scotland – scotland.forestry.gov.uk/managing/get-involved/communities
 National Standards for Community Engagement - www.scdc.org.uk/what/national-standards/
 Communities Channel Scotland - www.communityscot.org.uk/
 Community Land Scotland - www.communitylandscotland.org.uk/
 Community Funds - www.gov.scot/Topics/Built-Environment/regeneration/communityfunds
 Scottish Council of Voluntary Organisations - www.scvo.org.uk/
 Social Enterprise Scotland - www.socialenterprisescotland.org.uk/
 Co-operative Development Scotland - www.scottish-enterprise.com/services/develop-your-organisation/co-operative-development-scotland/overview

North Ayrshire

NAC Community Asset Transfer Team - The team will facilitate the Asset Transfer process and support Third Sector, community and voluntary organisations to reach an informed choice regarding the viability or liability of proposals.

Communityassetteam@north-ayrshire.gov.uk

North Ayrshire for Business - For information and support with Business Plans Tel: 01294 449944; website: www.northayrshireforbusiness.com/home.aspx or email: business@north-ayrshire.gov.uk

The Ayrshire Community Trust - TACT provides support to local voluntary sector organisations to help them grow and develop. Tel: 01294 443044;

website: www.theayrshirecommunitytrust.co.uk/ or email: info@theayrshirecommunitytrust.co.uk

